

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

September 1, 2020  
Date of report (Date of earliest event reported)

ENCORE CAPITAL GROUP, INC.

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of incorporation)

000-26489  
(Commission File Number)

48-1090909  
(IRS Employer Identification No.)

350 Camino de la Reina, Suite 100  
San Diego, California 92108  
(Address of principal executive offices)(Zip Code)

(877) 445-4581  
(Registrant's telephone number, including area code)

Not applicable  
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 Par Value Per Share	ECPG	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

#### Item 1.01 Entry into a Material Definitive Agreement.

The information set forth under Item 8.01 of this Current Report on Form 8-K with respect to the Senior Facility Agreement (defined below) and the Note Purchase Agreement (defined below) is incorporated by reference.

The descriptions of the Senior Facility Agreement and the Note Purchase Agreement included in Item 8.01 of this Current Report on Form 8-K is only a summary and does not purport to be complete and is qualified in its entirety by reference to the complete text of the documents, copies of which are filed as Exhibits 10.1 and 10.2, respectively, to this report and are incorporated herein by reference.

#### Item 7.01. Regulation FD Disclosure.

On September 1, 2020, Encore Capital Group, Inc. (the "**Company**") made available on its website materials to be used in connection with the Consent Solicitation described under Item 8.01 of this Current Report on Form 8-K (the "**Investor Presentation**"). A copy of the Investor Presentation is furnished herewith as Exhibit 99.1 and is incorporated by reference herein. The information in Item 7.01 of this Current Report on Form 8-K, including the information contained in Exhibit 99.1, is being furnished to the Securities and Exchange Commission pursuant to Item 7.01, and shall not be deemed to be "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or otherwise subject to the liabilities of that section, and shall not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by a specific reference in such filing.

#### Item 8.01. Other Events.

On September 1, 2020, Cabot Financial (Luxembourg) S.A. and Cabot Financial (Luxembourg) II S.A., indirect subsidiaries of the Company, announced the solicitation of consents (the "**Consent Solicitation**") from the holders of their respective outstanding £512.9 million 7.5% Senior Secured Notes due 2023 and €400.0 million Senior Secured Floating Rate Notes due 2024. The Consent Solicitation requests consent from the holders to, among other amendments:

- replace Cabot Financial Limited with the Company as the parent of the restricted group under the indentures governing the notes (the "**Indentures**");
- add additional subsidiaries and remove certain subsidiaries of the Company as guarantors of the notes under the Indentures;
- align the covenants under the Indentures to certain of those in the Senior Facility Agreement (defined below); and
- modify the Intercreditor Agreement (defined below).

The Consent Solicitation will expire at 5:00 p.m. (London time) on September 8, 2020, unless extended, amended or terminated.

On September 1, 2020, the Company entered into the following agreements the effectiveness of which are subject to the satisfaction of certain conditions, including the requisite number of consents being obtained in connection with the Consent Solicitation:

- an amendment and restatement agreement between, among others, Cabot Financial Limited, an indirect subsidiary of the Company, Midland Credit Management, Inc., other subsidiaries of the Company named therein as guarantors, the financial institutions named therein as lenders and Truist Bank as agent and security agent, pursuant to which the senior facilities agreement

originally dated September 20, 2012, as amended from time to time (the "**Original Senior Facility Agreement**"), will be amended and restated to (the "**Senior Facility Agreement**"), among other things:

- increase commitments under the revolving credit facility from £375.0 million to \$1,050.0 million;
  - replace Cabot Financial Limited with the Company as the parent of the restricted group under the Original Senior Facility Agreement;
  - add Midland Credit Management, Inc. as a borrower thereunder;
  - add the Company and certain subsidiaries of the Company as guarantors; and
  - transfer the commitments of certain existing lenders to new lenders;
  - a stretch facility agreement in an amount of up to \$300.0 million (the "**Stretch Facility Agreement**") between, among others, Midland Credit Management, Inc. as borrower, other subsidiaries of the Company named therein as guarantors and Truist Bank as agent and security agent, under substantially similar terms as the Senior Facility Agreement;
  - a fourth amended and restated senior note purchase agreement (the "**Note Purchase Agreement**") relating to the Encore senior secured notes between the Company, the noteholders named therein, and certain subsidiaries of the Company named therein, pursuant to which the senior secured note purchase agreement originally dated May 9, 2013 (as amended and restated from time to time) will be amended and restated to, among other amendments:
    - add additional subsidiaries and remove certain subsidiaries of the Company as guarantors; and
    - align security and certain of the covenants therein with those in the Senior Facility Agreement;
  - an amendment and restatement agreement between, among others, Cabot Financial Limited, additional subsidiaries of the Company and Truist Bank as security agent, pursuant to which the intercreditor agreement originally dated September 20, 2012, as amended from time to time (the "**Original Intercreditor Agreement**"), will be amended and restated to (the "**Intercreditor Agreement**"), among other amendments:
    - include the Stretch Facility as an obligation subject to (and benefitting from) the Intercreditor Agreement;
    - include the notes previously issued under the Note Purchase Agreement as obligations subject to (and benefitting from) the Intercreditor Agreement;
    - replace Cabot Financial Limited with the Company as the parent of the restricted group; and
    - add the Company and certain subsidiaries of the Company as intra-group lenders, intra-group borrowers and/or debtors (as applicable).
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Assuming the conditions to the effectiveness of the Stretch Facility Agreement and the amendments and restatements reflected in the Senior Facility Agreement, the Note Purchase Agreement and the Intercreditor Agreement are satisfied, the Company intends to:

- draw down on the facilities under the Senior Facility Agreement and the Stretch Facility Agreement and use the proceeds to:
  - repay a portion of amounts previously drawn under the Original Senior Facility Agreement in connection with the transfer of commitments of certain existing lenders to new lenders;
  - repay amounts drawn under the Company's third amended and restated credit Agreement dated as of December 20, 2016 (as amended from time to time, the "**Encore Revolving Credit Facility and Term Loan Facility**"); and
  - repay approximately \$103.7 million of the Encore senior secured notes that are held by noteholders that have not agreed to enter into the Note Purchase Agreement; and
- terminate the Encore Revolving Credit Facility and Term Loan Facility and the Company's existing second amended and restated intercreditor agreement, dated as of August 11, 2017, as amended from time to time.

The Company continually evaluates different financing alternatives and may decide to enter into new secured credit facilities, increase the commitments available under the existing facilities or access the debt capital markets (including offering senior secured notes) in order to replace commitments or refinance drawings to be made under the Stretch Facility Agreement.

On September 1, 2020, the Company issued a press release announcing the items discussed above. A copy of the press release is attached as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated by reference herein.

**Item 9.01. Financial Statements and Exhibits.**

<u>Exhibit Number</u>	<u>Description</u>
10.1	<a href="#">Amended and Restated Senior Secured Revolving Credit Facility Agreement</a>
10.2	<a href="#">Fourth Amended and Restated Senior Note Purchase Agreement</a>
99.1	<a href="#">Investor Presentation</a>
99.2	<a href="#">Press Release</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)



**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ENCORE CAPITAL GROUP, INC.

Date: September 1, 2020

/s/ Jonathan C. Clark

Jonathan C. Clark

Executive Vice President, Chief Financial Officer and Treasurer

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EXHIBIT INDEX

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AMENDMENT DEED

RELATING TO A SENIOR FACILITIES AGREEMENT ORIGINALLY DATED 20 SEPTEMBER 2012 AS AMENDED BY AN AMENDMENT LETTER DATED 25 APRIL 2013, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 28 JUNE 2013, AS AMENDED BY AN AMENDMENT AGREEMENT DATED 25 JULY 2014, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 5 FEBRUARY 2015, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 11 NOVEMBER 2015, AS AMENDED BY AN AMENDMENT LETTER DATED 6 JUNE 2016, AS AMENDED BY AN AMENDMENT AGREEMENT DATED 6 OCTOBER 2016, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 31 MARCH 2017, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 12 DECEMBER 2017, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 5 NOVEMBER 2018 AND AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 15 NOVEMBER 2019

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dated  
\_\_\_\_\_ 2020

by

**CABOT FINANCIAL LIMITED**  
Parent

**CABOT FINANCIAL (UK) LIMITED**  
Existing Borrower

**ENCORE CAPITAL GROUP, INC.**  
Effective Date Parent

**THE COMPANIES NAMED IN PART 1 OF SCHEDULE 1**  
Existing Obligors

**THE COMPANIES NAMED IN PART 2 OF SCHEDULE 1**  
Acceding Obligors

**J.P. MORGAN EUROPE LIMITED**  
Resigning Agent

**TRUIST BANK**  
Successor Agent

and

**TRUIST BANK**  
Successor Security Agent

**Baker  
McKenzie.**  
Baker & McKenzie LLP  
100 New Bridge Street  
London EC4V 6JA  
United Kingdom  
[www.bakermckenzie.com](http://www.bakermckenzie.com)

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**AMENDMENT DEED**

This Deed is dated \_\_\_\_\_ 2020

**Between**

- (1) **Cabot Financial Limited**, in its capacity as parent (the "**Parent**");
- (2) **The Subsidiary** of the Parent listed in Part I of Schedule 1 (*The Parties*) as borrower (the "**Existing Borrower**");
- (3) **The Companies** listed in Part II of Schedule 1 (*The Parties*) as guarantors (the "**Existing Guarantors**");
- (4) **Encore Capital Group, Inc.** as the effective date parent (the "**Effective Date Parent**");
- (5) **Midland Credit Management, Inc.** as acceding borrower (the "**Acceding Borrower**");
- (6) **The Companies** listed in Part III of Schedule 1 (*the Parties*) as acceding guarantors (the "**Acceding Guarantors**" and together with the Acceding Borrower, the "**Acceding Obligors**");
- (7) **The Financial Institutions** listed in Part IV of Schedule 1 (*The Parties*) as lenders (the "**Existing Lenders**");
- (8) **The Financial Institutions** listed in Part V of Schedule 1 (*The Parties*) as lenders (the "**Effective Date Lenders**");
- (9) **DNB (UK) Limited, MUFG Bank, Ltd., Truist Securities, Inc, ING Capital LLC and Fifth Third Bank, National Association** as joint lead arrangers (the "**Arrangers**");
- (10) **Citizens Bank, N.A.** as syndication agent (the "**Syndication Agent**");
- (11) **J.P. Morgan Europe Limited** as resigning agent of the other Finance Parties (the "**Resigning Agent**");
- (12) **Truist Bank** as successor agent for the other Finance Parties (the "**Successor Agent**"); and
- (13) **Truist Bank** as security agent for the Secured Parties (the "**Successor Security Agent**").

**It is agreed** as follows:

**1. BACKGROUND**

- 1.1 This Deed is supplemental to and amends the Original Facility Agreement (as defined below).
- 1.2 The Existing Obligors have requested that the Original Facility Agreement be amended pursuant to the terms of this Deed.
- 1.3 On the Effective Date (as defined below) and subject to the terms of this Deed, the following steps shall take place simultaneously:
  - (a) the Original Facility Agreement shall be amended and restated in accordance with the provisions of Clause 4 (*Amendment and Restatement of the Original Facility Agreement*);

- (b) the Existing Lenders' commitments shall transfer to the Effective Date Lenders in accordance with the provisions of Clause 5 (*Transfer of Lenders' Commitments*) below;
  - (c) the Resigning Agent shall resign as Agent under the Original Facility Agreement and the Successor Agent shall be appointed as Agent under the Amended Facility Agreement; and
  - (d) the Acceding Borrower shall accede to the Amended Facility Agreement as a Borrower and the Acceding Obligors will accede to the Amended Facility Agreement as Guarantors.
- 1.4 Pursuant to the terms of the ICA Amendment and Restatement Agreement (as defined below), on the Effective Date the Resigning Security Agent will resign as Security Agent and the Successor Security Agent (as defined below) will be appointed as Security Agent.
- 1.5 Pursuant to clause 42 (*Amendments and Waivers*) of the Amended Facility Agreement (as defined below) all the Lenders have consented to the amendment and restatement of the Original Facility Agreement as set out in Clause 4 (*Amendment and restatement*) of this Deed and accordingly the Resigning Agent is authorised and instructed, in each case, to execute this Deed on behalf of the Finance Parties.
- 1.6 It is intended that this document takes effect as a deed notwithstanding the fact that the Existing Lenders or Effective Date Lenders may execute this document under hand.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Deed:

"**Acceding Obligor**" means the Acceding Borrower and each Acceding Guarantor.

"**Amended Facility Agreement**" means the Original Facility Agreement, as amended and restated by this Deed.

"**Amended Intercreditor Agreement**" means the Cabot Intercreditor Agreement as amended by the ICA Amendment and Restatement Agreement.

"**Approved List**" has the meaning given to such term in the Amended Facility Agreement delivered on or prior to the Effective Date.

"**Cabot Intercreditor Agreement**" means the intercreditor agreement, originally dated September 20, 2012, among the Parent, Cabot Financial (Luxembourg) II S.A., J.P. Morgan Europe Limited, the Resigning Security Agent, Citibank N.A., London Branch as senior note trustee and the other parties named therein, as amended and restated pursuant to an amendment and restatement agreement dated 5 January 2017 and as further amended and restated pursuant to an amendment and restatement agreement dated on or around the date of this Deed.

"**Consent Solicitation**" means the consent solicitation regarding the Existing Cabot Notes launched on or before the Effective Date.

"**Deed of Partial Release**" means the Irish law governed deed of partial release and discharge dated 18 December 2019 between Cabot Securitisation Europe Limited and the Resigning Security Agent pursuant to which the Released Assets were released and discharged from all security constituted by and pursuant to the Irish Debenture.

"**Existing Encore Facilities**" has the meaning given to it in the Amended Facility Agreement.

"**Existing Cabot Notes**" has the meaning given to "Cabot Senior Notes" in the Amended Intercreditor Agreement.

"**Effective Date**" means the date on which the Successor Agent confirms to the Existing Lenders, the Effective Date Lenders and the Parent that it has received each of the documents and other evidence listed in Schedule 2 (*Conditions Precedent to the Effective Date*) in form and substance satisfactory to the Successor Agent.

"**ERC Model Output**" has the meaning given to such term in the Amended Facility Agreement.

"**Existing Obligors**" means the Existing Borrower and each Existing Guarantor.

"**Group**" has the meaning given to such term in the Amended Facility Agreement.

"**Guarantee Obligations**" means the guarantee and indemnity obligations of a Guarantor contained in the Original Facility Agreement.

"**ICA Amendment and Restatement Agreement**" means the amendment and restatement agreement amending and restating the Cabot Intercreditor Agreement dated on or about the date of this Deed.

"**Irish Debenture**" means the Irish law governed debenture dated 28 May 2015 between the Cabot Asset Purchases (Ireland) Limited, Cabot Financial (Ireland) Limited and Cabot Financial Debt Recovery Services Limited and the Resigning Security Agent as confirmed on 1 June 2015, as acceded to by Cabot Financial (Treasury) Ireland as a chargor pursuant to a security accession deed dated 11 November 2015, as supplemented by a supplemental deed of confirmation and charge dated 11 November 2015, as acceded to by Cabot Securitisation Europe Limited as chargor by a security accession deed dated 15 July 2016, as supplemented by a supplemental deed dated 15 July 2016, as supplemented by a supplemental deed of confirmation and charge dated 6 October 2016, as confirmed by a deed of confirmation dated 13 December 2017, as supplemented by a deed of confirmation and charge dated 18 July 2018 and as confirmed by a deed of confirmation dated 14 June 2019.

"**Marlin Intercreditor Agreement**" means the intercreditor agreement dated 25 July 2013, between, amongst others, Marlin Financial Intermediate II Limited as parent, The Bank of New York Mellon, London Branch as senior note trustee and The Royal Bank of Scotland plc as security trustee, as amended and/or restated from time to time.

"**Original Facility Agreement**" means the facility agreement dated 20 September 2012 between the Parent, the Original Borrowers, the Original Guarantors, Cabot Credit Management Limited, the Resigning Agent, the Arranger and the Existing Lenders (as amended by an amendment letter dated 25 April 2013, as amended and restated by an Amendment and Restatement Agreement dated 28 June 2013, as amended by an Amendment Agreement dated 25 July 2014, as amended and restated by an Amendment and Restatement agreement dated 5 February 2015, as amended and restated by an Amendment and Restatement Agreement dated 11 November 2015, as amended by an amendment letter dated 6 June 2016, as amended by an Amendment Agreement dated 6 October 2016, as amended and restated by an Amendment and Restatement agreement dated 31 March 2017, as amended and restated by an Amendment and Restatement Agreement dated 12 December 2017, as amended and restated by an Amendment and Restatement

Agreement dated 5 November 2018 and as amended and restated by an Amendment and Restatement Agreement dated 15 November 2019.

"**Original Financial Statements**" has the meaning given to such term in the Amended Facility Agreement which, for the avoidance of doubt, shall include the financial results of each Acceding Obligor on a consolidated basis.

"**Offering Memorandum**" has the meaning given to such term in the Amended Facility Agreement.

"**Released Assets**" means 100 Ordinary Shares of €1 each held by Cabot Securitisation Europe Limited in Torrington Commercial Limited (a company incorporated under the laws of Ireland with registration number 659557 whose registered office is at Commercial House, Millbank Business Park, Lucan, Co. Dublin, Ireland).

"**Private Placement Notes Agreement**" has the meaning given to such term in the Amended Intercreditor Agreement.

"**Restricted Group**" has the meaning given to such term in the Amended Facility Agreement.

"**Resigning Security Agent**" has the meaning given to such term in the ICA Amendment and Restatement Agreement.

"**Initial ERC**" has the meaning given to such term in the Amended Facility Agreement.

2.2 Incorporation of defined terms

(a) Unless a contrary indication appears, a term defined in the Original Facility Agreement has the same meaning in this Deed.

(b) The principles of construction set out in the Original Facility Agreement shall have effect as if set out in this Deed.

2.3 Clauses

In this Deed any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause in or a Schedule to this Deed.

2.4 Third party rights

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

2.5 Designation

In accordance with the Original Facility Agreement, each of the Parent and the Resigning Agent designates this Deed as a Finance Document.

3. **REPRESENTATIONS**

3.1 The Repeating Representations are deemed to be made by each Existing Obligor and the Parent (by reference to the facts and circumstances then existing) on the Effective Date, and references to "this Deed" or to the "Transaction Documents" in the Repeating Representations shall be construed as references to this Deed and to the Original Facility Agreement and on the Effective Date, to the Amended Facility Agreement.



3.2 The Repeating Representations and the representations set out in Clause 24.7 (*Insolvency*), Clause 24.11 (*Financial Statements*), Clause 24.16 (*Security*), Clause 24.30 (*ERISA and Multiemployer Plan*), Clause 24.31 (*Federal Reserve Regulations*), Clause 24.32 (*Investment Companies*), Clause 24.33 (*Anti-Terrorism Laws*) of the Amended Facility Agreement are deemed to be made by each Acceding Obligor (by reference to the facts and circumstances then existing) on the Effective Date, and references to "this Deed" or to the "Transaction Documents" in the Repeating Representations shall be construed as references to this Deed and to the Original Facility Agreement and on the Effective Date, to the Amended Facility Agreement.

#### 4. AMENDMENT AND RESTATEMENT OF THE ORIGINAL FACILITY AGREEMENT

4.1 With effect from the Effective Date, the Original Facility Agreement shall be amended and restated so that it shall be read and construed for all purposes as set out in Schedule 3 (*Restated Senior Facilities Agreement*).

4.2 The Effective Date must occur on or before 30 September 2020 (or such later date as may be agreed by the Resigning Agent (acting on the instructions of all the Lenders under the Amended Facility Agreement) and the Parent). If the Effective Date has not occurred on or before 5.00pm (London time) on 30 September 2020, the rights and obligations of the Parties under this Deed shall terminate in full.

#### 5. TRANSFER OF EXISTING LENDER'S COMMITMENTS

With effect from the Effective Date, the Existing Lenders and the Effective Date Lenders agree to the transfer by novation from the Existing Lenders to the Effective Date Lenders of the Existing Lenders' Commitments in the amounts specified at Part IV of Schedule 1 (*The Parties*) in accordance with Clause 30.5 (*Procedure for transfer*) of the Amended Facility Agreement.

#### 6. TRANSFER OF AGENCY ROLES

##### 6.1 Resignation of the Agent

(a) With effect from the Effective Date, the Resigning Agent:

- (i) resigns as Agent;
- (ii) assigns absolutely to the Successor Agent all of the rights and interests of the Resigning Agent as Agent;
- (iii) is discharged from any further obligations in respect of the Finance Documents but shall remain entitled to the benefit of Clause 33 (Role of the Agent, the Arranger, the Issuing Bank and others) of the Amended Facility Agreement; and
- (iv) (subject to Clause 6.3(d) (*Exoneration*)) shall have no further liabilities or obligations to any other party in respect of the Finance Documents.

(b) By signing this Deed, the Parent, Resigning Agent and the Majority Lenders under the Original Facility Agreement hereby waive the requirement under Clause 33.12 (*Replacement of the Agent*) of the Original Facility Agreement for the Majority Lenders to provide the Resigning Agent with 30 days' notice of its replacement and the requirement that the Successor Agent act through an office in the United Kingdom. The Parent further waives any requirement for the Parent to consult with the Majority Lenders as to the Successor Agent's appointment.

6.2 Appointment of the Agent

With effect from the Effective Date:

- (a) the Successor Agent:
  - (i) accepts its appointment as Agent; and
  - (ii) agrees to assume all the rights and obligations of the Resigning Agent as it would have had if such Successor Agent had been an original party to the Original Facility Agreement and all rights and obligations of the Resigning Agent will be transferred and assigned to the Successor Agent.
- (b) fees which are expressed to be payable to the Agent under clause 22 (*Costs and Expenses*) of the Amended Facility Agreement shall be paid to the Successor Agent on the terms agreed in any fee letter entered into between the Parent and the Successor Agent; and
- (c) the Agent is hereby vested with all the rights, powers and duties of the Resigning Agent in its capacity as Agent under the Amended Facility Agreement.

6.3 Exoneration

- (a) Prior to the Effective Date, the Successor Agent will not be liable for any claim, loss or liability that may have arisen or accrued under the Finance Documents.
- (b) The Successor Agent will not be liable to the extent that that loss or liability is attributable to any act or omission of the Resigning Agent before the Effective Date.
- (c) The Resigning Agent shall not bear any responsibility or liability for any future action taken or omitted to be taken by the Successor Agent in its capacity as such or for any other event or action related to the Finance Documents that may occur on or after the Effective Date.
- (d) For the avoidance of doubt, the Resigning Agent shall remain liable to any other Party for any cost, loss or liability under the Finance Documents to the extent that that the cost, loss or liability is attributable to any act or omission of the Resigning Agent before the Effective Date and the Resigning Agent would have been liable in respect of such cost, loss or liability pursuant to the terms of that Finance Agreement.
- (e) The Successor Agent shall be entitled to conclusively rely upon, and shall not incur any liability for relying upon the records and other information supplied to it.
- (f) Nothing in this Clause will affect any right, obligation or liability of the Resigning Agent as Agent which relates to the period before the Effective Date.
- (g) None of the Resigning Agent or the Successor Agent shall bear any responsibility or liability for the failure by any other Party (as applicable) to comply with: (i) the terms of this Deed and any other Finance Document or (ii) any other obligation in relation to the transfer of any security, right and/or obligations (including at law) under this Deed and any other Finance Document or otherwise.

6.4 Confirmation

- (a) Each Party (other than the Resigning Agent and the Successor Agent):
  - (i) consents to the resignation and appointment under this Deed;
  - (ii) agrees that, from the Effective Date, each Party (other than the Resigning Agent) will acquire rights and assume obligations as between themselves equivalent to those it would have had or been under had the Successor Agent been the original Agent under the Original Facility Agreement and each Finance Document; and
  - (iii) acknowledges that this Clause constitutes notice to it of the resignation of the Resigning Agent and the appointment of the Successor Agent with effect from the Effective Date.

6.5 Agency Further Assurance

- (a) The Resigning Agent shall, at the Parent's cost, make available to the Successor Agent such documents and records and provide such assistance as the Successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (b) Each Obligor must take whatever action the Successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

6.6 Specific actions

- (a) Without limiting anything else in this Clause, the Resigning Agent must:
  - (i) hold on trust for the Finance Parties any moneys or property received by it after the Effective Date in its capacity as former Agent from any other person under or in respect of the Finance Documents and the transactions contemplated by the Finance Documents; and
  - (ii) promptly pay (and in any case no later than within three Business Days of receipt) or deliver such moneys or property to the Successor Agent or as the Successor Agent directs.
- (b) Subparagraphs (a)(i) and (ii) above do not apply to monies received by the Resigning Agent in respect of fees (including agency fees), costs, liabilities or expenses which are:
  - (i) owed to the Resigning Agent;
  - (ii) due in respect of the period in which it acted as Agent under the Finance Documents; and
  - (iii) entitled to be retained by the Resigning Agent for its own account under the terms of the Finance Documents.
- (c) The Successor Agent must promptly pay to the Resigning Agent any fees payable under clause 17.3 (*Agency fee*) of the Original Facility Agreement received by the Successor Agent and due in respect of the period in which the Resigning Agent acted as Agent under the Finance Documents.

- (d) To the extent that any Party, has made a payment to a trust account in accordance with Clause 36.5 (*Impaired Agent*), such Party shall give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the Successor Agent for distribution in accordance with Clause 35.2 (*Redistribution of payments*)

**7. ACCESSIONS**

**7.1 With effect from the Effective Date,**

- (a) the Acceding Borrower agrees to become a Borrower and to be bound by the terms of the Amended Facility Agreement and the other Finance Documents (other than the Cabot Intercreditor Agreement); and
- (b) each Acceding Guarantor agrees to become a Guarantor and to be bound by the terms of the Amended Facility Agreement and the other Finance Documents (other than the Cabot Intercreditor Agreement) as a Guarantor.
- (c) Each Acceding Obligor and the Successor Security Agent agrees that the Successor Security Agent shall hold:
- (i) the Transaction Security;
  - (ii) all proceeds of the Transaction Security; and
  - (iii) all obligations expressed to be undertaken by the Acceding Obligor to pay amounts in respect of the Liabilities to the Successor Security Agent as trustee for the Secured Parties and guaranteed and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Obligor in favour of the Successor Security Agent as trustee for the Secured Parties,

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

**8. EXISTING OBLIGOR CONFIRMATIONS**

**8.1 Confirmation of Guarantee Obligations**

For the avoidance of doubt, and subject to the Legal Reservations and Perfection Requirements, on the Effective Date, the Parent and each Existing Obligor confirms for the benefit of the Finance Parties that all Guarantee Obligations owed by it under the Original Facility Agreement or any Finance Document shall (a) remain in full force and effect notwithstanding the amendments referred to in Clause 4 (*Amendment and restatement*) and (b) extend to any new obligations assumed by any Existing Obligor or Acceding Obligor under the Finance Documents as a result of this Deed (including, but not limited to, under the Amended Facility Agreement).

**8.2 Confirmation of Security**

For the avoidance of doubt and subject to the Legal Reservations and Perfection Requirements, on the Effective Date, the Parent and each Existing Obligor confirms for the benefit of the Secured Parties (save, for the avoidance of doubt, the security created pursuant to the Irish Debenture over the Released Assets which was released pursuant to the Deed of Partial Release)

that the Security created by it pursuant to each Transaction Security Document to which it is a party shall:

- (a) remain in full force and effect notwithstanding the amendments referred to in Clause 4 (*Amendment and restatement*); and
- (b) continue to secure all debts and obligations which are expressed to be Secured Obligations (each term as defined in the Cabot Intercreditor Agreement); and in each case including, but not limited to, its obligations under the Amended Facility Agreement.

**9. CONTINUITY AND FURTHER ASSURANCE**

9.1 Continuing obligations

9.2 The provisions of the Original Facility Agreement and the other Finance Documents shall, save as amended by this Deed, continue in full force and effect.

9.3 Further assurance

The Effective Date Parent shall and shall procure that each Existing Obligor and Acceding Obligor shall, at the request of the Successor Agent and at such Obligor's own expense, promptly do all such acts and things necessary to give effect to the amendments effected or to be effected pursuant to this Deed.

**10. TRANSACTION COSTS**

The Effective Date Parent shall ensure that all fees agreed pursuant to the Fee Letters are paid on the Effective Date or in accordance with any other period agreed in the relevant Fee Letter between the Effective Date Parent and the respective Lender.

**11. FEES, COSTS AND EXPENSES**

On the Effective Date, the Parent shall, within three Business Days of demand, pay the Resigning Agent and the Successor Agent the amount of all costs and expenses (including legal fees subject to agreed caps (if any)) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of this Deed and any other documents referred to in this Deed.

**12. MISCELLANEOUS**

12.1 Incorporation of terms

The provisions of clause 38 (*Notices*), clause 40 (*Partial invalidity*), clause 41 (*Remedies and waivers*) and clause 47 (*Enforcement*) of the Original Facility Agreement shall be incorporated into this Deed as if set out in full in this Deed and as if references in those clauses to "this Deed " or "the Finance Documents" are references to this Deed.

12.2 Addresses

For the purposes of clause 38.2 (*Addresses*) of the Amended Facility Agreement, the address (and fax number and the department or officer, if any, for whose attention the communication is to be

made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of each Acceding Obligor the address identified opposite its name in Part III (The Acceding Obligors) of Schedule 1 (The Parties); or
- (b) in the case of each Lender and the Successor Agent, that identified with its name below.

12.3 Counterparts

This Deed may be executed (including for the avoidance of doubt by using electronic or PDF signatures), 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 Deed.

12.4 Indemnity to the Agent

The parties to this Deed confirm for the avoidance of doubt that any indemnities to the Resigning Agent given in the Original Facility Agreement (including but not limited to under clauses 20.3 (*Indemnity to the Agent*) and 33.10 (*Lenders' indemnity to the Agent*)) of the Original Facility Agreement shall (subject to any limitations set out therein) and the Successor Agent given in the Amended Facility Agreement (including but not limited to under clauses 20.3 (*Indemnity to the Agent*) and 33.10 (*Lenders' indemnity to the Agent*)) apply to and include any cost, loss or liability incurred by the Agent under or in connection with this Deed and the transactions contemplated herein.

13. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

**This Deed is intended to be made as a deed, even if signed underhand by any of the Existing Lenders or the Effective Date Lenders and is hereby delivered on the date stated at the beginning of this Deed.**

**SCHEDULE 1  
THE PARTIES**

**PART 1  
THE EXISTING BORROWER**

<b>Name of Borrower</b>	<b>Registration number (or equivalent, if any) and Jurisdiction of incorporation</b>
Cabot Financial (UK) Limited	3757424, England & Wales

**PART II  
THE EXISTING GUARANTORS**

<b>Name of Guarantor</b>	<b>Registration number (or equivalent, if any) and Jurisdiction of incorporation</b>
Cabot Financial (Luxembourg) S.A.	B 171.245, Luxembourg
Cabot Financial (Luxembourg) II S.A.	B 201.268, Luxembourg
Cabot Financial Limited	5714535, England & Wales
Cabot Financial Holdings Group Limited (formerly Cabot Credit Management Group Limited)	4071551, England & Wales
Cabot Credit Management Group Limited (formerly Cabot Financial Holdings Group Limited)	4934534, England & Wales
Cabot Financial Debt Recovery Services Limited	3936134, England & Wales
Cabot Financial (UK) Limited	3757424, England & Wales
Cabot Financial (Europe) Limited	3439445, England & Wales
Financial Investigations and Recoveries (Europe) Limited	3958421, England & Wales
Apex Credit Management Limited	3967099, England & Wales
Marlin Financial Intermediate II Limited	8346249, England & Wales
Marlin Financial Intermediate Limited	7196379, England & Wales
Marlin Financial Group Limited	7195881, England & Wales
Marlin Midway Limited	8255990, England & Wales
Black Tip Capital Holdings Limited	5927496, England & Wales
Marlin Senior Holdings Limited	8215555, England & Wales
Marlin Portfolio Holdings Limited	8215352, England & Wales
Marlin Legal Services Limited	6200270, England & Wales
Cabot Financial (Ireland) Limited	144084, Ireland
Cabot Asset Purchases (Ireland) Limited	349016, Ireland
Cabot Securitisation Europe Limited	572606, Ireland
Cabot Credit Management Limited	05754978, England & Wales

**PART III  
THE ACCEDING OBLIGORS**

Name of Additional Borrower	Registration number (or equivalent, if any) and Jurisdiction of incorporation	Administrative details
Midland Credit Management, Inc	0048421, Kansas	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 Email: *****@*****.com, *****@*****.COM, *****@*****.COM

Name of Acceding Guarantor	Registration number (or equivalent, if any) and Jurisdiction of incorporation	Administrative details
Encore Capital Group, Inc.	3034002, Delaware	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM
Midland Funding LLC	3978393, Delaware	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM
Midland Portfolio Services Inc.	3978399, Delaware	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM



Midland Credit Management Inc.	0048421, Kansas	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM
Asset Acceptance, LLC	3568396, Delaware	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM
Asset Acceptance Capital Corp.	3706574, Delaware	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM
Cabot UK Holdco Limited	08467515, England & Wales	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM
Cabot Holdings S.à r.l.	B176902, Luxembourg	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM
Janus Holdings Luxembourg S.à r.l.	B178454, Luxembourg	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM

Encore Capital Group UK Limited	11309536, England & Wales	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM
Encore Holdings Luxembourg S.à r.l.	B198551, Luxembourg	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM
Marlin Intermediate Holdings Limited	08248105, England & Wales	350 Camino De La Reina, Suite 100 San Diego CA 92108 Attention: Chief Financial Officer Telecopy Number: 858-309-6998 *****@*****.com, *****@*****.COM, *****@*****.COM

**PART IV  
THE EXISTING LENDERS**

<b>Name of Existing Lender</b>	<b>Existing Commitments</b>
DNB (UK) Limited	£110,000,000
HSBC Bank plc	£70,000,000
JPMorgan Chase Bank N.A., London Branch	£5,000,000
Santander UK plc	£50,000,000
MUFG Bank, Ltd.	£50,000,000
Lloyds Bank plc	£45,000,000
The Royal Bank of Scotland plc	£45,000,000

**PART V  
EFFECTIVE DATE LENDERS**

Name of Effective Date Lender	Effective Date Commitment
DNB (UK) Limited	\$135,000,000
MUFG Bank, Ltd.	\$135,000,000
Truist Bank	\$135,000,000
ING Capital LLC	\$135,000,000
Fifth Third Bank, National Association	\$125,000,000
Citizens Bank, N.A.	\$100,000,000
Bank of America, N.A.	\$75,000,000
HSBC Bank plc	\$65,000,000
Umpqua Bank	\$60,000,000
Zions Bancorporation, n.a. (fka zb, n.a.) dba California Bank & Trust	\$40,000,000
Credit Suisse AG, Cayman Island Branch	\$22,500,000
Morgan Stanley Bank, N.A.	\$22,500,000
<b>Total:</b>	<b>\$1,050,000,000</b>

**SCHEDULE 2**  
**CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**1. OBLIGORS**

- 1.1 A copy of the constitutional documents of the Parent and each Existing Obligor or a certificate of an authorised signatory of the Parent or, as the case may be, each Existing Obligor certifying that the constitutional documents previously delivered to the Agent for the purposes of the Original Facility Agreement have not been amended and remain in full force and effect.
- 1.2 A copy of the constitutional documents of each Acceding Obligor, including, in relation to any Acceding Guarantor organized, incorporated or formed under the laws of the United States or any State thereof (including the District of Columbia), long form certificates of good standing and certified charter documents from the Secretary of State (or equivalent official) of the state of organization.
- 1.3 A copy of a resolution of the board or, if applicable, a committee of the board of directors of the Parent, each Existing Obligor, and each Additional Obligor:
- (a) approving the terms of, and the transactions contemplated by, this Deed and the Transaction Documents to which it is a party and resolving that it execute, deliver and perform this Deed and the Finance Documents to which it is a party
  - (b) authorising a specified person or persons to execute this Deed and the Finance Documents to which it is a party on its behalf; and
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with this Deed and the Finance Documents to which it is a party; and
  - (d) other than in respect of Encore Capital Group, Inc. appointing the Effective Date Parent as Obligors' Agent pursuant to clause 2.4 (*Obligors' Agent*) of the Amended Facility Agreement.
- 1.4 If applicable, a copy of a resolution of the board of directors of the relevant company, establishing the committee referred to in paragraph 1.3 above.
- 1.5 An extract (*extrait*) pertaining to any Obligor incorporated in Luxembourg and obtained from the online services of the Luxembourg Register of Commerce and Companies' official website as of the date of this Deed.
- 1.6 A certificate of non-inscription of judicial decisions (*certificat de non-inscription d'une décision judiciaire*) pertaining to any Obligor incorporated in Luxembourg obtained from the online services of the Luxembourg Register of Commerce and Companies' official website stating that the relevant Obligor has not been declared bankrupt (*en faillite*) and that it has not applied for general settlement or composition with creditors (*concordat préventif de faillite*), controlled management (*gestion contrôlée*) or reprieve from payment (*sursis de paiement*) or such other proceedings listed at Article 13, items 2 to 11 and Article 14 of the Luxembourg Act dated 19 December 2002 on the Register of Commerce and Companies, on Accounting and on Annual Accounts of the Companies (as amended from time to time).
- 1.7 A copy of a specimen of the signature of each person authorised by the resolutions referred to in paragraphs 1.3 and 1.4 above.

- 1.8 A copy of a resolution signed by all of the holders or majority holders (as applicable) of the issued shares in the Parent, each Existing Obligor (other than the Obligors incorporated in Ireland) and each Acceding Obligor (other than Obligors incorporated in the United States, including, the Effective Date Parent) approving the terms of, and the transactions contemplated by, this Deed and the Finance Documents to which the relevant company is a party.
- 1.9 A certificate of each Existing Obligor (signed by a director or authorised signatory) 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.
- 1.10 A certificate of each Acceding Obligor (signed by a director or authorised signatory) 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.
- 1.11 A certificate of each Obligor incorporated in Ireland confirming that entry into the transaction would not constitute financial assistance for the purposes of Section 82 of the Irish Companies Act 2014 or constitute an unlawful related party transaction for the purposes of Section 239 of the Irish Companies Act 2014.
- 1.12 A certificate of an authorised signatory of the Parent, each Existing Obligor and each Additional Obligor certifying that each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Deed.
- 1.13 A certificate of an authorised signatory of the Effective Date Parent attaching a copy of the group structure chart and certifying that it has not been amended or superseded as at the date hereof.
- 1.14 A certificate of an authorised signatory of the Effective Date Parent confirming that it has received irrevocable and binding commitments for the provision of financial indebtedness to be provided in connection with the refinancing transaction known as "Project Atlas" pursuant to the terms of (i) the Stretch Facility Agreement, (ii) the Amended Facility Agreement and (iii) the Encore Private Placement Notes in a total amount of not less than USD 1,500,000,000 and, of which commitments, the commitments provided under the Amended Facility Agreement are (i) not less than USD 1,050,000,000; and (ii) not greater than USD 1,210,000,000.
- 1.15 If any proposed Acceding Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 49.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

## 2. FINANCE DOCUMENTS

- 2.1 This Deed.
- 2.2 The Amended Facility Agreement.
- 2.3 The Amended Intercreditor Agreement.
- 2.4 The Fee Letters.
- 2.5 Evidence that the Existing Cabot Notes have been amended as a result of the Consent Solicitation and that the relevant noteholders are a party to the Amended Intercreditor Agreement.
- 2.6 Evidence that either (i) the Private Placement Notes Purchase Agreement has been amended and that the noteholders of outstanding Private Placement Notes have acceded to the Amended

Intercreditor Agreement or (ii) that the Private Placement Notes have been redeemed in full (the "**Redeemed Notes**"); or (iii) the Private Placement Notes Purchase Agreement has been amended and a portion the noteholders of outstanding Private Placement Notes have acceded to the Amended Intercreditor Agreement and the remaining Private Placement Notes have been redeemed in full (the "**Redeemed Portion**").

### 3. TRANSACTION SECURITY DOCUMENTS

- 3.1 An English law supplemental debenture between, among others, Encore Capital Group UK Limited, Cabot UK Holdco Limited, Cabot Financial (Luxembourg) S.A., Cabot Financial (Luxembourg) II S.A. in favour of the Successor Security Agent.
- 3.2 A Luxembourg law confirmatory security agreement between Cabot Credit Management Group Limited, Cabot Finance (Luxembourg) S.A. and Cabot Finance (Luxembourg) II S.A. in favour of the Successor Security Agent.
- 3.3 A Luxembourg first ranking pledge (*gage de premier rang*) over the shares of Cabot Holdings S.à r.l. between the Successor Security Agent as security agent, Cabot Holdings S.à r.l. as company and Janus Holdings Luxembourg S.à r.l. as pledgor.
- 3.4 A Luxembourg first ranking pledge (*gage de premier rang*) over the shares of Janus Holdings Luxembourg S.à r.l. between the Successor Security Agent as security agent, Janus Holdings Luxembourg S.à r.l. as company and Encore Capital Group UK Limited as pledgor.
- 3.5 A Luxembourg first ranking pledge (*gage de premier rang*) over the shares of Encore Holdings Luxembourg S.à r.l. between the Successor Security Agent as security agent, Encore Holdings Luxembourg S.à r.l. as company and Encore Capital Group, Inc. as pledgor.
- 3.6 An Irish law deed of confirmation between, among others, Cabot Financial Debt Recovery Services Limited, Cabot Asset Purchases (Ireland) Limited, Cabot Financial (Ireland) Limited and Cabot Securitization Europe Limited in favour of the Successor Security Agent in respect of a Debenture originally dated 28 May 2015.
- 3.7 A New York law security agreement between, among others, Encore Capital Group, Inc., Midland Funding LLC, Midland Portfolio Services, Inc., Midland Credit Management, Inc., Asset Acceptance LLC and Asset Acceptance Capital Corp in favour of the Successor Security Agent.
- 3.8 A New York law pledge agreement between, among others, Encore Capital Group, Inc., Midland Funding LLC, Midland Portfolio Services, Inc., Midland Credit Management, Inc., Asset Acceptance LLC and Asset Acceptance Capital Corp in favour of the Successor Security Agent.
- 3.9 Unless a grace period for supply of notices is contained in the relevant Transaction Security Document, a copy of all notices required to be sent under the Transaction Security Documents on or before the Effective Date executed by the relevant Acceding Obligors or Existing Obligors (as applicable) and, in the case of any notice to be sent to another member of the Restricted Group, duly acknowledged.
- 3.10 Save as otherwise expressly provided in the relevant Transaction Security Document, all share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Acceding Obligor or Existing Obligor (as applicable) in blank in relation to the assets subject to

or expressed to be subject to the Transaction Security and other documents of title required to be provided under the Transaction Security Documents on or before the Effective Date.

#### **4. LEGAL OPINIONS**

- 4.1 A legal opinion of Baker & McKenzie LLP, legal advisers to the Lenders in England, substantially in the form distributed to the Lenders prior to signing this Deed.
- 4.2 A legal opinion of Arthur Cox, legal advisers to the Lenders in Ireland, substantially in the form distributed to the Lenders prior to signing this Deed.
- 4.3 A legal opinion of Maples and Calder, legal advisers to the Obligors in Ireland, substantially in the form distributed to the Lenders prior to signing this Deed.
- 4.4 A legal opinion of White & Case LLP, legal advisers to the Obligors in New York and Delaware, substantially in the form distributed to the Lenders prior to signing this Deed.
- 4.5 A legal opinion of Lathrop GPM LLP, legal advisers to the Obligors in Kansas, substantially in the form distributed to the Lenders prior to signing this Deed.
- 4.6 A legal opinion of Baker & McKenzie LLP, legal advisers to the Lenders in Luxembourg, substantially in the form distributed to the Lenders prior to signing this Deed.
- 4.7 A legal opinion of White & Case LLP, legal advisers to the Obligors in Luxembourg, substantially in the form distributed to the Lenders prior to signing this Deed.

#### **5. OTHER DOCUMENTS AND EVIDENCE**

- 5.1 The Approved List.
- 5.2 A copy of the Original Financial Statements.
- 5.3 A certificate of Encore Capital Group, Inc. signed by an authorised signatory addressed to the Agent 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 Consolidated EBITDA) and aggregate gross assets (excluding goodwill) of the Existing Obligors and Acceding Obligors (calculated on an unconsolidated basis and excluding all intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) exceeds 85 per cent. of the Consolidated EBITDA and consolidated gross assets (excluding goodwill) of the Restricted Group.
- 5.4 Copies of prepayment notices with regard to the early repayment of the Existing Encore Facilities (which would provide for undertakings (or authorizations) to file any related UCC3 termination statements and releases of all security filings in connection with the transactions contemplated by the Existing Encore Facilities).
- 5.5 Evidence that all outstanding amounts under the Existing Encore Facilities has been or will be repaid in full on the Effective Date.
- 5.6 Deed of release in respect of any Security granted in relation to the Marlin Intercreditor Agreement.
- 5.7 If applicable, evidence that all outstanding amounts under the Redeemed Notes or the Redeemed Portion has been or will be repaid in full on the Effective Date.

- 5.8 If applicable, deeds of release in respect of any Security granted in relation to the Redeemed Notes.
- 5.9 ERC Model Output.
- 5.10 the Initial ERC.
- 5.11 In respect of each company incorporated in the United Kingdom whose shares are the subject of the Transaction Security (a "**Charged Company**"), either:
- (i) a certificate of an authorised signatory of the Parent certifying that:
    - (A) each member of the Group has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and
    - (B) no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares, together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, in the case of a Charged Company that is a member of the Group, is certified by an authorised signatory of the Parent to be correct, complete and not amended or superseded as at a date no earlier than the date of this Deed; or
  - (ii) a certificate of an authorised signatory of the Parent certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.
- 5.12 If an Acceding Obligor is incorporated under the laws of the United States, at the reasonable request of any Finance Party, a Beneficial Ownership Certificate in relation to such Acceding Obligor, if such Acceding Obligor qualifies as a "legal entity customer" under the Beneficial Ownership Regulation.
- 5.13 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.
- 5.14 Evidence that the amendments to the Private Placement Notes Agreement are effective and all related fees have been paid.
- 5.15 Evidence that the Consent Solicitation in respect of the amendments to the Existing Cabot Notes has completed and all related fees have been paid.
- 5.16 Evidence that all fees, costs and expenses due pursuant to this Deed have been paid or will be paid by the Effective Date.



**SCHEDULE 3  
AMENDED FACILITY AGREEMENT**

EXECUTION

Parent

Executed as a deed by  
**Cabot Financial Limited**  
acting by  
in the presence of:

By: /s/Craig Buick  
Name: Craig Buick  
Title: Director

By: /s/Laura Kantzler  
Name of witness: Laura Kantzler  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**The Existing Borrower**

Executed as a deed by

**Cabot Financial (UK) Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**The Existing Guarantors**

Executed as a deed by

**Cabot Financial (Luxembourg) S.A.**

Duly represented by:

By:	<u>/s/Simon Barnes</u>
Name:	<u>Simon Barnes</u>
Title:	<u>Manager</u>

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed** as a deed by

**Cabot Financial (Luxembourg) II S.A.**

Duly represented by:

By: /s/Simon Barnes  
Name: Simon Barnes  
Title: Manager

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed** as a deed by  
**Cabot Financial Limited**  
acting by  
in the presence of:

By: /s/Craig Buick  
Name: Craig Buick  
Title: Director

By: /s/Laura Kantzler  
Name of witness: Laura Kantzler  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

**Cabot Financial Holdings Group Limited**

acting by

in the presence of:

By: /s/Craig Buick  
Name: Craig Buick  
Title: Director

By: /s/Laura Kantzler  
Name of witness: Laura Kantzler  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

**Cabot Credit Management Group Limited**

acting by

in the presence of:

By: /s/Craig Buick  
Name: Craig Buick  
Title: Director

By: /s/Laura Kantzler  
Name of witness: Laura Kantzler  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_



Executed as a deed by

**Cabot Financial Debt Recovery Services Limited**

acting by

in the presence of:

By: /s/Craig Buick  
Name: Craig Buick  
Title: Director

By: /s/Laura Kantzler  
Name of witness: Laura Kantzler  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

**Cabot Financial (UK) Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

**Cabot Financial (Europe) Limited**

acting by

in the presence of:

By: /s/Craig Buick  
Name: Craig Buick  
Title: Director

By: /s/Laura Kantzler  
Name of witness: Laura Kantzler  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**Financial Investigations and Recoveries (Europe) Limited**

acting by

in the presence of:

By: /s/Craig Buick  
Name: Craig Buick  
Title: Director

By: /s/Laura Kantzler  
Name of witness: Laura Kantzler  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**Apex Credit Management Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**Marlin Financial Intermediate II Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

**Marlin Financial Intermediate Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

**Marlin Financial Group Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_



**Executed** as a deed by  
**Marlin Midway Limited**  
acting by  
in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

**Black Tip Capital Holdings Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

**Marlin Senior Holdings Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

**Marlin Portfolio Holdings Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**Marlin Legal Services Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Signed and delivered as a deed by  
**Cabot Financial (Ireland) Limited**

acting by its lawfully appointed attorney:

in the presence of:

By: /s/Sean Webb  
Name: Sean Webb  
Title: Director

By: /s/Tom Dillon  
Name of witness: Tom Dillon  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Signed and delivered as a deed by  
**Cabot Asset Purchases (Ireland) Limited**

acting by its lawfully appointed attorney:

in the presence of:

By: /s/Sean Webb  
Name: Sean Webb  
Title: Director

By: /s/Tom Dillon  
Name of witness: Tom Dillon  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Signed and delivered as a deed by  
**Cabot Securitisation Europe Limited**

acting by its lawfully appointed attorney:

in the presence of:

By: /s/Sean Webb  
Name: Sean Webb  
Title: Director

By: /s/Tom Dillon  
Name of witness: Tom Dillon  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_



Executed as a deed by

**Cabot Credit Management Limited**

acting by

in the presence of:

By: /s/Craig Buick  
Name: Craig Buick  
Title: Director

By: /s/Laura Kantzler  
Name of witness: Laura Kantzler  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**The Effective Date Parent**

Executed as a deed by

**Encore Capital Group, Inc.**

acting by

in the presence of:

By: /s/Jonathan Clark  
Name: Jonathan Clark  
Title: EVP and Chief Financial Officer

By: /s/Theresa Tierney Clark  
Name of witness: Theresa Tierney Clark  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_



**The Acceding Guarantors**

Executed as a deed by

**Encore Capital Group, Inc.**

acting by

in the presence of:

By: /s/Jonathan Clark  
Name: Jonathan Clark  
Title: EVP and Chief Financial Officer

By: /s/Theresa Tierney Clark  
Name of witness: Theresa Tierney Clark  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by  
**Midland Funding, LLC**  
acting by  
in the presence of:

By: /s/Ryan Bell  
Name: Ryan Bell  
Title: President

By: /s/Kiesha Bell  
Name of witness: Kiesha Bell  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

Midland Portfolio Services, Inc.

acting by

in the presence of:

By: /s/Ryan Bell  
Name: Ryan Bell  
Title: President

By: /s/Kiesha Bell  
Name of witness: Kiesha Bell  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

Midland Credit Management, Inc.

acting by

in the presence of:

By: /s/Ryan Bell  
Name: Ryan Bell  
Title: President

By: /s/Kiesha Bell  
Name of witness: Kiesha Bell  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by  
**Asset Acceptance, LLC**  
acting by  
in the presence of:

By: /s/Ryan Bell  
Name: Ryan Bell  
Title: President

By: /s/Kiesha Bell  
Name of witness: Kiesha Bell  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_



**Executed** as a deed by

**Asset Acceptance Capital Corp.**

acting by

in the presence of:

By: /s/Ryan Bell  
Name: Ryan Bell  
Title: President

By: /s/Kiesha Bell  
Name of witness: Kiesha Bell  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**Cabot UK Holdco Limited**

acting by

in the presence of:

By: /s/Craig Buick  
Name: Craig Buick  
Title: Director

By: /s/Laura Kantzler  
Name of witness: Laura Kantzler  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**Cabot Holdings S.à r.l.**

Duly represented by:

By:	<u>/s/ Jens Hoellermann</u>	<u>/s/ Simon Barnes</u>
Name:	Jens Hoellermann	Simon Barnes
Title:	Manager	Manager

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed** as a deed by

**Janus Holdings Luxembourg S.a r.l.**

Duly represented by:

By:	<u>/s/ Jens Hoellermann</u>	<u>/s/ Simon Barnes</u>
Name:	<u>Jens Hoellermann</u>	<u>Simon Barnes</u>
Title:	<u>Manager</u>	<u>Manager</u>

*[RCF Amendment and Restatement Agreement - Signature Page]*

Executed as a deed by

Encore Capital Group UK Limited

acting by

in the presence of:

By: /s/Ashish Masih  
Name: Ashish Masih  
Title: Director

By: /s/Jyoti Masih  
Name of witness: Jyoti Masih  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**Encore Holdings Luxembourg S.a r.l.**

Duly represented by:

By: /s/Gregory Call  
Name: Gregory Call  
Title: Class A Manager

*[RCF Amendment and Restatement Agreement - Signature Page]*

Executed as a deed by

**Marlin Intermediate Holdings Limited**

acting by

in the presence of:

By: /s/Derek Usher  
Name: Derek Usher  
Title: Director

By: /s/Lucy Bessett  
Name of witness: Lucy Bessett  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**The Existing Lenders**

Executed as a deed by

**DNB (UK) LIMITED**

acting by

in the presence of:

By:	<u>/s/Gemma Coppen</u>	<u>/s/ Kenneth Ellis</u>
Name:	<u>Gemma Coppen</u>	<u>Kenneth Ellis</u>
Title:	<u>Authorised Signatory</u>	<u>Authorised Signatory</u>

By:	<u>/s/Scott Darnley</u>
Name of witness:	<u>Scott Darnley</u>
Address of witness:	<u></u>
Occupation of witness:	<u></u>



**Executed by**

**HSBC BANK PLC**

acting by:

By: /s/Rebecca Andrew  
Name: Rebecca Andrew  
Title: Director

*[RCF Amendment and Restatement Agreement - Signature Page]*

Executed by

JPMORGAN CHASE BANK N.A., LONDON BRANCH

acting by:

By: /s/Lorenzo Bettini  
Name: Lorenzo Bettini  
Title: Vice President

/s/Juan A. Afan Rosa  
Juan A. Afan Rosa  
Executive Director

[RCF Amendment and Restatement Agreement - Signature Page]

**LLOYDS BANK PLC**

acting by:

By: /s/Paul Simmons  
Name: Paul Simmons  
Title: Associate Director

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed** as a deed by

**THE ROYAL BANK OF SCOTLAND PLC**

acting by

in the presence of:

By: /s/Robert Budgen  
Name: Robert Budgen  
Title: Director

By: /s/Tade Budgen  
Name of witness: Tade Budgen  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed by**

**MUFG BANK, LTD.**

acting by:

By: /s/Meng Zhang  
Name: Meng Zhang  
Title: Vice President

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed by**

**SANTANDER UK PLC**

acting by

By: /s/Mark Hearn  
Name: Mark Hearn  
Title: Relationship Director

*[RCF Amendment and Restatement Agreement - Signature Page]*

**The Effective Date Lenders**

Executed as a deed by

**BANK OF AMERICA, N.A.**

acting by

in the presence of:

By: /s/Angel Sutoyo  
Name: Angel Sutoyo  
Title: Senior Vice President

By: /s/Mariana Sanchez  
Name of witness: Mariana Sanchez  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

Executed as a deed by

ZIONS BANCORPORATION, N.A. (fka ZB, N.A.) dba CALIFORNIA BANK & TRUST

acting by

in the presence of:

By: /s/Melissa Chang  
Name: Melissa Chang  
Title: 1st Vice President

By: /s/Vincent Chiu  
Name of witness: Vincent Chiu  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_



**Executed** as a deed by  
**CITIZENS BANK, N.A.**

acting by

in the presence of:

By: /s/Karmyn Paul  
Name: Karmyn Paul  
Title: Vice President

By: /s/Doug Kennedy  
Name of witness: Doug Kennedy  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**CREDIT SUISSE AG, CAYMAN ISLAND BRANCH**

acting by

in the presence of:

By: /s/Doreen Barr  
Name: Doreen Barr

Title: Authorized Signatory

By: /s/Andrew Griffin  
Name: Andrew Griffin  
Title: Authorized Signatory

By: /s/Salil Ahuja  
Name of witness: Salil Ahuja

Address of witness: \_\_\_\_\_

Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**DNB (UK) LIMITED**

acting by

in the presence of:

By:	<u>/s/Gemma Coppen</u>	<u>/s/Kenneth Ellis</u>
Name:	<u>Gemma Coppen</u>	<u>Kenneth Ellis</u>
Title:	<u>Authorised Signatory</u>	<u>Authorised Signatory</u>

By:	<u>/s/Scott Darnley</u>
Name of witness:	<u>Scott Darnley</u>
Address of witness:	<u></u>
Occupation of witness:	<u></u>

**Executed** by  
**FIFTH THIRD BANK, NATIONAL ASSOCIATION**

acting by

By: /s/Peter Samboul  
Name: Peter Samboul  
Title: Senior Vice President

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed by**

**HSBC BANK PLC**

acting by:

By: /s/Rebecca Andrew  
Name: Rebecca Andrew  
Title: Director

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed** as a deed by

**ING CAPITAL LLC**

acting by

in the presence of:

By: /s/Mary Forstner  
Name: Mary Forstner  
Title: Director

By: /s/Tess Benson  
Name of witness: Tess Benson  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed** as a deed by

**ING CAPITAL LLC**

acting by

in the presence of:

By: /s/Jonathan Banks  
Name: Jonathan Banks

By: /s/Alexander Kreissman  
Name of witness: Alexander Kreissman

Title: MD

Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**Executed by**

**MORGAN STANLEY BANK, N.A.**

acting by:

By: /s/Michael King  
Name: Michael King  
Title: Authorized Signatory

*[RCF Amendment and Restatement Agreement - Signature Page]*



**Executed by**

**MUFG BANK, LTD.**

acting by:

By: /s/Meng Zhang  
Name: Meng Zhang  
Title: Vice President

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed** as a deed by

**TRUIST BANK**

acting by

By: /s/Hays Wood  
Name: Hays Wood  
Title: Director

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed** as a deed by

**UMPQUA BANK**

acting by

in the presence of:

By: /s/Emily Brayfield  
Name: Emily Brayfield  
Title: Senior Vice President

By: /s/Gary Housman  
Name of witness: Gary Housman  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**The Arranger**

Executed as a deed by

**DNB (UK) LIMITED**

acting by

in the presence of:

By:	<u>/s/Gemma Coppen</u>	<u>/s/Kenneth Ellis</u>
Name:	<u>Gemma Coppen</u>	<u>Kenneth Ellis</u>
Title:	<u>Authorised Signatory</u>	<u>Authorised Signatory</u>

By:	<u>/s/Scott Darnley</u>
Name of witness:	<u>Scott Darnley</u>
Address of witness:	<u></u>
Occupation of witness:	<u></u>

**The Arranger**

**Executed by**

**FIFTH THIRD BANK, NATIONAL ASSOCIATION**

acting by

By:	<u>/s/Peter Samboul</u>
Name:	<u>Peter Samboul</u>
Title:	<u>Senior Vice President</u>

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Executed** as a deed by

**ING CAPITAL LLC**

acting by

in the presence of:

By: /s/Jonathan Banks  
Name: Jonathan Banks  
Title: MD

By: /s/Alexander Kreissman  
Name of witness: Alexander Kreissman  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**The Arranger**

**Executed** as a deed by  
**ING CAPITAL LLC**

acting by

in the presence of:

By: /s/Mary Forstner  
Name: Mary Forstner

By: /s/Tess Benson  
Name of witness: Tess Benson

Title: Director

Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**The Arranger**

**Executed by**

**MUFG BANK, LTD.**

acting by:

By: /s/Meng Zhang  
Name: Meng Zhang  
Title: Vice President

*[RCF Amendment and Restatement Agreement - Signature Page]*



**Executed by**

**TRUIST SECURITIES, INC**

acting by

By: /s/Dan Mayer  
Name: Dan Mayer  
Title: Managing Director

*[RCF Amendment and Restatement Agreement - Signature Page]*

**Syndication Agent**

Executed as a deed by

**CITIZENS BANK, N.A.**

acting by

in the presence of:

By: /s/Douglas M Kennedy  
Name: Douglas M Kennedy  
Title: Sr. Vice President

By: /s/Jason Hembree  
Name of witness: Jason Hembree  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**The Resigning Agent**

Executed as a deed by

**J.P. MORGAN EUROPE LIMITED**

acting by

in the presence of:

By: /s/Fatma Mustafa  
Name: Fatma Mustafa  
Title: Vice President

By: /s/Luke Bright  
Name of witness: Luke Bright  
Address of witness: \_\_\_\_\_  
Occupation of witness: \_\_\_\_\_

**The Successor Agent**

Executed as a deed by

**TRUIST BANK**

acting by

in the presence of:

By:	<u>/s/Hays Wood</u>
Name:	<u>Hays Wood</u>
Title:	<u>Director</u>

**The Successor Security Agent**

Executed as a deed by

**TRUIST BANK**

acting by

in the presence of:

By: /s/Hays Wood  
Name: Hays Wood  
Title: Director

---

SENIOR FACILITIES AGREEMENT RELATING TO A \$1,050,000,000 COMMITTED REVOLVING FACILITY

---

dated

20 SEPTEMBER 2012 AS AMENDED BY AN AMENDMENT LETTER DATED 25 APRIL 2013, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 28 JUNE 2013, AS AMENDED BY AN AMENDMENT AGREEMENT DATED 25 JULY 2014, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 5 FEBRUARY 2015, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 11 NOVEMBER 2015, AS AMENDED BY AN AMENDMENT LETTER DATED 6 JUNE 2016, AS AMENDED BY AN AMENDMENT AGREEMENT DATED 6 OCTOBER 2016, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 31 MARCH 2017, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 12 DECEMBER 2017 AND AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 5 NOVEMBER 2018, AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED 15 NOVEMBER 2019 AND AS AMENDED AND RESTATED BY AN AMENDMENT AND RESTATEMENT AGREEMENT DATED \_\_\_\_\_ 2020

by  
ENCORE CAPITAL GROUP, INC.  
Parent

TRUIST BANK  
Acting as Agent

DNB (UK) LIMITED, MUFG BANK, LTD., TRUIST SECURITIES, INC.,  
ING CAPITAL LLC, FIFTH THIRD BANK, NATIONAL ASSOCIATION

Joint Lead Arrangers

and

CITIZENS BANK, N.A.  
Syndication Agent

with

TRUIST BANK  
Acting as Security Agent

**Baker  
McKenzie.**  
Baker & McKenzie LLP  
100 New Bridge Street  
London EC4V 6JA  
United Kingdom  
[www.bakermckenzie.com](http://www.bakermckenzie.com)

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## SENIOR FACILITIES AGREEMENT

This Agreement is originally dated 20 September 2012 and made

### Between

- (1) **Encore Capital Group, Inc.**, a Delaware corporation with its principal executive offices at 350 Camino de la Reina, Suite 100, San Diego, Ca. 92108 ("**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 Companies** listed in Part I of Schedule 1 (*The Original Parties*) as original guarantors (together with the parent, the "**Original Guarantors**");
- (4) **DNB (UK) Limited, MUFG Bank, Ltd., Truist Securities, Inc., ING Capital LLC, Fifth Third Bank, National Association** as joint lead arrangers (the "**Arrangers**");
- (5) Citizens Bank, N.A. as syndication agent (the "**Syndication Agent**");
- (6) **The Financial Institutions** listed in Part III of Schedule 1 (*The Original Parties*) as 2020 Effective Date Lenders (the "**2020 Effective Date Lenders**");
- (7) **Truist Bank** as agent of the other Finance Parties (the "**Agent**"); and
- (8) **Truist Bank** as security trustee for the Secured Parties (the "**Security Agent**").

It is agreed as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

"**2020 Amendment and Restatement Agreement**" means the amendment and restatement agreement in relation to this Agreement dated on or about \_\_\_\_\_ 2020 between, among others, the Obligors' Agent on behalf of each of the Obligors, the Lenders, the Agent and the Security Agent.

"**2020 Effective Date**" means the "Effective Date" as defined in the 2020 Amendment and Restatement Agreement.

"**Acceptable Bank**" means:

- (a) any Arranger or Affiliate of an Arranger;
- (b) 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, A- or higher by 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
- (c) any other bank or financial institution approved by the Agent.

"**Acceleration Notice**" means a notice served by the Agent pursuant to and in accordance with Clause 28.20 (*Acceleration*).

"**Accession Deed**" means a document substantially in the form set out in Schedule 6 (*Form of Accession Deed*).

"**Accounting Reference Date**" means 31 December.

"**Additional Borrower**" means a company which becomes an Additional Borrower in accordance with Clause 32 (*Changes to the Obligors*).

"**Additional Commitments**" has the meaning given to such term in Clause 2.3 (*Accordion Increase in Commitments*).

"**Additional Commitment Increase Date**" means each date on which the Total Commitments are increased pursuant to paragraph g of Clause 2.3 (*Accordion Increase in Commitments*).

"**Additional Commitment Increase Notice**" means an agreement substantially in the form set out in Schedule 18 (*Form of Additional Commitment Increase Notice*) or any other form agreed between the Parent and the Agent.

"**Additional Commitment Lender**" has the meaning given to that term in Clause 2.3 (*Accordion Increase in Commitments*).

"**Additional Commitment Restrictions**" means the following restrictions:

- (a) the last day of the availability period applicable to the Additional Commitment shall not be earlier than the last day of the Availability Period; and
- (b) the Additional Commitments may not have a shorter termination date than the Termination Date.

"**Additional Guarantor**" means a company which becomes an Additional Guarantor in accordance with Clause 32 (*Changes to the Obligors*).

"**Additional Obligor**" means an Additional Borrower or an Additional Guarantor.

"**Additional Loan**" means, in relation to an Additional Commitment, a loan made or to be made under that Additional Commitment or the principal amount outstanding for the time being of that loan.

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

"**Agent's Spot Rate of Exchange**" means:

- (a) as at the date of this Agreement, the spot rate of exchange as displayed by ICE Data Services; or
- (b) any other commercially available spot rate of exchange selected by the Agent and as agreed by the Parent,

in each case, for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11:00 a.m. on a particular day.

"**Agreed Security Principles**" means the principles set out in Schedule 16 (*Agreed Security Principles*).

"**Alternative Reference Bank Rate**" means:

- (a) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Alternative Reference Banks:
  - (i) in relation to LIBOR:
    - (A) (other than where paragraph (B) below applies) as the rate at which the relevant Alternative Reference Bank could borrow funds in the London interbank market 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; or
    - (B) if different, as the rate (if any and applied to the relevant Alternative Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or
  - (ii) in relation to EURIBOR:
    - (A) (other than where paragraph (B) below applies) as the rate at which the relevant Alternative Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in Euro within the Participating Member States for the relevant period; or
    - (B) if different, as the rate (if any and applied to the relevant Alternative Reference Bank and the relevant period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

"**Alternative Reference Banks**" means, in relation to LIBOR and EURIBOR, such reputable banks as may be appointed by the Agent in consultation with the Parent and provided that the relevant bank has provided its prior written consent to the Agent and the Parent to such appointment, in each case acting out of their principal offices in such jurisdiction as the Agent may, in consultation with the Parent, select.

"**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 for the Revolving Facility.

"**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 9 (*Ancillary Facilities*), to the extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

"**Ancillary Document**" means each document relating to or evidencing the terms of an Ancillary Facility.

"**Ancillary Facility**" means any ancillary facility made available by an Ancillary Lender in accordance with Clause 9 (*Ancillary Facilities*).

"**Ancillary Lender**" means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with Clause 9 (*Ancillary Facilities*).

"**Ancillary Outstandings**" means, at any time, in relation to an Ancillary Lender and an Ancillary Facility then in force the aggregate of the following amounts in the Base Currency outstanding under that Ancillary Facility (net of any credit balances on any account of any Borrower of an Ancillary Facility with the Ancillary Lender making available that Ancillary Facility to the extent that the 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):

- (a) the principal amount under each overdraft facility and on-demand short term loan facility (**provided that** for the purpose of this definition, any amount of any outstanding utilisation under any BACS facility (or similar) made available by an Ancillary Lender shall, with the prior consent of that Ancillary Lender, be excluded (without any double counting));
- (b) the face amount of each guarantee, bond and letter of credit under that Ancillary Facility; and
- (c) 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.

"**Anti-Terrorism Law**" means each of:

- (a) Executive Order No. 13224 of September 23, 2001 - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism (the Executive Order);
- (b) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (commonly known as the USA Patriot Act);
- (c) the Money Laundering Control Act of 1986, Public Law 99-570;
- (d) the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq, the Trading with the Enemy Act, 50 U.S.C. App. §§ 1 et seq, any Executive Order or regulation promulgated thereunder and administered by the Office of Foreign Assets Control ("**OFAC**") of the US Department of the Treasury; and

any similar law enacted in the United States of America subsequent to the 2020 Effective Date.

"**Approved List**" means the list of Lenders and potential Lenders held by the Agent (as the same may be amended from time to time pursuant to Clause 30.2 (*Conditions of assignment or transfer*)).

"**Article 55 BRRD**" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

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

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

"**Auditors**" means BDO USA LLP or any other accounting firm appointed by the Parent or the relevant member of the Group to act as its statutory auditors.

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

"**Availability Period**" means:

- (a) in respect of the Revolving Facility, the period from and including the 2020 Effective Date to and including the date falling one Month prior to the Termination Date; and
- (b) in respect of any Additional Commitment, the period specified in the Additional Commitment Increase Notice as the "Availability Period" relating to that Additional Commitment.

"**Available Commitment**" means, subject to Clause 9.8 (*Affiliates of Lenders as Ancillary Lenders*) in relation to a Facility, as applicable, a Lender's Commitment under that Facility minus (subject as set out below):

- (a) the Base Currency Amount of its participation in any outstanding Utilisations under that Facility and the amount of the aggregate of its Ancillary Commitments under that Facility;
- (b) in relation to any proposed Utilisation, the amount of its participation in any other Utilisations that are due to be made under that Facility on or before the proposed Utilisation Date and the amount of its Ancillary Commitment in relation to any new Ancillary Facility that is due to be made available on or before the proposed Utilisation Date in place of Commitments under that Facility, in accordance with Clause 9.2 (*Availability*); and

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

- (i) that Lender's participation in any Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
- (ii) that Lender's (or its Affiliate's) Ancillary Commitments which were provided in place of Commitments under that Facility, as applicable, in accordance with Clause 9.2 (*Availability*) to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date.

"**Available Facility**" means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.

"**Available Swingline Commitment**" of a Swingline Lender means its Swingline Commitment minus:

- (a) the amount of its participation in any outstanding Loans (including Swingline Loans); and
- (b) in relation to any proposed Utilisation under any Swingline Loan, the amount of its participation in any Swingline Loans that are due to be made under the Swingline Loan on or before the proposed Utilisation Date,

other than that Lender's participation in any Swingline Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

"**Bail-In Action**" means the exercise of any Write-down and Conversion Powers.

"**Bail-In Legislation**" means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

"**Bank Levy**" means any amount payable by any Finance Party or any of its Affiliates on the basis of, or in relation to, (i) its balance sheet or capital base or any part of it or its liabilities or minimum regulatory capital or any combination thereof (including the UK bank levy as set out in the Finance Act 2011 (as amended), the French tax bancaire de risque systémique as set out in Article 235 ter ZE of the French Code Général des impôts, the German bank levy as set out in the German Restructuring Fund Act 2010 (Restrukturierungsfondsgesetz) (as amended), the Dutch bank levy (bankenbelasting) as set out in the bank levy act (Wet bankenbelasting), the Swedish bank levy as set out in the Swedish Act on State Support to Credit Institutions (Sw. lag (2008:814) lag om statligt stöd till kreditinstitut), the Spanish bank levy (Impuesto sobre los Depósitos en las Entidades de Crédito) as set out in the Law 16/2012 of 27 December 2012 or any other similar levy or tax imposed in any other jurisdiction) and (ii) any financial activities taxes (or other taxes) of a kind contemplated in the European Commission consultation paper on financial sector taxation dated 22 February 2011 or the Single Resolution Mechanism established by EU Regulation n 806/2014 of 15 July 2014 and any other surcharge or tax of a similar nature implemented in any other jurisdiction.

"**Base Currency**" means US dollars.

"**Base Currency Amount**" means:

- (a) in relation to a Utilisation, the amount specified in the Utilisation Request delivered by a Borrower for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three 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, in the case of a Letter of Credit, as adjusted under Clause 6.8 (*Revaluation of Letters of Credit*) at six-monthly intervals; and

- (b) in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Agent by the Parent pursuant to Clause 9.2 (*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 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.

**"Base Reference Bank Rate"** means:

- (a) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Base Reference Banks:
- (i) in relation to LIBOR:
    - (A) (other than where paragraph (B) below applies) as the rate at which the relevant Base Reference Bank could borrow funds in the London interbank market 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; or
    - (B) if different, as the rate (if any and applied to the relevant Base Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or
  - (ii) in relation to EURIBOR:
    - (A) (other than where paragraph (B) below applies) as the rate at which the relevant Base Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in Euro within the Participating Member States for the relevant period; or
    - (B) if different, as the rate (if any and applied to the relevant Base Reference Bank and the relevant period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

**"Base Reference Banks"** means, in relation to LIBOR and EURIBOR, the principal London offices of Lloyds Bank plc and such other bank(s) as may be appointed by the Agent in consultation with the Parent provided that such other bank(s) shall be required to have consented in writing to such appointment.

**"Beneficial Ownership Certificate"** means a certificate regarding beneficial ownership of the Borrower as required by the Beneficial Ownership Regulation.

**"Beneficial Ownership Regulation"** means 31 C.F.R. § 1010.230.



"**Board of Governors**" means the Board of Governors of the Federal Reserve System of the United States.

"**Borrower**" means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 32 (*Changes to the Obligors*) and, in respect of an Ancillary Facility only, any Affiliate of a Borrower that becomes a borrower of that Ancillary Facility with the approval of the relevant Lender pursuant to the provisions of Clause 9.9 (*Affiliates of Borrowers*).

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

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

exceeds:

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

"**Budget**" means:

(a) the budget to be delivered by the Parent to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*); and

(b) in relation to any other period, any budget delivered by the Parent to the Agent in respect of that period pursuant to Clause 25.4 (*Budget*).

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, United Kingdom, New York, New York, Charlotte, North Carolina and Atlanta, Georgia:

(a) (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

(b) (in relation to any date for payment or purchase of Euro) any TARGET Day.

"**Capital Stock**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**Cash Equivalent Investments**" has the meaning given to "**Cash Equivalents**" in Schedule 14 (*Restrictive covenants*).

"**Centre of Main Interests**" means the "**centre of main interests**" as such term is used in Article 3(1) of the Regulation (EC) no. 2015/848 of 20 May 2015 on insolvency proceedings (recast).

"**Change in Law**" means the occurrence, after the date of this Agreement (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, guideline or directive

(whether or not having the force of law) by any Governmental Authority; **provided however** notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder issued in connection therewith or in implementation thereof shall be deemed to be a "**Change in Law**", regardless of the date enacted, adopted, issued or implemented.

"**Change of Control**" means a Change of Control as defined in Schedule 14 (*Restrictive covenants*).

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

"**Chief Executive Officer**" means the chief executive officer of the Parent or, if no chief executive officer is appointed, such other person fulfilling the functions of chief executive officer of the Parent.

"**Chief Financial Officer**" means the chief financial officer of the Parent or, if no chief financial officer is appointed, such other person fulfilling the functions of chief financial officer of the Parent.

"**Code**" means, at any date, the US Internal Revenue Code of 1986 (or any successor legislation thereto), as amended from time to time, and any associated regulations or other official guidance, all as the same may be in effect at such date.

"**Commitment**" means:

- (a) in relation to any Lender on the 2020 Effective Date, the amount 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 (*Increase*);
- (b) the Swingline Commitment;
- (c) any Additional Commitment; and
- (d) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

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

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Competitor**" means any person whose business (or the business of any of its Affiliates, related trusts, partnerships, or funds, excluding the business of any of its Affiliates, related trusts, partnerships, and funds in circumstances where (i) the relevant entity's primary business does not concern distressed or non-performing consumer debts and (ii) the relevant entity is independently managed or controlled from such person) is in competition with any aspect of the general business carried on by the Group as a whole in the distressed or non-performing consumer debt purchase and distressed or non-performing consumer debt collection market (together with each other person acting on behalf, on the instructions, or for the account of, any such person), in each case save that, in the case of any banking institution only, any person with a division or business line, Affiliate, related trust, partnership or fund that is in competition with the Group and that

division or business line, Affiliate, related trust, partnership or fund is not a material competitor of the Group shall not be a "Competitor".

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).

"**Confidential Information**" means all information relating to the Parent, any Obligor, the Group, the Finance Documents, any Facility or the Notes 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 any Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 43 (*Confidentiality*);
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) 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; and
- (iv) any Funding Rate or Reference Bank Quotation.

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 9 (*LMA form of Confidentiality Undertaking*) or in any other form agreed between the Parent and the Agent, in each case capable of being relied upon by (and not capable of being materially amended without the consent of) the Parent.

"**Consolidated EBITDA**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**Constitutional Documents**" means the constitutional documents of the Parent.

"**Consumer Debt or Account**" means any debt or account where the debtor is (i) an individual, or (ii) any other person in circumstances where an individual provides any surety, guarantee, credit support, Security, or other financial assistance which represents the principal credit support for the relevant debt or account in respect of that debt or account.

"**CTA**" means the Corporation Tax Act 2009.

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

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

any Commitment or amount outstanding under this Agreement.

"**Default**" means an Event of Default or any event or circumstance specified in Clause 28 (*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, **provided that** any such event or circumstance which requires any determination as to materiality before it may become an Event of Default shall not be a Default until such determination is made.

"**Defaulting Lender**" means any Lender other than a Lender which is a member of the Group:

- (a) which has failed to make its participation in a Loan available or 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*) or has failed to provide cash collateral (or has notified the Issuing Bank that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

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

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or
  - (B) a Disruption Event; andpayment is made within three (3) Business Days of its due date; or
- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

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

"**Designated Gross Amount**" has the meaning given to that term in Clause 9.2 (*Availability*).

"**Designated Net Amount**" has the meaning given to that term in Clause 9.2 (*Availability*).

"**Disruption Event**" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by

the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

"**EEA Member Country**" means any member state of the European Union, Iceland, Liechtenstein and Norway.

"**Employee Plan**" means an employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) which is subject to the provisions of Title IV or Section 302 of ERISA, or Section 412 of the Code, and in respect of which an Obligor or any ERISA Affiliate contributes or is required to contribute, or has, in the last seven years, contributed or been required to contribute.

"**Encore Private Placement Notes**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

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

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

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

"**Environmental Law**" means any applicable law or regulation which relates to:

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

"**ERC**" has the meaning given to that term in Clause 26.2 (*Financial definitions*).

"**ERC Model**" has the meaning given to that term in Clause 26.2 (*Financial definitions*).

"**ERC Model Output**" means the spread sheet prepared by the Parent showing ERC broken down into the monthly estimated remaining collections over 84 months, in the agreed form.

"**ERISA**" means, at any date, the United States Employee Retirement Income Security Act of 1974 (or any successor legislation thereto), as amended from time to time, and the regulations promulgated and rulings issued thereunder, all as the same may be in effect at such date.

"**ERISA Affiliate**" means any person that for purposes of Section 302 or Title IV of ERISA and Section 412 of the Code would be deemed at any relevant time to be a single employer with an Obligor, pursuant to Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

"**ERISA Event**" means:

- (a) any reportable event, as defined in Section 4043 of ERISA, with respect to an Employee Plan, as to which PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be notified of such event;
- (b) the filing of a notice of intent to terminate any Employee Plan, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Employee Plan or the termination of any Employee Plan under Section 4041(c) of ERISA;
- (c) the institution of proceedings under Section 4042 of ERISA by the PBGC for the termination of, or the appointment of a trustee to administer, any Employee Plan;
- (d) any failure by any Employee Plan to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Employee Plan, in each case whether or not waived;
- (e) the failure to make a required contribution to any Employee Plan that would reasonably be expected to result in the imposition of an encumbrance under Section 412 of the Code, or a filing under Section 412(c) of the Code or Section 302(c) of ERISA of any request for a minimum funding variance, with respect to any Employee Plan or Multiemployer Plan;
- (f) the complete or partial withdrawal of any Obligor or any ERISA Affiliate from any Employee Plan or a Multiemployer Plan;
- (g) an Obligor or an ERISA Affiliate incurring any liability under Title IV of ERISA with respect to any Employee Plan (other than premiums due and not delinquent under Section 4007 of ERISA);
- (h) a determination that any Employee Plan is, or is expected to be, in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code);
- (i) the receipt by an Obligor or any of its ERISA Affiliates of any notice of the imposition of withdrawal liability or of a determination that a Multiemployer Plan is, or is expected to be, in "endangered" or "critical" status within the meaning of Section 305 of ERISA;
- (j) the requirement that an Employee Plan provide a security pursuant to Section 436(f) of the Code;

- (k) any member of the Group or any ERISA Affiliate engages in a non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA and Section 4975 of the Code for which such member of the Group or ERISA Affiliate is a "disqualified person" (within the meaning of Section 4975 of the Code) or with respect to which any member of the Group or any ERISA Affiliate could otherwise be liable; and
- (l) the institution of a proceeding by a fiduciary of any Multiemployer Plan to enforce Section 515 of ERISA which proceeding is not dismissed within 30 days.

"**EU Bail-In Legislation Schedule**" means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

"**EUR**" or "**Euro**" means the single currency unit of the Participating Member States.

"**EURIBOR**" means, in relation to any Loan in Euro:

- (a) the applicable Screen Rate as of the Specified Time for Euro and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 16.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than 0.75 per cent. per annum, EURIBOR will be deemed to be 0.75 per cent. per annum.

"**Event of Default**" means any event or circumstance specified as such in Clause 28 (*Events of Default*).

"**Exchange Act**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**Excluded Bank Accounts**" means:

- (a) each bank account the credit balance of which relates to monies held on trust for third parties;
- (b) the bank accounts specified in Schedule 17 (*Excluded bank accounts*); and
- (c) any other bank account approved by the Agent from time to time.

"**Excluded Swap Obligation**" means, with respect to any Guarantor, (i) any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such member of the Group of, or the grant by such member of the Group of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) or (ii) any other Swap Obligation designated as an "Excluded Swap Obligation" of such Guarantor as specified in any agreement. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal or unlawful.

"**Existing 2023 Encore Exchangeable Notes**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**Existing Cabot Facilities**" means the facilities documented by the facility agreement originally dated 1 March 2005 (as amended and restated from time to time) made between, among others,

Cabot Financial (UK) Limited as borrower, The Royal Bank of Scotland plc as arranger, agent and security agent and Citibank, N.A., London Branch, DNB Bank ASA, The Royal Bank of Scotland plc and WestLB AG as original lenders.

"**Existing Cabot Notes**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**Existing Encore Convertible Notes**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**Existing Encore Notes**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**Existing Encore Facilities**" means the existing revolving credit facility and term loan facility made available pursuant to a third amended and restated credit agreement dated December 20, 2016, between, among others, the Parent, each of the guarantors and lenders party thereto and SunTrust Bank, as administrative agent, as amended from time to time.

"**Existing Hedging**" means:

- (a) the interest rate cap hedging agreement entered into before the 2020 Effective Date in respect of interest rate exposures relating to the Existing Cabot Facilities or the Existing Encore Facilities; and
- (b) the Existing Swap Agreements.

"**Existing Notes**" means the Existing Cabot Notes and the Existing Encore Notes.

"**Existing Swap Agreements**" means the:

- (a) interest rate swap agreement dated 25 October 2018 and entered into by the Parent and Fifth Third Bank; and
- (b) interest rate swap agreement dated 26 October 2018 and entered into by the Parent and MUFG Union Bank, N.A..

"**Expiry Date**" means, for a Letter of Credit, the last day of its Term.

"**Facility**" means the Revolving Facility;

"**Facility Office**" means:

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

"**Fallback Interest Period**" means one week.



"**FATCA**" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations and associated legislation;
- (b) 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
- (c) 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.

"**FATCA Application Date**" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

"**FATCA Deduction**" means a deduction or withholding from a payment under a Finance Document required by FATCA.

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

"**Fee Letter**" means:

- (a) any letter or letters dated on or about the date of this Agreement between the Parent and the Agent or the Parent and the Arrangers setting out the terms on which any arrangement fees or the fees referred to in Clause 17 (*Fees*) are payable; and
- (b) any agreement setting out fees payable to a Finance Party referred to in Clause 2.2 (*Increase*), Clause 2.3 (*Accordion Increase in Commitments*), Clause 17.3 (*Fees payable in respect of Letters of Credit*) or Clause 17.4 (*Interest, commission and fees on Ancillary Facilities*) of this Agreement or under any other Finance Document.

"**Finance Document**" means this Agreement, the 2020 Amendment and Restatement Agreement, 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, any Swingline Loan Utilisation Request, any Additional Commitment Increase Notice, any Transfer Certificate, any Assignment Agreement, any Increase Confirmation 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:

- (a) the definition of "**Material Adverse Effect**";
- (b) the definition of "**Transaction Document**";

- (c) the definition of "**Transaction Security Document**";
- (d) paragraph (a) of Clause 1.2 (*Construction*); and
- (e) Clause 28.1 (*Non-payment*), Clause 28.10 (*Unlawfulness and invalidity*), Clause 28.11 (*Intercreditor Agreement*), Clause 28.15 (*Repudiation and rescission of agreements*) and Clause 28.17 (*Material adverse change*).

"**Finance Party**" means the Agent, an Arranger, the Security Agent, a Lender, any Additional Commitment Lender, the Syndication Agent, a Hedge Counterparty, the Issuing Bank 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:

- (a) the definition of "**Secured Parties**";
- (b) paragraph (a)(iv) of Clause 1.2);
- (c) Clause 28.17 (*Material adverse change*), paragraph (c) of Clause 24.3 (*Non-conflict with other obligations*) or Clause 24.18 (*Good title to assets*) of the definition of "**Material Adverse Effect**";
- (d) Clause 34 (*Conduct of Business by the Finance Parties*); and
- (e) Clause 28.1 (*Non-payment*), Clause 28.10 (*Unlawfulness and invalidity*), Clause 28.11 (*Intercreditor Agreement*) and Clause 28.15 (*Repudiation and rescission of agreements*).

"**Financial Indebtedness**" has the meaning given to "**Indebtedness**" in Schedule 14 (*Restrictive covenants*).

"**Financial Quarter**" has the meaning given to that term in Clause 26.2 (*Financial definitions*).

"**Financial Year**" has the meaning given to that term in Clause 26.2 (*Financial definitions*).

"**Fixed Charges**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**Fixed GAAP**" means generally accepted accounting principles in the United States of America as in effect on the 2020 Effective Date or at any date after the 2020 Effective Date the Parent may make an irrevocable election to establish that "Fixed GAAP" shall mean Fixed GAAP as in effect on a date that is on or prior to the date of such election.

"**Funding Rate**" means any individual rate notified by a Lender to the Agent pursuant to paragraph (a) of Clause 16.4 (*Cost of funds*).

"**GAAP**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**GBP**", "**Sterling**" or "**£**" means the lawful currency for the time being of the United Kingdom.

"**Group**" means the Parent and each of its Subsidiaries for the time being.

"**Group Structure Chart**" means the group structure chart in the agreed form.

"**Guarantor**" means an Original Guarantor or an Additional Guarantor.

"**Hedge Counterparty**" means any person which is or has become a Party to the Intercreditor Agreement as a Hedge Counterparty in accordance with the provisions of the Intercreditor Agreement.

"**Hedging Agreement**" means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by a member of the Restricted Group and a Hedge Counterparty for any purpose permitted under Clause 27.16 (*Treasury Transactions*).

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

"**HMRC**" means HM Revenue & Customs.

"**Holdco**" means the Parent.

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

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

"**Impaired Agent**" means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) (if the Agent is also a Lender) it is a Defaulting Lender under paragraphs (a) or (b) of the definition of "**Defaulting Lender**"; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent,

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

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or
  - (B) a Disruption Event; andpayment is made within three (3) Business Days of its due date; or
- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

"**Increase Confirmation**" means a confirmation substantially in the form set out in Schedule 15 (*Form of Increase Confirmation*).

"**Increase Lender**" has the meaning given to that term in Clause 2.2 (*Increase*).

"**Information Memorandum**" means the document in the form approved by the Parent concerning the Group which, at the request of the Parent and on its behalf is to be prepared and distributed by the Arrangers in connection with the syndication of any Facility.

"Initial ERC" means the ERC forecast for the Group dated 30 June 2020.

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

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (i) has a Secured Party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such Secured Party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;

- (j) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or
- (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts,

**provided that** a Finance Party shall not be deemed to be subject to an Insolvency Event solely by virtue of the ownership or acquisition of any equity interest in that Finance Party or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

**"Intellectual Property"** means:

- (a) any patents, trademarks, 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 now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each member of the Restricted Group (which may now or in the future subsist).

**"Intercreditor Agreement"** means the intercreditor agreement, originally dated 20 September 2012, as amended and restated on or about the 2020 Effective Date pursuant to an amendment and restatement between, among others, the Parent, the Debtors (as defined in the Intercreditor Agreement), the Security Agent, the Agent, the Lenders (as RCF Lenders), the Arranger (as Arranger), the Intra-Group Lenders, the Structural Creditors and the Cabot Note Trustee (each as defined in the Intercreditor Agreement).

**"Interest Period"** means, in relation to a Loan, each period determined in accordance with Clause 15 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 14.3 (Default interest).

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

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

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

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

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

each as of the Specified Time for the currency of that Loan.

"**Intra-Group Loans**" means a loan by the Parent to the Borrower and any other loans made by one member of the Restricted Group to another member of the Restricted Group.

"**Investment Grade Status**" has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

"**Issuing Bank**" means each Lender which has notified the Agent that it has agreed to the Parent's request to be an Issuing Bank pursuant to the terms of this Agreement (and if more than one Lender has so agreed, such Lenders shall be referred to, whether acting individually or together, as the "**Issuing Bank**") provided that, in respect of a Letter of Credit issued or to be issued pursuant to the terms of this Agreement, the "**Issuing Bank**" shall be the Issuing Bank which has issued or agreed to issue that Letter of Credit.

"**ITA**" means the Income Tax Act 2007.

"**Joint Venture**" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity in which the interests of all members of the Restricted Group (taken together) are not more than 50%.

"**L/C Proportion**" means in respect of any Letter of Credit, the proportion (expressed as a percentage) borne by that Lender's Available Commitment in the relevant Facility to the Available Facility immediately prior to the issue of that Letter of Credit, adjusted to reflect any assignment or transfer under this Agreement to or by that Lender.

"**Legal Opinion**" means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 32 (*Changes to the Obligors*).

"**Legal Reservations**" means:

- (a) the principle that certain remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under any applicable limitation law (including the Limitation Acts), 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 acquiescence, set-off or counterclaim;
- (c) the principle that in certain circumstances Security granted by way of fixed charge may be recharacterised as a floating charge or that Security purported to be constituted as an assignment may be recharacterised as a charge;

- (d) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (e) the principle that an English court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (f) the principle that the creation or purported creation of Security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which Security has purportedly been created;
- (g) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (h) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

**"Lender"**

means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.2 (*Increase*), Clause 2.3 (*Accordion Increase in Commitments*) or Clause 30 (*Changes to the Lenders*),

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

**"Letter of Credit"** means:

- (a) a letter of credit or guarantee in favour of third parties including counter guarantees for guarantees to such third parties and which:
  - (i) complies with the Letter of Credit Requirements;
  - (ii) is in substantially the form set out in Schedule 12 (*Form of Letter of Credit*); or
  - (iii) is in any other form requested by the Parent and agreed by the Majority Lenders in respect of the relevant Facility under which the Letter of Credit is to be issued and the Issuing Bank; or
- (b) any guarantee, indemnity or other instrument in a form requested by a Borrower (or the Parent on its behalf) and agreed by the Majority Lenders in respect of the relevant Facility under which the Letter of Credit is to be issued and the Issuing Bank.

**"Letter of Credit Requirements"** means the requirements as to the form of a Letter of Credit as set out in Schedule 11 (*Letter of Credit requirements*).

**"LIBOR"** means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 16.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than 0.75 per cent. per annum, LIBOR shall be deemed to be 0.75 per cent. per annum.

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

"**LMA**" means the Loan Market Association.

"**Loan**" means:

- (a) a loan made or to be made under the Revolving Facility or the principal amount outstanding for the time being of that loan;
- (b) a Swingline Loan; or
- (c) any Additional Loan.

"**LTV Ratio**" has the meaning given to it in Clause 26.2 (*Financial definitions*).

"**LTV Ratios**" means the LTV Ratio and the SSRCF LTV Ratio.

"**Luxembourg Guarantor**" means Cabot Financial (Luxembourg) S.A., Cabot Financial (Luxembourg) II S.A. and any other Guarantor which is incorporated and/or established in the Grand Duchy of Luxembourg from time to time

"**Majority Lenders**" means:

- (a) in respect of any direction provided by the Majority Lenders under Clause 28.20 (*Acceleration*) or any discretion, amendment or waiver provided by the Majority Lenders under Clause 26 (*Financial Covenants*) or in relation to any discretion, amendment or waiver relating to Transaction Security, a Lender or Lenders whose Commitments aggregate 66.67 per cent. or more of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregated 66.67 per cent. or more of the Total Commitments immediately prior to that reduction);
- (b) in any other case, a Lender or Lenders whose Commitments aggregate more than 50 per cent. of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregated more than 50 per cent. of the Total Commitments immediately prior to that reduction); and
- (c) in respect of a waiver of any of the conditions to funding which apply to an Additional Commitment prior to a proposed Utilisation of an Additional Commitment, a Lender or Lenders whose Additional Commitment aggregate more than 50 per cent. of the aggregate Additional Commitments in respect of that Additional Commitment.

"**Mandatory Prepayment Account**" means an interest-bearing account:

- (a) held, or to be held, by a Borrower with the Agent or the Security Agent (or Affiliate of the Agent or the Security Agent);
- (b) identified in a letter between the Parent and the Agent as a Mandatory Prepayment Account;
- (c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Agent and Security Agent (each acting reasonably); and



(d) from which no withdrawals may be made by any members of the Restricted Group except as contemplated by this Agreement, as the same may be redesignated, substituted or replaced from time to time.

"**Margin**" means:

- (a) in respect of the Revolving Facility, on and from the 2020 Effective Date, 2.50 per cent per annum; and
- (b) in respect of any Additional Commitment, the rate set out in the Additional Commitment Increase Notice relating to that Additional Commitment.

"**Material Adverse Effect**" means a material adverse effect on:

- (a) the business, operations, assets or financial condition of the Restricted Group (taken as a whole); or
- (b) the ability of the Obligors (taken as a whole) to perform their payment obligations under the Finance Documents; or
- (c) the legality, validity, enforceability or ranking of any Security granted or purported to be granted pursuant to any of the Finance Documents, in any such case, in a manner or to an extent which is materially adverse to the interests of the Lenders under the Finance Documents and, if capable of remedy is not remedied within 15 Business Days of the earlier of:
  - (i) the Parent becoming aware of the issue; or
  - (ii) the giving of notice of the issue by the Agent,provided that such period shall run concurrently with any applicable grace period contained in Clause 28 (*Events of Default*).

"**Material Company**" means, at any time:

- (a) an Obligor; or
- (b) a wholly-owned member of the Restricted Group that is the Holding Company of an Obligor; or
- (c) a member of the Restricted Group (other than a Permitted Purchase Obligations SPV or any Subsidiary of the Parent whose only material assets are the Capital Stock of a Permitted Purchase Obligations SPV) which:
  - (i) has earnings before interest, tax, depreciation and amortisation calculated on the same basis as Consolidated EBITDA (but on an unconsolidated basis and excluding intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) representing more than five (5) per cent. of Consolidated EBITDA of the Restricted Group calculated on a consolidated basis; or
  - (ii) has gross assets (on an unconsolidated basis excluding intra-Restricted Group items, goodwill and investments in Restricted Subsidiaries of any member of the

Restricted Group) representing five (5) per cent. or more of the gross assets of the Restricted Group calculated on a consolidated basis (excluding goodwill),

but does not include:

- (a) a Permitted Purchase Obligations SPV; or
- (b) a Restricted Subsidiary whose only assets are the Capital Stock in a Permitted Purchase Obligations SPV.

Compliance with the conditions set out in paragraph (c) above shall be determined by reference to:

- (i) the most recent Annual Financial Statements of the Group (adjusted in accordance with Clause 25.7 (*Unrestricted Subsidiaries*)), supplied under paragraph (a) of Clause 25.1 (*Financial statements*) and the Compliance Certificate relating thereto;
- (ii) the latest (if applicable) consolidated financial statements of the Subsidiary (audited to the extent required by law). However, if a Subsidiary has been acquired since the date as at which the latest Annual Financial Statements of the Group were prepared, the Annual Financial Statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary (that adjustment being certified by the Chief Financial Officer or the Chief Executive Officer of the Parent as representing an accurate reflection of the revised Consolidated EBITDA) or gross assets of the Restricted 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. All calculations in connection with paragraph (c) establishing whether or not any member of the Group is a Material Company shall be calculated in accordance with Fixed GAAP.

**"Material Event of Default"** means any event or circumstance constituting:

- (a) an Event of Default under Clause 28.4 (*Other obligations*) to the extent that such Event of Default relates to a failure to comply that is material other than in the case of Clause 27.20 (*Note Purchase Condition*) where materiality will not be applied to such test; and
- (b) an Event of Default under any Clause other than Clause 28.4 (*Other obligations*).

**"Member State"** means the territory of each Member State of the Community as defined in Article 5 and 6 of the Council Directive 2006/112/EC on the common system of value added tax.

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

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

(c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

"**Multiemployer Plan**" means a "multiemployer plan" (as defined in Section 3(37) of ERISA) that is subject to Title IV of ERISA that is or has been contributed to by an Obligor or any ERISA Affiliate.

"**Non-Acceptable L/C Lender**" means a Lender which:

- (a) is not an Acceptable Bank within the meaning of paragraph (c) of the definition of "**Acceptable Bank**" (other than a Lender which each Issuing Bank has agreed is acceptable to it notwithstanding that fact);
- (b) is a Defaulting Lender or an Insolvency Event has occurred in respect of a Holding Company of such Lender;
- (c) is determined or declared as such by the Issuing Bank from time to time; or
- (d) has failed to make (or has notified the Agent that it will not make) a payment to be made by it under Clause 7.3 (*Indemnities*) or Clause 33.11 (*Lenders' indemnity to the Agent*) or any other payment to be made by it under the Finance Documents to or for the account of any other Finance Party in its capacity as Lender by the due date for payment unless the failure to pay falls within the description of any of those items set out at paragraphs (i) and (ii) of the definition of Defaulting Lender,

**provided that**, notwithstanding the provisions of this definition, any Arranger under this Agreement shall be considered an Acceptable Bank at all times.

"**Non-Consenting Lender**" has the meaning given to that term in Clause 42.5 (*Replacement of Lender*).

"**Non-Consumer Debt or Accounts**" means any debt or account that is not a Consumer Debt or Account.

"**Non-Permitted Jurisdiction Originated Account**" means a Portfolio Account originally issued or extended to a person:

- (a) outside the United Kingdom, the United States or a Permitted Jurisdiction, unless such person was resident in the United Kingdom, the United States or a Permitted Jurisdiction at such time; and
- (b) in a jurisdiction which is not a Sanctioned Jurisdiction.

"**Non-UK/Non-US Originated Account**" means a Portfolio Account originally issued or extended to a person outside the United Kingdom or the United States unless such person was resident in the United Kingdom or the United States at such time.

"**Note Documents**" means the Senior Note Documents (as such term is defined in the Intercreditor Agreement).

"**Notes**" means the Senior Notes (as such term is defined in the Intercreditor Agreement).

"**Notifiable Debt Purchase Transaction**" has the meaning given to that term in paragraph (b) of Clause 31.2 (*Disenfranchisement on Debt Purchase Transactions entered into by a member of the Group*).

"**Obligor**" means a Borrower or a Guarantor.

"**Obligors' Agent**" means the Parent or such other person, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.5 (*Obligors' Agent*).

"**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*).

"**Original Financial Statements**" means:

- (a) the audited financial statements of the Group ending 31 December 2019; and
- (b) in relation to any other Obligor, its audited (to the extent required by law to be audited) financial statements (to the extent required by law to be produced) delivered to the Agent as required by Clause 32 (*Changes to the Obligors*).

"**Original Lender**" means each financial institution listed in of Part III Schedule 1 (*The Original Parties*) as a 2020 Effective Date Lender with a Commitment greater than \$0.

"**Participating Member State**" means any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to this Agreement.

"**PBGC**" means the US Pension Benefit Guaranty Corporation, or any entity succeeding to all or any of its functions under ERISA.

"**Perfection Requirements**" means the making or procuring of appropriate registrations, filings, endorsements, stampings, intimations in accordance with local laws, notations in stock registries, notarisations, legalisation and/or notifications of the Transaction Security Documents and/or the Transaction Security created thereunder.

"**Permitted Acquisition**" means an acquisition:

- (a) of shares or other ownership interests in a company representing at least 50.1 per cent. of the issued share capital or other ownership interests of such company or of a business or undertaking carried on as a going concern (each a "**Business Acquisition**"); or
- (b) an acquisition of Portfolio Accounts for consideration in cash,

but only if:

- (i) in relation to a Business Acquisition, no Event of Default has occurred and is continuing at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition or would result therefrom;
- (ii) in relation to an acquisition of Portfolio Accounts, no Event of Default has occurred and is continuing at the time the relevant member of the Restricted

Group contractually commits to the relevant acquisition or would result therefrom;

- (iii) in relation to a Business Acquisition, the acquired company, business, or undertaking is engaged in a business, service or activity that is related, complementary, incidental, ancillary or similar to any of the businesses, services or activities that are carried on by the Restricted Group at the time of such Business Acquisition;
- (iv) in relation to an acquisition of a Portfolio Account:
  - (A) if the aggregate purchase value of Portfolio Accounts acquired by the Restricted Group since the most recent Quarter Date exceeds or will as a result of such acquisition of Portfolio Accounts exceed an amount equal to 50 per cent. of the amount budgeted for acquisitions of Portfolio Accounts in the Budget for the relevant Financial Year, the Parent has delivered a Compliance Certificate (amended to set out calculations in respect of the LTV Ratios and the acquired Portfolio Accounts only) signed by the Chief Financial Officer or the Chief Executive Officer showing in reasonable detail calculations demonstrating that it is in compliance with the LTV Ratios (calculated by reference to the last day of the most recently ended calendar Month);
  - (B) in the case of a Portfolio Account constituting either (i) a Non-Consumer Debt or Account, or (ii) a Non-UK/Non-US Originated Account, having regard to the circumstances applying at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition, the relevant acquisition would not result in a failure to comply with the definition of "**Portfolio Account**"; and
  - (C) such acquisition is in compliance with Schedule 14 (*Restrictive Covenants*);
- (v) in relation to a Business Acquisition of less than 100 per cent. but more than 50.1 per cent. of the issued share capital or other ownership interest interests of a company which following the acquisition would constitute a Material Company, subject to such company becoming an Obligor and granting Security (on substantially the same or equivalent terms to the Transaction Security granted as a condition precedent to initial Utilisation of the Facilities and subject to the Agreed Security Principles) over all its assets in favour of the Secured Parties as soon as practicable and in any event within:
  - (A) in the case of a Business Acquisition in England and Wales, 60 days; or
  - (B) in the case of a Business Acquisition in any other jurisdiction, 90 days,of consummation of the relevant acquisition;
- (vi) in relation to a Business Acquisition, the Parent has delivered a Compliance Certificate (amended to set out calculations in respect of the LTV Ratios and the

Portfolio Accounts only) signed by the Chief Financial Officer or the Chief Executive Officer showing in reasonable detail calculations demonstrating:

- (A) that it will remain in compliance with the LTV Ratios immediately following completion of the relevant acquisition (calculated by reference to the last day of the most recently ended Financial Quarter and on a pro forma basis for the proposed Business Acquisition taking into account any Financial Indebtedness incurred or to be incurred by any member of the Restricted Group in relation to the proposed acquisition); and
  - (B) to the extent that the Business Acquisition includes an acquisition of any Non-Consumer Debt or Account or any Non-UK/Non-US Originated Accounts, having regard to the circumstances applying at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition, that the relevant acquisition would not result in a failure to comply with the definition of "**Portfolio Account**";
- (vii) in relation to a Business Acquisition, the acquired company, business or undertaking is incorporated or established, and carries on its principal business, in the United Kingdom, European Union, European Economic Area, India, United States of America or Canada;
- (viii) in the reasonable opinion of the Parent, such acquisitions are directly or indirectly EBITDA enhancing over the next three Financial Years after the completion of such acquisition having regard to the Group as a whole and the nature of the Group's business in the debt purchase and debt collection market; and
- (ix) in relation to an acquisition of Portfolio Accounts to be funded by a Utilisation in an amount of more than:
- (A) 7.5% of ERC (as determined by reference to the Compliance Certificate most recently delivered to the Agent under this Agreement or (if relevant) the last day of the most recently ended calendar month on a pro forma basis for such acquisition), the Parent notifies the Agent of such acquisition promptly following its completion and provides the Agent with such information in relation to the acquisition as the Agent or the Lenders may reasonably require promptly upon request; or
  - (B) 15% of ERC (as determined by reference to the Compliance Certificate most recently delivered to the Agent under this Agreement or (if relevant) the last day of the most recently ended calendar month on a pro forma basis for such acquisition), the prior written consent of the Majority Lenders has been obtained.

"**Permitted Financial Indebtedness**" means any Financial Indebtedness which is permitted under Section 1.2 of Schedule 14 (*Restrictive covenants*).

"**Permitted Joint Venture**" means any investment in a Joint Venture that is not prohibited by Clause 27.7 (*Joint Ventures*).

"**Permitted Jurisdiction**" means each of Ireland, France, Spain, Portugal, Italy, Germany, the Netherlands, Australia and New Zealand and Poland.

**"Permitted Jurisdiction Non-UK/Non-US Originated Account"** means a Portfolio Account originally issued or extended to a person outside the United Kingdom or the United States unless such person was resident in the United Kingdom or the United States at such time, provided that:

- (a) the aggregate **"ERC"** amount of all Permitted Jurisdiction Originated Accounts in any individual Permitted Jurisdiction (calculated on the same basis as ERC and as set out in the further proviso below) at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition does not exceed (i) in the case of each of Ireland, France and Spain, an amount equal to 20 per cent. of ERC and (ii) in the case of each other individual Permitted Jurisdiction, an amount equal to 10 per cent. of ERC (as determined in each case by reference to the Compliance Certificate most recently delivered to the Agent under this Agreement or if relevant the last day of the most recently ended calendar Month adjusted on a pro forma basis for the proposed acquisition); and
- (b) the aggregate **"ERC"** amount of all Non-Permitted Jurisdiction Originated Accounts (calculated on the same basis as ERC and as set out in the further proviso below) at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition does not exceed an amount equal to 5 per cent. of ERC (as determined by reference to the Compliance Certificate most recently delivered to the Agent under this Agreement or if relevant the last day of the most recently ended calendar Month adjusted on a pro forma basis for the proposed acquisition),

and provided further that for the purposes of this definition, when calculating the aggregate **"ERC"** amount of all such Permitted Jurisdiction Originated Accounts or all such Non-Permitted Jurisdiction Originated Accounts debt, it shall refer to the estimated remaining collections projected to be received over 84 Months from the debt portfolio of which such debt is a component multiplied by the ratio of Permitted Jurisdiction Originated Accounts or Non-Permitted Jurisdiction Originated Accounts to total accounts in that debt portfolio, respectively.

**"Permitted Jurisdiction Originated Account"** means a Portfolio Account originally issued or extended to a person in a Permitted Jurisdiction.

**"Permitted Payment"** has the meaning given to that term in the Intercreditor Agreement.

**"Permitted Purchase Obligations SPV"** has the meaning given to that term in Schedule 14 (*Restrictive covenants*).

**"Permitted Refinancing Indebtedness"** means any Refinancing Indebtedness (as defined in Schedule 14 (*Restrictive covenants*)) permitted pursuant to Section 1 of Schedule 14 (*Restrictive covenants*).

**"Permitted Reorganisation"** means:

- (a) an amalgamation, merger, transfer, consolidation, liquidation, dissolution or corporate reconstruction (each a **"Reorganisation"**) on a solvent basis of a member of the Restricted Group where:
  - (i) all of the business and assets of that member of the Restricted Group remain within the Restricted Group (and if that member of the Restricted Group was an Obligor immediately prior to such Reorganisation being implemented, all of the business and assets of that member are retained by one or more other Obligors);

- (ii) if it or its assets or the shares in it were subject to the Transaction Security immediately prior to such Reorganisation, the Security Agent will enjoy substantially the same or equivalent Security over the same assets or, as the case may be, over it or the shares in it (or in each case over the shares of its successor) or, where a member of the Group is being dissolved or liquidated, its assets (after payment of creditors) are passed up to its Holding Company (subject to such Holding Company granting the same or equivalent Security over the relevant assets in favour of the Security Agent); and
  - (iii) in the case of an amalgamation, merger or corporate reconstruction, if such member of the Group is an Obligor, the surviving entity is or becomes an Obligor to at least the same extent as such first mentioned Obligor immediately prior to the said amalgamation, merger or corporate reconstruction;
- (b) any Reorganisation permitted under Schedule 14 (Restrictive covenants); or
  - (c) any other Reorganisation of one or more members of the Restricted Group approved by the Majority Lenders (acting reasonably).

"**Person**" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organisations, whether or not legal entities, and Governmental Authorities.

"**Portfolio**" means the Portfolio Accounts.

"**Portfolio Account**" means:

- (a) (i) a performing, sub-performing or charged-off consumer account, loans, receivables, mortgages, debentures, claims or other similar assets or instruments or any other consumer account owned by the Restricted Group (in each case, a "**Consumer Portfolio Account**"); (ii) (to the extent that, when calculating the aggregate "ERC" amount under the Notes, this is also taken into account and the same methodology is used) any sale, lease, licence, transfer or other disposal of any asset (including but not limited to real estate) owned or held (as relevant) by the Restricted Group following any acceleration, enforcement or similar action or proceeding or following any restructuring arrangement (such action or proceeding, or restructuring arrangement, (in each case, as appropriate) having taken place prior to or following such asset being owned or held (as relevant) by the Restricted Group) in connection with any Consumer Portfolio Account; or (iii) any Non-Consumer Debt or Account; or
- (b) a Right to Collect Account,

provided that:

- (i) the aggregate "ERC" amount of all Non-Consumer Debt or Accounts (calculated on the same basis as ERC and as set out in the further proviso below) at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition does not exceed an amount equal to 7.5 per cent. of ERC (as determined by reference to the Compliance Certificate most recently delivered to the Agent under this Agreement or if relevant the last day of the most recently



ended calendar Month adjusted on a pro forma basis for the proposed acquisition); and

- (ii) the aggregate "ERC" amount of all Permitted Jurisdiction Non-UK/Non-US Originated Accounts (calculated on the same basis as ERC and as set out in the further proviso below) at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition does not exceed an amount equal to 50 per cent. of ERC (as determined by reference to the Compliance Certificate most recently delivered to the Agent under this Agreement or if relevant the last day of the most recently ended calendar Month adjusted on a pro forma basis for the proposed acquisition),

and provided further that for the purposes of this definition, when calculating the aggregate "ERC" amount of all such Non-Consumer Debt or Accounts or all such Permitted Jurisdiction Non-UK/Non-US Originated Accounts, it shall refer to the estimated remaining collections projected to be received over 84 Months from the debt portfolio of which such debt is a component multiplied by the ratio of Non-Consumer Debt or Accounts or Permitted Jurisdiction Non-UK/Non-US Originated Accounts to total accounts in that debt portfolio, respectively.

"**Quarter Date**" has the meaning given in Clause 26.2 (*Financial definitions*).

"**Quasi Security**" means any transaction in which a member of the Restricted Group agrees to:

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Restricted Group;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined:

- (a) (if the currency is Sterling) the first day of that period;
- (b) (if the currency is Euro) two TARGET Days before the first day of that period; or
- (c) (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).

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligations, each Obligor that has total assets exceeding \$10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any

regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

"**Reference Bank Quotation**" means any quotation supplied to the Agent by a Base Reference Bank or an Alternative Reference Bank.

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

"**Relevant Acceleration Event**" has the meaning given to that term in Schedule 16 (*Agreed Security Principles*).

"**Relevant Interbank Market**" means in relation to Euro, the European interbank market and, in relation to any other currency, the London interbank market.

"**Relevant Jurisdiction**" means, in relation to an Obligor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where it conducts a substantial part of its business or its principal place of business; and
- (c) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

"**Reliance Parties**" means the Agent, the Arranger, the Security Agent, the Issuing Bank, each Original Lender and each person who accedes as a Lender as part of the Syndication of the Facilities within six months of this Agreement.

"**Renewal Request**" means a written notice delivered to the Agent in accordance with Clause 6.6 (*Renewal of a Letter of Credit*).

"**Repeating Representations**" means each of the representations set out in Clause 24.1 (*Status*), Clause 24.2 (*Binding obligations*), Clause 24.3 (*Non-conflict with other obligations*), Clause 24.4 (*Power and authority*), paragraph (a) of Clause 24.5 (*Validity and admissibility in evidence*), Clause 24.6 (*Governing law and enforcement*), Clause 24.9 (*No default*), paragraph (f) of Clause 24.10 (*No misleading information*) paragraphs (d) and (e) of Clause 24.11 (*Financial Statements*), Clause 24.19 (*Legal and beneficial ownership*), Clause 24.20 (*Shares*), Clause 24.25 (*Centre of main interests and establishments*) and Clause 24.28 (*Money Laundering Laws*).

"**Replacement Debt**" means Permitted Refinancing Indebtedness where the proceeds are applied within one (1) day of the incurrence of the Permitted Refinancing Indebtedness (provided that the Parent shall use its reasonable endeavours to procure that it is applied on the same day) in prepayment, purchase, defeasance, satisfaction and discharge or redemption of (a) the Notes, Indebtedness incurred in connection with any Permitted Purchase Obligations or any Term Debt; or (b) any Permitted Refinancing Indebtedness.

"**Representative**" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"**Resignation Letter**" means a letter substantially in the form set out in Schedule 7 (*Form of Resignation Letter*).

"**Resolution Authority**" means any body which has authority to exercise any Write-down and Conversion Powers.

"**Restricted Group**" means the Parent and the Restricted Subsidiaries.

"**Restricted Party**" means a person that is (i) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on any Sanctions List, (ii) located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country or territory-wide Sanctions (including, without limitation, Crimea, Cuba, Burma, Myanmar, Iran, North Korea, Sudan and Syria); or (iii) otherwise a target of Sanctions.

"**Restricted Subsidiary**" means a Subsidiary of the Parent other than an Unrestricted Subsidiary.

"**Revolving Facility**" means the revolving credit facility made available under this Agreement as described in paragraph (a) of Clause 2.1 (*The Facilities*).

"**Right to Collect Account**" means a performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument that is owned by a Person that is not a member of the Restricted Group (a "**Third Party**") and in respect of which:

- (a) such Third Party is unable or unwilling to dispose of, or is not established for the purpose of disposing of, the relevant performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument to a member of the Restricted Group and:
  - (i) a member of the Restricted Group is entitled to collect and retain substantially all of the amounts due under such performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument or to receive amounts equivalent thereto; or
  - (ii) a member of the Restricted Group shall be entitled to the transfer of all such amounts received under such performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument and such amounts will be transferred to a member of the Restricted Group within a period of not more than 45 days from the date of their collection; or
- (b)
  - (i) a member of the Restricted Group shall have legal (and beneficial) or beneficial title (or the relevant local law equivalent in each case) to such relevant performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or other claim or other similar asset or instrument and any amounts collected thereunder. Any amounts collected thereunder shall be transferred to a member of the Restricted Group within a period of not more than 45 days from the date of their collection; or

- (ii) a member of the Restricted Group shall be legally (and beneficially) or beneficially entitled (or the relevant local law equivalent in each case) to collect and retain substantially all of the amounts due under such performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument or to receive amounts equivalent thereto.

For the avoidance of doubt, nothing in this definition shall restrict any Unrestricted Subsidiary from engaging in any of the activities applicable to Restricted Subsidiaries provided that such activity shall not constitute a Right to Collect Account unless a Restricted Subsidiary has the rights with respect to such Right to Collect Account detailed under paragraph (a) or (b) above.

**"Rollover Loan"** means one or more Loans:

- (a) made or to be made on the same day that:
  - (i) a maturing Loan is due to be repaid; or
  - (ii) a demand by the Issuing Bank pursuant to a drawing in respect of a Letter of Credit or payment of outstandings under an Ancillary Facility is due to be met;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Loan or the relevant claim in respect of that Letter of Credit or Ancillary Facility Utilisation; and
- (c) made or to be made to the same Borrower for the purpose of:
  - (i) refinancing that maturing Loan or Ancillary Facility Utilisation; or
  - (ii) satisfying the relevant claim in respect of that Letter of Credit.

**"Sanctioned Jurisdiction"** means a country or territory which is subject to:

- (a) general trade, economic or financial sanctions or embargoes imposed, administered or enforced by (i) the US Department of Treasury's Office of Foreign Assets Control, (ii) the United Nations Security Council, (iii) the European Union or (iv) the United Kingdom, including Her Majesty's Treasury of the United Kingdom; or
- (b) general economic or financial sanctions embargoes imposed by the US federal government and administered by the US State Department, the US Department of Commerce or the US Department of the Treasury.

**"Sanctioned Person"** means, at any time, (a) any person listed in any Sanctions-related list of designated persons maintained by the Office of Foreign Assets Control of the US Department of the Treasury or the US Department of State, or by the United Nations Security Council, the European Union or any EU member state or the United Kingdom, (b) any person operating, organized or resident in a Sanctioned Jurisdiction or (c) any person owned or controlled by any such person or persons.

**"Sanctions"** means the economic sanctions laws, regulations, or restrictive measures administered, enacted or enforced by the Sanctions Authorities (including, without limitation, 31 C.F.R., Subtitle B, Chapter V; the Iran Sanctions Act of 1996, as amended; the Comprehensive

Iran Sanctions, Accountability and Divestment Act of 2010; Executive Order 13590; and the National Defence Authorisation Act for Fiscal Year 2012).

"**Sanctions Authorities**" means (i) the United States government, including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury and the United States Department of State; (ii) the United Nations; (iii) the European Union or its Member States, (iv) the United Kingdom, including Her Majesty's Treasury and the Department of Business, Energy and Industrial Strategy; or (v) the respective governmental institutions and agencies of any of the foregoing.

"**Sanctions List**" means the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the US Department of Treasury, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by Her Majesty's Treasury, the consolidated list of persons, groups or entities subject to European Union sanctions administered by the European External Action Service or any similar list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities.

"**Screen Rate**" means:

- (a) in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); and
- (b) in relation to EURIBOR, the Euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate),

or, in each case, on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson 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 and the Lenders.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Secured Parties**" has the meaning given to it in the Intercreditor Agreement.

"**Security**" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Separate Loan**" has the meaning given to that term in Clause 10.1 (*Repayment of Loans*).

"**Specified Time**" means a time determined in accordance with Schedule 10 (*Timetables*).

"**SSRCF LTV Ratio**" has the meaning given to it in Clause 26.2 (*Financial definitions*).

"**Stretch Facility**" means any "Facility" as defined in the Stretch Facility Agreement.

"**Stretch Facility Agreement**" means the term loan facility of up to \$300,000,000 made between among others, the Parent and the Stretch Facility Finance Parties.

"**Stretch Facility Finance Parties**" means each "Finance Party" as defined under the Stretch Facility Agreement.

"**Structural Change**" has the meaning given to it under paragraph (b) of Clause 42.3 (*Exceptions*).

"**Structural Debt Document**" means any document or agreement evidencing the terms of any Structural Liabilities.

"**Structural Liabilities**" has the meaning given to it in the Intercreditor Agreement.

"**Subsidiary**" means in relation to any person, any entity which is controlled directly or indirectly by that person and any entity (whether or not so controlled) treated as a subsidiary in the latest financial statements of that person from time to time, and "control" for this purpose means the direct or indirect ownership of the majority of the voting share capital of such entity or the right or ability to determine the composition of a majority of the Board of Directors (or like board) of such entity, in each case whether by virtue of ownership of share capital, contract or otherwise.

"**Super Majority Lenders**" means, at any time a Lender or Lenders whose Commitments aggregate 85 per cent. or more of the Total Commitments or, if the Total Commitments have been reduced to zero, aggregate 85 per cent. or more of the Total Commitments immediately prior to that reduction.

"**Swap Obligation**" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"**Swingline Commitment**" means the Commitments provided by the Swingline Lender, being as at the 2020 Effective Date, \$15,000,000.

"**Swingline Lender**" means Truist Bank.

"**Swingline Loan**" means a loan made to the Borrower by the Swingline Lender in respect of the Swingline Commitment in accordance with Clause 5.7 (*Utilisation – Swingline Commitment*).

"**Syndication**" means the primary syndication of the Facilities.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in Euro.

"**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.

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

"**Term**" means each period determined under this Agreement for which the Issuing Bank is under a liability under a Letter of Credit.

"**Term Debt**" means on any date, Financial Indebtedness with a scheduled maturity date 12 Months or more from the date on which such Financial Indebtedness was incurred (and for the

avoidance of doubt excluding the Facilities and any Ancillary Facility). In no event shall the Notes or the Encore Private Placement Notes be "Term Debt".

"**Termination Date**" means:

in respect of the Revolving Facility, the 4th anniversary of the 2020 Effective Date; and

in respect of any Additional Commitment, the date set out in the Additional Commitment Increase Notice relating to that Additional Commitment (or such other date as the Additional Commitment Lenders in respect of that Additional Commitment and the Parent may agree).

"**Total Additional Commitments**" means the aggregate of the Additional Commitments, being zero as at the 2020 Effective Date.

"**Total Commitments**" means the aggregate of the Commitments, of up to \$1,050,000,000 as at the 2020 Effective Date and the Total Additional Commitments.

"**Transaction Documents**" means the Finance Documents, the Note Documents, the Structural Debt Documents and the Constitutional Documents.

"**Transaction Security**" means the Security created or expressed to be created in respect of the obligations of any of the Obligors under any of the Finance Documents pursuant to the Transaction Security Documents.

"**Transaction Security Documents**" means each of the documents listed as being a Transaction Security Document at Paragraph 3 (*Transaction Security Documents*) of Schedule 2 (*Conditions Precedent to the Effective Date*) in the 2020 Amendment and Restatement Agreement, any document required to be delivered to the Agent under paragraph 14 of Part II of Schedule 2 (*Conditions Precedent*) together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

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

"**Transfer Date**" means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

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

"**UK Bail-In Legislation**" means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"**United States Person**" means any Person that is a "United States Person" as defined in

Section 7701(a)(30) of the Code.

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

"**Unrestricted Subsidiary**" has the meaning given to it in Schedule 14 (*Restrictive covenants*).

"**USA Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 of the United States.

"**US Bankruptcy Code**" has the meaning given to it in Clause 23.1 (*Guarantee and indemnity*).

"**US Borrower**" means a Borrower whose jurisdiction of organisation is a state of the United States or the District of Columbia.

"**US dollars**", "**\$**" and dollars denote lawful currency of the United States of America.

"**US Guarantor**" means a Guarantor whose jurisdiction of organisation is a state of the United States of America or the District of Columbia.

"**US Obligor**" means any US Borrower or US Guarantor.

"**US Qualifying Lender**" means, in respect of a payment by or in respect of a US Borrower, a Lender or Agent which, as of the date it became a party to this Agreement (or, in the case of a Lender, if it subsequently changes its Facility Office, the date on which it changes its Facility Office), (a) is entitled to a complete exemption from withholding of US federal income tax on all payments payable to it under this Agreement and (b) has supplied to the relevant US Borrower a properly completed and executed applicable US Tax Form evidencing such exemption.

"**US Tax Form**" means, as applicable:

- (a) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, that either: (A) includes a claim for an exemption from or reduction of US withholding tax under an applicable income tax treaty, with Part II of such W-8BEN (or Part III of such W-8BEN-E, as applicable) completed, or (B) if such claim for exemption is based on the "portfolio interest exemption" is accompanied by a certificate representing that such Lender or the Agent, as applicable, is not described in Section 871(h)(3) or Section 881(c)(3) of the Code;
- (b) an IRS Form W-8ECI;
- (c) an IRS Form W-9; or
- (d) any other IRS form establishing an exemption from withholding of US federal income tax on payments to that person under this Agreement;

which, in each case, may be provided under cover of, if required to establish such an exemption, an IRS Form W-8IMY and the certificate described in paragraph (i)(B) above in respect of its beneficial owners, if applicable.

"**US Tax Obligor**" means:

- (a) a Borrower which is resident for tax purposes in the US; or



(b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

"**Utilisation**" means a Loan or a Letter of Credit.

"**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made or the relevant Letter of Credit is to be issued.

"**Utilisation Request**" means a notice substantially in the relevant form set out in Part I or Part II of Schedule 3 (*Requests and Notices*) or in any other form agreed by the Agent from time to time.

"**VAT**" means value added tax as provided for in Council Directive 2006/112/EC, as amended, on the common system of value added tax and any other tax of a similar nature (including goods and services tax) wherever imposed.

"**Write-down and Conversion Powers**" means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to any UK Bail-In Legislation:
  - (i) any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that UK Bail-In Legislation.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the "**Agent**", any "**Arranger**", any "**Finance Party**", any "**Issuing Bank**", any "**Lender**", any "**Hedge Counterparty**", 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 and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
  - (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Parent and the Agent;
  - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iv) 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;
  - (v) "**guarantee**" means (other than in Clause 23 (*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;
  - (vi) "**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;
  - (vii) a Lender's "**participation**" in relation to a Letter of Credit, shall be construed as a reference to the relevant amount that is or may be payable by a Lender in relation to that Letter of Credit;
  - (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law (but if not having the force of law, which is binding or customarily complied with)) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (x) a provision of law is a reference to that provision as amended or re-enacted;
  - (xi) a time of day is a reference to London time; and
  - (xii) "the date hereof", "the date of this Agreement" and other like expressions is to 20 September 2012.

- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Borrower providing "**cash cover**" for a Letter of Credit or an Ancillary Facility means a Borrower paying an amount in the currency of the Letter of Credit (or, as the case may be, the Ancillary Facility) to an interest-bearing account in the name of the Borrower and the following conditions being met:
  - (i) the account is with the Security Agent or with the Issuing Bank or Ancillary Lender for which that cash cover is to be provided;
  - (ii) subject to paragraph (b) of Clause 7.5 (*Cash cover by Borrower*), until no amount is or may be outstanding under that Letter of Credit or Ancillary Facility, withdrawals from the account may only be made to pay a Finance Party amounts due and payable to it under this Agreement in respect of that Letter of Credit or Ancillary Facility; and
  - (iii) the Borrower has executed a security document over that account, in form and substance satisfactory to the Security Agent or the Issuing Bank or Ancillary Lender with which that account is held, creating a first ranking security interest over that account.
- (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived. An Event of Default is "**continuing**" if it has not been remedied or waived.
- (f) A Borrower "repaying" or "prepaying" a Letter of Credit or Ancillary Outstandings means:
  - (i) that Borrower providing cash cover for that Letter of Credit or in respect of the Ancillary Outstandings;
  - (ii) the maximum amount payable under the Letter of Credit or Ancillary Facility being reduced or cancelled in accordance with its terms; or
  - (iii) the Issuing Bank or Ancillary Lender being satisfied that it has no further liability under that Letter of Credit or Ancillary Facility,and the amount by which a Letter of Credit is, or Ancillary Outstandings are repaid or prepaid under paragraphs (f)(i) and (f)(ii) above is the amount of the relevant cash cover or reduction.
- (g) An amount borrowed includes any amount utilised by way of Letter of Credit or under an Ancillary Facility.
- (h) A Lender funding its participation in a Utilisation includes a Lender participating in a Letter of Credit.
- (i) An outstanding amount of a Letter of Credit at any time is the maximum amount that is or may be payable by the relevant Borrower in respect of that Letter of Credit at that time.

- (j) A Letter of Credit is completely cancelled, discharged and released in accordance with its terms:
  - (i) upon the Issuing Bank having paid the amount available under the Letter of Credit;
  - (ii) upon return of the original Letter of Credit to the Issuing Bank together with the beneficiary's letter of release, or, if such original Letter of Credit has been lost, stolen, mutilated or destroyed, confirmation from the beneficiary of such Letter of Credit that this is the case and indemnities are provided satisfactory to the Issuing Bank from the beneficiary and other satisfactory assurances are provided as the Issuing Bank may require; or
  - (iii) upon lapse of its Expiry Date and no demand having been received by the Issuing Bank on or before such Expiry Date.
- (k) Unless specifically provided to the contrary, a reference to a Subsidiary of a member of the Restricted Group excludes each Unrestricted Subsidiary.
- (l) For all purposes under the Finance Documents, in connection with any division or plan of division under Delaware law (or any comparable event under the laws of another jurisdiction):
  - (i) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person; and
  - (ii) if any new Person comes into existence,  
such new Person shall be deemed to have been organised on the first date of its existence by the holders of its equity interests at such time.

### 1.3 Irish terms

In this Agreement, where it relates to an Obligor incorporated in Ireland, a reference to:

- (a) "inability to pay its debts" will be deemed to mean inability to pay its debts within the meaning of Section 509(3) or section 570(d) of the Irish Companies Act; and
- (b) the term "examiner" shall have the meaning given to it in Section 508(1) of the Irish Companies Act and the term "examinership" shall be construed in accordance with the Companies Act 2014 of Ireland.

### 1.4 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or enjoy the benefit of any term of this Agreement.
- (b) Subject to paragraph (j) of Clause 42.3 (*Exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

## 1.5 Intercreditor Agreement

Other than in respect of paragraphs (h) to (j) of Clause 42.3 (*Exceptions*), this Agreement is subject to the Intercreditor Agreement and in the event of any inconsistency between this Agreement and the Intercreditor Agreement, the Intercreditor Agreement shall prevail.

## 2. The Facilities

### 2.1 The Facilities

- (a) Subject to the terms of this Agreement, the Lenders make available a multicurrency revolving credit facility in an aggregate amount the Base Currency Amount of which is equal to the Total Commitments.
- (b) Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make available an Ancillary Facility to any of the Borrowers in place of all or part of its Commitment.

### 2.2 Increase

- (a) The Parent may by giving prior notice to the Agent by no later than the date falling 20 Business Days after the effective date of a cancellation of:
  - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 11.6 (*Right of cancellation in relation to a Defaulting Lender*); or
  - (ii) the Commitments of a Lender in accordance with Clause 11.1 (*Illegality*), Clause 12.1 (*Exit*) or Clause 12.3 (*Disposal Proceeds and Insurance Proceeds*),request that the Total Commitments be increased (and the Total Commitments shall be so increased) in an aggregate amount of up to the amount of the Available Commitments or Commitments so cancelled as follows:
  - (iii) the increased Commitment 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 a member of the Restricted Group and which is further acceptable to the Agent (acting reasonably) and each of which confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;
  - (iv) 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;
  - (v) 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;
  - (vi) the Commitments of the other Lenders shall continue in full force and effect; and

- (vii) any increase in the Total 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.
- (b) An increase in the Total Commitments will only be effective on:
  - (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender;
  - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:
    - (A) the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
    - (B) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender, the completion of which the Agent shall promptly notify to the Parent, the Increase Lender and the Issuing Bank; and
  - (iii) the Issuing Bank consenting to that increase.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
- (d) Unless the Agent otherwise agrees or the increased Commitment is assumed by an Existing Lender, the Parent shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee of \$2,000 and 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.
- (e) 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.
- (f) Clause 30.4 (*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:
  - (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
  - (iii) a "re-transfer" and "re-assignment" were references to respectively a "transfer" and "assignment".

### 2.3 Accordion Increase in Commitments

- (a) Subject to this Clause 2.3, the Parent may at any time and from time to time following the 2020 Effective Date, request an increase in the Total Commitments (such increase, the "**Additional Commitments**") by delivering to the Agent a duly completed Additional Commitment Increase Notice not later than 10 Business Days' (or such shorter period as the Agent and the Parent may agree) prior to the proposed date for the commencement of the availability period in respect of the Additional Commitments so requested.
- (b) No consent of any Finance Party is required in order to establish an Additional Commitment (other than any Lender or Lenders which is or are to provide the relevant Additional Commitment), provided that, unless otherwise agreed by the Majority Lenders:
- (i) the Additional Commitment is permitted to be incurred on a pro forma basis under paragraph (a) of Section 1.2 (*Limitation on Indebtedness*) of Schedule 14 (*Restrictive Covenants*);
  - (ii) subject to the terms of the Intercreditor Agreement, each Additional Commitment may (x) benefit from the same guarantees as the Revolving Facility and (y) rank pari passu in right of payment to the then existing Facilities and pari passu in right of security over the same Charged Property with respect to the Revolving Facility;
  - (iii) the applicable final maturity date in respect of the Additional Commitment (as set out in the Additional Commitment Increase Notice relating to that Additional Commitment or as otherwise agreed by the Parent and the Additional Commitment Lenders(s) under that Additional Commitment from time to time) does not fall on or before the Termination Date (as at the 2020 Effective Date);
  - (iv) no Event of Default has occurred and is continuing or would arise as a result of such Additional Commitment being established and/or utilised;
  - (v) the Additional Commitment is to be applied towards any purpose which is permitted pursuant to Clause 3.1 (*Purpose*) of this Agreement; and
  - (vi) the proposed Additional Commitment Lender shall not be:
    - (A) a member of the Group;
    - (B) a Sanctioned Person or incorporated or established in a jurisdiction that is a Sanctioned Jurisdiction; or
    - (C) a Competitor.
- (c) Each Additional Commitment Increase Notice shall specify the following matters:
- (i) the identity of each Lender or other bank, financial institution, trust, fund or other entity (each, an "**Additional Commitment Lender**") selected by the Parent (each of which shall not be a member of the Restricted Group) that is willing to

assume all of the obligations of a Lender corresponding to an Additional Commitment;

- (ii) the aggregate amount of the Additional Commitments requested (the "**Request Amount**");
- (iii) the Additional Commitment Increase Date for that Additional Commitment;
- (iv) the Termination Date in respect of that Additional Commitment;
- (v) the proposed availability period in respect of the requested Additional Commitments, which period must comply with the Additional Commitment Restrictions;
- (vi) the identities of the Borrower(s) in respect of the requested Additional Commitments; and
- (vii) the currency or currencies in which the Additional Commitments may be drawn,

and shall be validly delivered only if executed by the Parent, the relevant Borrower in relation to the Additional Commitment, and each applicable Additional Commitment Lender.

- (d) No Existing Lender shall (unless otherwise agreed by that Lender) be obliged to provide any Additional Commitment but the Lenders who were party to this Agreement on the 2020 Effective Date (if at that time still a Lender) shall be given the option to provide Additional Commitments before the Parent contractually commits to other lenders providing the Additional Commitments.
- (e) Following the delivery of a valid Additional Commitment Increase Notice, the requested Additional Commitments shall become effective on the later of:
  - (i) the execution by the Agent of the Additional Commitment Increase Notice. The Agent shall, subject to paragraph (ii)(B) below, as soon as reasonably practicable after receipt by it of a duly completed Additional Commitment Increase Notice appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Additional Commitment Increase Notice; and
  - (ii) in relation to an Additional Commitment Lender which is not a Lender immediately prior to the relevant increase, the later of:
    - (A) the Additional Commitment Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement as a Lender under this Agreement; and
    - (B) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption by the Additional Commitment Lender of the relevant Additional Commitments, the completion of which the Agent shall



promptly notify to the Parent, the Additional Commitment Lender and the Issuing Bank (if any).

- (f) The introduction of Additional Commitments pursuant to this Clause 2.3 shall occur as follows:
- (i) each Additional Commitment will be assumed by the relevant Additional Commitment Lender, each of whom confirms its willingness to assume and does assume all of the obligations of a Lender corresponding to that part of the Additional Commitments which it is to assume, as if it had been an Original Lender, subject to paragraph (g) below;
  - (ii) each of the Obligors and each Additional Commitment Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Additional Commitment Lender would have assumed and/or acquired had the Additional Commitment Lender been an Original Lender, subject to paragraph (g) below;
  - (iii) to the extent not already a Party as a Lender, each Additional Commitment Lender shall become a Party as a Lender and each Additional Commitment Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Additional Commitment Lender and those Finance Parties would have assumed and/or acquired had the Additional Commitment Lender been an Original Lender, subject to paragraph (g) below;
  - (iv) the Commitments of the other Lenders shall continue in full force and effect; and
  - (v) the increase in the Total Commitments shall take effect on the Additional Commitment Increase Date.
- (g) At the time of the implementation of the Additional Commitment Increase Notice, if the Facility is not drawn and the terms of the Additional Commitment Increase Notice are the same as those of the Facility, the amount of the Commitments shall be increased by the amount of the Additional Commitments. If at the time of the implementation of the Additional Commitment Increase Notice, the Borrower has made a Utilisation under the Facility which is outstanding or if the terms of the Additional Commitment Increase Notice are not the same as those of the Facility, each Additional Commitment Lender, by executing the Additional Commitment Increase Notice, 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 in order to implement the Additional Commitment Increase Notice.
- (h) 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 2.3.

- (i) The Parent may, subject to the Additional Commitment Restrictions, pay to an Additional Commitment Lender a fee in the amount and at the times agreed between the Parent and that Additional Commitment Lender in a Fee Letter.
- (j) On and from the Additional Commitment Increase Date this Agreement shall be amended, read and construed as if the Additional Commitment Lender were party hereto with a Commitment or Commitments as detailed in the Additional Commitment Increase Notice.
- (k) Any amounts payable to the Lenders by any Obligor on or before an Additional Commitment Increase Date (including, without limitation, all interest and fees payable up to (but excluding) that Additional Commitment Increase Date) in respect of any period ending on or prior to that Additional Commitment Increase Date shall be for the account of the Lenders prior to such Additional Commitment Increase Date and no Additional Commitment Lender shall have any interest in, or any rights in respect of, any such amount (save in respect of their Commitments up to (but excluding) that Additional Commitment Increase Date).
- (l) Each Lender authorises the Agent to execute on its behalf:
  - (i) any Additional Commitment Increase Notice delivered to it pursuant to this Clause 2.3; and
  - (ii) any amendments required to the Finance Documents that are consequential on, incidental to or required to implement or reflect the introduction of Additional Commitments pursuant to this Clause 2.3.

#### **2.4 Finance Parties' rights and obligations**

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

#### **2.5 Obligors' Agent**

- (a) Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Deed irrevocably appoints the Parent to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
  - (i) 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 agree any

Additional Commitment and to deliver any Additional Commitment Increase Notice, 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

(ii) 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.

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

### **3. PURPOSE**

#### **3.1 Purpose**

Each Borrower shall apply all amounts borrowed by it under the Facilities, any Letter of Credit issued and any utilisation of any Ancillary Facility towards:

(a) the general corporate and working capital purposes of the Restricted Group;

(b) the payment of transaction fees, costs and expenses;

(c) refinancing:

(i) the Existing Cabot Facilities;

(ii) the Existing Encore Facilities;

(iii) any amount of the Encore Private Placement Notes which are not amended in order that they are subject to the terms of the Intercreditor Agreement on or around the 2020 Effective Date

and, in each case, any ancillary facility granted in connection therewith.

#### **3.2 New purpose**

In the event that a Borrower makes a Utilisation under the Facilities in order to apply the proceeds of that Utilisation in or towards making a Permitted Acquisition (as identified in the relevant Utilisation Request) and that Permitted Acquisition is abandoned, the Borrower shall promptly notify the Agent and shall specify a new permitted purpose for the application of the Loan.

### 3.3 Monitoring

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

## 4. CONDITIONS OF UTILISATION

### 4.1 Initial conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received or is satisfied it will receive all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent (acting reasonably). The Agent shall notify the Parent and the Lenders promptly upon being so satisfied. For the avoidance of doubt, the obligations under this Clause 4.1 shall only apply to the initial Utilisation of the Facilities which occurred prior to the 2020 Effective Date.

### 4.2 Further conditions precedent

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

- (a) in the case of a Rollover Loan, no Acceleration Notice has been given pursuant to Clause 28.20 (*Acceleration*); and
- (b) in the case of any other Utilisation (including, for the avoidance of doubt, any Utilisation of a Swingline Loan), unless the Majority Lenders and the Parent agree otherwise:
  - (i) no Default is continuing or would result from the proposed Utilisation;
  - (ii) in relation to the initial Utilisation, all the representations and warranties in Clause 24 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations to be made by each Obligor, by reference to the facts and circumstances then existing are true and correct in all material respects (to the extent not already subject to materiality) and will be true and correct in all material respects (to the extent not already subject to materiality) immediately after the making of the relevant Utilisation; and
  - (iii) no breach of the financial covenants in paragraphs (a), (b) or (c) of Clause 26.1 (*Financial condition*) is continuing or would result from the making of the relevant Utilisation (calculated *pro forma* assuming the immediate application of the proceeds of such Utilisation for the relevant Utilisation and as at the date of the proposed Utilisation).

### 4.3 Conditions relating to Optional Currencies

- (a) A currency will constitute an Optional Currency in relation to a Utilisation if:
  - (i) 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 Utilisation; and

- (ii) it is in Euros or Sterling, or any other currency approved by the Agent (acting on the instructions of all the Lenders) and any other currency selected by the relevant Borrower (or the Obligors' Agent on its behalf) in accordance with paragraph (b) below.
- (b) If the Agent has received a written request from the Parent, relevant Borrower or the Obligors' Agent for a currency to be approved under paragraph (a) above, the Agent will confirm to the Parent by the Specified Time:
  - (i) whether or not all Lenders have granted their approval; and
  - (ii) if approval has been granted, the minimum amount for any subsequent Loan in that currency.
- (c) If an Optional Currency in relation to a Utilisation is requested by the Parent, the relevant Borrower or the Obligors' Agent pursuant to paragraph (b) above to be in Euros or Sterling, such Utilisation shall only be provided in Euros or Sterling, as applicable, to the extent that total aggregate amount of Utilisations which have been drawn in Euros or Sterling on or prior to the relevant Utilisation Request, pro forma for Euros or Sterling amounts identified in the relevant Utilisation Request in respect of the proposed Utilisation, does not exceed 50 per cent of the Total Commitments as at the 2020 Effective Date.

#### 4.4 Maximum number of Utilisations

- (a) A Borrower (or the Parent on its behalf) may not deliver a Utilisation Request if as a result of the proposed Utilisation twenty (20) or more Loans would be outstanding.
- (b) Any Separate Loan shall not be taken into account in this Clause 4.4.
- (c) A Borrower (or the Parent on its behalf) may not request that a Letter of Credit be issued if as a result of the proposed Utilisation more than 10 (or such other number as may be agreed by the Parent, the Issuing Bank and the Agent) Letters of Credit would be outstanding.

#### 4.5 Lending Affiliates

- (a) Each Lender may discharge its obligations in respect of a Utilisation under this Agreement by nominating one or more branches or affiliates to participate in that Utilisation, **provided that** such branch or affiliate is not a Sanctioned Person and is not incorporated or established, and does not carry on business, in a jurisdiction that is a Sanctioned Jurisdiction or is a Competitor.
- (b) A Lender may nominate a branch or affiliate to participate in one or more Utilisations:
  - (i) in respect of an Original Lender, in this Agreement; or
  - (ii) in the Transfer Certificate or Assignment Agreement (as applicable) pursuant to which such Lender becomes party to this Agreement.
- (c) Any branch or affiliate nominated by a Lender to participate in a Utilisation shall:
  - (i) participate in compliance with the terms of this Agreement; and

- (ii) be entitled, to the extent of its participation, to all the rights and benefits of a Lender under the Finance Documents **provided that** such rights and benefits shall be exercised on its behalf by its nominating Lender save where law or regulation requires the branch or affiliate to do so.
- (d) Each Lender shall remain liable and responsible for the performance of all obligations assumed by a branch or affiliate on its behalf and non-performance of a Lender's obligations by its branch or affiliate shall not relieve such Lender from its obligations under this Agreement.
- (e) Any notice or communication to be made to a branch or an affiliate of a Lender pursuant to this Agreement:
  - (i) may be served directly upon the branch or affiliate, at the address supplied to the Agent by the nominating Lender pursuant to its nomination of such branch or affiliate, where the Lender or the relevant branch or affiliate requests this; or
  - (ii) may be delivered to the lending office of the Lender.
- (f) If a Lender nominates an affiliate, that Lender and that affiliate:
  - (i) will be treated as having a single Commitment but for all other purposes other than those referred to in paragraphs (d) and (e) above will be treated as separate Lenders; and
  - (ii) will be regarded as a single Lender for the purpose of (A) voting in relation to any matter or (B) compliance with Clause 30 (*Changes to the Lenders*).

## 5. UTILISATION - LOANS

### 5.1 Delivery of a Utilisation Request

A Borrower (or the Parent on its behalf) may utilise the Facilities by delivery to the Agent of duly completed Utilisation Requests not later than the Specified Time.

### 5.2 Completion of a Utilisation Request for Loans

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
  - (ii) the amount and currency of the Utilisation complies with Clause 5.3 (*Currency and amount*); and
  - (iii) the proposed Interest Period complies with Clause 15 (*Interest Periods*).
- (b) Only one Utilisation may be requested in each Utilisation Request.

### 5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be:
  - (i) in relation to the Facilities, the Base Currency or an Optional Currency; and

- (ii) in relation to an Additional Commitment, the Base Currency, an Optional Currency or such other currency, in each case as specified in the relevant Additional Commitment Increase Notice.
- (b) The amount of the proposed Utilisation must be:
  - (i) if the currency selected is the Base Currency, a minimum of \$1,000,000 or, if less, the Available Facility;
  - (ii) if the currency selected is Euro, a minimum of EUR1,000,000 or, if less, the Available Facility;
  - (iii) if the currency selected is Sterling, a minimum of £1,000,000 or, if less, the Available Facility;
  - (iv) if the currency selected is any other Optional Currency, the minimum amount specified by the Agent pursuant to paragraph (b) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility; and
  - (v) in respect of an Additional Commitment, the minimum amounts (and, if applicable) integral multiples set out in the relevant Additional Commitment Increase Notice.

#### **5.4 Lenders' participation**

- (a) If the conditions set out in this Agreement have been met, and subject to Clause 10.1 (*Repayment of Loans*), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) 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 cash by the Specified Time.

#### **5.5 Limitations on Utilisations**

The maximum aggregate amount of all Letters of Credit outstanding together with the amount of the Ancillary Commitments shall not at any time exceed 25% of the Total Commitments.

#### **5.6 Cancellation of Commitment**

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

#### **5.7 Utilisation – Swingline Commitment**

- (a) Each of:
  - (i) Clause 4.3 (*Conditions relating to Optional Currencies*);

- (ii) Clause 5 (*Utilisation – Loans*), other than this Clause 5.7 (*Utilisation - Swingline Commitment*);
- (iii) Clause 8 (*Optional Currencies*);
- (iv) for the purpose of paragraph (c)(v) below only, Clause 15 (*Interest Periods*); and
- (v) Subject to paragraph (d) below, the provisions and Specified Times set out at Schedule 10 (*Timetables*),

do not apply to Swingline Loans.

- (b) Subject to the terms and conditions set forth herein, the Swingline Lender may, in its sole discretion, make Swingline Loans to the Borrower, from time to time during the Availability Period, in an aggregate principal amount outstanding at any time not to exceed the lesser of: (i) the Available Swingline Commitments and (ii) the Available Commitments provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. The Borrower shall be entitled to borrow, repay and reborrow Swingline Loans in accordance with the terms and conditions of this Agreement.
- (c) The Borrower shall give the Agent written notice (or telephonic notice promptly confirmed in writing) of each proposed Utilisation of a Swingline Loan, substantially in the form set out at Part III (*Form of Swingline Loan Utilisation Request*) of Schedule 3 (a "**Swingline Loan Utilisation Request**"), prior to 11:00 a.m. on the requested date of each Swingline Loan (provided that any Swingline Loan which is requested to be drawn in Sterling shall require submission of a Swingline Loan Utilisation Request prior to 11:00am one Business Day prior to the requested date of such Swingline Loan). Each Swingline Loan Utilisation Request shall be irrevocable and shall specify:
  - (i) the principal amount of such Swingline Loan;
  - (ii) the currency of the Swingline Loan which shall be either the Base Currency or Sterling;
  - (iii) the proposed Utilisation Date of such Swingline Loan (which shall be a Business Day) and
  - (iv) the amount of the proposed Swingline Loan is not more than the Available Swingline Commitments and is a minimum of \$100,000 (or a larger multiple of \$50,000) (or, in each case, the equivalent amount in Sterling), or such other minimum amounts agreed to by the Swingline Lender and the Borrower;
  - (v) the proposed Interest Period which shall apply to the Swingline Loan, which:
    - (A) shall not extend beyond the Termination Date;
    - (B) shall be a period of not less than one Business Day and not more than five Business Days; and
    - (C) shall end on a Business Day; and



(vi) the account of the Borrower to which the proceeds of such Swingline Loan should be credited,

and on receipt of a duly completed Swingline Loan Utilisation Request, the Agent will promptly advise the Swingline Lender of each Swingline Loan Utilisation Request. The Swingline Lender will make the proceeds of each Swingline Loan available to the Borrower in the Base Currency or Sterling, as applicable, in immediately available funds at the account specified by the Borrower in the applicable Swingline Loan Utilisation Request not later than 1:00p.m. on the requested date of such Swingline Loan.

- (d) The Swingline Lender, at any time and from time to time in its sole discretion, may, but in no event no less frequently than once each calendar week shall, on behalf of the Borrower (which hereby irrevocably authorises and directs the Swingline Lender to act on its behalf), give a Swingline Loan Utilisation Request to the Agent requesting the Lenders (including the Swingline Lender) to make Loans in an amount equal to the unpaid principal amount of any Swingline Loan. Each Lender will make the proceeds of its Loan included in such Borrowing available to the Agent for the account of the Swingline Lender in accordance with this Clause 5 (*Utilisation - Loans*), which will be used solely for the repayment of such Swingline Loan. For the avoidance of doubt, any Loans which are made to refinance Swingline Loans in accordance with this paragraph (d) shall be provided by the Lenders in accordance with the requirements of Schedule 10 (*Timetables*).
- (e) If for any reason the Loans referred to in paragraph (d) above may not be (as determined in the sole discretion of the Agent), or are not, made in accordance with the foregoing provisions, then each Lender (other than the Swingline Lender) shall purchase an undivided participating interest in such Swingline Loan in an amount equal to its pro rata share thereof on the proposed Utilisation Date in respect of the applicable Loans which should have been made. On the date of such required purchase, each Lender shall promptly transfer, in immediately available funds, the amount of its participating interest to the Agent for the account of the Swingline Lender.
- (f) Each Lender's obligation to make Loans available pursuant to paragraph (d) above or to purchase participating interests pursuant to paragraph (e) above shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defence or other right that such Lender or any other Person may have or claim against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (ii) the existence of a Default or an Event of Default or the termination of any Lender's Commitment, (iii) the existence (or alleged existence) of any event or condition which has had or could reasonably be expected to have a Material Adverse Effect, (iv) any breach of this Agreement or any other Finance Document by any Obligor, the Agent or any Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If such amount is not in fact made available to the Swingline Lender by any Lender, the Swingline Lender shall be entitled to recover such amount on demand from such Lender, together with accrued interest thereon for each day from the date of demand thereof which shall be calculated in accordance with Clause 14.1 (*Calculation of interest*). Until such time as such Lender makes its required payment, the Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of the unpaid participation for all purposes of the Finance Documents. In addition, such

Lender shall be deemed to have assigned any and all payments made of principal and interest on its Loans and any other amounts due to it hereunder to the Swingline Lender to fund the amount of such Lender's participation interest in such Swingline Loans that such Lender failed to fund pursuant to this Section, until such amount has been purchased in full.

- (g) All or any part of any Defaulting Lender's participation in Swingline Loans, which has arisen pursuant to paragraph (d) above or as a result of such Defaulting Lender purchasing participating interests pursuant to paragraph (e) above, shall be reallocated among the non-Defaulting Lenders in accordance with their respective pro rata shares of the Commitments but only to the extent that such reallocation does not result in the Commitments of any non-Defaulting Lender exceeding its Available Commitments. In the event that a reallocation to any non-Defaulting Lender in accordance with this paragraph (g) is not possible due to such non-Defaulting Lender having an insufficient amount Available Commitments, the relevant portion of such Defaulting Lender's participation in a Swingline Loan shall become immediately due and payable by the Borrower.

## **6. UTILISATION – LETTERS OF CREDIT**

### **6.1 The Facilities**

- (a) Each Facility may be utilised by way of Letters of Credit.
- (b) Other than Clause 5.5 (*Limitations on Utilisations*), Clause 5 (*Utilisation - Loans*) does not apply to utilisations by way of Letters of Credit.
- (c) The Expiry Date of a Letter of Credit shall not fall on a day which is after the Termination Date relating to the applicable Facility.

### **6.2 Delivery of a Utilisation Request for Letters of Credit**

A Borrower (or the Parent on its behalf) may request a Letter of Credit to be issued (for its own, or another member of the Restricted Group's, obligations) by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time. On receipt of a duly completed Utilisation Request, the Agent shall promptly deliver such Utilisation Request to the Issuing Bank and each Lender.

### **6.3 Completion of a Utilisation Request for Letters of Credit**

Each Utilisation Request for a Letter of Credit is irrevocable and will not be regarded as having been duly completed unless:

- (a) it identifies the Facility to be utilised;
- (b) it specifies that it is for a Letter of Credit;
- (c) it identifies the Borrower of the Letter of Credit;
- (d) it identifies the Issuing Bank that is to issue the Letter of Credit;
- (e) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;

- (f) the amount and currency of the Letter of Credit complies with Clause 6.4 (*Currency and amount*) and the amount of the Letter of Credit does not exceed the amount of the Issuing Bank's Available Commitments;
- (g) the form of Letter of Credit is attached;
- (h) the Expiry Date of the Letter of Credit falls on or before the Termination Date in respect of the relevant Facility;
- (i) the Term of the Letter of Credit is 12 Months or less (or such longer period agreed with the Issuing Bank);
- (j) the delivery instructions for the Letter of Credit are specified; and
- (k) the beneficiary of the Letter of Credit is identified and the Issuing Bank is able to comply with all applicable laws and regulations which it is legally required to comply with in relation to the jurisdiction of incorporation and identity of the beneficiary and in relation to any beneficiary of any Letter of Credit which is not an Obligor, such beneficiary satisfies the Issuing Bank's normal internal Letter of Credit issuing policies, including without limitation that the beneficiary is not a Restricted Party.

#### **6.4 Currency and amount**

- (a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.
- (b) Subject to Clause 5.5 (*Limitations on Utilisations*), the amount of the proposed Letter of Credit must be an amount whose Base Currency Amount is not more than the relevant Available Facility and which is:
  - (i) if the currency selected is the Base Currency, a minimum of \$1,000,000 (or such other amount agreed by the Parent and the Issuing Bank) or, if less, the relevant Available Facility; or
  - (ii) if the currency selected is Euro, a minimum of EUR1,000,000 (or such other amount agreed by the Parent and the Issuing Bank) or, if less, the relevant Available Facility;
  - (iii) if the currency selected is Sterling, a minimum of £1,000,000 (or such other amount agreed by the Parent and the Issuing Bank) or, if less, the relevant Available Facility; and
  - (iv) if the currency selected is any other Optional Currency, the minimum amount specified by the Agent pursuant to paragraph (b) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the relevant Available Facility.

#### **6.5 Issue of Letters of Credit**

- (a) If the conditions set out in this Agreement have been met, the Issuing Bank shall issue the Letter of Credit on the Utilisation Date.
- (b) Subject to Clause 4.1 (*Initial conditions precedent*), the Issuing Bank will only be obliged to comply with paragraph (a) above in relation to a Letter of Credit, if on the date of the Utilisation Request or Renewal Request and on the proposed Utilisation Date:

- (i) in the case of a Letter of Credit to be renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*) no Event of Default has occurred and is continuing under Clause 28.7 (*Insolvency*) or Clause 28.8 (*Insolvency proceedings*) in respect of the proposed Borrower of the Letter of Credit and no Acceleration Notice has been given pursuant to Clause 28.20 (*Acceleration*); and
- (ii) in the case of any other Utilisation in respect of a Letter of Credit:
  - (A) no Default is continuing or would result from the proposed Utilisation;
  - (B) the Repeating Representations to be made by each Obligor by reference to the facts and circumstances then existing are true in all material respects (to the extent not already subject to materiality) and will be true and correct in all material respects (to the extent not already subject to materiality) immediately after the making of the relevant Utilisation; and
  - (C) no breach of the financial covenants in paragraphs (a), (b) or (c) Clause 26.1 (*Financial condition*) is continuing or would result from the making of the relevant Utilisation (calculated *pro forma* assuming the immediate application of the proceeds of such Utilisation for the relevant Utilisation and as at the date of the proposed Utilisation).
- (c) The amount of each Lender's participation in each Letter of Credit will be equal to the proportion borne by its Available Commitment to the relevant Available Facility immediately prior to the issue of the Letter of Credit.
- (d) The Agent shall determine the Base Currency Amount of each Letter of Credit which is to be issued in an Optional Currency and shall notify the Issuing Bank and, as the case may be, each Lender of the details of the requested Letter of Credit and its participation in that Letter of Credit by the Specified Time.
- (e) The Issuing Bank has no duty to enquire of any person whether or not any of the conditions set out in paragraph (b) above has been met. The Issuing Bank may assume that those conditions have been met unless it is expressly notified to the contrary by the Agent. The Issuing Bank will have no liability to any person for issuing a Letter of Credit based on such assumption.
- (f) The Issuing Bank is solely responsible for the form of the Letter of Credit that it issues. The Agent has no duty to monitor the form of that document.
- (g) Subject to paragraph (h) of Clause 33.7 (*Rights and discretions*), each of the Issuing Bank and the Agent shall provide the other with any information reasonably requested by the other that relates to a Letter of Credit and its issue.
- (h) The Issuing Bank may issue a Letter of Credit in the form of a SWIFT message or other form of communication customary in the relevant market but has no obligation to do so.
- (i) The Issuing Bank shall be entitled to request that the Borrower of the Letter of Credit completes any necessary standard form submission or application forms which the Issuing Bank reasonably requires from the Borrower. The Borrower of the Letter of Credit shall use reasonable endeavours to complete any such forms promptly and no later than the proposed Utilisation Date in respect of the Letter of Credit.

#### 6.6 Renewal of a Letter of Credit

- (a) A Borrower (or the Parent on its behalf) may request that any Letter of Credit issued on behalf of that Borrower be renewed by delivery to the Agent of a Renewal Request in substantially similar form to a Utilisation Request for a Letter of Credit by the Specified Time. On receipt of a Renewal Request, the Agent shall promptly deliver such Renewal Request to the Issuing Bank and each Lender.
- (b) The Finance Parties shall treat any Renewal Request in the same way as a Utilisation Request for a Letter of Credit except that the condition set out in paragraph (g) of Clause 6.3 (*Completion of a Utilisation Request for Letters of Credit*) shall not apply.
- (c) The terms of each renewed Letter of Credit shall be the same as those of the relevant Letter of Credit immediately prior to its renewal, except that:
  - (i) its amount may be less than the amount of the Letter of Credit immediately prior to its renewal; and
  - (ii) its Term shall start on the date which was the Expiry Date of the Letter of Credit immediately prior to its renewal, and shall end on the proposed Expiry Date specified in the Renewal Request.
- (d) If the conditions set out in this Agreement have been met, the Issuing Bank shall amend and re-issue any Letter of Credit pursuant to a Renewal Request.

#### 6.7 Reduction of a Letter of Credit

- (a) If, on the proposed Utilisation Date of a Letter of Credit, any of the Lenders under the relevant Facility to be utilised is a Non-Acceptable L/C Lender and:
  - (i) that Lender has failed to provide cash collateral to the Issuing Bank in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender*); and
  - (ii) either:
    - (A) the Issuing Bank has not required the relevant Borrower to provide cash cover pursuant to Clause 7.5 (*Cash cover by Borrower*); or
    - (B) the relevant Borrower has failed to provide cash cover to the Issuing Bank in accordance with Clause 7.5 (*Cash cover by Borrower*),

the Issuing Bank may reduce the amount of that Letter of Credit by an amount equal to the amount of the participation of that Non-Acceptable L/C Lender in respect of that Letter of Credit and that Non-Acceptable L/C Lender shall be deemed not to have any participation (or obligation to indemnify the Issuing Bank) in respect of that Letter of Credit for the purposes of the Finance Documents.
- (b) The Issuing Bank shall notify the Agent, the Parent and the Lenders of each reduction made pursuant to this Clause 6.7.
- (c) This Clause 6.7 shall not affect the participation of each other Lender in that Letter of Credit.

## 6.8 Revaluation of Letters of Credit

- (a) If any Letters of Credit are denominated in an Optional Currency, the Agent shall on the last day of each Quarter Date recalculate the Base Currency Amount of each Letter of Credit by notionally converting into the Base Currency the outstanding amount of that Letter of Credit on the basis of the Agent's Spot Rate of Exchange on the date of calculation.
- (b) A Borrower (or the Parent on its behalf) shall, if requested by the Agent within 10 days of any calculation under paragraph (a) above, ensure that within three Business Days sufficient Utilisations are prepaid to prevent the Base Currency Amount of the Utilisations exceeding the Total Commitments (after deducting the Ancillary Commitments provided in place of each relevant Lender's relevant Commitments in accordance with Clause 9.2 (*Availability*)) following any adjustment to a Base Currency Amount under paragraph (a) above.

## 7. LETTERS OF CREDIT

### 7.1 Immediately payable

If a Letter of Credit or any amount outstanding under a Letter of Credit is expressed to be immediately payable, the Borrower that requested (or on behalf of which the Parent requested) the issue of that Letter of Credit shall repay or prepay that amount immediately.

### 7.2 Claims under a Letter of Credit

- (a) Each Borrower irrevocably and unconditionally authorises the Issuing Bank to pay any claim made or purported to be made under a Letter of Credit requested by it (or requested by the Parent on its behalf) and which appears on its face to be in order (in this Clause 7, a "**claim**").
- (b) Following the receipt of a claim, the Issuing Bank shall promptly issue a notice to the Borrower, with a copy to the Agent, in order to notify of any claim, the amount of the claim and the date of payment of the claim.
- (c) Each Borrower shall within three (3) Business Days of demand (or, if such claim is being funded by way of a Utilisation, within five (5) Business Days of demand) pay to the Agent for the Issuing Bank an amount equal to the amount of any claim.
- (d) Each Borrower acknowledges that the Issuing Bank:
  - (i) is not obliged to carry out any investigation or seek any confirmation from any other person before paying a claim; and
  - (ii) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person.
- (e) The obligations of a Borrower under this Clause 7 will not be affected by:
  - (i) the sufficiency, accuracy or genuineness of any claim or any other document; or
  - (ii) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

- (f) Without prejudice to the relevant obligations under the Letter of Credit, the Issuing Bank confirms to the Lenders that before making any payment in respect of a claim it will conduct such checks as it considers reasonable and necessary to ensure that any payment made would not contravene regulatory or statutory restrictions or any internal policy applicable to it and in relation to any beneficiary of any Letter of Credit which is not an Obligor, such beneficiary satisfies the Issuing Bank's normal internal Letter of Credit issuing policies, including without limitation that the beneficiary is not a Restricted Party.

### 7.3 Indemnities

- (a) Each Borrower shall immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit requested by (or on behalf of) that Borrower.
- (b) Each Lender shall (according to its L/C Proportion of the relevant Facility) immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank's gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit (unless the Issuing Bank has been reimbursed by an Obligor pursuant to a Finance Document) **provided that** the Issuing Bank shall apply any cash cover that it holds for itself in respect of that Letter of Credit to the extent that it is able to do so. If it is prevented from applying such cash cover in respect of that Letter of Credit then paragraph (b) of Clause 35.1 (*Payments to Lenders*) shall not apply for the duration of such prevention.
- (c) If any Lender is not permitted (by its constitutional documents or any applicable law) to comply with paragraph (b) above, then that Lender will not be obliged to comply with paragraph (b) and shall instead be deemed to have taken, on the date the Letter of Credit is issued (or if later, on the date the Lender's participation in the Letter of Credit is transferred or assigned to the Lender in accordance with the terms of this Agreement), an undivided interest and participation in the Letter of Credit in an amount equal to its L/C Proportion of the relevant Facility of that Letter of Credit. On receipt of demand from the Agent, that Lender shall pay to the Agent (for the account of the Issuing Bank) an amount equal to its L/C Proportion of the amount demanded.
- (d) The Borrower which requested (or on behalf of which the Parent requested) a Letter of Credit shall immediately on demand reimburse any Lender for any payment it makes to the Issuing Bank under this Clause 7.3 in respect of that Letter of Credit.
- (e) The obligations of each Lender or Borrower under this Clause 7.3 are continuing obligations and will extend to the ultimate balance of sums payable by that Lender or Borrower in respect of any Letter of Credit, regardless of any intermediate payment or discharge in whole or in part.
- (f) The obligations of any Lender or Borrower under this Clause 7.3 will not be affected by any act, omission, matter or thing which, but for this Clause 7.3, would reduce, release or prejudice any of its obligations under this Clause 7.3 (without limitation and whether or not known to it or any other person) including:
- (i) any time, waiver or consent granted to, or composition with, any Obligor, any beneficiary under a Letter of Credit or any other person;

- (ii) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor or any member of the Restricted Group;
- (iii) 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, any beneficiary under a Letter of Credit 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;
- (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor, any beneficiary under a Letter of Credit or any other person;
- (v) any amendment (however fundamental) or replacement of a Finance Document, any Letter of Credit or any other document or security;
- (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, any Letter of Credit or any other document or security; or
- (vii) any insolvency or similar proceedings.

#### 7.4 Cash collateral by Non-Acceptable L/C Lender

- (a) If, at any time, a Lender is a Non-Acceptable L/C Lender, the Issuing Bank may, by notice to that Lender, request that Lender to pay and that Lender shall pay, on or prior to the date falling three (3) Business Days after the request by the Issuing Bank, an amount equal to that Lender's L/C Proportion in the relevant Facility of the outstanding amount of a Letter of Credit and in the currency of that Letter of Credit to an interest-bearing account held in the name of that Lender with the Issuing Bank.
- (b) The Non-Acceptable L/C Lender to whom a request has been made in accordance with paragraph (a) above shall enter into a security document or other form of collateral arrangement over the account, in form and substance satisfactory to the Issuing Bank, as collateral for any amounts due and payable under the Finance Documents by that Lender to the Issuing Bank in respect of that Letter of Credit.
- (c) Until no amount is or may be outstanding under that Letter of Credit, withdrawals from the account may only be made to pay to the Issuing Bank amounts due and payable to the Issuing Bank by the Non-Acceptable L/C Lender under the Finance Documents in respect of that Letter of Credit.
- (d) Each Lender shall notify the Agent and the Parent:
  - i. on the date of this Agreement or on any later date on which it becomes such a Lender in accordance with Clause 2.2 (*Increase*), Clause 2.3 (*Accordion Increase in Commitments*) or Clause 30 (*Changes to the Lenders*) whether it is a Non-Acceptable L/C Lender; and
  - ii. as soon as practicable upon becoming aware of the same, that it has become a Non-Acceptable L/C Lender,



and an indication in Schedule 1 (*The Original Parties*), in a Transfer Certificate, in an Assignment Agreement or in an Increase Confirmation to that effect will constitute a notice under paragraph (d) to the Agent and, upon delivery in accordance with Clause 30.7 (*Copy of Transfer Certificate, Assignment Agreement, Increase Confirmation or Additional Commitment Increase Notice to Parent*), to the Parent.

- (e) Any notice received by the Agent pursuant to paragraph (d) above shall constitute notice to the Issuing Bank of that Lender's status and the Agent shall, upon receiving each such notice, promptly notify the Issuing Bank of that Lender's status as specified in that notice.
- (f) If a Lender who has provided cash collateral in accordance with this Clause 7.4:
  - (i) ceases to be a Non-Acceptable L/C Lender; and
  - (ii) no amount is due and payable by that Lender in respect of a Letter of Credit,

that Lender may, at any time it is not a Non-Acceptable L/C Lender, by notice to the Issuing Bank request that an amount equal to the amount of the cash provided by it as collateral in respect of that Letter of Credit (together with any accrued interest) standing to the credit of the relevant account held with the Issuing Bank be returned to it and the Issuing Bank shall pay that amount to the Lender within three (3) Business Days after the request from the Lender (and shall cooperate with the Lender in order to procure that the relevant security or collateral arrangement is released and discharged).

#### **7.5 Cash cover by Borrower**

- (a) If a Lender which is a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender*) and the Issuing Bank notifies the Obligors' Agent (with a copy to the Agent) that it requires the Borrower of the relevant Letter of Credit or proposed Letter of Credit to provide cash cover to an account with the Issuing Bank in an amount equal to that Lender's L/C Proportion in the relevant Facility of the outstanding amount of that Letter of Credit and in the currency of that Letter of Credit then that Borrower shall do so within three (3) Business Days after the notice is given.
- (b) Notwithstanding paragraph (d) of Clause 1.2 (*Construction*), the Issuing Bank may agree to the withdrawal of amounts up to the level of that cash cover from the account if:
  - (i) it is satisfied that the relevant Lender is no longer a Non-Acceptable L/C Lender;
  - (ii) the relevant Lender's obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; or
  - (iii) an Increase Lender has agreed to undertake the obligations in respect of the relevant Lender's L/C Proportion in the relevant Facility of the Letter of Credit.
- (c) To the extent that a Borrower has complied with its obligations to provide cash cover in accordance with this Clause 7.5, the relevant Lender's L/C Proportion in the relevant Facility in respect of that Letter of Credit will remain (but that Lender's obligations in relation to that Letter of Credit may be satisfied in accordance with paragraph (d)(ii) of Clause 1.2 (*Construction*)). However, the relevant Borrower's obligation to pay any Letter of Credit Fee in relation to the relevant Letter of Credit to the Agent (for the

account of that Lender) in accordance with paragraph (b) of Clause 17.3 (*Fees payable in respect of Letters of Credit*) will be reduced proportionately as from the date on which it complies with that obligation to provide cash cover (and for so long as the relevant amount of cash cover continues to stand as collateral).

- (d) The relevant Issuing Bank shall promptly notify the Agent of the extent to which a Borrower provides cash cover pursuant to this Clause 7.5 and of any change in the amount of cash cover so provided.

#### **7.6 Rights of contribution**

No Obligor will be entitled to any right of contribution or indemnity from any Finance Party in respect of any payment it may make under this Clause 7.

### **8. OPTIONAL CURRENCIES**

#### **8.1 Selection of currency**

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

#### **8.2 Unavailability of a currency**

If before the Specified Time on any Quotation Day a Lender participating in the relevant Facility notifies the Agent 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 relevant Borrower or Parent to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause 8.2 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.

#### **8.3 Agent's calculations**

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

### **9. ANCILLARY FACILITIES**

#### **9.1 Type of Facility**

An Ancillary Facility may be by way of:

- (a) an overdraft facility;
- (b) a guarantee, bonding, documentary or stand-by letter of credit facility;
- (c) a short term loan facility;
- (d) a derivatives facility;
- (e) a foreign exchange facility; or

(f) 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.

## 9.2 Availability

- (a) If the Parent and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide an Ancillary Facility on a bilateral basis in place of all or part of that Lender's unutilised Commitment (which shall (except for the purposes of determining the Majority Lenders and of Clause 42.5 (*Replacement of Lender*)) be reduced by the amount of the Ancillary Commitment under that Ancillary Facility).
- (b) 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:
- (i) a notice in writing of the establishment of an Ancillary Facility and specifying:
- (A) the Facility under which such Ancillary Facility is to be provided;
  - (B) the proposed Borrower(s) which may use the Ancillary Facility;
  - (C) the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;
  - (D) the proposed type of Ancillary Facility to be provided;
  - (E) the proposed Ancillary Lender;
  - (F) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, if the Ancillary Facility is an overdraft facility comprising more than one account its maximum gross amount (that amount being the "**Designated Gross Amount**") and its maximum net amount (that amount being the "**Designated Net Amount**");
  - (G) the proposed currency;
  - (H) the purpose of the Ancillary Facility to be provided; and
  - (I) any other information which the Agent may reasonably request in connection with the Ancillary Facility.

The Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.

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 9). In such a case, the provisions of this Agreement with regard to amendments and waivers will apply.

- (c) Subject to compliance with paragraph (b) above:
- (i) the Lender concerned will become an Ancillary Lender; and

(ii) the Ancillary Facility will be available,  
with effect from the date agreed by the Parent and the Ancillary Lender.

### 9.3 Terms of Ancillary Facilities

- (a) Except as provided below, the terms of any Ancillary Facility will be those agreed by the Ancillary Lender and the Parent.
- (b) However, those terms:
- (i) must be based upon normal commercial terms at that time (except as varied by this Agreement);
  - (ii) may allow only Borrowers (or Affiliates of Borrowers nominated pursuant to Clause 9.9 (*Affiliates of Borrowers*)) to use the Ancillary Facility;
  - (iii) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;
  - (iv) may not allow the Ancillary Commitment of a Lender to exceed the Available Commitment of that Lender in relation to the relevant Facility (excluding for these purposes any reduction in the Available Commitments attributable to such Ancillary Commitment); and
  - (v) must require that the Ancillary Commitment is reduced to nil, and that all Ancillary Outstandings are repaid (or cash cover provided in respect of all the Ancillary Outstandings) not later than the Termination Date relating to the relevant Facility (or such earlier date as the Commitment of the relevant Ancillary Lender is reduced to zero).
- (c) If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for (i) Clause 39.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility; (ii) 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 (iii) 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.
- (d) Interest, commission and fees on Ancillary Facilities are dealt with in Clause 17.4 (*Interest, commission and fees on Ancillary Facilities*).

### 9.4 Repayment of Ancillary Facility

- (a) An Ancillary Facility shall cease to be available on the Termination Date relating to the relevant Facility or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.
- (b) If an Ancillary Facility expires or is cancelled (in whole or in part) in accordance with its terms or by agreement between the parties thereto, the Ancillary Commitment of the Ancillary Lender shall be reduced accordingly (and its Commitment shall be increased accordingly).

- (c) No Ancillary Lender may demand repayment or prepayment of any amounts or demand cash cover for any liabilities made available or incurred by it under its Ancillary Facility (except where the Ancillary Facility is provided on a net limit basis to the extent required to bring any gross outstandings down to the net limit) unless:
- (i) the Total Commitments have been cancelled in full, or all outstanding Utilisations have become due and payable in accordance with the terms of this Agreement, or the Agent has declared all outstanding Utilisations immediately due and payable, or the expiry date of the Ancillary Facility occurs; or
  - (ii) 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
  - (iii) the Ancillary Outstandings (if any) under that Ancillary Facility can be refinanced by a Utilisation of the relevant Facility and the Ancillary Lender gives sufficient notice to enable a Utilisation to be made to refinance those Ancillary Outstandings.
- (d) For the purposes of determining whether or not the Ancillary Outstandings under an Ancillary Facility mentioned in paragraph (c)(iii) above can be refinanced by a Utilisation:
- (i) the Commitment of the Ancillary Lender will be increased by the amount of its Ancillary Commitment; and
  - (ii) the Utilisation may (so long as paragraph (c)(i) above does not apply) be made under the relevant Facility irrespective of whether a Default is outstanding or any other applicable condition precedent is not satisfied (but only to the extent that the proceeds are applied in refinancing those Ancillary Outstandings) and irrespective of whether Clause 4.4 (*Maximum number of Utilisations*) or paragraph (a) of Clause 5.2 (*Completion of a Utilisation Request for Loans*) applies.
- (e) On the making of a Utilisation to refinance Ancillary Outstandings:
- (i) each Lender will participate in that Utilisation 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 under the relevant Facility bearing the same proportion to the aggregate amount of the Utilisations then outstanding under the relevant Facility as its Commitment bears to the Total Commitments; and
  - (ii) the relevant Ancillary Facility shall be cancelled to the extent of such refinancing.
- (f) In relation to an Ancillary Facility which comprises an overdraft facility where a Designated Net Amount has been established, the Ancillary Lender providing that Ancillary Facility shall only be obliged to take into account for the purposes of calculating compliance with the Designated Net Amount those credit balances which it is permitted to take into account by the then current law and regulations in relation to its

reporting of exposures to applicable regulatory authorities as netted for capital adequacy purposes.

#### 9.5 Ancillary Outstandings

Each Borrower and each Ancillary Lender agrees with and for the benefit of each Lender that:

- (a) the Ancillary Outstandings under any Ancillary Facility provided by that Ancillary Lender shall not exceed the Ancillary Commitment applicable to that Ancillary Facility and where the Ancillary Facility is an overdraft facility comprising more than one account, Ancillary Outstandings under that Ancillary Facility shall not exceed the Designated Net Amount in respect of that Ancillary Facility; and
- (b) where all or part of the Ancillary Facility is an overdraft facility comprising more than one account, the Ancillary Outstandings (calculated on the basis that the words in brackets starting 'net of' and ending 'under that Ancillary Facility' of the definition of that term were deleted) shall not exceed the Designated Gross Amount applicable to that Ancillary Facility.

#### 9.6 Adjustment for Ancillary Facilities upon acceleration

- (a) In this Clause 9.6:

"**Outstandings**" means, in relation to a Lender, the aggregate in the Base Currency of (i) its participation in each Utilisation then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender), and (ii) if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender in respect of its Commitments (together with the aggregate amount of all accrued interest, fees and commission owed to it as an Ancillary Lender in respect of that Ancillary Facility).

"**Total Outstandings**" means the aggregate of all Outstandings.

- (b) If an Acceleration Notice is served under paragraphs (a)(i), (a)(ii) or (iv) of Clause 28.20 (*Acceleration*) each Lender and each Ancillary Lender under the Facility shall promptly adjust by corresponding transfers (to the extent necessary) their claims in respect of amounts outstanding to them under the Facility and each Ancillary Facility to ensure that after such transfers the Outstandings of each Lender under the Facility bear the same proportion to the Total Outstandings as such Lender's Commitment bears to the Total Commitments, each as at the date such Acceleration Notice is served under Clause 28.20 (*Acceleration*).
- (c) 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 corresponding transfers (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.
- (d) Prior to the application of the provisions of paragraph (b) of this Clause 9.6, an Ancillary Lender that has provided an overdraft comprising more than one account under an

Ancillary Facility shall set-off any liabilities owing to it under such overdraft facility against credit balances on any account comprised in such overdraft facility.

- (e) All calculations to be made pursuant to this Clause 9.6 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders.

#### 9.7 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.

#### 9.8 Affiliates of Lenders as Ancillary Lenders

- (a) Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender. In such case, (other than for the purposes of Clause 18 (*Tax Gross Up and Indemnities*) and paragraph (h) of Clause 30.2 (*Changes to the Lenders*) in each case in relation to which the Affiliate of the Lender shall be treated as a Lender in its own right) 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 III 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. For the purposes of calculating the Lender's Available Commitment, the Lender's Commitment shall be reduced to the extent of the aggregate of the Ancillary Commitments of its Affiliates.
- (b) 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 9.2 (*Availability*).
- (c) 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 to this Agreement as an Ancillary Lender in accordance with clause 21.12 (*New Ancillary Lender*) of the Intercreditor Agreement.
- (d) If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender (as defined in Clause 30 (*Changes to the Lenders*)), its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document.
- (e) 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.

#### 9.9 Affiliates of Borrowers

- (a) Subject to the terms of this Agreement:
- (i) (for the purpose of any cash management program (including, without limitation, any zero balance cash pooling arrangement) to which an existing Borrower and the Affiliate of such Borrower is also a party) an Affiliate of a Borrower; and

- (ii) an Affiliate of a Borrower which is incorporated in the same jurisdiction as an existing Borrower, may with the approval of the relevant Lender become a Borrower with respect to an Ancillary Facility.
- (b) The Parent shall specify any relevant Affiliate of a Borrower in any notice delivered by the Parent to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (*Availability*).
- (c) If a Borrower ceases to be a Borrower under this Agreement in accordance with Clause 32.3 (*Resignation of a Borrower*), its Affiliate shall cease to have any rights under this Agreement or any Ancillary Document.
- (d) Where this Agreement or any other Finance Document imposes an obligation on a borrower under an Ancillary Facility and the relevant borrower is an Affiliate of a Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Affiliate.
- (e) 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 Affiliate of that Borrower being under no obligations under any Finance Document or Ancillary Document.

#### **9.10 Commitment amounts**

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

- (a) its Ancillary Commitment under that Facility; and
- (b) the Ancillary Commitment of its Affiliate under that Facility,

in each case, excluding for these purposes any reduction in such Lender's Commitment in relation to that Facility attributable to such Ancillary Commitment.

#### **10. Repayment**

##### **10.1 Repayment of Loans**

- (a) Each Borrower which has drawn a Loan shall repay that Loan on the last day of its Interest Period.
- (b) Without prejudice to each Borrower's obligation under paragraph (a) above, if one or more Loans are to be made available to a Borrower:
  - (i) on the same day that a maturing Loan is due to be repaid by that Borrower;
  - (ii) in the same currency as the maturing Loan; and
  - (iii) in whole or in part for the purpose of refinancing the maturing Loan;the aggregate amount of the new Loans shall be treated as if applied in or towards repayment of the maturing Loan so that:



- (A) if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:
  - (1) the relevant Borrower will only be required to pay an amount in cash equal to that excess; and
  - (2) each Lender's participation (if any) 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 (if any) in the maturing Loan and that Lender will not be required to make its participation in the new Loans available in cash; and
- (B) if the amount of the maturing Loan is equal to or less than the aggregate amount of the new Loans:
  - (1) the relevant Borrower will not be required to make any payment in cash; and
  - (2) each Lender will be required to make its participation in the new Loans available in cash only to the extent that its participation (if any) in the new Loans exceeds that Lender's participation (if any) 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.
- (C) 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 Termination Date and will be treated as separate Loans (the "**Separate Loans**") denominated in the currency in which the relevant participations are outstanding.
- (d) A Borrower to whom a Separate Loan is outstanding may prepay that Separate Loan by giving five (5) 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.
- (e) 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 Defaulting Lender on the last day of each Interest Period of that Separate Loan.
- (f) 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.

## **10.2 Repayment of Additional Commitment Loans**

The Borrower in respect of any Additional Loans which have been utilised pursuant to an Additional Commitment Increase Notice shall repay the relevant Additional Loans as specified in the related Additional Commitment Increase Notice.

## **11. Illegality, voluntary prepayment and cancellation**

### **11.1 Illegality**

If after the date of this Agreement (or, if later, the date the relevant Lender becomes a Party) it becomes unlawful in any applicable jurisdiction for (i) a Lender or (ii) for any United States based Affiliate of any Lender which is based in Europe, to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation:

- (a) that Lender or that Affiliate of a Lender, shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Parent, the Commitment of that Lender or of that Affiliate of a Lender will be immediately cancelled; and
- (c) each Borrower shall repay that Lender's (or the Affiliate of any 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 or Affiliate of any Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

### **11.2 Illegality in relation to Issuing Bank**

If after the date of this Agreement (or, if later, the date on which the relevant Letter of Credit is issued) it becomes unlawful for an Issuing Bank to issue or leave outstanding any Letter of Credit, then:

- (a) that Issuing Bank shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Parent, the Issuing Bank shall not be obliged to issue any Letter of Credit;
- (c) to the extent it would be unlawful for any such Letter of Credit to remain outstanding, the Parent shall procure that the relevant Borrower shall use all reasonable endeavours to procure the release of each Letter of Credit issued by that Issuing Bank and outstanding at such time; and
- (d) until any other Lender has agreed to be an Issuing Bank pursuant to the terms of this Agreement, the relevant Facility shall cease to be available for the issue of Letters of Credit.

### **11.3 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 \$1,000,000 and an integral multiple of \$1,000,000) of the Available Facility. Any cancellation under this Clause 11.3 shall reduce the Commitments of the Lenders rateably under that Facility.

#### 11.4 Voluntary prepayment of Utilisations

A Borrower to which a Utilisation has been made may:

- (a) in relation to any Loan (other than a Swingline Loan), if it or the Parent gives the Agent not less than five (5) Business Day's prior notice; and
- (b) in relation to any Swingline Loan, if it or the Parent gives the Agent notice prior to 11.00am on the prepayment date of such Swingline Loan,

(or, in the cases of paragraphs (a) above, such shorter period as the Majority Lenders may agree), prepay the whole or any part of that Utilisation (but, if in part, being an amount that reduces that Utilisation other than a Swingline Loan by a minimum amount of \$1,000,000 (or its equivalent in other currencies) and an integral multiple of \$1,000,000 (or its equivalent in other currencies) or, in the case of a Swingline Loan, being an amount that reduces such Swingline Loan by a minimum amount of \$100,000 or an integral multiple of \$50,000).

#### 11.5 Right of cancellation and repayment in relation to a single Lender or Issuing Bank

- (a) If:
  - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 18.2 (*Tax gross up*);
  - (ii) any Lender or Issuing Bank claims indemnification from the Parent or an Obligor under Clause 18.3 (*Tax indemnity*) or Clause 19.1 (*Increased costs*); or
  - (iii) a Lender or the Agent does not consent to an Amendment (as defined in paragraph (f) of Clause 42.3 (*Exceptions*)) pursuant to paragraph (e) of Clause 42.3 (*Exceptions*); or
  - (iv) a Lender or the Agent does not provide their consent pursuant to Clause 32.6 (*Changes to the Obligors – FATCA*)

the Parent may, whilst the circumstance giving rise to the requirement for that increase, indemnification or consent continues, give the Agent notice:

- (A) (if such circumstances relate to a Lender) of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations; or
  - (B) (if such circumstances relate to the Issuing Bank) of any outstanding Letter of Credit issued by it and cancellation of its appointment as an Issuing Bank under this Agreement in relation to any Letters of Credit to be issued in the future.
- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment of that Lender shall immediately be reduced to zero.
  - (c) 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 (including all amounts owing as described in paragraphs (a)(i) and (ii) above where relevant).

#### 11.6 Right of cancellation in relation to a Defaulting Lender

- (a) 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 five (5) Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

#### 12. Mandatory Prepayment

##### 12.1 Exit

- (a) Upon the Parent becoming aware that (i) a Change of Control or (ii) the sale of all or substantially all of the assets of the Restricted Group whether in a single transaction or a series of related transactions (a "Sale") may occur, the Parent shall promptly notify the Agent of that event.
- (b) Subject to Clause 12.2 (*Exit Discussions*) upon the occurrence of (i) a Change of Control or (ii) a Sale:
  - (i) a Lender shall not be obliged to fund a Utilisation (except for a Rollover Loan) and an Ancillary Lender shall not be obliged to fund a utilisation of an Ancillary Facility; and
  - (ii) if a Lender so requires and informs the Agent within 60 days of (i) the occurrence of a Change of Control or (ii) the date on which a Sale occurs, the Agent shall, promptly notify the Parent and five Business Days thereafter, the Facilities shall be cancelled insofar as they are made available by that Lender and that Lender's participation in outstanding Utilisations and Ancillary Outstandings shall, together with accrued interest, and all other amounts accrued to that Lender under the Finance Documents be immediately due and payable, and full cash cover in respect of each letter of credit under an Ancillary Facility shall become immediately due and payable, whereupon on the date so specified by the Agent the Facilities insofar as made available by that Lender will be cancelled and all such outstanding amounts will become immediately due and payable.
- (c) Sub-paragraph (b)(i) above shall only apply where a Lender has required cancellation within 60 days of (i) the occurrence of a Change of Control or (ii) the date on which a Sale occurs, as more particularly set out in sub-paragraph (b)(ii) above.

##### 12.2 Exit Discussions

- (a) Notwithstanding Clause 12.1 (*Exit*) above, the Parent shall be permitted to approach each Lender in advance of a proposed Change of Control to seek each such Lender's consent to a waiver of the provisions of Clause 12.1 (*Exit*) in connection with such proposed Change of Control (the "**Successor Transfer**"). The Parent shall approach each Lender more than

30 days before a Successor Transfer. Each Lender and the Parent shall then consult for a period of not more than 30 days in respect of the Successor Transfer (the "**Discussion Period**").

- (b) Prior to the expiry of the Discussion Period, each Lender shall give written confirmation to the Parent of its decision, acting reasonably (in the sole determination of each Lender), to: (i) consent to the Successor Transfer (the "**Positive Decision**"); or (ii) not consent to the Successor Transfer (the "**Negative Decision**").
- (c) For the avoidance of doubt, any Lender that delivers a Negative Decision shall not be obliged to disclose its reasons for such Negative Decision, **provided that** where a Lender fails to disclose its reasons for a Negative Decision, a duly authorised signatory of such Lender shall, at the request of the Parent, certify in writing that its consent to the Successor Transfer is not being unreasonably withheld (in the sole discretion of that Lender), taking into account the Lender and its Affiliates.
- (d) In the event that any Lender provides a Positive Decision, no Change of Control shall occur for the purposes of Clause 12.1 (*Exit*) and this Agreement generally in relation to the Commitments and participations of that Lender.
- (e) In the event of a Negative Decision by any Lender:
  - (i) on and from the date of that Change of Control that Lender shall not be obliged to fund a Utilisation (except for a Rollover Loan) and if that Lender is an Ancillary Lender, it shall not be obliged to fund a utilisation of an Ancillary Facility; and
  - (ii) the Agent shall, promptly notify the Parent and with effect from the date that is 75 days after the Change of Control, cancel the Facilities insofar as made available by that Lender and declare that Lender's participation in outstanding Utilisations and Ancillary Outstandings, together with accrued interest and all other amounts accrued to that Lender under the Finance Documents due and payable on or (at the Parent's election subject to Break Costs) before the date that is 75 days after the Change of Control, and full cash cover in respect of each Letter of Credit and any letter of credit under any Ancillary Facility shall become due and payable on or (at the Parent's election subject to Break Costs) before the date that is 75 days after the Change of Control.
- (f) Following a Negative Decision, the Parent shall have the right (but not the obligation) to treat the relevant Lender as if it were a Non-Consenting Lender and require the transfer of such Lender's commitments in accordance with Clause 42.5 (*Replacement of Lender*).

### 12.3 Disposal Proceeds and Insurance Proceeds

- (a) For the purposes of this Clause 12.3, Clause 12.4 (*Application of mandatory prepayments*) and Clause 12.5 (*Mandatory Prepayment Accounts*):

"**Asset Disposition**" has the meaning given to it in Schedule 14 (*Restrictive covenants*).

"**Disposal Proceeds**" means the consideration received by any member of the Restricted Group (including any amount receivable in repayment of intercompany debt) for any

Asset Disposition made by any member of the Restricted Group on arm's length terms except for Excluded Disposal Proceeds and after deducting:

- (i) any reasonable expenses which are incurred by any member of the Restricted Group with respect to that Asset Disposition to persons who are not members of the Restricted Group; and
- (ii) any Tax incurred and required to be paid by the seller in connection with that Asset Disposition (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"**Excluded Disposal Proceeds**" means:

- (i) any proceeds of any Asset Dispositions which the Parent notifies the Agent are, or are to be, applied in accordance with the Existing Cabot Notes Indentures **provided that** such proceeds are subsequently applied in accordance with Section 4.10 of the Existing Cabot Notes Indentures;
- (ii) any proceeds of any Asset Dispositions applied towards the repayment or prepayment of any Stretch Facility which has been drawn pursuant to the Stretch Facility Agreement; or
- (iii) any proceeds of any Asset Dispositions applied towards the prepayment, purchase, defeasement, redemption, acquisition or retirement of the Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations or Term Debt, in each case in accordance with the terms of Clause 27.20 (*Note Purchase Condition*).

"**Excluded Insurance Proceeds**" means:

- (i) any net proceeds of an insurance claim which (x) relates to any insurance for business interruption or third party liability or (y) the Parent notifies the Agent are, or are to be, applied:
  - (A) to meet a third party claim;
  - (B) to cover operating losses in respect of which the relevant insurance claim was made;
  - (C) in the replacement, reinstatement and/or repair of the assets or to the purchase of replacement assets useful to the business or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made; or
  - (D) which are, or are to be, applied or reinvested in substantially similar assets used in the Restricted Group's business,in each case within 364 days, or such longer period as the Majority Lenders may agree, after receipt by any member of the Restricted Group or the Security Agent (as the case may be);

- (ii) any net proceeds of an insurance claim to the extent that such proceeds are applied towards the repayment or prepayment of any Stretch Facility which has been drawn pursuant to the Stretch Facility Agreement; or
- (iii) any net proceeds of an insurance claim to the extent that the aggregate of the Insurance Proceeds of all claims received in such Financial Year of the Parent are no more than (calculated as at the date of receipt of the last Insurance Proceeds) \$5,000,000 (or its equivalent) in such Financial Year.

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

- (b) The Parent shall ensure that the Disposal Proceeds are applied to cancel Commitments and, if applicable, prepay Utilisations at the times and in the order of application contemplated by Clause 12.4 (*Application of mandatory prepayments*).
- (c) The Parent shall ensure that the Borrowers offer to cancel Commitments and, if applicable, prepay Utilisations in the amount of any Insurance Proceeds at the times and in the order of application contemplated by Clause 12.4 (*Application of mandatory prepayments*).

#### 12.4 Application of mandatory prepayments

- (a) Subject to paragraph (b) below, a cancellation and, if applicable, a prepayment made under Clause 12.3 (*Disposal Proceeds and Insurance Proceeds*) or Clause 27.20 (*Note Purchase Condition*) shall be applied in the following order:
  - (i) first, in cancellation of Available Commitments in relation to the relevant Facility;
  - (ii) secondly, in prepayment of Utilisations under the relevant Facility (in such order as the Parent may elect **provided that** outstanding Loans will be prepaid before outstanding Letters of Credit); and
  - (iii) thirdly, in repayment and cancellation of the Ancillary Outstandings and Ancillary Commitments under the relevant Facility.
- (b) Unless the Parent makes an election under paragraph (c) below, the Borrowers shall cancel Commitments and, if applicable, prepay Utilisations at the following times:
  - (i) in the case of any prepayment relating to Insurance Proceeds, promptly upon receipt of those proceeds; and
  - (ii) in the case of Disposal Proceeds, on (A) the Asset Disposition Purchase Date (as defined in the Existing Cabot Notes Indentures) relating to those Disposal Proceeds, (B) if no such Asset Disposition Purchase Date applies because of any applicable *de minimis* threshold under the Existing Cabot Notes Indentures, the 366<sup>th</sup> day following the later of the date of the relevant Asset Disposition and the receipt of those Disposal Proceeds or (C) if an Asset Disposition Offer (as defined in the Existing Cabot Notes Indentures) is made but is not taken up by

any creditor on the expiry of the relevant Asset Disposition Offer Period (as defined in the Existing Cabot Notes Indentures),

- (c) Subject to paragraph (d) below, the Parent may, by giving the Agent not less than two (2) Business Days' (or such shorter period as the Majority Lenders may agree) prior written notice, elect that any cancellation and, if applicable, prepayment (and corresponding cancellation) due under Clause 12.3 (*Disposal Proceeds and Insurance Proceeds*) be made on the last day of the Interest Period relating to the Utilisation. If the Parent makes that election then an amount of the Utilisation equal to the amount of the relevant prepayment will be cancelled and, if applicable, be due and payable on the last day of its Interest Period.
- (d) If the Parent has made an election under paragraph (c) above but an Event of Default has occurred and is continuing, if so directed by the Majority Lenders, that election shall no longer apply and a proportion of the Utilisation in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable.
- (e) The Parent and each other Obligor shall use all reasonable endeavours to ensure that any transaction giving rise to a prepayment obligation or obligation to provide cash cover is structured in such a way that it will not be unlawful for the Obligors to move the relevant proceeds received between members of the Restricted Group to enable a mandatory prepayment to be lawfully made, cash cover lawfully provided and the proceeds lawfully applied as provided under Clause 12.3 (*Disposal Proceeds and Insurance Proceeds*). If, however after the Parent and each such Obligor has used all such reasonable endeavours and taken such reasonable steps, it will still:
  - (i) be unlawful (including, without limitation, by reason of financial assistance, corporate benefit restrictions on upstreaming cash intra-group and the fiduciary and statutory duties of the directors of any member of the Restricted Group) for such a prepayment to be made and/or cash cover to be provided and the proceeds so applied; and
  - (ii) be unlawful (including, without limitation, by reason of financial assistance, corporate benefit restrictions on upstreaming cash intra-group and the fiduciary and statutory duties of the directors of any member of the Restricted Group) to make funds available to a member of the Restricted Group that could make such a prepayment and/or provide such cash cover,

then such prepayment and/or provision of cash cover shall not be required to be made (and, for the avoidance of doubt, the relevant amount shall be available for the general corporate purposes of the Restricted Group and shall not be required to be paid to a Mandatory Prepayment Account or any other blocked account) **provided always that** if the restriction preventing such payment/provision of cash cover or giving rise to such liability is subsequently removed, any relevant proceeds will immediately be applied in prepayment and/or the provision of cash cover in accordance with Clause 12.3 (*Disposal Proceeds and Insurance Proceeds*) at the end of the relevant Interest Period(s) to the extent that such payment has not otherwise been made or the proceeds otherwise used.



### 12.5 Mandatory Prepayment Accounts

- (a) The Parent shall ensure that amounts in respect of which the Parent has made an election under paragraph (c) of Clause 12.4 (*Application of mandatory prepayments*) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Restricted Group.
- (b) The Parent and each Borrower irrevocably authorise the Agent to apply amounts credited to the Mandatory Prepayment Account to pay amounts due and payable under Clause 12.4 (*Application of mandatory prepayments*) and otherwise under the Finance Documents.
- (c) A Lender, Security Agent or Agent with which a Mandatory Prepayment Account is held acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) each such account is subject to the Transaction Security.

### 12.6 Excluded proceeds

Where Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the definition of Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Parent shall (a) ensure that those amounts are used for that intended purpose (or a suitable replacement specific purpose within that specified period) and, if requested to do so by the Agent, shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition, or (b) promptly ensure that those amounts are applied in cancellation and prepayment of the Facilities at the times and in the manner set out in Clause 12.4 (*Application of mandatory prepayments*).

## 13. Restrictions

### 13.1 Notices of Cancellation or Prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 11 (*Illegality, voluntary prepayment and cancellation*) shall (subject to the terms of that Clause) 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.

### 13.2 Interest and other amounts

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

### 13.3 Reborrowing of a Facility

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

#### 13.4 Prepayment in accordance with Agreement

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

#### 13.5 No reinstatement of Commitments

Subject to Clause 2.2 (*Increase*) and Clause 2.3 (*Accordion Increase in Commitments*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

#### 13.6 Agent's receipt of Notices

If the Agent receives a notice under Clause 11 (*Illegality, voluntary prepayment and cancellation*), it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender or Issuing Bank, as appropriate.

### 14. INTEREST

#### 14.1 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:

- (a) Margin; and
- (b) LIBOR or, in relation to any Loan in Euro, EURIBOR.

#### 14.2 Payment of interest

- (a) 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 (6) Months, on the dates falling at six (6) Monthly intervals after the first day of the Interest Period).
- (b) If the Annual Financial Statements and related Compliance Certificate received by the Agent show a higher or lower Margin should have applied during a certain period then the Parent shall (or shall ensure that the relevant Borrower shall) promptly pay to the Agent (or the next succeeding interest payment under the relevant Facility(ies) shall be reduced by) any amounts necessary to put the Agent and the Lenders in the position they should have been in had the appropriate rate of Margin been applied during such period (**provided that** any such reduction shall only apply to the extent the Lender which received the overpayment of interest remains a Lender as at the date of such adjustment).

#### 14.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 1 per cent. 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 14.3 shall be immediately payable by the Obligor on demand by the Agent.

- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 1 per cent. higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 14.4 Notification of rates of interest

- (a) The Agent shall promptly notify the Lenders and the relevant Borrower (or the Parent) of the determination of a rate of interest under this Agreement.
- (b) The Agent shall promptly notify the relevant Borrower (or the Parent) of each Funding Rate relating to a Loan.

### 15. INTEREST PERIODS

#### 15.1 Selection of Interest Periods

- (a) 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.
- (b) Subject to this Clause 15, a Borrower (or the Parent) may select an Interest Period of one (1) day (provided that such day is a Business Day and provided further that the Borrower may select no more than 5 Interest Periods of one day in each calendar year), 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).
- (c) An Interest Period for a Loan shall not extend beyond the Termination Date, relating to the applicable Facility.
- (d) A Loan has one Interest Period only.

#### 15.2 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).

### 16. CHANGES TO THE CALCULATION OF INTEREST

#### 16.1 Unavailability of Screen Rate

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

- (b) **Shortened Interest Period:** If no Screen Rate is available for LIBOR or, if applicable, EURIBOR, for:
- (i) the currency of a Loan; or
  - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,
- the Interest Period of that Loan shall (if it is longer than the applicable Fallback Interest Period) be shortened to the applicable Fallback Interest Period and the applicable LIBOR or EURIBOR for that shortened Interest Period shall be determined pursuant to the definition of "LIBOR" or "EURIBOR".
- (c) **Shortened Interest Period and Historic Screen Rate:** If the Interest Period of a Loan is, after giving effect to paragraph (b) above, either the applicable Fallback Interest Period or shorter than the applicable Fallback Interest Period and, in either case, no Screen Rate is available for LIBOR or, if applicable EURIBOR, for:
- (i) the currency of that Loan; or
  - (ii) the Interest Period of that Loan and it is not possible to calculate the Interpolated Screen Rate,
- the applicable LIBOR or EURIBOR shall be the Historic Screen Rate for that Loan.
- (d) **Shortened Interest Period and Interpolated Historic Screen Rate:** If paragraph (c) above applies but no Historic Screen Rate is available for the Interest Period of the Loan, the applicable LIBOR or EURIBOR shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period of that Loan.
- (e) **Alternative Reference Bank Rate:** If paragraph (d) above applies but it is not possible to calculate the Interpolated Historic Screen Rate, the Interest Period of that Loan shall, if it has been shortened pursuant to paragraph (b) above, revert to its previous length and the applicable LIBOR or EURIBOR shall be the Alternative Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.
- (f) **Cost of funds:** If paragraph (e) above applies but no Alternative Reference Bank Rate is available for the relevant currency or Interest Period there shall be no LIBOR or EURIBOR for that Loan and Clause 16.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

#### 16.2 Calculation of Base Reference Bank Rate and Alternative Reference Bank Rate

- (a) Subject to paragraph (b) below, if LIBOR or EURIBOR is to be determined on the basis of a Base Reference Bank Rate but a Base Reference Bank does not supply a quotation by the Specified Time, the Base Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Base Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Base Reference Banks supplies a quotation, there shall be no Base Reference Bank Rate for the relevant Interest Period.

- (c) Subject to paragraph (d) below, if LIBOR or EURIBOR is to be determined on the basis of an Alternative Reference Bank Rate but an Alternative Reference Bank does not supply a quotation by the Specified Time, the Alternative Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Alternative Reference Banks.
- (d) If before close of business in London on the date falling one Business Day after the Quotation Day none or only one of the Alternative Reference Banks supplies a quotation, there shall be no Alternative Reference Bank Rate for the relevant Interest Period.

**16.3 Market disruption**

- (a) If LIBOR or, if applicable, EURIBOR is determined otherwise than on the basis of an Alternative Reference Bank Rate and 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 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 then the applicable LIBOR or EURIBOR shall be the Alternative Reference Bank Rate as of the Specified Time for the currency of the Loan and for a period equal in length to the Interest Period of that Loan and if no Alternative Reference Bank Rate is available for the relevant currency or Interest Period there shall be no LIBOR or EURIBOR for that Loan and Clause 16.4 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.
- (b) If LIBOR or, if applicable, EURIBOR is determined on the basis of an Alternative Reference Bank Rate and before close of business in London on the date falling 2 Business Days after the Quotation Day for the relevant Interest Period of the Loan the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 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 then Clause 16.4 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

**16.4 Cost of funds**

- (a) If this Clause 16.4 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event within 2 Business Days of the first day of that Interest Period (or, if earlier, on the date falling 2 Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 16.4 applies 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 days) with a view to agreeing a substitute basis for determining the rate of interest.

- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.
- (d) If this Clause 16.4 applies pursuant to Clause 16.3 (*Market disruption*): and
  - (i) a Lender's Funding Rate is less than LIBOR or, in relation to any Loan in Euro, EURIBOR; or
  - (ii) a Lender does not supply a quotation by the time specified in paragraph (a) above,the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR or, in relation to a Loan in Euro, EURIBOR.
- (e) If this Clause 16.4 applies pursuant to Clause 16.1 (*Unavailability of Screen Rate*) but any Lender does not supply a quotation by the time specified in paragraph (a) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

#### **16.5 Notification to Parent**

If Clause 16.4 (*Cost of funds*) applies or if LIBOR or, if applicable, EURIBOR is to be determined on the basis of an Alternative Reference Bank Rate the Agent shall, as soon as is practicable, notify the Parent.

#### **16.6 Break Costs**

- (a) 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.
- (b) Each Lender shall, together with any demand by the Agent, provide to the Agent (with a copy to the Parent) a certificate confirming the amount of its Break Costs (giving reasonable details of the calculation of its Break Costs) for any Interest Period in which they accrue.

### **17. FEES**

#### **17.1 Commitment fee**

- (a) During the Availability Period in respect of the Revolving Facility, the Parent shall pay (or procure the payment) to the Agent (for the account of each Lender pro rata to their Available Commitments) a fee (the "**Commitment Fee**") in an amount equal to 0.40 per cent. per annum of the aggregate Available Commitments under the Revolving Facility.
- (b) The accrued Commitment Fee is payable on the last day of each successive Financial Quarter which ends during the Availability Period in respect of the Revolving Facility, on the last day of the Availability Period in respect of the Revolving Facility and on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

- (c) 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.
- (d) No Commitment Fee is payable hereunder if the 2020 Effective Date does not occur.

**17.2 Agency fee**

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

**17.3 Fees payable in respect of Letters of Credit**

- (a) The Parent or the relevant Borrower shall pay to the Agent for the Issuing Bank a fronting fee at a percentage rate per annum agreed between the relevant Borrower (or the Parent) and the Issuing Bank (and notified to the Agent) (the "**Fronting Fee**") on the outstanding amount which is counter-indemnified by the other Lenders (excluding, for the avoidance of doubt, the amount which is counter-indemnified by the Issuing Bank, or an Affiliate thereof, in its capacity as a Lender and excluding any amount in respect of which cash cover has been provided) of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date.
- (b) The Parent or the relevant Borrower shall pay to the Agent for the account of each Lender, a Letter of Credit fee (computed at the rate equal to the applicable Margin) on the outstanding amount of each Letter of Credit (excluding, for the avoidance of doubt, any amount in respect of which cash cover has been provided) requested by it for the period from the issue of that Letter of Credit until its Expiry Date, each such fee being a "**Letter of Credit Fee**". Each Letter of Credit Fee shall be distributed according to each Lender's L/C Proportion of that Letter of Credit.
- (c) The accrued Fronting Fee and each Letter of Credit Fee shall be payable on the last day of each Financial Quarter (or such shorter period as shall end on the Expiry Date for that Letter of Credit) starting on the date of issue of that Letter of Credit. The accrued Fronting Fee and Letter of Credit Fee is also payable to the Agent on the cancelled amount of any Lender's Commitment under that Facility calculated to the time the cancellation is effective if that Commitment is cancelled in full and the Letter of Credit is prepaid or repaid in full.
- (d) The Parent or the relevant Borrower shall pay to the Issuing Bank (for its own account) an issuance/administration fee in the amount and at the times specified in a Fee Letter.

**17.4 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.

## 18. TAX GROSS UP AND INDEMNITIES

### 18.1 Definitions

In this Agreement:

**"Borrower DTTP Filing"** means an HMRC Form DTTP2 duly completed and filed by the relevant Borrower, which:

- (a) where it relates to a UK Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence notified in writing by each Original Lender to the relevant Borrower within 25 days of the 2020 Effective Date, and
  - (i) where the Borrower is an Original Borrower, is filed with HMRC within 30 days of the 2020 Effective Date; or
  - (ii) where the Borrower is an Additional Borrower, is filed with HMRC within 30 days of the date on which that Borrower becomes an Additional Borrower; or
- (b) where it relates to a UK Treaty Lender that is a New Lender, an Additional Commitment Lender or an Increase Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate, Assignment Agreement, Increase Confirmation or Additional Commitment Increase Notice which it executes on becoming a Party as a Lender, and
  - (i) where the Borrower is a Borrower as at the relevant Transfer Date or date on which the increase in the Commitments described in the relevant Increase Confirmation takes effect, is filed with HMRC within 30 days of that Transfer Date or date on which the increase in the Commitments described in the relevant Increase Confirmation or Additional Commitment Increase Notice takes effect; or
  - (ii) where the Borrower is not a Borrower as at the relevant Transfer Date or date on which the increase in the Commitments described in the relevant Increase Confirmation or Additional Commitment Increase Notice takes effect, is filed with HMRC within 30 days of the date on which that Borrower becomes an Additional Borrower.

**"Change of Tax Law"** means any change which occurs after the 2020 Effective Date or, if later, after the date on which the relevant Lender became a Lender pursuant to this Agreement, in any law, regulation or UK Treaty (or in the interpretation, administration or application of any law, regulation or UK Treaty) or any published practice or published concession of any relevant taxing authority.

**"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 (other than any Hedging Agreement).

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

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



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

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

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction (other than any Hedging Agreement).

"**Tax Payment**" means either the increase in a payment made by an Obligor to a Finance Party under Clause 18.2 (*Tax gross up*) or a payment under Clause 18.3 (*Tax indemnity*).

"**UK Qualifying Lender**" means:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
  - (i) a Lender:
    - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
    - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance.
  - (ii) a Lender which is:
    - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
    - (B) a partnership each member of which is:
      - (1) a company so resident in the United Kingdom; or
      - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its

chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

- (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
  - (i) a UK Treaty Lender; or
- (b) a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document.

"**UK Treaty Lender**" means a Lender which:

- (a) is treated as a resident of a UK Treaty State for the purposes of the UK Treaty;
- (b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and
- (c) meets all other conditions in the relevant UK Treaty for full exemption from tax imposed by the United Kingdom on interest, except that for this purpose it shall be assumed that the following conditions (if applicable) are satisfied:
  - (i) any condition which relates (expressly or by implication) to there being a special relationship between the relevant Borrower and the Lender or between both of them and another person, or to the amounts or terms of any Loan or the Finance Documents; and
  - (ii) any necessary procedural formalities.

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

Unless a contrary indication appears, in this Clause 18 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination, acting reasonably.

## **18.2 Tax gross up**

- (a) Each Obligor shall, and shall (so far as it is lawfully able) cause each other person making payment on behalf of such Obligor to, make all payments to be made by it under this Agreement without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) 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 any such notification from a Lender it shall notify the Parent and the relevant Obligor.

- (c) 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.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
- (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a UK Qualifying Lender, but on that date that Lender is not or has ceased to be a UK Qualifying Lender other than as a result of any Change of Tax Law; or
  - (ii) the relevant Lender is a UK Qualifying Lender solely by reason of falling within paragraph (a)(ii) of the definition of UK Qualifying Lender and:
    - (A) an officer of HMRC has given (and not revoked) a direction (a "**Direction**") under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Parent a certified copy of that Direction; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
  - (iii) the relevant Lender is a UK Qualifying Lender solely by reason of falling within paragraph (a)(ii) of the definition of UK Qualifying Lender and:
    - (A) the relevant Lender has not given a Tax Confirmation to the Parent; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Parent, on the basis that the Tax Confirmation would have enabled the Parent to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
  - (iv) the relevant Lender is a UK Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) or (h) (as applicable) below.
- (e) If an Obligor is required to make a Tax Deduction that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

- (g)
- (i) Subject to paragraph 18.2(g)(ii) below, a UK Treaty Lender and each Obligor which makes a payment to which that UK Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
  - (ii)
    - (A) A UK Treaty Lender which is an Original Lender and which holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence by written notice to the relevant Borrower within 25 days of the 2020 Effective Date; and
    - (B) a New Lender, Additional Commitment Lender or Increase Lender that is a UK Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate, Assignment Agreement, Increase Confirmation or Additional Commitment Increase Notice which it executes,and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.
  - (h) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph 18.2(g)(ii) above and:
    - (i) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or
    - (ii) a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
      - (A) that Borrower DTTP Filing has been rejected by HMRC;
      - (B) HMRC has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing; or
      - (C) HMRC has given the Borrower authority to make payments to that Lender without a Tax Deduction but such authority has subsequently been revoked or expired;and in each case, the Borrower has notified that Lender in writing, that Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for that Borrower to obtain authorisation to make that payment without a Tax Deduction.
  - (i) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph 18.2(g)(ii) above, no Obligor shall make a

Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Utilisation unless the Lender otherwise agrees.

- (j) A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
- (k) A Lender which is a New Lender, an Additional Commitment Lender or an Increase Lender shall, if relevant, give a Tax Confirmation in the Assignment Agreement, Transfer Certificate, Increase Confirmation or Additional Commitment Increase Notice which it executes.
- (l) A Lender that has given a Tax Confirmation to the Parent shall promptly notify the Parent and the Agent if there is any change in the position set out in that Tax Confirmation.
- (m) If:
  - (i) a Tax Deduction was required by law to be applied to a payment made by or on account of an Obligor to a Lender under a Finance Document;
  - (ii) the relevant Obligor was unaware, and could not reasonably be expected to have been aware, that the Tax Deduction was required and as a result did not make the Tax Deduction;
  - (iii) the applicable Obligor would not have been required to make an increased payment under paragraph (c) above in respect of that Tax Deduction because, at the time of making a payment, one of the exclusions in this Clause 18.2 would have applied; and
  - (iv) the relevant Obligor did not make such Tax Deduction, in reliance on the notifications and confirmations provided pursuant to Clause 18.5 (*Lender Status Confirmation*),then the Lender that received the payment in respect of which the Tax Deduction was required by law to have been made shall promptly reimburse that Obligor for the amount of the Tax Deduction that was required by law to have been made to the extent not so made (or, if greater, the amount of any additional amount paid by an Obligor pursuant paragraph (C) of this Clause 18.2), together with (for the avoidance of doubt) any penalty, interest and reasonable expenses properly incurred by the relevant Obligor in connection with any failure or delay in making the appropriate payment to the taxing authority.
- (n) A payment shall not be increased under paragraph (c) above by reason of a Tax imposed by the United States if (A) the payment could have been made to the relevant Lender without a Tax Deduction if it were a US Qualifying Lender, but on that date the Lender is not or has ceased to be a US Qualifying Lender other than as a result of any change after the date such Lender first became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or double taxation agreement; or (B) such Tax arises from a failure of the relevant Lender or the Agent, as applicable, to comply with its obligations under paragraph (p) below.

- (o) With respect to payments made by or in respect of a US Tax Obligor, each Lender and the Agent shall supply to the relevant Obligor and, in the case of a Lender, to the Agent a properly completed and executed applicable US Tax Form and will supply additional US Tax Forms upon a reasonable time following a written request by that Obligor, in each case, to the extent such Lender or the Agent, as applicable, is legally entitled to do so. A Lender or the Agent, as applicable, shall promptly notify the Agent and such Obligor if any US Tax Form previously provided by such Lender or the Agent, as applicable, has become invalid or incorrect, and shall provide a replacement US Tax Form to the Agent and such Obligor to the extent such Lender or the Agent, as applicable, is legally entitled to do so.

### 18.3 Tax indemnity

- (a) 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 determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 18.2 (*Tax gross up*);
    - (B) would have been compensated for by an increased payment under Clause 18.2 (*Tax gross up*) but was not so compensated solely because one of the exclusions in paragraphs (d) or (n) of Clause 18.2 (*Tax gross up*) applied (or paragraph (m) of Clause 18.2 (*Tax gross up*) applies);
    - (C) is compensated for by an increased payment under clause 18.6 (*Stamp taxes*);
    - (D) would have been compensated for by an increased payment under Clause 18.6 (*Stamp taxes*) but was not so compensated because any of the exclusions in Clause 18.6 (*Stamp taxes*) applied;
    - (E) is in respect of VAT (in relation to which Clause 18.7 (*VAT*) shall apply);

- (F) relates to a FATCA Deduction required to be made by a Party; or
  - (G) is suffered or incurred with respect to any Bank Levy.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Parent.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 18.3, notify the Agent.

#### 18.4 Tax Credit

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

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

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

#### 18.5 Lender Status Confirmation

- (a) Each Lender which becomes a Party to this Agreement after the 2020 Effective Date shall indicate, in the Transfer Certificate, Assignment Agreement, Increase Confirmation or Additional Commitment Increase Notice which it executes on becoming a Party, and for the benefit of the Agent and each Obligor, which of the following categories it falls in:
  - (i) With respect to a Loan or Commitment that is extended to a US Tax Obligor,
    - (A) Not a US Qualifying Lender; or
    - (B) A US Qualifying Lender.
  - (ii) With respect to a Loan or Commitment that is extended to a Borrower other than a US Tax Obligor,
    - (A) not a UK Qualifying Lender;
    - (B) a UK Qualifying Lender (other than a UK Treaty Lender); or
    - (C) a UK Treaty Lender.
- (b) Where a Lender nominates a branch or affiliate or Affiliate that is not an Existing Lender to participate in a Facility under Clause 4.5 (*Lending Affiliates*) or Clause 9.8 (*Affiliates of Lenders as Ancillary Lenders*) that Lender shall notify the Agent and the Agent shall notify the Parent of the location of the branch or (as the case may be) the jurisdiction of tax residence of the affiliate or Affiliate which will participate and shall confirm in writing to the Agent (who shall send a copy of such notification to the Parent), for the

benefit of the Agent and each Obligor, which of the following categories the nominee falls in:

- (i) With respect to a Loan or Commitment that is extended to a US Tax Obligor,
  - (A) Not a US Qualifying Lender; or
  - (B) A US Qualifying Lender.
- (ii) With respect to a Loan or Commitment that is extended to a Borrower other than a US Tax Obligor,
  - (A) not a UK Qualifying Lender;
  - (B) a UK Qualifying Lender (other than a UK Treaty Lender); or
  - (C) a UK Treaty Lender.
- (c) If a New Lender, Increase Lender, Additional Commitment Lender, or branch or affiliate (nominated under Clause 4.5 (*Lending Affiliates*)) or Affiliate (nominated under Clause 9.8 (*Affiliates of Lenders as Ancillary Lenders*)) fails to indicate its status in accordance with this Clause 18.5 then such New Lender, Increase Lender, Additional Commitment Lender, branch or affiliate or Affiliate shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a UK Qualifying Lender or US Qualifying Lender, as applicable, 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, Assignment Agreement, Increase Confirmation or Additional Commitment Increase Notice shall not be invalidated by any failure of a Lender to comply with this Clause 18.5.
- (d) Upon the written request of the Agent to an Original Lender (such request to be made following the written request of the Parent to the Agent no later than fifteen (15) Business Days before the first interest payment date following the 2020 Effective Date), the Original Lender shall indicate to the Agent, for the benefit of Agent and each Obligor, in which of the following categories it falls:
  - (i) With respect to a Loan or Commitment that is extended to a US Tax Obligor,
    - (A) Not a US Qualifying Lender; or
    - (B) A US Qualifying Lender.
  - (ii) With respect to a Loan or Commitment that is extended to a Borrower other than a US Tax Obligor,
    - (A) not a UK Qualifying Lender;
    - (B) a UK Qualifying Lender (other than a UK Treaty Lender); or
    - (C) a UK Treaty Lender.
- (e) Each Lender shall promptly notify the Agent (who shall promptly inform the Parent) if there is any change to any status as set out in this Clause 18.5.



## 18.6 Stamp taxes

The Parent shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that such Finance Party incurs in relation to all stamp duty, documentary, property transfer, registration and other similar Taxes payable in respect of any Finance Documents save for (a) any Taxes payable in respect of an assignment or transfer pursuant to Clause 30 (*Changes to the Lenders*) (other than in accordance with Clause 21 (*Mitigation by the Lenders*)) and (b) Luxembourg registration duties payable due to a registration, submission or filing by a Secured Party of any Finance Document where such registration, submission or filing is or was not required to maintain or preserve the rights of the Secured Parties under the Finance Documents.

## 18.7 VAT

- (a) All amounts expressed to be payable under a Finance Document (other than any Hedging Agreement) 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 (other than any Hedging Agreement) and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document (other than any Hedging Agreement), and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document (other than any Hedging Agreement) to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall at the same time reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including

such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

- (d) Any reference in this Clause 18.7 (VAT) to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).
- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party shall promptly provide such Finance Party with details of that Party's VAT registration and any such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

#### **18.8 FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to 18.8(a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Party to do anything which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) and (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then

such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party

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

- (e) If a Borrower is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
  - (i) where an Original Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the 2020 Effective Date;
  - (ii) where a Borrower is a US Tax Obligor and the relevant Lender is a New Lender, an Increase Lender, an Additional Commitment Lender, the relevant Transfer Date, the date on which an increase to Commitments takes effect pursuant to Clause 2.2 (*Increase*) or the Additional Facility Commencement Date (assuming that the relevant Borrower is a Borrower at the relevant Transfer Date, date on which an increase to Commitments takes effect pursuant to Clause 2.2 (*Increase*) or Additional Facility Commencement Date (as applicable));
  - (iii) the date a new US Tax Obligor accedes as a Borrower (assuming that the relevant Lender is a Lender on such date); or
  - (iv) where the Borrower is not a US Tax Obligor, the date of a request from the Agent,

supply to the Agent

- (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
  - (B) any withholding statement and other documentation, authorisations and waivers as the Agent may require to certify or establish the status of such Lender under FATCA or that other applicable law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

#### **18.9 FATCA Deduction**

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

#### **18.10 U.S. Withholding Obligations**

Notwithstanding anything to the contrary in this Clause 18.10, if any payments by or on account of any obligation of any Obligor under any Finance Document shall be treated as arising from sources in the United States, it is understood and agreed that the Agent shall assume primary withholding responsibility under Chapters 3 and 4 of the Code and primary Form 1099 and Form 1042-S reporting and backup withholding responsibility with respect to payments it receives on account of any Lender. In furtherance of the foregoing, (A) if the Agent is a United States Person it shall deliver to the relevant US Tax Obligor two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that it is exempt from federal backup withholding and (B) if the Agent is not a United States Person it shall deliver to the US Tax Obligor two properly completed and duly signed copies of Internal Revenue Service Form W-8ECI or Internal Revenue Service Form W-8BEN-E, as applicable, with respect to fees received on its own behalf and, with respect to payments received on account of any Senior Lender, two properly completed and duly signed copies of Internal Revenue Service Form W-8IMY (or successor form) certifying that the Agent is either (1) a "qualified intermediary" assuming primary withholding responsibility under Chapters 3 and 4 of the Code and primary Form 1099 reporting and backup withholding responsibility for payments it receives for the accounts of others, or (2) a "U.S. branch" and that the payments it receives for the account of others are not effectively connected with the conduct of a trade or business in the United States, and in the case of each of clauses (1) and (2), that the Agent is using such form as evidence of its agreement with the US Tax Obligor to be treated as a United States Person with respect to such payments (and the US Tax Obligor and the Agent agree to so treat the Agent as a United States Person with respect to such payments as contemplated by U.S. Treasury Regulations Section 1.1441-1(b)(2)(iv)(A)), with the effect that the US Tax Obligor can make payments to the Agent without deduction or withholding of any taxes imposed by the United States. The Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the US Tax Obligor in writing of its legal inability to do so.

#### **19. INCREASED COSTS**

##### **19.1 Increased costs**

- (a) Subject to Clause 19.3 (*Exceptions*) the Parent shall, within three (3) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any Change in Law (or in the interpretation, administration or application of any law or regulation); (ii) compliance with any law or regulation made

after the date of this Agreement (or, if later, the date it became a Party to this Agreement); or (iii) the implementation or application of, or compliance with, Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

(b) In this Agreement:

"**Basel III**" means:

- (i) 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;
- (ii) 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
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

"**CRD IV**" means:

- (i) 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
- (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

"**Increased Costs**" means:

- (i) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or an Ancillary Commitment or funding or performing its obligations under any Finance Document or Letter of Credit.

## 19.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 19.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.
- (b) Each Finance Party shall, with a demand by the Agent, provide a certificate (giving reasonable details of the circumstances giving rise to such claim and the calculation of the Increased Cost) confirming the amount of its Increased Costs.

## 19.3 Exceptions

- (a) Clause 19.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause 18.3 (*Tax indemnity*) (or would have been compensated for under Clause 18.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 18.3 (*Tax indemnity*) applied);
  - (iv) is suffered or incurred with respect to any Bank Levy;
  - (v) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
  - (vi) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (or, if later, the date it became a Party to this Agreement) (but excluding any amendment arising out of Basel III or CRD IV) ("**Basel II**") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).
- (b) In this Clause 19.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 18.1 (*Definitions*).

## 20. OTHER INDEMNITIES

### 20.1 Currency indemnity

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

that Obligor shall as an independent obligation, within three (3) Business Days of demand, indemnify the 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.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

## 20.2 Other indemnities

The Parent shall (or shall procure that an Obligor will), within three (3) Business Days of demand, indemnify the Arranger and each other Secured Party against any cost, loss or liability (other than any cost, loss or liability for, in respect of, or on account of Tax, in relation to which Clause 18.3 (*Tax indemnity*) shall apply) incurred by it as a result of:

- (a) the occurrence of any Event of Default;
- (b) 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 35 (*Sharing among the Lenders*);
- (c) funding, or making arrangements to fund, its participation in a Utilisation 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);
- (d) issuing or making arrangements to issue a Letter of Credit requested by the Parent or a Borrower in a Utilisation Request but not issued by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of a Finance Party's gross negligence or wilful misconduct); or
- (e) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.

## 20.3 Indemnity to the Agent

The Parent shall promptly indemnify the Agent against any cost, loss or liability (other than any cost, loss or liability for, in respect of, or on account of Tax, in relation to which Clause 18.3 (*Tax indemnity*) shall apply) incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

## 21. MITIGATION BY THE LENDERS

### 21.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming

payable under or pursuant to, or cancelled pursuant to, any of Clause 11.1 (*Illegality*) (or, in respect of the Issuing Bank, Clause 11.2 (*Illegality in relation to Issuing Bank*)), Clause 18 (*Tax Gross Up and Indemnities*) or Clause 19 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

(b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

## **21.2 Limitation of liability**

(a) 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 21.1 (*Mitigation*).

(b) A Finance Party is not obliged to take any steps under Clause 21.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **22. COSTS AND EXPENSES**

### **22.1 Transaction expenses**

The Parent shall within ten (10) Business Days of demand pay (or procure payment) to the Agent, the Arrangers, the Issuing Bank and the Security Agent the amount of all out-of-pocket costs and expenses (including legal fees subject to agreed caps (if any)) 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:

(a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

(b) any other Finance Documents executed after the date of this Agreement.

### **22.2 Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 36.10 (*Change of currency*), the Parent shall, within ten (10) Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees subject to agreed caps (if any)) 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.

### **22.3 Enforcement and preservation costs**

The Parent shall, within ten (10) Business Days of demand, pay (or procure the payment) to the Arrangers and each other Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.



**23. GUARANTEE AND INDEMNITY**

**23.1 Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally, jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due (allowing for any applicable grace period) under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor;
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 23 if the amount claimed had been recoverable on the basis of a guarantee; and
- (d) guarantees as primary obligor and not merely as surety to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents (including without limitation):
  - (i) obligations which, but for the automatic stay under section 362(a) of the US Bankruptcy Code, would become due; and
  - (ii) any interest accruing after the commencement of any proceeding under any US Debtor Relief Law at the rate provided for in this Agreement, whether or not such interest is an allowed claim in any such proceeding;
- (e) undertakes with each Finance Party that whenever another Obligor does not pay an 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.
- (f) agrees with each Finance Party that if, for any reason, any amount claimed by a Finance Party under this Clause 23 is not recoverable on the basis of a guarantee, it will be liable to indemnify that Finance Party on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount when due under or in connection with any Finance Document. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 23 if the amount claimed had been recoverable on the basis of a guarantee; and
- (g) agrees that, as between that Guarantor and the Finance Parties, all amounts outstanding under this Agreement may be declared to be forthwith due and payable as provided in this Agreement for the purposes of this Clause 23, notwithstanding any stay (including under the US Bankruptcy Code), injunction or other prohibition preventing the same as against any other Obligor and that, in such event, all such amounts (whether or not due

and payable by any such other Obligor) shall forthwith become due and payable by the Guarantor for the purposes of this Clause 23.

Each of the above paragraphs (d) through (g) are independent of each other and is given for good consideration. For the purposes of paragraphs (d) through (g):

**"US Bankruptcy Code"** means Title 11 of The United States Code (entitled "Bankruptcy"), as amended from time to time and as now or hereafter in effect, or any successor thereto; and

**"US Debtor Relief Laws"** means the US Bankruptcy Code and all other federal and state liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization or similar debtor relief laws in effect from time to time.

#### **23.2 Continuing Guarantee**

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

#### **23.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration, examinership or otherwise, without limitation, then the liability of each Guarantor under this Clause 23 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### **23.4 Waiver of defences**

The obligations of each Guarantor under this Clause 23 will not be affected by an act, omission, matter or thing which, but for this Clause 23, would reduce, release or prejudice any of its obligations under this Clause 23 (without limitation and whether or not known to it or any Finance Party) including:

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

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

(g) any insolvency or similar proceedings.

#### **23.5 Guarantor Intent**

Without prejudice to the generality of Clause 23.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing Indebtedness; 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.

#### **23.6 Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 23. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **23.7 Keep well**

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Obligor to honour all of its obligations under its guarantee in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under its guarantee, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until discharged in accordance with the provisions of its guarantee. Each Qualified ECP Guarantor intends that this Section constitute, and this Section shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Obligor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

#### **23.8 Appropriations**

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

(a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against

those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 23.

### 23.9 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 23:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 23.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

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 36 (*Payment Mechanics*).

### 23.10 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 or any Holding Company of that Retiring Guarantor, then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) 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
- (b) 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.

#### 23.11 Additional security

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

#### 23.12 Guarantee Limitations

The guarantee created under this Clause 23 does not apply to any liability to the extent that it would result in the guarantee being illegal and with respect to any Additional Guarantor is subject to the limitations set out in the Accession Deed applicable to such Additional Guarantor.

#### 23.13 Guarantee Limitations – Luxembourg

- (a) Notwithstanding anything to the contrary in this Agreement or any other Debt Document (as defined in the Intercreditor Agreement), the aggregate obligations and liabilities of any Luxembourg Guarantor under this Clause 23 for the obligations of any Obligor which is not a direct or indirect Subsidiary of such Luxembourg Guarantor shall, together with any similar guarantee and/or payment obligations (*garanties personnelles*) of such Luxembourg Guarantor arising under any other Debt Documents (as defined in the Intercreditor Agreement), be limited to an aggregate amount not exceeding the higher of:
  - (i) 95% of such Luxembourg Guarantor's capitaux propres (as referred to in article 34 of the Luxembourg law dated 19 December 2002 on the commercial register and annual accounts) determined as at the date on which a demand is made under the Guarantee, increased by the amount of any Intra-Group Liabilities (without double counting); and
  - (ii) 95% of such Luxembourg Guarantor's capitaux propres (as referred to in article 34 of the Luxembourg law dated 19 December 2002 on the commercial register and annual accounts) determined as at the date of this Agreement, increased by the amount of any Intra-Group Liabilities (without double counting).
- (b) For the purposes of sub-paragraph (a) above, "**Intra-Group Liabilities**" shall mean any amounts owed by such Luxembourg Guarantor to any other member of the Restricted Group that have not been financed (directly or indirectly) by a borrowing under the Debt Documents (as defined in the Intercreditor Agreement).
- (c) The guarantee limitation specified in sub-paragraph (a) above shall not apply to (i) any amounts borrowed by such Luxembourg Guarantor under the Debt Documents (as defined in the Intercreditor Agreement) and (ii) any amounts borrowed under the Debt Documents (as defined in the Intercreditor Agreement) and on-lent to such Luxembourg Guarantor (in any form whatsoever).

#### 23.14 Guarantee Limitations – Ireland

Notwithstanding anything to the contrary in this Agreement, the obligations and liabilities under this Clause 23 do not apply to any liability to the extent that it would result in this Clause 23 constituting:

- (a) unlawful financial assistance (within the meaning of Section 82 of the Irish Companies Act 2014); or
- (b) a breach of Section 239 of the Irish Companies Act 2014.

#### 23.15 Guarantee Limitations - US

- (a) Anything herein or in any other Finance Document to the contrary notwithstanding, the maximum liability of each US Guarantor hereunder and under the other Finance Documents shall in no event exceed, after giving effect to any rights of contribution, the amount that can be guaranteed by such US Guarantor under the US Bankruptcy Code or any applicable laws relating to fraudulent conveyances, fraudulent transfers or the insolvency of debtors.
- (b) Notwithstanding anything to the contrary in this Agreement or any other Finance Document, in no circumstances shall proceeds of any Security constituting an asset of a Guarantor be applied towards the payment of any Excluded Swap Obligations nor shall any guarantee provided by any Guarantor pursuant to any Finance Document guarantee any obligations which are Excluded Swap Obligations, notwithstanding the terms of such Finance Document (and in the case of any conflict between the terms of any Finance Document and this Clause 23.15, the terms of this Clause 23.15 shall prevail).

#### 23.16 Acknowledgement Regarding Any Supported QFCs

To the extent that the Finance Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Finance Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

- (a) in the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Finance Documents that might

otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Finance Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Clause 23.16, the following terms have the following meanings:

"**BHC Act Affiliate**" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"**Covered Entity**" means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"**QFC**" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

## 24. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 24 to each Finance Party at the times specified in Clause 24.35 (*Times when representations made*) only and the Parent acknowledges that the Finance Parties have entered into this Agreement in reliance on these representations and warranties.

### 24.1 Status

- (a) It and each of the Material Companies is a corporation, or as the case may be, a limited liability company or limited partnership, duly incorporated or organised (as applicable), validly existing and in good standing (as applicable) under the law of its jurisdiction of incorporation or organisation.
- (b) It and each of the Material Companies has the power and authority to own its assets and carry on its business as it is being conducted.

### 24.2 Binding obligations

Subject to the Legal Reservations and Perfection Requirements:

- (a) 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

- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

**24.3 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 do not conflict with:

- (a) any law or regulation applicable to it in any material respect;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or constitute a default or termination event (however described) under any such agreement or instrument to an extent which has or is reasonably expected to have a Material Adverse Effect.

**24.4 Power and authority**

- (a) 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.
- (b) 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.

**24.5 Validity and admissibility in evidence**

- (a) All Authorisations required:
  - (i) 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
  - (ii) 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, subject to the Legal Reservations and Perfection Requirements.
- (b) 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 except to the extent that the failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

**24.6 Governing law and enforcement**

- (a) The choice of the governing law of each of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation subject to the Legal Reservations.
- (b) Subject to the Legal Reservations, 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 jurisdiction of incorporation.



#### 24.7 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 28.8 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 28.9 (*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 28.7 (*Insolvency*) applies to a Material Company.

#### 24.8 No filing or stamp taxes

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except any filing, recording or enrolling or any tax or fee payable in connection with the Transaction Security which will be made or paid promptly after the date of the relevant Finance Document, **provided that**, for the avoidance of doubt, this Clause 24.8 shall not apply in respect of any stamp duty, registration or similar tax payable in respect of an assignment or transfer by a Lender of any of its rights or obligations under a Finance Document, and **provided further that** in Luxembourg in the case any of the Finance Documents:

- (i) are attached as an annex to an act (*annexés à un acte*) that itself is subject to mandatory registration; or
- (ii) are deposited in the minutes of a notary (*déposés u rang des minutes d'un notaire*); or
- (iii) are voluntarily registered, registration duties at a fixed rate or an ad valorem rate, depending on the nature of the registered document will in such event become due and payable.

#### 24.9 No default

- (a) No Event of Default and, on the date of this Agreement, the date of the 2020 Amendment and Restatement Agreement and the 2020 Effective Date, 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.
- (b) To the best of its knowledge after due enquiry, no 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 Restricted Subsidiaries or to which its (or any of its Restricted Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

#### 24.10 No misleading information

Save as disclosed in writing to the Agent and the Arranger prior to the date of this Agreement (or, in relation to the Information Memorandum, prior to the date of the Information Memorandum or, in relation to the delivery of any written information under paragraph (f) below, prior to or at the same time as the delivery of such information):

- (a) all material factual information relating to the Restricted Group (taken as a whole) contained in the Information Memorandum was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;
- (b) the Initial ERC and the ERC Model Output have been prepared on the basis of recent historical information, are based on assumptions believed by the Parent to be fair and reasonable and have been approved by the Chief Financial Officer or the Chief Executive Officer of the Parent;
- (c) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were believed by the Parent to be fair and based on reasonable grounds at the time expressed;
- (d) as at the date of approval by the Parent of the Information Memorandum, no event or circumstance has occurred or arisen and no information has been omitted from the Information Memorandum and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum (taken as a whole) being untrue or misleading in any material respect;
- (e) the information included in the Beneficial Ownership Certificate, if applicable, is true and correct in all respects; and
- (f) all other written information provided after the date of this Agreement by any member of the Restricted Group (including its advisers) to a Finance Party (save for any written information that is expressly provided on an information only basis pursuant to paragraph (c) of Clause 27.6 (*Acquisitions*)) was true, complete and accurate and is not misleading, in each case in all material respects as at the date it was provided (or, in the case of any report or document that relates to historical matters and is expressed to be accurate as at a particular date, as at the date so expressed therein) and, in the case of a report or document prepared by a third party was, true, complete and accurate and is not misleading, in each case, to the best of its knowledge and belief of the relevant member of the Restricted Group in all material respects as at the date it was prepared.

#### 24.11 Financial Statements

- (a) The Original Financial Statements were prepared in accordance with GAAP (or in accordance with the accounting principles prevailing in the jurisdiction of any Obligor other than the Parent) consistently applied.
- (b) The audited Original Financial Statements give a true and fair view of the financial condition and results of operations of the Group during the relevant financial year.

- (c) There has been no material adverse change in the assets, business or financial condition of the Restricted Group taken as a whole since the date of the Original Financial Statements.
- (d) Its most recent financial statements delivered pursuant to Clause 25.1 (*Financial statements*):
  - (i) subject to paragraph (b) of Clause 25.3 (*Requirements as to financial statements*) have been prepared in accordance with GAAP as applied to the Original Financial Statements; and
  - (ii) give a true and fair view of (if audited) or fairly present (subject to customary year-end adjustments) (if unaudited) its consolidated (if applicable) financial condition as at the end of, and consolidated (if applicable) results of operations for, the period to which they relate.
- (e) There has been no material adverse change in the assets, business or financial condition of the Restricted Group taken as a whole since the date of the most recent financial statements delivered pursuant to Clause 25.1 (*Financial statements*).
- (f) The budgets delivered under Clause 25.4 (*Budget*) 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.

**24.12 No proceedings**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief having made due and careful enquiry) been started or threatened against it or any of its Subsidiaries.

**24.13 No breach of laws**

- (a) It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Restricted Group which have or are reasonably likely to have a Material Adverse Effect.

**24.14 Environmental laws**

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

**24.15 Taxation**

- (a) It (and each member of the Restricted Group) has duly and punctually filed all income and all other material tax returns (together with all necessary information relating thereto) and has paid and discharged all taxes imposed upon it or its assets (in each case within

the time period allowed and before the imposition of any interest or penalties), save, in each case, to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or against any member of the Restricted Group) with respect to Taxes, which would have, or would reasonably be expected to have, a Material Adverse Effect.
- (c) In respect of a Borrower, it is resident for Tax purposes only in the jurisdiction of its incorporation.

#### **24.16 Security and Financial Indebtedness**

- (a) No Security or Quasi Security exists over all or any of the present or future assets of any member of the Restricted Group other than as permitted by this Agreement.
- (b) No member of the Restricted Group has any actual or contingent Financial Indebtedness outstanding other than as permitted by this Agreement.

#### **24.17 Ranking**

The payment obligations of each Obligor under each of the Finance Documents rank and will at all times rank at least *pari passu* in right and priority of payment with all its other present and future unsecured and unsubordinated indebtedness (actual or contingent) except indebtedness preferred by laws of general application.

#### **24.18 Good title to assets**

It has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted where failure to do so would have, or could be reasonably expected to have, a Material Adverse Effect.

#### **24.19 Legal and beneficial ownership**

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

#### **24.20 Shares**

- (a) 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.
- (b) Other than any mandatory provisions required by law, 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.
- (c) Other than in respect of any employee and director shares and options, convertible and exchangeable notes entered into by the Parent, there are no agreements in force or corporate resolutions passed which provide for the issue or allotment of, or grant any person the right (whether conditional or otherwise) 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).

#### 24.21 Intellectual Property

It and each of its Subsidiaries:

- (a) 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 to the extent that failure to do so would reasonably be expected to have a Material Adverse Effect.
- (b) does not (nor does any of its Subsidiaries), 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
- (c) 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 reasonably be expected to have a Material Adverse Effect.

#### 24.22 Group Structure Chart

As of the 2020 Effective Date, the Group Structure Chart is true, complete and accurate in all material respects.

#### 24.23 Obligors

- (a) All Material Companies which are members of the Restricted Group are Guarantors.
- (b) The aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA) and the aggregate gross assets (excluding goodwill) of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) exceeds on the 2020 Effective Date, 85 per cent. of Consolidated EBITDA and consolidated gross assets (excluding goodwill) of the Restricted Group.
- (c) For the avoidance of doubt, all calculations in connection with: (i) establishing whether or not any member of the Group is a Material Company; and (ii) the Guarantor coverage test set out in this Clause 24.23, shall in each case be calculated in accordance with Fixed GAAP.

#### 24.24 Accounting reference date

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

#### 24.25 Centre of main interests and establishments

- (a) The Centre of Main Interest of each Obligor incorporated in the European Union is situated in its jurisdiction of incorporation.
- (b) No Luxembourg Guarantor has an "establishment" (as that term is used in Article 2(10) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)) in any jurisdiction.
- (c) For the avoidance of doubt, this Clause 24.25 shall not apply to any Obligor incorporated in the United States.

#### 24.26 Pensions

To the best knowledge and belief of each Obligor, having made due enquiry:

- (a) no member of the Restricted Group has any material liability in respect of any pension scheme and there are no circumstances which would give rise to such a liability, which in each case would reasonably be expected to have a Material Adverse Effect; and
- (b) each member of the Restricted Group is in compliance in all material respects with all applicable laws and regulations relating to, and the governing provisions of any of its pension schemes maintained by or for the benefit of any member of the Restricted Group and/or its employees, where failure to be so in compliance would reasonably be expected to have a Material Adverse Effect.

#### 24.27 Holding Company

Except:

- (a) as may arise under the Transaction Documents; or
  - (b) as permitted under Clause 27.9 (*Holding Companies*) (ignoring for this purpose the references to Transaction Security in paragraph (b) thereof),
- on or prior to the 2020 Effective Date, the Parent has not traded or incurred any material liabilities or commitments (actual or contingent, present or future).

#### 24.28 Money Laundering Laws

- (a) Each Borrower hereby confirms to each Lender that all Utilisations made by it under this Agreement will:
  - (i) be made solely for its own account or for the account of the Restricted Group; and
  - (ii) will not be used for the benefit of any Restricted Party.
- (b) No Obligor, and to the best of the Parent's knowledge, none of its Affiliates:
  - (i) is a Restricted Party;
  - (ii) to the best of its knowledge has received funds or other property from a Restricted Party; or
  - (iii) to the best of its knowledge is in breach of or is the subject of any action or investigation under Sanctions.
- (c) Each Obligor and each of its Affiliates have taken reasonable measures to ensure compliance with the Sanctions.
- (d) Each Obligor and its Affiliates' operations are and have been conducted in compliance with all applicable anti-money laundering laws and financial record keeping and reporting requirements, rules, regulations and guidelines (the "**Money Laundering Laws**") and no claim, action, suit, proceeding or investigation by or before any court or governmental agency, authority or body or any arbitrator involving it or its Affiliates with respect to Money Laundering Laws is pending and, to the best of its knowledge, no such

claims, actions, suits, proceedings or investigations are threatened in each case in any relevant jurisdiction.

- (e) No Obligor, nor to the knowledge of any Obligor, any director, officer, agent, employee of an Obligor or any of its Restricted Subsidiaries is aware of or has taken any action, directly or indirectly, that has resulted in a violation by such persons of any applicable anti-bribery law, including but not limited to, the United Kingdom Bribery Act 2010 (the "**UK Bribery Act**") and the US Foreign Corrupt Practices Act of 1977 (the "**FCPA**"). Furthermore, each of the Obligors and, to the knowledge of each Obligor, its Restricted Subsidiary have conducted their businesses in compliance with the UK Bribery Act, the FCPA and similar laws, rules or regulations and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

#### **24.29 Domiciliation**

Cabot Financial (Luxembourg) S.A. is in full compliance with the amended Luxembourg law dated 31 May 1999 on the domiciliation of companies (and the relevant regulations).

#### **24.30 ERISA and Multiemployer Plans**

- (a) No ERISA Event has occurred, is continuing, or is reasonably likely to occur with respect to which any Obligor or ERISA Affiliate has or would reasonably be expected to have a Material Adverse Effect.
- (b) Each Employee Plan which is intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified or is in the process of being submitted to the IRS for approval or will be so submitted during the applicable remedial amendment period if permitted by the IRS, and, nothing has occurred since the date of such determination that would adversely affect such determination (or, in the case of an Employee Plan with no determination, nothing has occurred that would materially adversely affect such qualification).
- (c) Neither any Obligor nor any ERISA Affiliate has incurred a complete or partial withdrawal from any Multiemployer Plan, and if each of the Obligors and each ERISA Affiliate were to withdraw in a complete withdrawal as of the date of the 2020 Amendment and Restatement Agreement, the aggregate withdrawal liability that would be incurred would not reasonably be expected to have a Material Adverse Effect.
- (d) There are no actions, suits or claims pending against or involving an Employee Plan (other than routine claims for benefits) or, to the knowledge of any Obligor or any ERISA Affiliate, threatened, which would reasonably be expected to be asserted successfully against any Employee Plan and, if so asserted successfully, would reasonably be expected either singly or in the aggregate to have a Material Adverse Effect.
- (e) Neither any Obligor nor any ERISA Affiliate has ceased operations at a facility so as to become subject to the provisions of Section 4068(a) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Employee Plan subject to Section 4064(a) of ERISA to which it made contributions.

- (f) To the knowledge of each Obligor and each ERISA Affiliate, no Multiemployer Plan is or is reasonably likely to become insolvent or is in reorganization for purposes of Title IV of ERISA, except where any such insolvency or reorganization would not reasonably be expected to have a Material Adverse Effect.
- (g) Each US Guarantor and each ERISA Affiliate has made all contributions to each Employee Plan and Multiemployer Plan required by law within the applicable time limits prescribed by law, the terms of that Employee Plan and any contract or agreement requiring contributions to the Employee Plan except as could not be reasonably expected to have a Material Adverse Effect.

**24.31 Federal Reserve Regulations**

Neither the making of any Loan hereunder nor the use of the proceeds thereof will violate the provisions of Regulation U or X of the Board of Governors.

**24.32 Investment Companies**

Neither the Parent nor any Obligor is or is required to be registered as an "investment company" under the US Investment Company Act of 1940 (the "**1940 Act**").

**24.33 Anti-Terrorism Laws**

To the best of its knowledge, the Parent and each other member of the Group:

- (a) is not a Restricted Party nor owned or controlled by a Restricted Party;
- (b) has not received funds or other property from a Restricted Party;
- (c) is not in breach of or the subject of any action or investigation under any Anti-Terrorism Law; and
- (d) has taken reasonable measures to ensure compliance with the Anti-Terrorism Laws.

**24.34 Anti-Boycott**

No representation, warranty or covenant given in Clauses 24.28 and 24.33 shall give rise to any obligation that constitutes a breach of Council Regulation (EC) No 2271/96, as amended.

**24.35 Times when representations made**

- (a) 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.
- (b) The Repeating Representations and the representations set out in Clause 24.19 (*Legal and beneficial ownership*) and Clause 24.20 (*Shares*) are deemed to be made by each



Additional Obligor in respect of itself on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.

- (c) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## 25. INFORMATION 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.

In this Clause 25:

"**Annual Financial Statements**" means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 25.1 (*Financial statements*).

"**Quarterly Financial Statements**" means the financial statements delivered pursuant to paragraph (b) of Clause 25.1 (*Financial statements*).

### 25.1 Financial statements

- (a) The Parent shall supply to the Agent as soon as they are available, but in any event within 90 days after the end of each of its Financial Years, its audited consolidated financial statements for that Financial Year.
- (b) The Parent shall supply to the Agent as soon as they are available, but in any event within 45 days after the end of each Financial Quarter of each of its Financial Years its consolidated financial statements for that Financial Quarter.
- (c) The Parent shall supply to the Agent as soon as possible, but in any event within 45 days after the end of each Month a calculation statement (in the form to be agreed between the Parent and the Agent), confirming the SSRCF LTV Ratio at the applicable Test Date (together with computations in reasonable detail of such calculation).
- (d) The requirements under paragraphs (a) and (b) of this Clause 25.1 shall be deemed satisfied for so long as the Parent:
- (i) is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, or elects to comply with such provisions, and it continues to file the reports required by Section 13(a) with the SEC and provided that the Parent complies with any extension to the timing of delivery of financial statements expressly permitted by the SEC from time to time; or
  - (ii) the Parent elects to provide to the Agent reports which, if filed with the SEC, would satisfy (in the good faith judgment of the Parent) the reporting requirements of Section 13(a) or 15(d) of the Exchange Act (other than the provision of certifications, exhibits or information as to internal controls and procedures), for so long as it elects, the Parent will make available to the Agent, such annual reports, information, documents and other reports that the Parent is, or would be, required to file with the SEC pursuant to such Section 13(a) or 15(d) of the Exchange Act.

## 25.2 Provision and contents of Compliance Certificate

- (a) The Parent shall supply a Compliance Certificate to the Agent with each set of its audited consolidated Annual Financial Statements and each set of its consolidated Quarterly Financial Statements and as otherwise required pursuant to this Agreement.
- (b) A Compliance Certificate delivered in accordance with paragraph (a) above shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 26 (*Financial Covenants*) (but only where the Parent is required to demonstrate in such Compliance Certificate compliance in accordance with the provisions of Clause 26.3 (*Financial testing*)), computations as to the LTV Ratio, the SSRCF LTV Ratio, the Fixed Charge Coverage Ratio (regardless of whether the Parent is required to demonstrate in such Compliance Certificate compliance with the provisions of Clause 26.3 (*Financial testing*)) but provided that where the Parent is not required to demonstrate such compliance, if the computations as to the LTV Ratio and the SSRCF LTV Ratio show that the Parent would not, were it required to demonstrate compliance with the provisions of Clause 26.3 (*Financial testing*), comply with such provisions, it will not constitute a breach of the terms of this Agreement or constitute a Default or an Event of Default) and ERC in respect of the relevant Quarter Date together with a certification that:
  - (i) in respect of any Compliance Certificate delivered with the consolidated Annual Financial Statements and the consolidated Quarterly Financial Statements and subject to paragraph (b) of Clause 25.3 (*Requirements as to financial statements*) below, ERC as at the last day of the period to which the relevant financial statements relate is identical to the gross amount used as the basis for the calculation of the purchased asset value as reported in the balance sheet of the relevant financial statements;
  - (ii) subject to paragraph (b) of Clause 25.3 (*Requirements as to financial statements*) below, there have been no material changes to the methodology used to calculate ERC in respect of the Portfolio Accounts compared to the methodology set out in the ERC Model;
  - (iii) ERC has been prepared on the basis of recent historical information and based on assumptions believed by the Parent to be fair and reasonable; and
  - (iv) in respect of the Compliance Certificate delivered with the consolidated Annual Financial Statements only, confirm compliance with Clause 27.17 (*Guarantors*) and identify which members of the Restricted Group are Material Companies.
- (c) Each Compliance Certificate shall be signed by the Chief Financial Officer or the Chief Executive Officer of the Parent.

## 25.3 Requirements as to financial statements

- (a) The Parent shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Parent shall procure that:
  - (i) each set of Annual Financial Statements shall be audited by the Auditors; and

- (ii) each set of Quarterly Financial Statements is accompanied by commentary on the performance of the Restricted Group for the Financial Quarter to which the financial statements relate and the Financial Year to date and any other material developments or proposals affecting the Restricted Group or its business.
- (b) The requirements under paragraph (a)(ii) above shall be deemed satisfied for so long as the Parent:
- (i) is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, or elects to comply with such provisions, and it continues to file the reports required by Section 13(a) with the SEC; or
  - (ii) the Parent elects to provide to the Agent reports which, if filed with the SEC, would satisfy (in the good faith judgment of the Parent) the reporting requirements of Section 13(a) or 15(d) of the Exchange Act (other than the provision of certifications, exhibits or information as to internal controls and procedures), for so long as it elects, the Parent will make available to the Agent, such annual reports, information, documents and other reports that the Parent is, or would be, required to file with the SEC pursuant to such Section 13(a) or 15(d) of the Exchange Act.
- (c) Each set of financial statements delivered pursuant to Clause 25.1 (*Financial statements*) shall be prepared in accordance with GAAP or, in the respect of ERC, the ERC Model, unless, in relation to any set of financial statements or ERC, the Parent notifies the Agent that there has been a material change in the methodology used to calculate ERC and arising as a result of a change determined by the Restricted Group's portfolio valuation committee or accounting practices and the Parent delivers to the Agent the information referred to in the following subparagraphs (i) and (ii) below as appropriate:
- (i) a description of any change necessary for (1) those financial statements to reflect GAAP or, as the case may be, the accounting principles on which that Obligor's Original Financial Statements were prepared, or (2) ERC to reflect the determination of the Restricted Group's portfolio valuation committee or accounting practices; and
  - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 26 (*Financial Covenants*) has been complied with (but only to the extent that the LTV Ratios have been tested by reference to such financial statements in accordance with the provisions of Clause 26.3 (*Financial testing*)), to compare any LTV Ratio and SSRCF LTV Ratio to any previous calculations thereof provided under this Agreement (regardless of whether the Parent is required to demonstrate compliance with the provisions of Clause 26.3 (*Financial testing*)) and to make an accurate comparison between the financial position indicated in (1) those financial statements and the Original Financial Statements, and (2) the relevant ERC and the applicable Initial ERC as calculated prior to any such change in methodology.

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.

- (d) If the Parent notifies the Agent of a change in accordance with paragraph (c) above, the Parent and the Agent shall enter into negotiations in good faith with a view to agreeing any amendments to this Agreement which are necessary as a result of the change. These amendments will be such as to ensure that the change does not result in any material alteration in the commercial effect of the obligations contained in this Agreement. If any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms (subject to the Agent receiving the prior consent of the Super Majority Lenders).
- (e) Notwithstanding any other term of this Agreement, no Event of Default shall occur, or be deemed to occur, as a result of any restriction on the identity of the Parent's Auditors contained in this Agreement, being prohibited, unlawful, ineffective, invalid or unenforceable pursuant to the Audit Laws.

#### 25.4 Budget

- (a) The Parent shall supply to the Agent, as soon as the same becomes available but in any event within sixty (60) days of the start of each of its Financial Years, an annual budget for that financial year in the form customarily prepared by the Parent (the "**Budget**").
- (b) The Parent shall ensure that each Budget:
  - (i) includes a budgeted consolidated profit and loss, balance sheet and cashflow statement and projected financial covenant calculations;
  - (ii) subject to paragraph (b) of Clause 25.3 (*Requirements as to financial statements*), is prepared in accordance with GAAP and the accounting practices and financial reference periods applied to financial statements under Clause 25.1 (*Financial statements*); and
  - (iii) has been approved by the Board of Directors of the Parent.
- (c) If the Parent materially updates or changes the Budget, it shall promptly following (but in any event not later than thirty (30) Business Days of) the update or change being made deliver to the Agent such updated or changed Budget together with a written explanation of the main changes in that Budget.

#### 25.25 Group companies

The Compliance Certificate supplied with its Annual Financial Statements shall confirm which members of the Restricted Group are Material Companies and that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA, as defined in Clause 26 (*Financial Covenants*), and aggregate gross assets (excluding goodwill) of the Guarantors in each case (calculated on an unconsolidated basis and excluding all intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) exceeds 85 per cent. of Consolidated EBITDA (as defined in Clause 26 (*Financial Covenants*)) and aggregate gross assets (excluding goodwill) of the Restricted Group. For the avoidance of doubt, all calculations in connection with this clause : (i) establishing whether or not any member of the Group is a Material Company; and (ii) the Guarantor coverage test set out in this Clause 25.5, shall in each case be calculated in accordance with Fixed GAAP.

**25.6 Year-end**

No member of the Restricted Group shall change its Accounting Reference Date.

**25.7 Unrestricted Subsidiaries**

If any Subsidiaries of the Parent have been designated as Unrestricted Subsidiaries, the information delivered under Clauses 25.1 (*Financial statements*), 25.2 (*Provision and contents of Compliance Certificate*) and 25.4 (*Budget*) will include reasonably detailed information as to the financial condition of the Restricted Group separate from that of the Unrestricted Subsidiaries.

**25.8 Notification of default**

- (a) The Parent shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon its becoming aware of such Default (unless the Parent is aware that a notification has already been provided by another Obligor).
- (b) If the Agent has reasonable grounds for believing that a Default has occurred and is continuing, it may request, and promptly upon such request by the Agent, the Parent shall supply to the Agent, a certificate signed by two of its senior officers on its behalf certifying, to the best of the knowledge and belief of the senior officers, that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

**25.9 "Know your customer" checks**

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

itself) in order for the Agent to carry out and be satisfied 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.

- (c) The Parent shall, by not less than ten (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 Restricted Subsidiaries becomes an Additional Obligor pursuant to Clause 32 (*Changes to the Obligors*).
- (d) 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 Restricted Subsidiary to this Agreement as an Additional Obligor.

#### **25.10 Keeping of Books and Records**

- (a) The Parent will, and will cause each Obligor to, permit the Agent and the Lenders, by their respective representatives and agents (at reasonable times and upon reasonable advance written notice, so long as no Default or Event of Default has occurred and is continuing) to inspect (including to conduct an annual field examination of) any of its property in the United States and the United Kingdom, including, an audit by professionals (including consultants and accountants) retained by the Agent of the Parent's practices in the computation of ERC, inspection and audit of the Collateral, books and financial records of the Parent and each Obligor, to examine and make copies of the books of accounts and other financial records of the Parent and each Obligor, and to discuss the affairs, finances and accounts of the Parent and each Obligor with, and to be advised as to the same by, their respective officers and their independent public accountants.
- (b) The Parent shall keep and maintain, and cause each of its Obligors to keep and maintain, in all material respects, proper books of record and account in which entries in conformity with GAAP (or in accordance with the accounting principles prevailing in the jurisdiction of any Obligor other than the Parent) shall be made of all dealings and transactions in relation to their respective businesses and activities. If an Event of Default has occurred and is continuing, the Parent, upon the Agent's request, shall turn over copies of any such records to the Agent or its representatives.

### **26. FINANCIAL COVENANTS**

#### **26.1 Financial condition**

- (a) The Parent shall ensure that on each Test Date the LTV Ratio does not exceed 0.75.
- (b) The Parent shall ensure that on each Test Date the SSRCF LTV Ratio does not exceed 0.275.

(c) The Parent shall ensure that on each Test Date the Fixed Charge Coverage Ratio for the Parent and the members of the Restricted Group is greater than 2.0 to 1.0.

## 26.2 Financial definitions

In this Agreement:

"**ERC**" means the aggregate amount of estimated remaining collections projected to be received by the Restricted Group from the Portfolio during the period of 84 Months, as calculated by the ERC Model as at the last day of the Month most recently ended prior to the date of calculation which most accurately reflects the latest performance of the portfolios.

"**ERC Model**" means the models and methodologies that the Parent uses to calculate the value of its loan portfolio and those of its Subsidiaries, consistently with:

- (a) for the period from and including the 2020 Effective Date to and including 28 February 2021, its most recent quarterly financial statements each as of the date of such determination; and
- (b) thereafter, its most recent audited financial statements each as of the date of such determination.

"**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 Restricted Group ending on the Accounting Reference Date in each year.

"**Fixed Charge Coverage Ratio**" means the ratio of Consolidated EBITDA to Fixed Charges for any Relevant Period.

"**LTV Ratio**" means, in respect of any date of calculation, the aggregate Financial Indebtedness of the Restricted Group less cash and Cash Equivalent Investments held by the Restricted Group as of such date (other than cash or Cash Equivalent Investments in an amount equal to amounts collected by the Restricted Group on behalf of third-party clients and held by the Restricted Group as of such date), divided by ERC (provided that in relation to testing dates other than on any Quarter Date ERC shall be adjusted to give effect to purchases or disposals of performing, sub-performing or charged off accounts, loans, receivables, mortgages debentures or claims or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts) made since the last day of the Month most recently ended prior to the date of calculation on the basis of estimates made on a *pro forma* basis by management acting in good faith).

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

"**Quarter Period**" means the period commencing on the day immediately following a Quarter Date and ending on the next occurring Quarter Date.

"**Relevant Period**" means each period of four consecutive Quarter Periods ending on a Quarter Date.

"**SSRCF LTV Ratio**" means, in respect of any date of calculation, the aggregate drawn amount of (i) the Facilities, (ii) any Financial Indebtedness which constitutes "Super Senior Liabilities"

under and as defined in the Intercreditor Agreement, together with any hedging liabilities which under the terms of the Intercreditor Agreement rank *pari passu* with liabilities under the Facilities in the application of the proceeds of enforcement of Transaction Security, less cash and Cash Equivalent Investments held by the Restricted Group as of such date (other than cash or Cash Equivalent Investments in an amount equal to amounts collected by the Restricted Group on behalf of third-party clients and held by the Restricted Group as of such date), divided by ERC (provided that in relation to testing dates other than on any Quarter Date or the last day of any Month, ERC shall be adjusted to give effect to purchases or disposals of performing, sub-performing or charged off accounts, loans, receivables, mortgages debentures or claims or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts) made since the last day of the Month most recently ended prior to the date of calculation on the basis of estimates made on a *pro forma* basis by management acting in good faith). In calculating ERC for the purposes of the SSRCF LTV Ratio only, ERC shall not include ERC from members of the Group in respect of which the Lenders do not benefit from a first ranking Security interest over that member of the Group's shares and material assets.

"**Test Condition**" means the aggregate Base Currency Amount of all Utilisations and Ancillary Outstandings (excluding any Letters of Credit, guarantee, bond or letters of credit other than to the extent issued in relation to or to support Financial Indebtedness) exceeds 20 per cent. of the Total Commitments.

"**Test Date**" means:

- (a) in respect of the LTV Ratio, each Quarter Date on which the Test Condition is met;
- (b) in respect of the SSRCF LTV Ratio, each Quarter Date and on the last day of each Month; and
- (c) in respect of the Fixed Charge Coverage Ratio, each Quarter Date.

### 26.3 Financial testing

The financial covenants set out in Clause 26.1 (*Financial condition*) shall only be tested on a Test Date, and if so tested will be calculated in accordance with GAAP, wherever appropriate and by reference to each of the applicable financial statements and, in the case of paragraph (c) below, by reference to the monthly calculation statement delivered in accordance with paragraph (c) of Clause 25.1 (*Financial Statements*):

- (a) in the case of the LTV Ratio, delivered pursuant to paragraphs (a) and (b) of Clause 25.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 25.2 (*Provision and contents of Compliance Certificate*);
- (b) in the case of the Fixed Charge Coverage Ratio, delivered pursuant to paragraphs (a) and (b) of Clause 25.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 25.2 (*Provision and contents of Compliance Certificate*); and
- (c) in the case of the SSRCF LTV Ratio pursuant to paragraph (c) of Clause 25.1 (*Financial Statements*) and in respect of the SSRCF LTV Ratio tested on a Quarter Date only, Clause 25.2 (*Provision and contents of Compliance Certificate*).



## 27. GENERAL UNDERTAKINGS

The undertakings in this Clause 27 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.

### 27.1 Restrictive Covenants

Each Obligor shall comply with the covenants set out in Schedule 14 (*Restrictive covenants*).

### 27.2 Authorisations

Each Obligor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation (other than as may be no longer required pursuant to a Permitted Reorganisation) required under any applicable law or regulation:

- (a) of a Relevant Jurisdiction to enable it to perform its obligations under the Transaction Documents to which it is a party;
- (b) of a Relevant Jurisdiction to ensure, subject to the Legal Reservations and the Perfection Requirements, the legality, validity, enforceability or admissibility in evidence of any Transaction Document to which it is a party; and
- (c) of a Relevant Jurisdiction or any jurisdiction where it conducts its business to carry on its business except to the extent that failure to obtain or comply with those Authorisations could not reasonably be expected to have a Material Adverse Effect.

### 27.3 Compliance with laws

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will) comply in all respects with all laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.
- (b) Other than to the extent that such undertaking would conflict with Council Regulation (EC) No. 2271/96 (as amended), each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will) not, and shall not permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of the Facilities to fund any trade, business or other activities: (i) involving or for the benefit of any Restricted Party, or (ii) in any other manner that could result in any Obligor or its Affiliates, or any Lender being in breach of any Sanctions or becoming a Restricted Party.
- (c) No part of the proceeds of any Loan will be used, directly or indirectly, for any payments that would constitute a violation of any applicable anti-bribery law.
- (d) The Parent shall ensure that no member of the Group is owned or controlled by a Restricted Party or any person or entity (to the best of its knowledge) involved in the violation of any Anti-Terrorism Law.
- (e) Each Obligor shall (and the Parent shall procure that each member of the Group will), to the extent applicable to each party:
  - (i) comply with the Anti-Terrorism Laws in all material respects;

- (ii) immediately notify the Agent if it obtains knowledge that it has become or been listed as a Restricted Party or has been charged with or has engaged in any violation of any Anti-Terrorism Law;
- (iii) to the best of its knowledge, not accept funds or other property from a Restricted Party or from any person or entity (to the best of its knowledge) involved in the violation of any Anti-Terrorism Law; and
- (iv) exclude any funds derived from any Restricted Party or from any person or entity (to the best of its knowledge) involved in the violation of any Anti-Terrorism Law from being used to pay debt service or any other amounts owing under any Finance Document.

#### **27.4 Taxation**

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
  - (i) such payment is being contested in good faith by appropriate proceedings;
  - (ii) adequate reserves established in accordance with GAAP are being maintained for such Taxes and the costs required to contest them; and
  - (iii) such payment can be lawfully withheld and failure to pay such Taxes is not reasonably likely to have a Material Adverse Effect.
- (b) No Obligor may change its residence for Tax purposes.

#### **27.5 Change of business**

Other than pursuant to a Permitted Reorganisation, the Parent shall procure that no substantial change is made to the general nature of the business of the Obligors or the Restricted Group taken as a whole from that carried on by the Restricted Group at the 2020 Effective Date, provided that, for the avoidance of doubt, operations by the Obligors and/or the Restricted Group in relation to any debt servicing business, debt litigation or debt collection activities (or in each case any associated activities) shall not constitute such a change.

#### **27.6 Acquisitions**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Restricted Group will) undertake the acquisition of:
  - (i) a company or any shares or equivalent ownership interest or securities or a business or undertaking (or, in each case, any interest in any of them); or
  - (ii) Portfolio Accounts.
- (b) Paragraph (a) above does not apply to:
  - (i) an acquisition of a company or any shares or equivalent ownership interest or securities or a business or undertaking (or, in each case, any interest in any of them) which is a Permitted Acquisition or Permitted Joint Venture;

- (ii) an acquisition of a Portfolio Account which is a Permitted Acquisition;
  - (iii) the acquisition or incorporation of a newly formed company;
  - (iv) an acquisition by a member of the Restricted Group from another member of the Restricted Group **provided that** such acquisition is permitted by the provisions of Schedule 14 (*Restrictive covenants*);
  - (v) Permitted Reorganisations; or
  - (vi) an acquisition of securities that are Cash Equivalent Investments.
- (c) In the case of making a Permitted Acquisition that constitutes a "Business Acquisition" as defined in the definition of "Permitted Acquisition", the Parent shall deliver (or shall procure that the relevant member of the Group delivers) to the Agent (on an information only basis and without any liability including without limitation for the content therein) the most recent audited accounts of, and management information with respect to, the acquired business.

#### 27.7 Joint Ventures

- (a) No Obligor shall (and the Parent shall ensure that no member of the Group will):
- (i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in a Joint Venture; or
  - (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to a Joint Venture (or agree to do any of the foregoing),
- if that Joint Venture is established, or carries on its principal business in a country that is a Sanctioned Jurisdiction.

#### 27.8 Intra-Group Transfers

Notwithstanding any other provision of this Agreement:

- (a) no Obligor may transfer, assign or otherwise dispose of any asset to any non-Obligor if, as a result of such transfer, assignment or disposition, the test in paragraph (a)(ii) of Clause 27.17 (*Guarantors*) would not be met if tested on a *pro forma* basis taking into account such transfer, assignment or disposition;
- (b) no Obligor may transfer, assign or otherwise dispose of any asset that is subject to the Transaction Security to any other Obligor, where Transaction Security will not upon or immediately following such transfer be in place in respect of such asset following the assignment, transfer or disposition; and
- (c) the Parent may not designate any member of the Restricted Group as an Unrestricted Subsidiary if, as a result of such designation, the test in paragraph (a)(ii) of Clause 27.17 (*Guarantors*) would not be met if tested on a *pro forma* basis taking into account such designation.

## 27.9 Holding Companies

No Holdco shall trade, carry on any business, own any assets or incur any liabilities except for:

- (a) the holding of shares in Subsidiaries and Joint Ventures not prohibited by this Agreement;
- (b) the ownership of intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments but (subject to the Agreed Security Principles) only if those credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security;
- (c) the making of Intra-Group Loans or loans to the extent that (subject to the Agreed Security Principles) such loans are subject to Transaction Security;
- (d) Security and guarantees (or similar) permitted under Schedule 14 (*Restrictive covenants*);
- (e) the entry into and performance of its obligations (and incurrence of liabilities) under the Transaction Documents and Pari Passu Debt Documents (as defined in the Intercreditor Agreement) to which it is a party;
- (f) subject to the relevant creditors (or an appointed Representative on their behalf) acceding to the Intercreditor Agreement as secured creditors or as unsecured creditors in each case ranking behind the Pari Passu Creditors (as defined in the Intercreditor Agreement), the entry into and performance of its obligations (and incurrence of liabilities) under the customary documentation relating thereto to which it is a party;
- (g) the granting of Transaction Security to the Finance Parties in accordance with the terms of the Finance Documents;
- (h) the provision of administrative, managerial, financial statement accounting and legal services to other members of the Restricted Group of a type customarily provided by a Holding Company to its Subsidiaries and the ownership of assets necessary to provide such services;
- (i) subject to the Intercreditor Agreement, the making of or receipt of any Permitted Payment; and
- (j) general corporate administration and compliance activities including without limitation those relating to entering into engagements and other service contracts on behalf of the Group, paying overhead costs and filing fees and other ordinary course expenses (such as audit fees and Taxes), other related activities and periodic reporting requirements.

## 27.10 Preservation of assets

Each Obligor shall (and the Parent shall ensure that each 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 where failure to do so would reasonably be expected to have a Material Adverse Effect.

## 27.11 Pari passu ranking

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

other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

**27.12 Insurance**

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will) maintain insurances on and in relation to its material business and assets of an insurable nature against those risks and to the extent as is usual for companies carrying on the same or substantially similar business, where failure to do so would reasonably be expected to have a Material Adverse Effect.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

**27.13 Pensions**

The Parent shall ensure that all pension schemes operated by or maintained for the benefit of any member of the Restricted Group and/or any of their employees are fully funded to the extent required by their terms and applicable laws where failure to do so would reasonably be expected to have a Material Adverse Effect.

**27.14 Share capital**

No Obligor shall (and the Parent shall ensure no member of the Restricted Group will) issue any shares except:

- (a) by the Parent;
- (b) shares by a member of the Restricted Group to another member of the Restricted Group and/or pro-rata to its minority shareholder(s) where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares held by the member of the Restricted Group also become subject to the Transaction Security on the same terms; or
- (c) in connection with a Permitted Joint Venture.

**27.15 Amendments**

No Obligor shall (and the Parent shall ensure that no member of the Restricted Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of the Note Documents or documents relating to any Pari Passu Notes (as defined in the Intercreditor Agreement) or Replacement Debt relating to the Notes or Pari Passu Notes (as defined in the Intercreditor Agreement) which brings forward the maturity or any amortisation of the Notes, the Pari Passu Notes (as defined in the Intercreditor Agreement) or such Replacement Debt (as applicable).

**27.16 Treasury Transactions**

No Obligor shall (and the Parent will procure that no members of the Restricted Group will) enter into any Treasury Transaction, other than:

- (a) the hedging transactions documented by the Hedging Agreements;
- (b) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes;

- (c) any Treasury Transaction entered into in the ordinary course of business for the hedging of actual or projected real exposures arising in the ordinary course of a member of the Restricted Group's commercial activities and not for speculative purposes; and
- (d) any Existing Hedging.

#### 27.17 Guarantors

- (a) The Parent shall ensure that subject to the Agreed Security Principles and paragraphs (b) and (c) below:
  - (i) all Material Companies which are members of the Restricted Group, and any member of the Restricted Group that is or becomes a guarantor in respect of any of the Notes, the Existing Notes or the Encore Private Placement Notes, are Guarantors (in the case of any member of the Restricted Group that is or becomes a guarantor in respect of the Notes, the Existing Notes or the Encore Private Placement Notes, before or simultaneously to becoming a guarantor in respect of the Notes, Existing Notes or the Encore Private Placement Notes); and
  - (ii) the aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA) of the Parent and the Guarantors for each Financial Year and the aggregate gross assets (excluding goodwill) of the Parent and the Guarantors (in each case calculated on an unconsolidated basis and excluding all intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) represents not less than 85 per cent. of Consolidated EBITDA for the corresponding Financial Year and consolidated gross assets (excluding goodwill) of all members of the Restricted Group (including the Parent), respectively, in each case calculated by reference to the most recently delivered set of Annual Financial Statements of the Group delivered under Clause 25.1 (*Financial statements*) and adjusted to give *pro forma* effect to any acquisitions (including through mergers or consolidations) and dispositions that have taken place prior to the date on which the Financial Year ends.
- (b) Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.
- (c) Subject to the Agreed Security Principles, any member of the Restricted Group that becomes a Material Company and any Material Company acquired in accordance with this Agreement after the 2020 Effective Date shall become a Guarantor and grant Security as the Agent may require (acting reasonably) (including, for the avoidance of doubt, provision of share security by the immediate Holding Company of the relevant Material Company) and such Material Company shall accede to the Intercreditor Agreement as soon as practicable and in any event within 45 days of delivery of any Annual Financial Statements delivered under Clause 25.1 (*Financial statements*) or within (i) in the case of any Material Company established or incorporated in England and Wales, as soon as is reasonably practicable and in any event, 60 days of its

acquisition or (ii) in the case of any other Material Company, as soon as is reasonably practicable and in any event, 90 days of its acquisition, as the case may be.

- (d) For the avoidance of doubt, all calculations in connection with: (i) establishing whether or not any member of the Group is a Material Company; and (ii) the Guarantor coverage test set out in this Clause 27.17, shall in each case be calculated in accordance with Fixed GAAP.

#### 27.18 Unrestricted Subsidiaries

- (a) Subject to paragraph (c) of Clause 27.8 (*Intra-Group Transfers*), nothing in this Agreement shall restrict the Parent from designating any of its Subsidiaries as being Unrestricted Subsidiaries **provided that** such Subsidiary meets the requirements for such designation set out in Schedule 14 (*Restrictive covenants*).
- (b) If a member of the Restricted Group is designated as an Unrestricted Subsidiary, each Obligor will (i) ensure that the Unrestricted Subsidiary does not (and will, for so long as it is an Unrestricted Subsidiary, not) legally or beneficially own shares in any Restricted Subsidiary; and (ii) use its reasonable endeavours to ensure that no member of the Restricted Group has any material liabilities (including pension, environmental and Tax liabilities) to or in respect of the Unrestricted Subsidiary and if any such material liability arises the Parent will promptly notify the Agent and procure that the Unrestricted Subsidiary becomes a Restricted Subsidiary as soon as reasonably practicable and in any event within 20 Business Days of the first date on which the Parent is aware of the material liability.

#### 27.19 Further assurance

- (a) Each Obligor shall (and the Parent shall procure that each 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)):
- (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
  - (ii) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Each Obligor shall (and the Parent shall procure that each member of the Restricted Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection

or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

- (c) Paragraphs (a) and (b) above shall be subject to the Agreed Security Principles in relation to any Security granted after the date of this Agreement. Each Obligor must use, and must procure that any other member of the Restricted Group that is a potential provider of Transaction Security uses, all reasonable endeavours lawfully available to avoid or mitigate the legal constraints on the provision of Security provided for in the Agreed Security Principles.
- (d) For the avoidance of doubt, no Security will be granted under any Transaction Security Document over any asset which is permitted to be subject to a Permitted Lien under paragraph (aa) of that definition and any purported grant of such Security shall be null and void.

**27.20 Note Purchase Condition**

- (a) For the purposes of this Clause 27.20:
- (b) "**Existing Debt Amount**" shall mean the total principal amount of the Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations and Term Debt (which shall include, for the avoidance of doubt, the Existing Encore Notes and any Permitted Purchase Obligations) and issued by the Restricted Group as at the 2020 Effective Date or as at the effective date of any amendment and restatement agreement in relation to this Agreement or amendment agreement in relation to this Agreement (as applicable) entered into after the date of the 2020 Amendment and Restatement Agreement (a "**Relevant Effective Date**"); and
- (c) "**Repurchase**" shall mean a prepayment, purchase, defeasement or redemption (or otherwise retirement for value) of any Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations or Term Debt (which shall include, for the avoidance of doubt, the Existing Encore Notes and any Permitted Purchase Obligations) **provided that** prepayment, purchase, defeasement or redemption (or other retirement) of any Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations or Term Debt (which shall include, for the avoidance of doubt, the Existing Encore Notes and any Permitted Purchase Obligations) made solely with the proceeds of Additional Indebtedness (as defined in the Intercreditor Agreement) permitted to be incurred under the Intercreditor Agreement shall not be a "**Repurchase**".
- (d) Members of the Restricted Group may Repurchase any Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations or Term Debt (which shall include, for the avoidance of doubt, the Existing Encore Notes and any Permitted Purchase Obligations):
  - (i) if the aggregate principal amount of all such Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations and Term Debt Repurchased since the 2020 Effective Date or after a Relevant Effective Date (as applicable) does not exceed 35 per cent. of the corresponding Existing Debt Amount;



- (ii) to the extent that the aggregate principal amount of all such Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations and Term Debt Repurchased since the 2020 Effective Date or after a Relevant Effective Date (as applicable) exceeds 35 per cent. but is 50 per cent. or less of the corresponding Existing Debt Amount, if the Parent ensures that such Repurchase is matched by a simultaneous cancellation of the Commitments so that the Commitments are reduced by the same proportion as that by which the aggregate principal amount of the Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations and Term Debt being Repurchased corresponds to the corresponding Existing Debt Amount and (to the extent necessary as a result of such cancellation) prepayment of outstanding Utilisations, in the order of application contemplated by Clause 12.4 (*Application of mandatory prepayments*); and
  - (iii) to the extent that the aggregate principal amount of all such Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations and Term Debt Repurchased since the 2020 Effective Date or after a Relevant Effective Date (as applicable) exceeds 50 per cent. of the corresponding Existing Debt Amount, if the Parent ensures that such Repurchase is matched by a simultaneous cancellation of the Commitments so that the Commitments are reduced by the same amount as that by which the Notes, Replacement Debt, Indebtedness incurred in connection with any Permitted Purchase Obligations and Term Debt are being Repurchased and (to the extent necessary as a result of such cancellation) prepayment of outstanding Utilisations, in the order of application contemplated by Clause 12.4 (*Application of mandatory prepayments*).
- (e) No Repurchase may be made:
- (i) while an Event of Default is continuing or would result from such Repurchase; or
  - (ii) if the Restricted Group would not be in compliance with the financial covenants set out in Clause 26.1 (*Financial condition*) on a *pro forma* basis after taking into account such Repurchase and to be certified in a Compliance Certificate delivered prior to the making of the Repurchase (amended to set out calculations in respect of the LTV Ratio and SSRCF Ratio only and as calculated by reference to the last day of the most recently ended calendar Month).

#### 27.21 ERC Model

Each Obligor shall ensure that the material terms of the ERC Model are not amended, modified or waived, without the prior written consent of the Agent (acting on the instructions of the Super Majority Lenders) other than where (i) such amendments, modifications or waivers relate to reporting format changes for internal management purposes which would not affect the Lenders or (ii) changes are made in accordance with sub-paragraph (c) of Clause 25.3 (*Requirements as to financial statements*).

**27.22 Bank Accounts**

- (a) Each Obligor's bank accounts (and the Parent shall procure that each member of the Restricted Group's bank accounts) save, in each case, for any Excluded Bank Accounts, are held with a Lender, an Affiliate of a Lender or an Acceptable Bank.
- (b) Each Obligor (and the Parent shall procure that each member of the Restricted Group) shall keep any monies held on trust for third parties segregated from monies belonging to it in separate bank accounts.

**28. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 28 is an Event of Default (save for Clause 28.20 (*Acceleration*)).

**28.1 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:

- (a) in respect of any payments of principal or Interest, its failure to pay is caused by administrative or technical error or a Disruption Event and payment is made within three (3) Business Days of its due date; and
- (b) in respect of any other payment (which does not fall within paragraph (a) above), payment is made within five (5) Business Days of its due date.

**28.2 Financial covenants**

The Parent does not comply with the provisions of paragraphs (a), (b) or (c) of Clause 26.1 (*Financial condition*) provided that to the extent that paragraphs (a) and (c) of Clause 26.1 (*Financial condition*) are satisfied on a subsequent Test Date and paragraph (b) is satisfied on two subsequent successive Test Dates (and Compliance Certificates have been delivered in respect of such future Test Dates in accordance with this Agreement), any such non-compliance shall be deemed to be waived for all purposes under the Finance Documents. For the avoidance of doubt, prior to the delivery of such subsequent Compliance Certificates demonstrating compliance any of the rights under Clause 28.20 (*Acceleration*) may be exercised and to the extent so exercised the deemed waiver under this Clause 28.2 shall not apply.

**28.3 Financial statements**

- (a) An Obligor does not comply with the provisions of Clauses 25.1 (*Financial statements*), 25.2 (*Provision and contents of Compliance Certificate*) and paragraphs (a) and (b) of Clause 25.3 (*Requirements as to financial statements*).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five (5) Business Days of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor (as the case may be) and (ii) the Parent or an Obligor (as the case may be) becoming aware of the failure to comply.

**28.4 Other obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents to which it is a party (other than those referred to in Clause 28.1 (*Non-payment*), Clause 28.2 (*Financial covenants*) and Clause 28.3 (*Financial statements*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within fifteen (15) Business Days of the earlier of (i) the Agent giving notice to the Parent or the relevant Obligor, as the case may be, and (ii) the Parent or an Obligor, as the case may be, becoming aware of the failure to comply.

**28.5 Misrepresentation**

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents to which it is a party or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document to which it is a party is or proves to have been incorrect or misleading (in the case of any statement or representation which is not subject to a materiality threshold in accordance with its terms, in any material respect) when made or deemed to be made and, if the circumstances causing such misrepresentation are capable of remedy within such period, such Obligor shall have failed to remedy such circumstances within fifteen (15) Business Days of the earlier of (i) the Agent giving notice to the Parent or the relevant Obligor, as the case may be, and (ii) the Parent or the relevant Obligor, as the case may be, becoming aware of, in each case, the failure to comply.

**28.6 Cross default**

- (a) Any Financial Indebtedness of any member of the Restricted Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Restricted 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).
- (c) Any commitment for any Financial Indebtedness of any member of the Restricted Group is cancelled or suspended by a creditor of any member of the Restricted Group as a result of an event of default (however described).
- (d) Any creditor or note trustee or other Representative of any member of the Restricted Group becomes entitled to declare any Financial Indebtedness of any member of the Restricted Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 28.6 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than \$25,000,000 (or its equivalent in any other currency or currencies) and excluding in any case any Financial Indebtedness to the extent owed by one member of the Restricted Group to another member of the Restricted Group.

## 28.7 Insolvency

The occurrence of any of the following:

- (a) An Obligor or a Material Company is unable or admits inability to pay its debts as they fall due or is deemed (other than as a result of its assets being less than its liabilities) to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (other than in respect of the Finance Documents) with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of any Obligor or Material Company.
- (c) Any Obligor in any US jurisdiction:
  - (i) applies for, or consent to, the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of itself or of all or a substantial part of its property;
  - (ii) makes a general assignment for the benefit of its creditors;
  - (iii) commences a voluntary case under Title 11 of the United States of America Code entitled "Bankruptcy" (or any successor thereof), as amended; or
  - (iv) files a petition with respect to itself seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganisation, liquidation, dissolution, arrangement or winding up, or composition or readjustment of debts.

## 28.8 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or Material Company;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Obligor or Material Company;
  - (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, examiner, compulsory manager or other similar officer in respect of any Obligor or Material Company or any of its assets;
  - (iv) enforcement of any Security over any assets of any Obligor or Material Company,and in particular, as regards any Luxembourg Guarantor, no "*faillite*", "*gestion controlee*", "*suspension des paiements*", "*concordat judiciaire*" or "*liquidation judiciaire*".

- (b) Paragraph (a) shall not apply to:
  - (i) any winding-up petition, case or proceeding which is frivolous or vexatious and is discharged, stayed or dismissed within fourteen (14) days of commencement; or
  - (ii) any Permitted Reorganisation.
- (c) A proceeding or case shall be commenced, without the application or consent of an Obligor, in any US court of competent jurisdiction, seeking:
  - (i) such Obligor's reorganisation, liquidation, dissolution, arrangement or winding-up or the composition or readjustment of such Obligor's debts;
  - (ii) the appointment of a receiver, custodian, trustee, examiner, liquidator or the like of such Obligor or of all or any substantial part of such Obligor's property; or
  - (iii) similar relief in respect of such Obligor under any law relating to the bankruptcy insolvency, reorganisation, winding-up or composition or adjustment of debts,
  - (iv) and any such proceeding or case referred to in paragraphs (i) to (iii) above shall not be controverted within 20 days or shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 60 or more days, or an order for relief against such Obligor shall be entered in an involuntary case under Title 11 of the United States of America Code entitled "Bankruptcy" (or any successor thereto) as amended.

**28.9 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor or a Material Company having an aggregate value of \$37,500,000 and is not discharged within twenty (20) Business Days.

**28.10 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for any person (other than a Finance Party) that is a party to a Finance Document to perform any of its obligations thereunder 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, ineffective or unenforceable, in each case in a manner which materially adversely affects the interests of the Lenders under the Finance Documents.
- (b) Any obligation or obligations of any person (other than a Finance Party) under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation materially adversely affects the interests of the Lenders under the Finance Documents.

**28.11 Intercreditor Agreement**

Any member of the Restricted Group or any Structural Creditor (as defined in the Intercreditor Agreement) that is party to the Intercreditor Agreement fails to comply in any material respect

with the provisions of, or does not perform its obligations under, the Intercreditor Agreement and if the non-compliance or failure to perform is capable of remedy, it is not remedied within fifteen (15) Business Days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or failure to perform.

**28.12 Change of ownership**

- (a) After the 2020 Effective Date, an Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent other than as a result of a Permitted Reorganisation or transaction permitted under this Agreement; or
- (b) An Obligor ceases to own at least the same percentage of shares in a Material Company as on the 2020 Effective Date, except as a result of a Permitted Reorganisation or transaction permitted under this Agreement.

**28.13 Audit qualification**

The Auditors of the Restricted Group qualify the audited annual consolidated financial statements of the Parent:

- (a) on the grounds that the Auditors are unable to prepare those financial statements on a going concern basis (other than such qualification which arises solely because of a potential breach of the covenant set out in Clause 26.1 (*Financial condition*));
- (b) where that qualification is otherwise in terms or as to issues which would be reasonably likely to materially and adversely affect the interests of the Finance Parties taken as a whole under the Finance Documents; or
- (c) on the basis of non-disclosure or inaccurate disclosure.

**28.14 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 its respective assets which has or is reasonably likely to have a Material Adverse Effect.

**28.15 Repudiation and rescission of agreements**

- (a) An Obligor rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security to which it is a party.
- (b) Any Obligor rescinds or purports to rescind or repudiates or purports to repudiate any Note 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 taken as a whole.

**28.16 Litigation**

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

**28.17 Material adverse change**

Any event or circumstance occurs which has a Material Adverse Effect.

**28.18 Cessation of business**

An Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

**28.19 Failure to refinance bonds**

Any Notes or Existing Notes are not refinanced in full by the date falling 90 days before the scheduled principal repayment date specified in the relevant Existing Notes (but excluding the Encore Private Placement Notes, the Existing 2023 Encore Exchangeable Notes and any Existing Encore Convertible Notes and any other convertible notes or exchangeable notes issued by any member of the Restricted Group which prohibits optional or early redemption at par prior to their stated maturity date but in each case only for so long as the Existing Encore Convertible Notes or the Existing 2023 Encore Exchangeable Notes or any other convertible notes contain a prohibition on optional or early redemption at par prior to their stated maturity date).

**28.20 Acceleration**

- (a) 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:
- (i) cancel the Total Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;
  - (ii) 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;
  - (iii) 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;
  - (iv) declare that cash cover in respect of each Letter of Credit is immediately due and payable at which time it shall become immediately due and payable;
  - (v) declare that cash cover in respect of each Letter of Credit is payable on demand at which time it shall immediately become due and payable on demand by the Agent on the instructions of the Majority Lenders;
  - (vi) 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;
  - (vii) 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;

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

- (b) Following the occurrence of an Event of Default under Clause 28.1 (*Non-payment*) as a result of non-payment or non cash cover of an amount which has fallen due to be paid to any Lender in accordance with paragraph (e)(ii) of Clause 12.2 (*Exit Discussions*) or paragraph (b)(ii) of Clause 12.1 (*Exit*), if the Majority Lenders have not exercised their right of acceleration under paragraph (a) above, the relevant Lender or Lenders who have given a Negative Decision, shall be deemed to constitute the Majority Lenders and shall have the right to direct the Agent to exercise any of the rights listed in sub-paragraphs (i) to (viii) in paragraph (a) above.
- (c) If an Event of Default under Clause 28.7 (*Insolvency*) or Clause 28.8 (*Insolvency proceedings*) shall occur in respect of a US Guarantor, then without notice to such Obligor or any other act by the Agent or any other person, the Loans to such US Guarantor, interest thereon, cash cover in respect of each Letter of Credit issued for the account of such US Guarantor and all other amounts owed by such US Guarantor under the Finance Documents shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are expressly waived.

## 29. INVESTMENT GRADE STATUS

29.1 For so long as the Notes (or any Permitted Financial Indebtedness issued by a member of the Restricted Group to refinance or replace the Notes or in exchange for the Notes) have an Investment Grade Status (the "**Suspense Period**"), the following clauses of this Agreement shall not apply:

- (a) Clause 25.6 (*Year-end*); and
- (b) Clauses 27.12 (*Insurance*), 27.13 (*Pensions*), 27.14 (*Share capital*) and 27.16 (*Treasury Transactions*).

29.2 Any obligations arising under the Clauses specified in Clause 29.1 above (including, without limitation, obligations with respect to any Compliance Certificate required to be delivered during or with respect to any period that ends during a Suspense Period insofar as those obligations concern the certification of matters that are no longer applicable as a result of this Clause 29), and, in the case that a Suspense Period ceases to apply, any events or circumstances properly taken at any time during a Suspense Period (and not taken in contemplation of the Suspense Period coming to an end) that would but for this Clause 29 have given rise to a misrepresentation, breach, Default or Event of Default and which would as a result of the Suspense Period ceasing to apply constitute a misrepresentation, breach, Default or Event of Default, shall be deemed not to give rise to a misrepresentation, breach, Default or Event of Default.

## 30. CHANGES TO THE LENDERS

### 30.1 Assignments and transfers by the Lenders

Subject to this Clause 30 and to Clause 30.12 (*Accession of Additional Commitment Lenders*), a Lender (the "**Existing Lender**") may:

- (a) assign any of its rights; or
- (b) 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 (the "New Lender").

### 30.2 Conditions of assignment or transfer

- (a) Subject to paragraph (b) below, an Existing Lender must consult with the Parent for five (5) Business Days before it may make an assignment or transfer in accordance with Clause 30.1 (*Assignments and transfers by the Lenders*) unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) to any bank or financial institution on the Approved List; or
  - (iii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender; or
  - (iv) made at a time when an Event of Default is continuing.
- (b) Notwithstanding anything else in this Agreement, in no circumstances may an Existing Lender make an assignment or transfer to, or enter into any sub-participation with, a person:
  - (i) that is a Sanctioned Person or that is incorporated or established, or carries on business, in a jurisdiction that is a Sanctioned Jurisdiction;
  - (ii) is a Competitor; or
  - (iii) that is an Obligor or Affiliate of an Obligor (except solely as provided in Section 31 (*Restriction on Debt Purchase Transactions*)) or a natural person, unless that person is already a Lender, and any assignment or transfer purported to be made other than in compliance with this condition shall be void *ab initio*.
- (c) The Approved List may be amended at any time and from time to time with the prior written consent of the Agent (acting on the instruction of the Majority Lenders) and the Parent.
- (d) The consent of the Issuing Bank is required for any assignment or transfer by an Existing Lender of any of its rights and/or obligations under any of the Facilities (other than a transfer by DNB Bank ASA, London Branch to DNB (UK) Limited as its Affiliate) unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) to any bank or financial institution on the Approved List; or
  - (iii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender;
  - (iv) to a financial institution that has a rating of at least BB+ by Standard & Poor's Rating Services Limited or Fitch Ratings Ltd or at least Ba1 by Moody's Investor Services Limited; or

- (v) made at a time when an Event of Default is continuing.
- (e) An assignment will only be effective on:
  - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender;
  - (ii) the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
  - (iii) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (f) The amount of the Existing Lender's Commitment assigned or transferred must be a minimum of \$1,000,000 and in integral multiples of \$1,000,000 unless the assignment or transfer is:
  - (i) to another Lender or an Affiliate of a Lender;
  - (ii) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender;
  - (iii) made at a time when an Event of Default is continuing; or
  - (iv) of all of the relevant Existing Lender's Commitment (and not part thereof).
- (g) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 30.5 (*Procedure for transfer*) is complied with.
- (h) If:
  - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office or nominates a branch or affiliate that is not an Existing Lender to participate in any of the Facilities under Clause 4.5 (*Lending Affiliates*) or nominates an Affiliate of a Lender as an Ancillary Lender under Clause 9.8; and
  - (ii) as a result of circumstances existing at the date of the assignment, transfer, change or nomination, an Obligor would be obliged to make a payment to the New Lender, affiliate, Lender acting through its new Facility Office or branch or Affiliate of a Lender which is an Ancillary Lender under Clause 19.1 (*Increased costs*) or Clause 18 (*Tax Gross Up and Indemnities*),then the New Lender, affiliate or Lender acting through its new Facility Office or branch or Affiliate of a Lender which is an Ancillary Lender is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office or branch (or head office) or Lender which nominated its

Affiliate would have been if the assignment, transfer, change or nomination had not occurred. This paragraph (h) shall not apply, (i) in respect of an assignment or transfer made in the ordinary course of the Syndication of the facilities or (ii) in relation to Clause 18.2 (*Tax gross up*), to a UK Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii)(B) of Clause 18.2 (*Tax gross up*) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that UK Treaty Lender.

- (i) 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.
- (j) The Agent, acting solely for this purpose as an agent of the Parent and Borrowers, shall maintain a copy of each Transfer Certificate, Assignment Agreement and Increase Confirmation delivered to it and a register for the recording of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Utilisations owing or attributable to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Obligors, the Agent and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Parent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.
- (k) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Parent and Borrowers, maintain a register on which it enters the name and address of each person it sells a participation to (a "**Participant**") and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Finance Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Finance Document) to any person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the United States Proposed Treasury Regulations (or, in each case, any amended or successor version). Each Obligor agrees that each Participant shall be entitled to the benefits of Clause 18.2 (*Tax gross up*) (subject to the requirements and limitations therein, including the requirement under Clause 18.2 (*Tax gross up*) to deliver US Tax Forms (it being understood that the US Tax Forms shall be delivered to the Lender that sells the participation)) to the same extent as if it were a Lender and had acquired its interest by assignment. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

### 30.3 Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, (ii) to a Related Fund or (iii) made in connection with the Syndication of the Facilities, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of \$2,500.

### 30.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or
  - (iv) 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.
- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 29; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

### 30.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 30.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and

the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 30.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");
  - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other 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;
  - (iii) the Agent, the Arrangers, the Security Agent, the New Lender, the other Lenders, the Issuing Bank 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 Arrangers, the Security Agent, any Issuing Bank and any relevant Ancillary Lender and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) the New Lender shall become a Party as a "Lender".

### **30.6 Procedure for assignment**

- (a) Subject to the conditions set out in Clause 30.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all

necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

(c) Subject to Clause 30.9 (*Pro rata interest settlement*), on the Transfer Date:

- (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
  - (ii) the Existing Lender will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
  - (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 30.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 30.5 (*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 30.2 (*Conditions of assignment or transfer*).

### 30.7 Copy of Transfer Certificate, Assignment Agreement, Increase Confirmation or Additional Commitment Increase Notice to Parent

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

### 30.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 30, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

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

except that no such charge, assignment or Security shall:

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

- (ii) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

### 30.9 Pro rata interest settlement

If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 30.5 (*Procedure for transfer*) or any assignment pursuant to Clause 30.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
  - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
  - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 30.9, have been payable to it on that date, but after deduction of the Accrued Amounts.

### 30.10 Sub-participations

Nothing in this Agreement shall restrict the ability of a Lender to sub-participate any or all of its rights and/or obligations hereunder, **provided that:**

- (a) such Lender remains a Lender under this Agreement with all rights and obligations pertaining thereto and remains liable under this Agreement in relation to those obligations sub-participated; and
- (b) such Lender either:
  - (i) retains the unrestricted right to exercise all voting and similar rights in respect of its Commitments (the "**Voting Rights**"), free of any obligation to act on the instructions of any other person; or
  - (ii) prior to entering into such sub-participation, provides the Obligors' Agent with details of the proposed sub-participation, and unless the sub-participation is:
    - (A) to another Lender or an Affiliate of a Lender;
    - (B) if the Existing Lender is a fund, to a fund which is a Related Fund of the Existing Lender;
    - (C) to any bank or financial institution on the Approved List; or

(D) made at a time when an Event of Default is continuing,

obtains the prior written consent of the Parent (such consent not to be unreasonably withheld or delayed, **provided that** the Parent shall be deemed to have given its consent five (5) Business Days after the Parent is given notice of the request unless it is expressly refused by the Parent within that period).

### 30.11 Voting

If a transfer or sub-participation does not comply with the conditions set out in this Clause 30, the New Lender's (or, in the case of a sub-participation, the Existing Lender's) Commitments and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the Facilities or, as applicable, the relevant Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments and/or participations has been obtained.

### 30.12 Accession of Additional Commitment Lenders

Any person which provides Additional Commitments shall become a Party to this Agreement as a Lender in accordance with the terms of Clause 30 (*Changes to the Lenders*) and shall, at the same time, become a party to the Intercreditor Agreement as a Lender in accordance with the terms of clause 20.8 (*Creditor/Agent Accession Undertaking*) of the Intercreditor Agreement.

## 31. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

### 31.1 Permitted Debt Purchase Transactions

- (a) The Parent shall not, and shall procure that each other member of the Group shall not (i) enter into any Debt Purchase Transaction other than in accordance with the other provisions of this Clause 31 or (ii) 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**".
- (b) A Borrower may purchase by way of assignment, pursuant to Clause 30 (*Changes to the Lenders*), a participation in any Loan in respect of which it is the borrower and any related Commitment where:
  - (i) such purchase is made for a consideration of less than par;
  - (ii) such purchase is made using one of the processes set out at paragraphs (c) and (d) below; and
  - (iii) such purchase is made at a time when no Default is continuing.
- (c) A Debt Purchase Transaction referred to in paragraph (b) above may be entered into pursuant to a solicitation process (a "**Solicitation Process**") which is carried out as follows:
  - (i) Prior to 11.00 am on a given Business Day (the "**Solicitation Day**") the Parent or a financial institution acting on its behalf (the "**Purchase Agent**") will approach at the same time each Lender to enable them to offer to sell to the relevant Borrower(s) an amount of their participation in any of the Facilities. Any Lender wishing to make such an offer shall, by 11.00 am on the second Business Day



following such Solicitation Day, communicate to the Purchase Agent details of the amount of its participations it is offering to sell and the price at which it is offering to sell such participations. Any such offer shall be irrevocable until 11.00 am on the third Business Day following such Solicitation Day and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by communicating its acceptance in writing to the Purchase Agent or, if it is the Purchase Agent, the relevant Lenders. The Purchase Agent (if someone other than the Parent) will communicate to the relevant Lenders which offers have been accepted by 12 noon on the third Business Day following such Solicitation Day. In any event by 5.00 pm on the fourth Business Day following such Solicitation Day, the Parent shall notify the Agent of the amounts of the participations purchased through the relevant Solicitation Process and the average price paid for the purchase of participations. The Agent shall promptly disclose such information to the Lenders.

- (ii) Any purchase of participations pursuant to a Solicitation Process shall be completed and settled on or before the fifth Business Day after the relevant Solicitation Day.
  - (iii) In accepting any offers made pursuant to a Solicitation Process the Parent shall be free to select which offers and in which amounts it accepts but on the basis that it accepts offers in inverse order of the price offered (with the offer or offers at the lowest price being accepted first) and that if it receives two or more offers at the same price it shall only accept such offers on a *pro rata* basis.
- (d) A Debt Purchase Transaction referred to in paragraph (b) above may also be entered into pursuant to an open order process (an "**Open Order Process**") which is carried out as follows:
- (i) The Parent (on behalf of the relevant Borrower(s)) may by itself or through another Purchase Agent place an open order (an "**Open Order**") to purchase participations in any of the Facilities up to a set aggregate amount at a set price by notifying at the same time all the Lenders of the same. Any Lender wishing to sell pursuant to an Open Order will, by 11.00 am on any Business Day following the date on which the Open Order is placed but no earlier than the first Business Day, and no later than the fifth Business Day, following the date on which the Open Order is placed, communicate to the Purchase Agent details of the amount of its participations it is offering to sell. Any such offer to sell shall be irrevocable until 11.00 am on the Business Day following the date of such offer from the Lender and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by it communicating such acceptance in writing to the relevant Lender.
  - (ii) Any purchase of participations in any of the Facilities pursuant to an Open Order Process shall be completed and settled by the relevant Borrower(s) on or before the fourth Business Day after the date of the relevant offer by a Lender to sell under the relevant Open Order.
  - (iii) If the Purchase Agent receives on the same Business Day two or more offers at the set price such that the maximum amount of any of the Facilities to which an

Open Order relates would be exceeded, the Parent shall only accept such offers on a *pro rata* basis.

- (iv) The Parent shall, by 5.00 pm on the sixth Business Day following the date on which an Open Order is placed, notify the Agent of the amounts of the participations purchased through such Open Order Process. The Agent shall promptly disclose such information to the Lenders.
- (e) For the avoidance of doubt, there is no limit on the number of occasions a Solicitation Process or an Open Order Process may be implemented.
- (f) In relation to any Debt Purchase Transaction entered into pursuant to this Clause 31.1, notwithstanding any other term of this Agreement or the other Finance Documents:
  - (i) on completion of the relevant assignment pursuant to Clause 30 (*Changes to the Lenders*), the portions of the Loan to which it relates and the Commitment in relation to such amounts shall be extinguished;
  - (ii) such Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of any of the Facilities;
  - (iii) the Borrower which is the assignee shall be deemed to be an entity which fulfils the requirements of Clause 30.1 (*Assignments and transfers by the Lenders*) to be a New Lender;
  - (iv) No member of the Group shall be deemed to be in breach of any provision of Clause 27 (*General Undertakings*) solely by reason of such Debt Purchase Transaction;
  - (v) Clause 35 (*Sharing among the Lenders*) shall not be applicable to the consideration paid under such Debt Purchase Transaction; and
  - (vi) for the avoidance of doubt, any extinguishment of any part of the Loans shall not affect any amendment or waiver which prior to such extinguishment had been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement.

### **31.2 Disenfranchisement on Debt Purchase Transactions entered into by a member of the Group**

- (a) For so long as a member of the Group (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
  - (i) in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero; and
  - (ii) for the purposes of Clause 42.3 (*Exceptions*), such member of the Group or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender (unless in the case of a person

not being a member of the Group 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 a member of the Group (a "**Notifiable Debt Purchase Transaction**"), such notification to be substantially in the form set out in Part I of Schedule 13 (*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 a member of the Group,such notification to be substantially in the form set out in Part II of Schedule 13 (*Forms of notifiable Debt Purchase Transaction notice*).
- (d) Each member of the Group 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 behest of, or on the instructions of, the Agent or one or more of the Lenders.

## 32. CHANGES TO THE OBLIGORS

### 32.1 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.

### 32.2 Additional Borrowers

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 25.9 ("*Know your customer*" checks) and Clause 32.6 (*Changes to the Obligors – FATCA*), the Parent may request that any of its wholly owned Subsidiaries becomes a Borrower under any Facility. That Subsidiary shall become a Borrower under that Facility, if:
  - (i) it is incorporated in the same jurisdiction as an existing Borrower or if all the Lenders approve the addition of that Subsidiary;
  - (ii) the Parent and that Subsidiary deliver to the Agent a duly completed and executed Accession Deed;
  - (iii) the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;
  - (iv) the Parent confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and

- (v) 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.
- (b) 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*).

### 32.3 Resignation of a Borrower

- (a) In this Clause 32.3, Clause 32.5 (*Resignation of a Guarantor*) and Clause 32.8 (*Resignation and release of security on disposal*), "**Third Party Disposal**" means the disposal of an Obligor or a Holding Company of an Obligor to a person which is not a member of the Group where that disposal is permitted by this Agreement or the Intercreditor Agreement (and the Parent has confirmed this is the case).
- (b) If a Borrower is the subject of a Third Party Disposal and subject to Clause 32.6 (*Changes to the Obligors – FATCA*), the Parent may request that such Borrower (other than the Parent) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- (c) The Agent shall accept a Resignation Letter and notify the Parent and the other Finance Parties of its acceptance if:
  - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
  - (ii) the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents; and
  - (iii) where the Borrower is also a Guarantor (unless its resignation has been or is contemporaneously accepted in accordance with Clause 32.5 (*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).
- (d) 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 concurrently with the Third Party Disposal taking effect.
- (e) The Agent may, at the reasonable cost and expense of the Parent, require a customary 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.

### 32.4 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 25.9 (*"Know your customer" checks*) and 32.6 (*Changes to the Obligors – FATCA*), the Parent may request that any of its Subsidiaries become a Guarantor.

- (b) A member of the Group shall become an Additional Guarantor if:
  - (i) the Parent and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Deed; and
  - (ii) 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.
- (c) 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*).

**32.5 Resignation of a Guarantor**

- (a) Subject to 32.6 (*Changes to the Obligors – FATCA*), the Parent may request that a Guarantor (other than the Parent) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:
  - (i) that Guarantor is being disposed of by way of a Third Party Disposal (as defined in Clause 32.3 (*Resignation of a Borrower*)) or as a result of the disposal of Charged Property that is otherwise permitted by this Agreement or the Intercreditor Agreement or is designated as an Unrestricted Subsidiary to the extent permitted by this Agreement and the Parent has confirmed this is the case; or
  - (ii) subject to clause 30.2(b) (*Amendments and Waivers: Transaction Security Documents*) of the Intercreditor Agreement, the Super Majority Lenders, have consented to the resignation of that Guarantor.
- (b) The Agent shall accept a Resignation Letter and notify the Parent and the Lenders of its acceptance if:
  - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter and the test in paragraph (a)(ii) of Clause 27.17 (*Guarantors*) will be met following acceptance of the Resignation Letter;
  - (ii) no payment is due from the Guarantor under Clause 23.1 (*Guarantee and indemnity*); and
  - (iii) 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 32.3 (*Resignation of a Borrower*).
- (c) The resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal or disposal of Charged Property, or until the confirmation of the Parent referred to in paragraph (b)(i) above is received or the consent referred to in paragraph (a)(ii) above is granted (as applicable), 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.

### 32.6 Changes to the Obligors – FATCA

- (a) If the Agent or a Lender reasonably believes that the accession of a Subsidiary as an Additional Borrower or an Additional Guarantor, or a Subsidiary ceasing to be a Borrower or Guarantor (a "**Change to the Obligors**") 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 Change to the Obligors may, subject to paragraph (b)(ii) below, not be effected without the consent of the Agent and all the Lenders.
- (b) If the Agent or any Lender does not consent to the relevant Change to the Obligors because it reasonably believes that the Change to Obligors may constitute a "material modification" for the purposes of FATCA, the Change to the Obligors may only occur if the Parent either:
  - (i) cancels and repays any non-consenting Lender pursuant to Clause 11.5 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*), **provided that** if such change to the Obligors is to be made more than six months before the relevant FATCA Application Date then any such cancellation and repayment shall only be made during the period beginning six months before and ending one month before the relevant FATCA Application Date, and **provided further that** if the Parent has exercised its right under this paragraph (b)(i) of Clause 32.6 to cancel and repay a Lender but has not done so by the date which is one month prior to the relevant FATCA Application Date then the Parent will be deemed to have agreed to pay increased amounts under (ii) below; or
  - (ii) if a FATCA Deduction is required to be made by an Obligor and/or by a Finance Party from a payment and notwithstanding the terms of Clause 18.2 (*Tax gross up*), procures that the amount of the payment due from that Obligor shall be increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required and/or pays to the relevant Finance Party (within three Business Days of demand by the Agent) an amount equal to the loss, liability or cost which that Finance Party determines will be or has been (directly or indirectly) suffered by that Finance Party as a result of another Finance Party making a FATCA Deduction.

### 32.7 Repetition of Representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (c) of Clause 24.35 (*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.

### 32.8 Resignation and release of security on disposal

If a Borrower or Guarantor (or Holding Company of a Borrower or Guarantor) is or is proposed to be the subject of a Third Party Disposal, or there is a disposal of Charged Property that is

otherwise permitted under Schedule 14 (*Restrictive covenants*) or the Intercreditor Agreement then:

- (a) where that Borrower or Guarantor created Transaction Security over any of its assets or business (or Transaction Security otherwise exists over the Charged Property to be disposed of) in favour of the Security Agent or, as applicable, the Finance Parties, or Transaction Security in favour of the Security Agent or, as applicable, the Finance Parties was created over the shares (or equivalent) of that Borrower or Guarantor, the Security Agent or, as applicable, the Finance Parties shall, at the cost and request of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;
- (b) the resignation of that Borrower or Guarantor and related release of Transaction Security referred to in paragraph (a) above shall not become effective until the date of that disposal; and
- (c) if the disposal of that Borrower or Guarantor or Holding Company of that Borrower or Guarantor is not made, the Resignation Letter of that Borrower or Guarantor and the related release of Transaction Security referred to in paragraph (a) above shall have no effect and the obligations of the Borrower or Guarantor and the Transaction Security created or intended to be created by or over that Borrower or Guarantor shall continue in such force and effect as if that release had not been effected.

### **33. ROLE OF THE AGENT, THE ARRANGER, THE ISSUING BANK AND OTHERS**

#### **33.1 Appointment of the Agent**

- (a) Each of the Arranger, the Lenders and the Issuing Bank appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Arranger, the Lenders and the Issuing Bank authorises the Agent 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.

#### **33.2 Instructions**

- (a) The Agent shall:
  - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a

decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instruction 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.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it is prefunded and/or 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.
- (e) 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.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

### 33.3 Duties of the Agent

- (a) Subject to paragraph (b) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Without prejudice to Clause 30.7 (*Copy of Transfer Certificate, Assignment Agreement Increase Confirmation or Additional Commitment Increase Notice to Parent*) and paragraph (e) of Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender*), paragraph (a) above shall not apply to any Transfer Certificate or any Assignment Agreement or any Increase Confirmation.
- (c) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arrangers or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.



- (f) The Agent shall provide to the Parent within 15 Business Days of a request by the Parent (but no more frequently than once per calendar Month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.
- (g) 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).
- (h) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

**33.4 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.

**33.5 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent, the Arranger and/or the Issuing Bank as a trustee or fiduciary of any other person.
- (b) None of the Agent, the Security Agent, the Arranger, any Issuing Bank 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.

**33.6 Business with the Group**

The Agent, the Security Agent, the Arranger, each Issuing Bank 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.

**33.7 Rights and discretions**

- (a) The Agent and any Issuing Bank may:
  - (i) rely on any representation, communication, notice or document (including, without limitation, any notice given by a Lender pursuant to paragraph (b) or paragraph (c) of Clause 31.2 (*Disenfranchisement on Debt Purchase Transactions entered into by member of the Group*)) believed by it to be genuine, correct and appropriately authorised; and

- (ii) assume that:
  - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
  - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
- (iii) rely on a certificate from any person:
  - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,  
as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 28.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised;
  - (iii) 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
  - (iv) no Notifiable Debt Purchase Transaction:
    - (A) has been entered into;
    - (B) has been terminated; or
    - (C) has ceased to be with a member of the Group.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may rely on the advice or services of any lawyers, accountants, surveyors or other 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.
- (e) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
  - (i) be liable for any error of judgment made by any such person; or

- (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person, unless such error or such loss was directly caused by the Agent's fraud, gross negligence or wilful misconduct.
- (f) 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.
- (g) Without prejudice to the generality of paragraph (f) above, the Agent:
  - (i) may disclose; and
  - (ii) 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.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Arranger or the Issuing Bank 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.
- (i) 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.

### **33.8 Responsibility for documentation**

None of the Agent, the Arranger, any Issuing Bank or any Ancillary Lender:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Issuing Bank, an Ancillary Lender, an Obligor or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents;
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security; or
- (c) is responsible 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.

### 33.9 No duty to monitor

The Agent shall not be bound to enquire:

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

### 33.10 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Issuing Bank or any Ancillary Lender), none of the Agent, the Issuing Bank, nor any Ancillary Lender will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct and provided further, in respect of the Agent only, that such gross negligence or wilful misconduct has been finally determined by a court of competent jurisdiction in a non-appealable order;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or
  - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Agent, any Issuing Bank or an Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, any Issuing Bank or any Ancillary Lender, in respect of any claim it might have against the

Agent, any Issuing Bank 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, any Issuing Bank or any Ancillary Lender may rely on this Clause 33.10 (*Exclusion of liability*) subject to Clause 1.4 (*Third party rights*).

- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:
  - (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender or for any Affiliate of any Lender,on behalf of any Lender and each Lender confirms to the Agent and the 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.

### **33.11 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 36.11 (*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 as finally determined by a court of competent jurisdiction in a non-appealable order (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

### **33.12 Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Parent.
- (b) 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.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the retiring Agent (after consultation with the Parent) may (but shall not be obliged to) appoint a successor Agent. In any event the Agent's resignation shall become effective 60 days after the notice given under paragraph (b) above regardless of whether a successor Agent has been appointed.

- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 33 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with the then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 33. 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.
- (g) 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:
  - (i) the Agent fails to respond to a request under Clause 18.8 (FATCA Information) and the Parent or 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;
  - (ii) the information supplied by the Agent pursuant to Clause 18.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Agent notifies the 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) the Parent or a Lender believes that a Party may be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and the Parent, by notice to the Agent, requires it to resign.

### 33.13 Replacement of the Agent

- (a) 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.

- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 33 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

**33.14 Resignation of the Issuing Bank**

- (a) The Issuing Bank may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Parent.
- (b) Alternatively the Issuing Bank 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 Issuing Bank. The Issuing Bank's resignation notice shall take effect immediately upon the earlier of (i) the expiry of such 30 day notice period and (ii) the date on which the successor Issuing Bank notifies all the Parties that it accepts its appointment, unless a successor Issuing Bank has not been appointed in which case such notice shall be ineffective until a successor Issuing Bank has been appointed.
- (c) If the Majority Lenders have not appointed a successor Issuing Bank in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Issuing Bank (after consultation with the Parent) may (but shall have no obligation to) appoint a successor Issuing Bank (in any event its resignation shall become effective on the 20<sup>th</sup> day).
- (d) On giving notification that it accepts its appointment as Issuing Bank the successor Issuing Bank will succeed to the position of the Issuing Bank and the then Issuing Bank will mean the successor Issuing Bank.
- (e) The retiring Issuing Bank shall at its own cost (a) make available to any successor Issuing Bank such documents and records and provide such assistance as the successor Issuing Bank may reasonably request for the purposes of performing its functions as Issuing Bank under the Finance Documents and (b) enter into and deliver to the successor Issuing Bank those documents and effect any registrations as may be required for the transfer or assignment of its rights and benefits under the Finance Documents to the successor Issuing Bank.
- (f) Upon the resignation of the Issuing Bank having become effective in accordance with paragraph (b) above, the retiring Issuing Bank shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 33. The retiring Issuing Bank must, whether before or after its resignation

becomes effective, pay any claims made or purported to be made under any Letters of Credit issued by it before the date on which its resignation becomes effective.

- (g) Any successor Issuing Bank and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor Issuing Bank had been an original Party.

### 33.15 Confidentiality

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

### 33.16 Relationship with the Lenders

- (a) Subject to Clause 30.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day, unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) 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 38.6 (*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 38.2 (*Addresses*) and paragraph (a)(iii) of Clause 38.6 (*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.



### **33.17 Credit appraisal by the Lenders, Issuing Bank 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, Issuing Bank and Ancillary Lender confirms to the Agent, each Arranger, each Issuing Bank 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:

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

### **33.18 Base Reference Banks**

If a Base Reference Bank (or, if a Base 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 Base Reference Bank.

### **33.19 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.

### **33.20 Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each of the Arrangers and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arrangers or Agent) the terms of any reliance letter or engagement letters provided in connection with the Finance Documents or the transactions contemplated in the

Finance Documents and to bind it in respect of such 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.

**33.21 Role of Base Reference Banks and Alternative Reference Banks**

- (a) No Base Reference Bank or Alternative Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Base Reference Bank or Alternative Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Base Reference Bank or Alternative Reference Bank) may take any proceedings against any officer, employee or agent of any Base Reference Bank or Alternative Reference Bank in respect of any claim it might have against that Base Reference Bank or Alternative Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Base Reference Bank or Alternative Reference Bank may rely on this Clause 33.21 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

**33.22 Third party Base Reference Banks and Alternative Reference Banks**

A Base Reference Bank or Alternative Reference Bank which is not a Party may rely on Clause 33.21 (*Role of Base Reference Banks and Alternative Reference Banks*), paragraph (j) of Clause 42.3 (*Exceptions*) and Clause 44 (*Confidentiality of Funding Rates and Reference Bank Quotations*) subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Act.

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

No provision of this Agreement will:

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

**35. SHARING AMONG THE LENDERS**

**35.1 Payments to Lenders**

- (a) Subject to paragraph (b) below, if a Lender (a "**Recovering Lender**") receives or recovers any amount from an Obligor other than in accordance with Clause 36 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:
  - (i) the Recovering Lender shall, within three (3) Business Days, notify details of the receipt or recovery, to the Agent;

- (ii) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Lender would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 36 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
  - (iii) the Recovering Lender shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Lender as its share of any payment to be made, in accordance with Clause 36.6 (*Partial payments*).
- (b) Paragraph (a) above shall not apply to any amount received or recovered by an Issuing Bank or an Ancillary Lender in respect of any cash cover provided for the benefit of that Issuing Bank or that Ancillary Lender.

### 35.2 **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 Lenders (other than the Recovering Lender) (the "**Sharing Lenders**") in accordance with Clause 36.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Lenders.

### 35.3 **Recovering Lender's rights**

On a distribution by the Agent under Clause 35.2 (*Redistribution of payments*) of a payment received by a Recovering Lender from an Obligor, as between the relevant Obligor and the Recovering Lender, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

### 35.4 **Reversal of redistribution**

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

- (a) each Sharing Lender shall, upon request of the Agent, pay to the Agent for the account of that Recovering Lender 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 Lender for its proportion of any interest on the Sharing Payment which that Recovering Lender is required to pay) (the "**Redistributed Amount**"); and
- (b) as between the relevant Obligor and each relevant Sharing Lender, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

### 35.5 **Exceptions**

- (a) This Clause 35 shall not apply to the extent that the Recovering Lender would not, after making any payment pursuant to this Clause 35, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Lender is not obliged to share with any other Lender any amount which the Recovering Lender has received or recovered as a result of taking legal or arbitration proceedings, if:

- (i) it notified the other Lenders of the legal or arbitration proceedings; and
- (ii) the other Lenders 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.

**35.6 Ancillary Lenders**

- (a) This Clause 35 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 28.20 (*Acceleration*).
- (b) Following service of notice under Clause 28.20 (*Acceleration*), this Clause 35 shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction from the Designated Gross Amount for an Ancillary Facility to its Designated Net Amount.

**36. PAYMENT MECHANICS**

**36.1 Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document 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.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.

**36.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 36.3 (*Distributions to an Obligor*) and Clause 36.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or London).

**36.3 Distributions to an Obligor**

The Agent may (with the consent of the Obligor or in accordance with Clause 37 (*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.

**36.4 Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform

any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

- (b) 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.

### 36.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 36.1 (*Payments to the Agent*) may instead either pay that amount direct to the required recipient or pay 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 and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents. In each case such payments must be made on the due date for payment under the Finance Documents.
- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the beneficiaries of that trust account *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 36.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 33.13 (*Replacement of the Agent*), each Party which has made a payment to a trust account in accordance with this Clause 36.5 shall give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution in accordance with Clause 35.2 (*Redistribution of payments*).

### 36.6 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
  - (i) first, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agent, the Issuing Bank and the Security Agent under those Finance Documents;
  - (ii) secondly, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;

- (iii) thirdly, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents and any amount due but unpaid under Clause 7.2 (*Claims under a Letter of Credit*) and Clause 7.3 (*Indemnities*); and
  - (iv) fourthly, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(i) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

**36.7 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.

**36.8 Business Days**

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

**36.9 Currency of account**

- (a) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.
- (b) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (c) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

**36.10 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Parent); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the 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.

**36.11 Disruption to Payment Systems etc.**

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

- (a) 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 Facilities as the Agent may deem necessary in the circumstances;
- (b) 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;
- (c) 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;
- (d) 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 42 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 36.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

**37. SET-OFF**

- (a) A Finance Party may set-off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) 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.

**38. NOTICES**

**38.1 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.

**38.2 Addresses**

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

- (a) in the case of the Parent, that identified with its name below;
- (b) in the case of each Lender, each Issuing Bank, 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
- (c) 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 (5) Business Days' notice.

**38.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 38.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Parent in accordance with this Clause 38.3 will be deemed to have been made or delivered to each of the Obligors.

**38.4 Notification of address and fax number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 38.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.



### 38.5 Communication when Agent is Impaired Agent

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

### 38.6 Electronic communication

- (a) Any communication to be made between the Agent or the Security Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the Security Agent and the relevant Lender:
- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) 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
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Agent and a Lender or the Security Agent will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender 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.

### 38.7 Use of websites

- (a) 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:
- (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the Parent and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
  - (iii) the information is in a format previously agreed between the 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.

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

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Parent shall at its own cost comply with any such request within ten (10) Business Days.

### **38.8 English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Agent, 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.

## **39. CALCULATIONS AND CERTIFICATES**

### **39.1 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.

### **39.2 Certificates and determinations**

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

### **39.3 Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

### **40. PARTIAL INVALIDITY**

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

### **41. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### **42. AMENDMENTS AND WAIVERS**

#### **42.1 Intercreditor Agreement**

Subject to Clause 1.4 (*Intercreditor Agreement*) this Clause 42 is subject to the terms of the Intercreditor Agreement.

#### **42.2 Required consents**

- (a) Subject to Clause 42.3 (*Exceptions*) and paragraph (d) of Clause 42.2, any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Parent and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 42.
- (c) Each Obligor agrees to any such amendment or waiver permitted by this Clause 42 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of all of the Guarantors.

(d) The Agent shall notify the Lenders reasonably promptly of any amendments or waivers proposed by the Parent.

#### 42.3 Exceptions

(a) An amendment or waiver that has the effect of changing or which relates to:

- (i) the definitions of "Majority Lenders", "Super Majority Lenders" or "Change of Control" in Clause 1.1 (*Definitions*);
- (ii) an extension to the date of payment of any amount under the Finance Documents (other than an extension which results from an amendment or waiver in respect of Clause 12.3 (*Disposal Proceeds and Insurance Proceeds*));
- (iii) an extension of the Availability Period;
- (iv) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable (save as provided by the operation of the Margin adjustment described in the definition of "Margin" and other than a reduction in the amount of any payment or cancellation which results from an amendment or waiver in respect of Clause 12.3 (*Disposal Proceeds and Insurance Proceeds*));
- (v) a change in currency of payment of any amount under the Finance Documents;
- (vi) an increase in or an extension of any Commitment or the Total Commitments;
- (vii) a change to the Borrowers or Guarantors other than in accordance with Clause 32 (*Changes to the Obligors*);
- (viii) any provision which expressly requires the consent of all the Lenders;
- (ix) Clause 2.4 (*Finance Parties' rights and obligations*), Clause 27.20 (*Note Purchase Condition*), Clause 30 (*Changes to the Lenders*) or this Clause 42;
- (x) Clause 12.1 (*Exit*) and Clause 12.2 (*Exit Discussions*); and
- (xi) subject to the terms of the Intercreditor Agreement, any amendment to the order of priority or subordination under the Intercreditor Agreement, or the manner in which the proceeds of enforcement of the Transaction Security are distributed,

shall not be made without the prior consent of all the Lenders, unless it is the result of:

- (A) a Structural Change, in which case the provisions of paragraph (c) below shall apply; or
- (B) an increase to any of the Facilities pursuant to Clause 2.2 (*Increase*) or Clause 2.3 (*Accordion Increase in Commitments*), in which case no consent of any Lender (other than each Increase Lender in the case of an increase pursuant to Clause 2.2 (*Increase*) or each Additional Commitment Lender in the case of an increase pursuant to Clause 2.3 (*Accordion Increase in Commitments*)) shall be required for such increase.

- (b) For the purposes of this Clause 42.3, "**Structural Change**" means an amendment, waiver or variation of the terms of the Finance Documents that results in:
- (i) the introduction of any additional tranche or facility under the Finance Documents that ranks junior to any of the Facilities (and, for the avoidance of doubt, excluding any tranche or facility ranking *pari passu* with or in priority to claims under the Finance Documents); or
  - (ii) any increase in or addition of any commitment, any extension of a commitment's maturity or availability, the re-denomination of a commitment into another currency and any extension of the date for or redenomination of, or a reduction of, any amount owing under the Finance Documents (other than by way of a waiver of a mandatory prepayment); or
  - (iii) changes to any Finance Documents that are consequential on, incidental to or required to implement or reflect any of the foregoing,
- provided that** an increase to any of the Facilities pursuant to Clause 2.2 (*Increase*) or an increase by way of the introduction of an Additional Commitment pursuant to Clause 2.3 (*Accordion Increase in Commitments*) shall not be a "**Structural Change**".
- (c) Subject to paragraph (e) below, a Structural Change may be approved with the consent of the Super Majority Lenders and of each Lender that is participating in that additional tranche or facility or increasing, extending or re-denominating its commitments or, as applicable, extending or redenominating or reducing any amount due to it.
- (d) Any amendment or waiver (other than any increase in or addition of any commitment) which:
- (i) relates only to the rights or obligations applicable to a particular Utilisation, Facility or the Lenders; and
  - (ii) does not materially and adversely affect the rights or interests of Lenders in respect of any other Utilisation or Facility,
- may be made in accordance with this Clause 42 but as if references in this Clause 42 to the specified proportion of Lenders (including, for the avoidance of doubt, all the Lenders) whose consent would, but for this paragraph (d), be required for that amendment or waiver were to that proportion of the Lenders participating in that particular Utilisation or Facility or forming part of the Lenders.
- (e) Any amendment or waiver which adversely affects the rights or interest of the Lenders or the rights or obligations applicable to a particular Utilisation or Facility shall only be made with the consent of the Majority Lenders in relation to that Facility.
- (f)
- (i) If the Agent or a Lender reasonably believes that an amendment or waiver or the implementation of any Additional Commitment or a Structural Change (an "**Amendment**") 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 may, subject to

paragraphs (ii) below, not be effected without the consent of the Agent and all the Lenders.

- (ii) If the Agent or any Lender does not consent to the relevant Amendment because it reasonably believes that the Amendment may constitute a "material modification" for the purposes of FATCA, the Parent may only make such Amendment if the Parent either:
  - (A) cancels and repays any non-consenting Lender pursuant to Clause 11.5 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*), **provided that** if such Amendment is to be made more than six months before the relevant FATCA Application Date then any such cancellation and repayment shall only be made during the period beginning six months before and ending one month before the relevant FATCA Application Date, and **provided further that** if the Parent has exercised its right under this paragraph (f)(ii)(A) of Clause 42.3 to cancel and repay a Lender but has not done so by the date which is one month prior to the relevant FATCA Application Date then the Parent will be deemed to have agreed to pay increased amounts under (B) below; or
  - (B) if a FATCA Deduction is required to be made by an Obligor and/or by a Finance Party from a payment and notwithstanding the terms of Clause 18.2 (*Tax gross up*), procures that the amount of the payment due from that Obligor shall be increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required and/or pays to the relevant Finance Party (within three Business Days of demand by the Agent) an amount equal to the loss, liability or cost which that Finance Party determines will be or has been (directly or indirectly) suffered by that Finance Party as a result of another Finance Party making a FATCA Deduction.
- (g) Notwithstanding Clause 1.4 (*Intercreditor Agreement*), the release of all or substantially all the Transaction Security (unless such release is provided for under Clause 16.5 (*Security*) of the *Intercreditor Agreement*) requires the consent of all the Lenders **provided that** the release of all or substantially all the Transaction Security (i) required to effect a Permitted Reorganisation, or (ii) upon final repayment and cancellation of the Facilities, shall be promptly granted by the Security Agent and no Lender consents will be required.
- (h) Notwithstanding Clause 1.4 (*Intercreditor Agreement*), subject to paragraph (g) above the release of any Transaction Security over any asset under any Transaction Security Document or the amendment to any Transaction Security Document requires the prior consent of the Super Majority Lenders **provided that** the release of any Transaction Security or amendment to any Transaction Security Document (i) required to effect a Permitted Reorganisation, or (ii) in respect of a disposal permitted by the provisions of this Agreement, shall be promptly granted by the Security Agent and no Super Majority Lender consents will be required.
- (i) An amendment or waiver which relates to the rights or obligations of the Agent, the Arranger, any Issuing Bank, the Security Agent, any Ancillary Lender or a Base

Reference Bank or an Alternative Reference Bank (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger, that Issuing Bank, the Security Agent that Ancillary Lender, that Base Reference Bank or, as the case may be, that Alternative Reference Bank.

- (j) Subject to Clause 2.3 (*Accordion Increase in Commitments*), no consent from any Lenders shall be required in connection with an Additional Commitment pursuant to an Additional Commitment Increase Notice (other than the consent of the relevant Lender(s) providing the Additional Commitment).
- (k) If any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any of the terms of any Finance Document within 15 Business Days (unless the Parent and the Agent agree to a longer time period in relation to any request) of that request being made, its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the relevant Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments and/or participations has been obtained to approve that request.

#### 42.4 Replacement of Screen Rate

- (a) If any Screen Rate is not available for a currency which can be selected for a Utilisation and the Agent reasonably determines that such unavailability is unlikely to be temporary then the relevant Screen Rate shall be an alternate rate of interest proposed by the Parent that is commercially practicable for the Agent to administer (as reasonably determined by the Agent):
  - (i) that the Agent determines (acting on the instructions of the Majority Lenders (acting reasonably)) is generally accepted as the then-prevailing market convention for determining a rate of interest for financings of the type provided under this Agreement; or
  - (ii) to which the Majority Lenders have given their consent,any such rate, the "**Successor Rate**", and the Agent and the Parent shall enter into an amendment to this Agreement to implement such Successor Rate and implement other related changes to this Agreement as may be reasonably required in connection with such implementation, which amendment shall, notwithstanding Clause 42 (*Amendments and Waivers*) be effective without any further action or consent of any other party to this Agreement.

#### 42.5 Replacement of Lender

- (a) If at any time:
  - (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (c) below); or
  - (ii) an Obligor becomes obliged to repay any amount in accordance with Clause 11.1 (*Illegality*) or to pay additional amounts pursuant to Clause 19.1 (*Increased costs*), Clause 18.2 (*Tax gross up*) or Clause 18.3 (*Tax indemnity*) to any Lender in excess of amounts payable to the other Lenders generally,

then the Parent may, on five (5) Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 30 (*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 (excluding a member of the Group and if such entity is a member of the Group, **provided that** such transfer shall be in accordance with Clause 31 (*Restriction on Debt Purchase Transactions*)), and which is acceptable to the Issuing Bank, which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Letter of Credit Fees, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) The replacement of a Lender pursuant to this Clause 42.5 shall be subject to the following conditions:
- (i) the Parent shall have no right to replace the Agent or Security Agent in their capacity as Agent or Security Agent;
  - (ii) neither the Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender;
  - (iii) in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 45 days after the date the Non-Consenting Lender notifies the Parent and the Agent of its failure or refusal to give a consent in relation to, or agree to any waiver or amendment to the Finance Documents requested by the Parent; and
  - (iv) in no event shall the Lender replaced under this paragraph (b) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents.
- (c) In the event that:
- (i) the Parent or the Agent (at the request of the Parent) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
  - (ii) the consent, waiver or amendment in question requires the approval of more than the Majority Lenders; and
  - (iii) the Majority Lenders have consented or agreed to such waiver or amendment,
- then any Lender who does not consent or agree to such waiver or amendment shall be deemed a "**Non-Consenting Lender**".

#### 42.6 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a



consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments.

(b) For the purposes of this Clause 42.6, the Agent may assume that the following Lenders are Defaulting Lenders:

- (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in 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.

#### 42.7 Replacement of a Defaulting Lender

(a) The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving five (5) Business Days' prior written notice to the Agent and such Lender:

- (i) replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 30 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement; or
- (ii) require such Lender to (and such Lender shall) transfer pursuant to Clause 30 (*Changes to the Lenders*) all (and not part only) of the undrawn Commitment of the Lender;

to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent, and which is acceptable to the Issuing Bank, which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender's participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Letter of Credit Fees, Break Costs and other amounts payable in relation thereto under the Finance Documents.

(b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 42.7 shall be subject to the following conditions:

- (i) the Parent shall have no right to replace the Agent or Security Agent in their capacity as Agent or Security Agent;
- (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;
- (iii) the transfer must take place no later than 45 days after the notice referred to in paragraph (a) above; and

(iv) 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.

#### 43. CONFIDENTIALITY

##### 43.1 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 43.2 (*Disclosure of Confidential Information*) 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.

##### 43.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, 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 it agrees to be bound by the same confidentiality restrictions as the Finance Party who is disclosing the information and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (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 (b) of Clause 33.16 (*Relationship with the Lenders*));
  - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
  - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory

authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

- (vi) to whom information is required by law to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) who is a Party; or
- (viii) with the consent of the Parent;

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

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

- (e) the size and term of the Facilities and the name of the Obligors to any investor or a potential investor in a securitisation (or similar transaction of broadly equivalent economic effect) of that Finance Parties' rights or obligations under the Finance Documents.

#### 43.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligors the following information:
  - (i) names of Obligors;
  - (ii) country of domicile of Obligors;
  - (iii) place of incorporation of Obligors;
  - (iv) date of this Agreement;
  - (v) the names of the Agent and the Arranger;
  - (vi) date of each amendment and restatement of this Agreement;
  - (vii) amount of Total Commitments;
  - (viii) currencies of the Facilities;
  - (ix) type of Facilities;
  - (x) ranking of Facilities;
  - (xi) Termination Date for Facilities;
  - (xii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and
  - (xiii) 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.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities, any Additional Commitment and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Obligor represents that none of the information set out in paragraphs (i) to (xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

- (d) The Agent shall promptly notify the Parent and the other Finance Parties of:
- (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities, any Additional Commitment and/or one or more Obligors;
  - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities, any Additional Commitment and/or one or more Obligors by such numbering service provider; and
  - (iii) any information which is reasonably required by any Finance Party in connection with the preparation of transaction tombstones or similar marketing materials or any other information required for the preparation of league tables.

**43.4 Entire agreement**

This Clause 43 (*Confidentiality*) 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.

**43.5 Inside information**

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

**43.6 Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 43.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 43 (*Confidentiality*).

**43.7 Continuing obligations**

The obligations in this Clause 43 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve Months from the earlier of:

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

#### 44. CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

##### 44.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Agent may disclose:
  - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the relevant Borrower pursuant to Clause 14.4 (*Notification of rates of interest*); and
  - (ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Base Reference Bank or Alternative Reference Bank, as the case may be.
- (c) The Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:
  - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the

relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and

(iv) any person with the consent of the relevant Lender or Base Reference Bank or Alternative Reference Bank, as the case may be.

(d) The Agent's obligations in this Clause 44 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 14.4 (*Notification of rates of interest*) provided that (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

#### 44.2 Related obligations

(a) The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.

(b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Base Reference Bank or Alternative Reference Bank, as the case may be:

(i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 44.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(ii) upon becoming aware that any information has been disclosed in breach of this Clause 44.

#### 44.3 No Event of Default

No Event of Default will occur under Clause 28.4 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 44.

#### 45. CONTRACTUAL RECOGNITION OF BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

(a) any Bail-In Action in relation to any such liability, including (without limitation):

(i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;

(ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and

(iii) a cancellation of any such liability; and

(b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

#### 46. 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.

#### 47. ELECTRONIC SIGNATURES

The words "execution", "execute", "signed", "signature," and words of like import in or related to this Agreement or any other document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, provided that the Agent shall accept (or not accept) electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms at its discretion (acting reasonably).

#### 48. GOVERNING LAW

(a) Subject to paragraph (b) below, this Agreement and any non-contractual obligations arising out of or in connection with it are governed by, and shall be construed and enforced in accordance with, English law.

(b) Notwithstanding paragraph (a) above, Schedule 14 (*Restrictive covenants*) shall be interpreted in accordance with New York law.

#### 49. ENFORCEMENT

##### 49.1 Jurisdiction of English courts

(a) Subject to paragraph (b) below, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**"). In this regard, 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.

(b) Notwithstanding paragraph (a) above, this Clause 49.1 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.



**49.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
  - (i) irrevocably appoints Cabot Financial (Europe) Limited as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and Cabot Financial (Europe) Limited by its execution of this Agreement, accepts that appointment); and
  - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must immediately (and in any event within ten (10) Business Days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) Each Obligor expressly agrees and consents to the provisions of this Clause 49 and Clause 48 (*Governing Law*).

**50. WAIVER OF JURY TRIAL**

Each Party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement, any other Finance Document or the transactions contemplated thereby (whether based on contract, tort or any other theory). Each Party (a) certifies that no Representative, agent or attorney or any other party has represented, expressly or otherwise, that such other Party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other Parties have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Clause 50.

**51. PATRIOT ACT**

Each Lender that is subject to the requirements of the USA Patriot Act hereby notifies each Obligor that, pursuant to the requirements of the USA Patriot Act, such Lender is required to obtain, verify and record information that identifies such Obligor, which information includes the name and address of such Obligor and other information that will allow such Lender to identify such Obligor in accordance with the USA Patriot Act.

**52. POWERS OF ATTORNEY**

If any of the parties to this Agreement is represented by an attorney or attorneys in connection with the signing and/or execution and/or delivery of this Agreement or any agreement or document referred to herein or made pursuant hereto and the relevant power or powers of attorney is or are expressed to be governed by English law, it is hereby expressly acknowledged and accepted by the other parties hereto that such laws shall govern the existence and extent of such attorney's authority and the effects of the exercise thereof.

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

**SCHEDULE 1  
THE ORIGINAL PARTIES**

**PART I  
THE ORIGINAL BORROWERS**

<b>Name of Original Borrower</b>	<b>Registration Number</b>	<b>Jurisdiction of Incorporation</b>
Cabot Financial (UK) Limited	3757424	England & Wales
Midland Credit Management, Inc.	0048421	Kansas

**PART II  
THE ORIGINAL GUARANTORS**

<b>Name of Original Guarantor</b>	<b>Registration number</b>	<b>Place of incorporation</b>
Cabot Credit Management Limited	5754978	England & Wales
Cabot Financial (UK) Limited	3757424	England & Wales
Cabot Financial (Luxembourg) S.A.	B-171245	Luxembourg
Cabot Financial (Luxembourg) II S.A.	B-201268	Luxembourg
Cabot Financial Limited	5714535	England & Wales
Cabot Financial Holdings Group Limited	4934534	England & Wales
Cabot Credit Management Group Limited	4071551	England & Wales
Cabot Financial Debt Recovery Services Limited	3936134	England & Wales
Cabot Financial (Europe) Limited	3439445	England & Wales
Financial Investigations and Recoveries (Europe) Limited	3958421	England & Wales
Apex Credit Management Limited	3967099	England & Wales
Cabot Financial (Ireland) Limited	144084	Ireland
Cabot Asset Purchases (Ireland) Limited	349016	Ireland
Cabot Securitisation Europe Limited	572606	Ireland

Cabot UK Holdco Limited	08467515	England & Wales
Cabot Holdings S.à.r.l.	B176902	Luxembourg
Marlin Financial Group Limited	7195881	England & Wales
Marlin Financial Intermediate Limited	7196379	England & Wales
Marlin Financial Intermediate II Limited	8346249	England & Wales
Marlin Midway Limited	8255990	England & Wales
Black Tip Capital Holdings Limited	5927496	England & Wales
Marlin Senior Holdings Limited	8215555	England & Wales
Marlin Portfolio Holdings Limited	8215352	England & Wales
Marlin Legal Services Limited	6200270	England & Wales
Encore Capital Group, Inc.	3034002	Delaware
Midland Credit Management, Inc.	0048421	Kansas
Midland Portfolio Services, Inc.	3978399	Delaware
Midland Funding, LLC	3978393	Delaware
Asset Acceptance Capital Corp.	3706574	Delaware
Asset Acceptance, LLC	3568396	Delaware
Janus Holdings Luxembourg S.à.r.l.	B178454	Luxembourg
Encore Capital Group UK Limited	11309536	England & Wales
Encore Holdings Luxembourg S.à.r.l.	B198551	Luxembourg
Marlin Intermediate Holdings Limited	08248105	England & Wales

**PART III  
THE LENDERS**

**PART IV**

**THE 2020 EFFECTIVE DATE LENDERS**

<b>Name of 2020 Effective Date Lender</b>	<b>Effective Date Commitment</b>
DNB (UK) Limited	\$135,000,000
MUFG Bank, Ltd.	\$135,000,000
Truist Bank	\$135,000,000
ING Capital LLC	\$135,000,000
Fifth Third Bank, National Association	\$125,000,000
Citizens Bank, N.A.	\$100,000,000
Bank of America, N.A.	\$75,000,000
HSBC Bank plc	\$65,000,000
Umpqua Bank	\$60,000,000
Zions Bancorporation, n.a. (fka zb, n.a.) dba California Bank & Trust	\$40,000,000
Credit Suisse AG, Cayman Island Branch	\$22,500,000
Morgan Stanley, Bank N.A.	\$22,500,000
<b>Total Commitments</b>	<b>1,050,000,000</b>

**SCHEDULE 2  
CONDITIONS PRECEDENT**

**PART I  
CONDITIONS PRECEDENT TO INITIAL UTILISATION**

*[Schedule 2, Part I intentionally left blank]*

**PART II**  
**CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN ADDITIONAL OBLIGOR**

1. A copy of the Accession Deed executed by the Additional Obligor and the Parent.
2. A copy of the constitutional documents of the Additional Obligor, including, in relation to any US Guarantor, long form certificates of good standing and certified charter documents from the Secretary of State of the state of organization.
3. If applicable, a copy of a resolution of the board or, if applicable, a committee of the Board of Directors of the Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
  - (b) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (d) authorising the Parent to act as its agent in connection with the Finance Documents.
4. 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.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
6. If required by local law, a copy of a resolution signed by all the holders of the issued shares of the Additional Obligor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
7. If applicable, 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.
8. 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.
9. A copy of any other authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration or other document, opinion or assurance which the Agent (acting reasonably) considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document.
10. A copy of the Original Financial Statements which for the avoidance of doubt, shall include the financial results of each Additional Obligor on a consolidated basis.

11. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
  - (a) A legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
  - (b) If the Additional Obligor is incorporated in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to (x) the Agent and/or (y) if customary in the relevant jurisdiction, the Group, in the jurisdiction of its incorporation or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.
12. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 49.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
13. If the proposed Additional Obligor is incorporated under the laws of the United States, at the reasonable request of any Finance Party, a Beneficial Ownership Certificate in relation to such Additional Obligor, if such Additional Obligor qualifies as a "legal entity customer" under the Beneficial Ownership Regulation.
14. Any security documents which, subject to the Agreed Security Principles, are required by the Agent to be executed by the proposed Additional Obligor.
15. Any notices or documents required to be given or executed under the terms of those security documents.

**PART III**  
**TRANSACTION SECURITY DOCUMENTS**

*[Schedule 2, Part III intentionally left blank]*



**SCHEDULE 3  
REQUESTS AND NOTICES  
PART I  
UTILISATION REQUEST**

**PART II  
UTILISATION REQUEST**

**PART III**  
**FORM OF SWINGLINE LOAN UTILISATION REQUEST**

**SCHEDULE 4  
FORM OF TRANSFER CERTIFICATE**

**SCHEDULE 5  
FORM OF ASSIGNMENT AGREEMENT**

**SCHEDULE 6  
FORM OF ACCESSION DEED**

**SCHEDULE 7  
FORM OF RESIGNATION LETTER**

**SCHEDULE 8  
FORM OF COMPLIANCE CERTIFICATE**



**SCHEDULE 9**  
**LMA FORM OF CONFIDENTIALITY UNDERTAKING**

**SCHEDULE 10  
TIMETABLES**

**PART I  
LOANS**

**PART II  
LETTER OF CREDIT**

**SCHEDULE 11  
LETTER OF CREDIT REQUIREMENTS**

Stand-by Letters of Credit:	Stand-by Letters of Credit shall be issued subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590.
Amount:	The proposed wording for the Letter of Credit shall only provide for the payment of the face amount but not additional interest or costs.
Reference to Underlying transaction:	The terms of an Letter of Credit must contain a narrative reference to what has been reported to the Agent about the underlying transaction but must not contain any confirmation with regard to facts of the underlying contract.
Purpose clause:	The terms of an Letter of Credit must contain a purpose clause to cover the relevant Borrower's or Borrower's affiliate's obligations arising from the underlying transaction.
Payment obligation:	The payment obligation of the Issuing Bank must be worded as an irrevocable obligation to pay a specific aggregate maximum amount of money and not for specific performance of the underlying contract.
No conflict or inconsistency with applicable law and/or rules:	Any terms of an Letter of Credit must not conflict or provide for inconsistency with applicable laws, regulations, rules, directions and ruling as well as all relevant decisions and rulings of any competent courts and any other competent authorities.
Excluded rules:	In no event, the Uniform Rules for Contract Guarantees of the International Chamber of Commerce in Paris, Publication No. 325 shall be applicable.
Expiry:	Each Letter of Credit must contain a provision stating when the obligation of the Issuing Bank under the Letter of Credit shall terminate (e.g. specific expiration date, return of Letter of Credit deed, release letter), which shall not be linked to events in the underlying contract and not be subject to interpretation.
Maturity / Demand:	Except if subject to ICC Rules the payment obligation of the Issuing Bank shall be determinable by reliance on the terms of the Letter of Credit and, as the case may be, any other document simultaneously to be presented together with a demand.
	The payment obligation shall be conditional upon presentation of a demand for payment with or, as the case may be, without simultaneous presentation of other documents.
	The terms of the Letter of Credit shall provide that receipt of a formally valid demand for payment has to be made to the Issuing Bank by the Expiry Date at the latest and confirm that thereafter no further demand shall be honoured and the Letter of Credit must be returned to the Issuing Bank.
Miscellaneous:	<p>The terms of the Letter of Credit shall not provide for:</p> <ul style="list-style-type: none"> <li>• inter-dependence between Issuing Bank's payment obligation and events in the underlying contract to be checked but out of Issuing Bank's control;</li> <li>• any other terms and conditions that expose the Issuing Bank to risks unusual to Letter of Credit undertakings;</li> <li>• an arbitration clause in respect of the payment obligation of the Issuing Bank; or</li> <li>• reduction provisions other than by a specific amount on a specified date.</li> </ul>

**SCHEDULE 12  
FORM OF LETTER OF CREDIT**

**SCHEDULE 13**  
**FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE**  
**PART I**  
**FORM OF NOTICE OF ENTERING INTO NOTIFIABLE DEBT PURCHASE TRANSACTION**

**PART II**  
**FORM OF NOTICE ON TERMINATION OF NOTIFIABLE DEBT PURCHASE TRANSACTION**

**SCHEDULE 14  
RESTRICTIVE COVENANTS**

**PART I  
COVENANTS**

**1. LIMITATION ON INDEBTEDNESS**

- 1.1 The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness); **provided, however, that** the Parent or a Subsidiary Guarantor may Incur Indebtedness if on the date of such Incurrence and after giving *pro forma* effect thereto (including *pro forma* application of the proceeds thereof), the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries is greater than 2.0 to 1.0.
- 1.2 Section 1.1 shall not prohibit the Incurrence of the following Indebtedness:
- (a) Indebtedness Incurred pursuant to any Credit Facility (including letters of credit or bankers' acceptances issued or created under any Credit Facility), and any Refinancing Indebtedness in respect thereof and Guarantees in respect of such Indebtedness in a maximum aggregate principal amount at any time outstanding not exceeding (i) the greater of (x) \$1,210.0 million and (y) 17.5% of ERC, plus (ii) in the case of any refinancing of any Indebtedness permitted under this paragraph (a) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such refinancing;
  - (b)
    - (i) Guarantees by the Parent or any Restricted Subsidiary of Indebtedness of the Parent or any Restricted Subsidiary in each case so long as the Incurrence of such Indebtedness being guaranteed is permitted under the terms of this Agreement; **provided, that** if the Indebtedness being guaranteed is subordinated to the Utilisations, then the guarantee must be subordinated to the Utilisations to the same extent as the Indebtedness guaranteed; or
    - (ii) without limiting Section 3 (*Limitation on Liens*), Indebtedness arising by reason of any Lien granted by or applicable to such Person securing Indebtedness of the Parent or any Restricted Subsidiary so long as the Incurrence of such Indebtedness is permitted under the terms of this Agreement;
  - (c) Indebtedness of the Parent owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Parent or any Restricted Subsidiary; **provided, however, that:**
    - (i) if any Obligor is the obligor on any such Indebtedness and the obligee is not a Obligor, it is either a Working Capital Intercompany Loan or unsecured and expressly subordinated in right of payment to prior payment in full of the Utilisations; and
    - (ii) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being beneficially held by a Person other than the Parent or a Restricted Subsidiary, and any sale or other transfer of any such Indebtedness to a Person other than the Parent or a Restricted Subsidiary, shall be



deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this paragraph (c) by the Parent or such Restricted Subsidiary, as the case may be;

- (d) Indebtedness represented by (i) any Indebtedness (other than Indebtedness described in paragraphs (a), (c), (g) or (o)) outstanding on the 2020 Effective Date after giving *pro forma* effect to the Refinancing Transactions as if they had occurred on such date, including the Existing Cabot Notes and the Existing Encore Notes, (ii) Refinancing Indebtedness Incurred in respect of any Indebtedness described in this paragraph (d) or paragraph (e) or Incurred pursuant to Section 1.1 and (iii) Management Advances;
- (e) Indebtedness of any Person (i) outstanding on the date on which such Person becomes a Restricted Subsidiary or is merged, consolidated, amalgamated or otherwise combined with (including pursuant to any acquisition of assets and assumption of related liabilities) the Parent or any Restricted Subsidiary or (ii) Incurred to provide all or any portion of the funds utilised 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 paragraph (e), that at the time of such acquisition or other transaction (x) the Parent would have been able to Incur \$1.00 of additional Indebtedness pursuant to Section 1.1 after giving *pro forma* effect to the relevant acquisition and Incurrence of such Indebtedness pursuant to this paragraph (e) or (y) the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such acquisition or other transaction;
- (f) Indebtedness under Currency Agreements, Interest Rate Agreements and Commodity Hedging Agreements entered into for bona fide hedging purposes of the Parent or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Parent);
- (g) Indebtedness represented by Capitalised Lease Obligations or Purchase Money Obligations, in each case, Incurred for the purpose of financing 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 in the business of the Parent or any of its Restricted Subsidiaries, and in each case any Refinancing Indebtedness in respect thereof, in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this paragraph (g) and then outstanding, will not exceed at any time outstanding the greater of (i) \$145.0 million and (ii) 3.0% of Total Assets;
- (h) Indebtedness in respect of (i) workers' compensation claims, self-insurance obligations, performance, indemnity, surety, judgment, appeal, advance payment, customs, VAT or other tax or other guarantees or other similar bonds, instruments or obligations and completion guarantees and warranties provided by the Parent or a Restricted Subsidiary or relating to liabilities, obligations, indemnities or guarantees Incurred in the ordinary course of business or for governmental or regulatory requirements, in each case not in connection with the borrowing of money, (ii) letters of credit, bankers' acceptances, guarantees or other similar instruments or obligations issued or relating to liabilities or obligations Incurred in the ordinary course of business, (iii) the financing of insurance premiums in the ordinary course of business and (iv) any customary cash management,

cash pooling or netting or setting off arrangements 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;

- (i) Indebtedness arising from agreements providing for customary guarantees, indemnification, obligations in respect of earn-outs or other adjustments of purchase price or, in each case, similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Capital Stock of a Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring or disposing of such business or assets or such Subsidiary for the purpose of financing such acquisition or disposition); **provided that**, in the case of a disposition, 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 disposition;
- (j)
  - (i) Indebtedness arising from the honouring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; **provided, however, that** such Indebtedness is extinguished within five Business Days of Incurrence;
  - (ii) Customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business; and
  - (iii) Indebtedness Incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of Receivables for credit management purposes, in each case, not in connection with the borrowing of money and Incurred or undertaken in the ordinary course of business on arm's length commercial terms;
- (k) Indebtedness in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the principal amount of all other Indebtedness Incurred pursuant to this paragraph (k) and then outstanding, will not exceed the greater of (i) \$285.0 million and (ii) 6.0% of Total Assets;
- (l) Indebtedness represented by Permitted Purchase Obligations;
- (m) Indebtedness in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the principal amount of all other Indebtedness Incurred pursuant to this paragraph (m) and then outstanding, will not exceed 100% of the Net Cash Proceeds received by the Parent from the issuance or sale (other than to a Restricted Subsidiary) of its Subordinated Shareholder Funding or Capital Stock (other than Disqualified Stock, Designated Preference Shares or an Excluded Contribution) or otherwise contributed to the equity (other than through the issuance of Disqualified Stock, Designated Preference Shares or an Excluded Contribution) of the Parent, in each case, subsequent to the 2020 Effective Date; **provided, however, that** (i) any such Net Cash Proceeds that are so received or contributed shall be excluded for

purposes of making Restricted Payments under Section 2.1 and paragraphs (a), (f), (j) and (n) of Section 2.3 to the extent the Parent and its Restricted Subsidiaries incur Indebtedness in reliance thereon and (ii) any Net Cash Proceeds that are so received or contributed shall be excluded for purposes of Incurring Indebtedness pursuant to this paragraph (m) to the extent the Parent or any of its Restricted Subsidiaries makes a Restricted Payment under Section 2.1 and/or paragraphs (a), (f), (j) or (n) of Section 2.3 in reliance thereon;

- (n) Indebtedness represented by the unpaid purchase price for portfolio assets acquired in the ordinary course of business; **provided, however, that** such amounts are due within one year of the acquisition of the related portfolio assets; and
- (o) Indebtedness Incurred pursuant to (x) (i) the Stretch Facility Agreement (including letters of credit or bankers' acceptances issued or created thereunder) or (ii) any other Indebtedness Incurred in lieu of the Stretch Facility Agreement outstanding on the 2020 Effective Date, and (y) any Refinancing Indebtedness in respect thereof, in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this paragraph (o) and then outstanding, will not exceed at any time outstanding \$300.0 million, plus in the case of any refinancing of any Indebtedness permitted under this paragraph (o) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing.

1.3 For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this Section 1:

- (a) in the event that Indebtedness meets the criteria of more than one of the types of Indebtedness described in this Section 1, the Parent, in its sole discretion, will classify, and may from time to time reclassify, such item of Indebtedness and will only be required to include the amount and type of such Indebtedness in one of the paragraphs of Section 1.1 or Section 1.2; **provided that** (i) Indebtedness Incurred pursuant to paragraph (a) of Section 1.2 may not be reclassified, and the Encore Private Placement Notes and Indebtedness under this Agreement outstanding or Incurred on the 2020 Effective Date will be deemed to have been Incurred on such date in reliance on the exception provided in paragraph (a) of Section 1.2; and (ii) Indebtedness Incurred pursuant to paragraph (o) of Section 1.2 may not be reclassified, and Indebtedness under the Stretch Facility Agreement Incurred or outstanding on the 2020 Effective Date will be deemed to have been Incurred on such date in reliance on the exception provided in paragraph (o) of Section 1.2;
- (b) Guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included;
- (c) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are Incurred pursuant to any Credit Facility and are being treated as Incurred pursuant to paragraphs (a), (g), (k) or (o) of Section 1.2 or pursuant to Section 1.1 and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;

- (d) the principal amount of any Disqualified Stock of the Parent or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;
  - (e) for the purposes of determining "ERC" under paragraphs (a)(i)(y) of Section 1.2, (i) *pro forma* effect shall be given to ERC on the same basis as for calculating the LTV Ratio for the Parent and its Restricted Subsidiaries and (ii) ERC shall be measured on or about the date on which the Parent obtains new commitments (in the case of revolving facilities) or incurs new Indebtedness (in the case of term facilities);
  - (f) Indebtedness permitted by this Section 1 need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this Section 1 permitting such Indebtedness; and
  - (g) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined on the basis of GAAP.
- 1.4 Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortisation of original issue discount, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock or the reclassification of commitments or obligations not treated as Indebtedness due to a change in GAAP, will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 1. The amount of any Indebtedness outstanding as of any date shall be calculated as specified under the definition of "Indebtedness."
- 1.5 If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall 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 this Section 1, the Parent shall be in default of this Section 1).
- 1.6 For purposes of determining compliance with any US dollar-denominated restriction on the Incurrence of Indebtedness, the Dollar Equivalent of the principal amount of Indebtedness denominated in another currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or, at the option of the Parent, first committed, in the case of Indebtedness Incurred under a revolving credit facility; **provided that** (a) if such Indebtedness is Incurred to refinance other Indebtedness denominated in a currency other than US dollar, and such refinancing would cause the applicable US dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such US dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced; (b) the Dollar Equivalent of the principal amount of any such Indebtedness outstanding on the 2020 Effective Date shall be calculated based on the relevant currency exchange rate in effect on the 2020 Effective Date; and (c) if and for so long as any such Indebtedness is subject to a Currency Agreement with respect to the currency in which such Indebtedness is denominated covering principal and interest on such Indebtedness, the amount of such Indebtedness, if denominated in US dollar, will be the amount of the principal payment required to be made under such Currency Agreement and, otherwise, the Dollar Equivalent of such amount plus the Dollar Equivalent of

any premium which is at such time due and payable but is not covered by such Currency Agreement. For purposes of calculating compliance with paragraphs (a) or (o) of Section 1.2 or for calculating the amount of Indebtedness outstanding under this Agreement, to the extent a Credit Facility is utilised for the purpose of guaranteeing or cash collateralising any letter of credit or guarantee, such guarantee or collateralisation and issuance of such letter of credit or guarantee shall be deemed to be a utilisation of such Credit Facility permitted under paragraphs (a) or (o) of Section 1.2 without double counting.

1.7 Notwithstanding any other provision of this Section 1, the maximum amount of Indebtedness that the Parent or a Restricted Subsidiary may Incur pursuant to this Section shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

## 2. LIMITATIONS ON RESTRICTED PAYMENTS

2.1 The Parent shall not, and shall not permit any of its Restricted Subsidiaries, directly or indirectly, to:

- (a) declare or pay any dividend or make any other payment or other distribution on or in respect of the Parent's or any Restricted Subsidiary's Capital Stock (including any payment in connection with any merger or consolidation involving the Parent or any of its Restricted Subsidiaries) except:
  - (i) dividends or distributions payable in Capital Stock of the Parent (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Parent or in Subordinated Shareholder Funding; and
  - (ii) dividends or distributions payable to the Parent or a Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to holders of its Capital Stock other than the Parent or another Restricted Subsidiary on no more than a pro rata basis, measured by value);
- (b) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Parent or any direct or indirect Holding Company held by Persons other than the Parent or a Restricted Subsidiary (other than in exchange for Capital Stock of the Parent (other than Disqualified Stock));
- (c) make any payment on or in respect of, or purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any (x) Subordinated Indebtedness (other than, in each case, any capitalisation of Subordinated Indebtedness or (i) any such payment, purchase, repurchase, redemption, defeasance or other acquisition or retirement or in anticipation of satisfying a sinking fund obligation, principal instalment or final maturity, in each case, due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement (ii) a payment of interest at the applicable interest payment date and (iii) any Indebtedness Incurred pursuant to paragraph (c) of Section 1.2) or (y) any Subordinated Shareholder Funding, other than any payment of interest thereon in the form of additional Subordinated Shareholder Funding; or

(d) make any Restricted Investment in any Person;

(any such dividend, distribution, payment, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in paragraphs (a) to (d) above are referred to herein as a "**Restricted Payment**"), if at the time the Parent or such Restricted Subsidiary makes such Restricted Payment:

- (i) a Default shall have occurred and be continuing (or would result immediately thereafter therefrom);
- (ii) the Parent is not able to Incur an additional \$1.00 of Indebtedness pursuant to Section 1.1 after giving effect, on a *pro forma* basis, to such Restricted Payment; or
- (iii) the aggregate amount of such Restricted Payment and all other Restricted Payments made subsequent to the 2020 Effective Date (and not returned or rescinded) (including, with respect to paragraphs (A) through (E) below only, Permitted Payments permitted below by clause 2.2 (without duplication of amounts paid pursuant to any other paragraph of Section 2.3), (j) or (k) of Section 2.3 but excluding all other Restricted Payments permitted by Section 2.3) would exceed the sum of (without duplication):
  - (A) 50% of Consolidated Net Income for the period (treated as one accounting period) from the first day of the first fiscal quarter commencing prior to the 2020 Effective Date to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which internal consolidated financial statements of the Parent are available (or, in the case such Consolidated Net Income is a deficit, minus 100% of such deficit);
  - (B) 100% of the aggregate Net Cash Proceeds, and the fair market value (as determined in accordance with Section 2.2) of property or assets or marketable securities, received by the Parent from the issue or sale of its Capital Stock (other than Disqualified Stock or Designated Preference Shares) or Subordinated Shareholder Funding subsequent to the 2020 Effective Date or otherwise contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Parent subsequent to the 2020 Effective Date (other than (x) Net Cash Proceeds or property or assets or marketable securities received from an issuance or sale of such Capital Stock to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent or any Subsidiary of the Parent for the benefit of its employees to the extent funded by the Parent or any Restricted Subsidiary, (z) Net Cash Proceeds or property or assets or marketable securities to the extent that any Restricted Payment has been made subsequent to the 2020 Effective Date from such proceeds in reliance on paragraph (f) of Section 2.3 and (z) Excluded Contributions);
  - (C) 100% of the aggregate Net Cash Proceeds, and the fair market value (as determined in accordance with Section 2.2) of property or assets or marketable securities, received by the Parent or any Restricted

Subsidiary from the issuance or sale (other than to the Parent or a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent or any Subsidiary of the Parent for the benefit of its employees to the extent funded by the Parent or any Restricted Subsidiary) by the Parent or any Restricted Subsidiary subsequent to the 2020 Effective Date of any Indebtedness that has been converted into or exchanged for Capital Stock of the Parent (other than Disqualified Stock or Designated Preference Shares) or Subordinated Shareholder Funding (plus the amount of any cash, and the fair market value (as determined in accordance with Section 2.2) of property or assets or marketable securities, received by the Parent or any Restricted Subsidiary upon such conversion or exchange) but excluding (x) Net Cash Proceeds to the extent that any Restricted Payment has been made subsequent to the 2020 Effective Date from such proceeds in reliance on paragraph (f) of Section 2.3 and (y) Excluded Contributions;

- (D) the amount equal to the net reduction in Restricted Investments made by the Parent or any of its Restricted Subsidiaries resulting from:
- (1) repurchases, redemptions or other acquisitions or retirements of any such Restricted Investment, proceeds realised upon the sale or other disposition to a Person other than the Parent or a Restricted Subsidiary of any such Restricted Investment, repayments of loans or advances or other transfers of assets (including by way of dividend, distribution, interest payments or returns of capital) to the Parent or any Restricted Subsidiary; or
  - (2) the redesignation of Unrestricted Subsidiaries as Restricted Subsidiaries (valued, in each case, as provided in the definition of "**Investment**") not to exceed, in the case of any Unrestricted Subsidiary, the amount of Investments previously made by the Parent or any Restricted Subsidiary in such Unrestricted Subsidiary, which amount, in each case under this paragraph (iii)(D), was included in the calculation of the amount of Restricted Payments referred to in the first sentence of this paragraph (iii); **provided, however, that** no amount will be included in Consolidated Net Income for purposes of the preceding paragraph (iii)(A) to the extent that it is (at the Parent's option) included under this paragraph (iii)(D); and
- (E) the amount of the cash and the fair market value (as determined in accordance with Section 2.2) of property or assets or of marketable securities received by the Parent or any of its Restricted Subsidiaries in connection with:
- (1) the sale or other disposition (other than to the Parent or a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent or any Subsidiary of the Parent for the benefit of its employees to the extent funded by the Parent or

any Restricted Subsidiary) of Capital Stock of an Unrestricted Subsidiary of the Parent; and

(2) any dividend or distribution made by an Unrestricted Subsidiary to the Parent or a Restricted Subsidiary,

**provided, however, that** no amount will be included in Consolidated Net Income for purposes of the preceding paragraph (iii)(A) to the extent that it is (at the Parent's option) included under this paragraph (iii)(E); **provided further, however,** that such amount shall not exceed the amount included in the calculation of the amount of Restricted Payments referred to in the first sentence of this paragraph (iii)(E); and

(F) \$150,000,000.

2.2 The fair market value of property or assets other than cash covered by paragraph (iii)(C) of Section 2.1 shall be the fair market value thereof as determined in good faith by the Board of Directors of the Parent.

2.3 The foregoing provisions will not prohibit any of the following (collectively, "**Permitted Payments**"):

- (a) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Capital Stock, Disqualified Stock, Designated Preference Shares, Subordinated Shareholder Funding or Subordinated Indebtedness made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Parent (other than Disqualified Stock or Designated Preference Shares), Subordinated Shareholder Funding or a substantially concurrent contribution to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of the Parent; **provided, however, that** to the extent so applied, the Net Cash Proceeds, or fair market value (as determined in accordance with Section 2.2) of property or assets or of marketable securities, from such sale of Capital Stock, Subordinated Shareholder Funding or such contribution will be excluded from paragraph (iii)(B) of Section 2.1;
- (b) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness permitted to be Incurred pursuant to Section 1 (*Limitation on Indebtedness*);
- (c) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Preferred Stock of the Parent or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Preferred Stock of the Parent or a Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to Section 1 (*Limitation on Indebtedness*), and that in each case, constitutes Refinancing Indebtedness;



- (d) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness:
- (i) from Net Available Cash to the extent permitted under Section 5 (*Limitation on sales of Assets and Subsidiary Stock*), but only (A) if the Parent shall have first complied with the terms described under Section 5 (*Limitation on sales of Assets and Subsidiary Stock*) and repaid all Utilisations required to be repaid thereby, prior to such purchase, repurchase, redemption, defeasance or other acquisition or retirement of such Subordinated Indebtedness and (B) at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest; or
  - (ii) to the extent required by the agreement governing such Subordinated Indebtedness, following the occurrence of a Change of Control (or other similar event described therein as a "change of control"), but only (A) if the Parent shall have first complied with the terms of Clause 12.1 (*Exit*) of this Agreement, prior to such purchase, repurchase, redemption, defeasance or other acquisition or retirement of such Subordinated Indebtedness and (B) at a purchase price not greater than 101% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest;
- (e) (i) any dividends paid within 60 days after the date of declaration if at such date of declaration such dividend would have complied with this covenant, and (ii) payments associated with the Refinancing Transactions;
- (f) the purchase, repurchase, redemption, defeasance or other acquisition, cancellation or retirement for value of Capital Stock of the Parent or any Holding Company (including any options, warrants or other rights in respect thereof) and loans, advances, dividends or distributions by the Parent to any Holding Company to permit any Holding Company to purchase, repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of any Holding Company (including any options, warrants or other rights in respect thereof), or payments to purchase, repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of any Holding Company (including any options, warrants or other rights in respect thereof), in each case from Management Investors; **provided that** such payments, loans, advances, dividends or distributions do not exceed an amount (net of repayments of any such loans or advances) equal to (A) \$12.5 million plus (B) \$5.0 million multiplied by the number of calendar years that have commenced since the 2020 Effective Date plus (C) the Net Cash Proceeds received by the Parent or its Restricted Subsidiaries since the 2020 Effective Date (including through receipt of proceeds from the issuance or sale of its Capital Stock or Subordinated Shareholder Funding to a Holding Company) from, or as a contribution to the equity (in each case under this limb (C), other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Parent from, the issuance or sale to Management Investors of Capital Stock (including any options, warrants or other rights in respect thereof), to the extent such Net Cash Proceeds are not included in any calculation under paragraph (iii)(B) or paragraph (iii)(C) of Section 2.1;
- (g) the declaration and payment of dividends to holders of any class or series of Disqualified Stock, or of any Preferred Stock of a Restricted Subsidiary, Incurred in accordance with Section 1 (*Limitation on Indebtedness*);

- (h) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof;
- (i) dividends, loans, advances or distributions to any Holding Company or other payments by the Parent or any Restricted Subsidiary in amounts equal to (without duplication):
  - (i) the amounts required for any Holding Company to pay any Related Taxes; or
  - (ii) amounts constituting or to be used for purposes of making payments to the extent specified in paragraphs (b), (c), (e), and (g) of Section 6.3;
- (j) so long as no Default or Event of Default has occurred and is continuing (or would result therefrom), (i) the declaration and payment by the Parent of, or loans, advances, dividends or distributions to pay, dividends on the common stock or common equity interests of the Parent or (ii) the purchase, repurchase, redemption, defeasance or other acquisition, cancellation or retirement for value of Capital Stock of the Parent (including any options, warrants or other rights in respect thereof) in an aggregate amount not to exceed in any fiscal year the greater of:
  - (i) 7% of the Market Capitalisation, provided that after giving *pro forma* effect to such payments, loans, advances, dividends or distributions, the Consolidated Net Leverage Ratio for the Parent and its Restricted Subsidiaries shall be equal to or less than 3.0 to 1.0; and
  - (ii) 6% of the Market Capitalisation, **provided that** after giving *pro forma* effect to such payments, loans, advances, dividends or distributions, the Consolidated Net Leverage Ratio for the Parent and its Restricted Subsidiaries shall be equal to or less than 3.5 to 1.0;
- (k) so long as no Default or Event of Default has occurred and is continuing (or would result therefrom), (a) Restricted Payments (including loans or advances) in an aggregate amount outstanding at any time not to exceed \$90.0 million and (b) any Restricted Payment (including loans or advances); **provided that**, in respect of clause (b) the Consolidated Net Leverage Ratio on a *pro forma* basis after giving effect to any such Restricted Payment does not exceed 2.00 to 1.0;
- (l) payments by the Parent, or loans, advances, dividends or distributions to any Holding Company to make payments, to holders of Capital Stock of the Parent or any Holding Company in lieu of the issuance of fractional shares of such Capital Stock; **provided, however, that** any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this Section 2 or otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Board of Directors of the Parent);
- (m) Investments in an aggregate amount outstanding at any time not to exceed the aggregate cash amount of Excluded Contributions, or consisting of non-cash Excluded Contributions, or Investments to the extent made in exchange for or using as consideration Investments previously made under this paragraph (m);

(n) (i) the declaration and payment of dividends to holders of any class or series of Designated Preference Shares of the Parent issued after the 2020 Effective Date; and (ii) the declaration and payment of dividends to any Holding Company or any Affiliate thereof, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preference Shares of such Holding Company issued after the 2020 Effective Date; **provided, however, that**, the amount of all dividends declared or paid pursuant to this paragraph (n) shall not exceed the Net Cash Proceeds received by the Parent or, in the case of Designated Preference Shares issued by any Holding Company or any Affiliate thereof, the aggregate amount contributed in cash to the equity (other than through the issuance of Disqualified Stock or an Excluded Contribution) of the Parent or loaned as Subordinated Shareholder Funding to the Parent, from the issuance or sale of such Designated Preference Shares; and

(o) dividends or other distributions of Capital Stock, Indebtedness or other securities of Unrestricted Subsidiaries.

2.4 The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Parent or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount, and the fair market value of any non-cash Restricted Payment shall be determined conclusively by the Board of Directors of the Parent acting in good faith.

### 3. LIMITATIONS ON LIENS

The Parent shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur or suffer to exist any Lien upon any of its property or assets (including Capital Stock of a Subsidiary), whether owned on the 2020 Effective Date or acquired after that date, or any interest therein or any income or profits therefrom, which Lien is securing any Indebtedness (such Lien, the "**Initial Lien**"), except (a) in the case of any property or asset that does not constitute Collateral, (1) Permitted Liens or (2) Liens on property or assets that are not Permitted Liens if, contemporaneously with the Incurrence of such Initial Lien, the Utilisations are secured at least equally and rateably with, or prior to, in the case of Liens with respect to Subordinated Indebtedness, the Indebtedness secured by such Initial Lien for so long as such Indebtedness is so secured, and (b) in the case of any property or asset that constitutes Collateral, Permitted Collateral Liens.

### 4. LIMITATION ON RESTRICTIONS ON DISTRIBUTIONS FROM RESTRICTED SUBSIDIARIES

4.1 The Parent shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

(a) pay dividends or make any other distributions in cash or otherwise on its Capital Stock or pay any Indebtedness or other obligations owed to the Parent or any Restricted Subsidiary;

(b) make any loans or advances to the Parent or any Restricted Subsidiary; or

(c) sell, lease or transfer any of its property 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 requirements to) loans or advances made to the Parent or any Restricted Subsidiary to other Indebtedness Incurred by the Parent or any Restricted Subsidiary shall not be deemed to constitute such an encumbrance or restriction.

4.2 The provisions of Section 4.1 shall not prohibit:

- (a) any encumbrance or restriction pursuant to (i) this Agreement, (ii) the Stretch Facility Agreement, (iii) the Encore Private Placement Notes (iv) the Encore Private Placement Notes Purchase Agreement, (v) the Existing Cabot Notes Indentures or the Existing Encore Notes Indentures, or (vi) any other agreement or instrument, in each case, in effect at or entered into on the 2020 Effective Date;
- (b) any encumbrance or restriction pursuant to an agreement or instrument of a Person or relating to any Capital Stock or Indebtedness of a Person, entered into on or before the date on which such Person was acquired by or merged, consolidated or otherwise combined with or into the Parent or any Restricted Subsidiary, or on which such agreement or instrument is assumed by the Parent or any Restricted Subsidiary in connection with an acquisition of assets (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilised to consummate, the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was acquired by or was merged, consolidated or otherwise combined with or into the Parent or any Restricted Subsidiary or entered into in connection with such transaction) and outstanding on such date; **provided that**, for the purposes of this paragraph (b), if another Person is the Successor Company, any Subsidiary thereof or agreement or instrument of such Person or any such Subsidiary shall be deemed acquired or assumed by the Parent or any Restricted Subsidiary when such Person becomes the Successor Company;
- (c) any encumbrance or restriction pursuant to an agreement or instrument effecting a refinancing of Indebtedness Incurred pursuant to, or that otherwise refinances, an agreement or instrument referred to in paragraphs (a) or (b) of this Section 4.2 or this paragraph (c) (an "Initial Agreement") or contained in any amendment, supplement or other modification to an agreement referred to in paragraphs (a) or (b) of this Section 4.2 or this paragraph (c); **provided, however, that** the encumbrances and restrictions with respect to the Parent or any Restricted Subsidiary contained in any such agreement or instrument are no less favourable in any material respect to the Lenders taken as a whole than the encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such refinancing or amendment, supplement or other modification relates (as determined in good faith by the Parent);
- (d) any encumbrance or restriction:
  - (i) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any lease, license or other contract;

- (ii) contained in mortgages, pledges, charges or other security agreements permitted under this Agreement or securing Indebtedness of the Parent or a Restricted Subsidiary permitted under this Agreement to the extent such encumbrances or restrictions restrict the transfer of the property or assets subject to such mortgages, pledges, charges or other security agreements; or
- (iii) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Parent or any Restricted Subsidiary;
- (e) any encumbrance or restriction pursuant to Purchase Money Obligations and Capitalised Lease Obligations permitted under this Agreement, in each case, that impose encumbrances or restrictions on the property so acquired or any encumbrance or restriction pursuant to a joint venture agreement that imposes restrictions on the transfer of the assets of the joint venture;
- (f) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;
- (g) customary provisions in leases, licenses, joint venture agreements, debt purchase agreements and other similar agreements and instruments entered into in the ordinary course of business;
- (h) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order, the terms of any licence, authorisation, concession or permit or required by any regulatory authority;
- (i) any encumbrance or restriction 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 agreements entered into in the ordinary course of business;
- (j) any encumbrance or restriction pursuant to Currency Agreements, Interest Rate Agreements or Commodity Hedging Agreements;
- (k) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be Incurred subsequent to the 2020 Effective Date pursuant to Section 1 (*Limitation on Indebtedness*) if (a) the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favourable to the Lenders than (i) the encumbrances and restrictions contained in this Agreement, together with the security documents associated therewith as in effect on the 2020 Effective Date, or (ii) as is customary in comparable financings (as determined in good faith by the Parent), or (b) the Parent determines at the time such Indebtedness is Incurred that such encumbrances or restrictions will not adversely affect, in any material respect, the Parent's ability to make principal or interest payments on the Utilisations;
- (l) restrictions relating to Permitted Purchase Obligations SPVs effected in connection with the incurrence of Permitted Purchase Obligations that, in the good faith determination of the Board of Directors of the Parent, are necessary or advisable;

- (m) any encumbrance or restriction existing by reason of any lien permitted under Section 3 (*Limitation on Liens*);
- (n) any encumbrance or restriction on assets held in trust for a third party, including pursuant to the relevant trust agreement; or
- (o) any encumbrance or restriction existing under any agreement that extends, renews, refinances or replaces the agreements containing the encumbrances or restrictions under Section 6.3; **provided that** the terms and conditions of any such encumbrances or restrictions are, in the good faith judgment of the Board of Directors of the Parent, no more restrictive in any material respect than those under or pursuant to the agreement so extended, renewed, refinanced or replaced.

## 5 LIMITATION ON SALES OF ASSETS AND SUBSIDIARY STOCK

5.1 The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:

- (a) the Parent or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Board of Directors of the Parent, of the shares and assets subject to such Asset Disposition (including, for the avoidance of doubt, if such Asset Disposition is a Permitted Asset Swap); and
- (b) in any such Asset Disposition, or series of related Asset Dispositions (except to the extent the Asset Disposition is a Permitted Asset Swap), at least 75% of the consideration from such Asset Disposition (excluding any consideration by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, other than Indebtedness) received by the Parent or such Restricted Subsidiary, as the case may be, is in the form of cash, Cash Equivalents or Temporary Cash Investments.

5.2 Pending the final application of any such Net Available Cash in accordance with the terms of this Agreement, the Parent and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise invest such Net Available Cash in any manner not prohibited by this Agreement.

5.3 For the purposes of paragraph (b) of Section 5.1 the following (or any combination thereof) will be deemed to be cash:

- (a) the assumption by the transferee of Indebtedness of the Parent or Indebtedness of a Restricted Subsidiary (other than Subordinated Indebtedness of the Parent or a Subsidiary Guarantor) and the release of the Parent or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition;
- (b) securities, notes or other obligations received by the Parent or any Restricted Subsidiary from the transferee that are converted by the Parent or such Restricted Subsidiary into cash or Cash Equivalents within 180 days following the closing of such Asset Disposition;
- (c) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that the Parent and each other Restricted

Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with such Asset Disposition;

- (d) consideration consisting of Indebtedness of the Parent or any Subsidiary Guarantor (other than Subordinated Indebtedness) received after the 2020 Effective Date from Persons who are not the Parent or any Restricted Subsidiary; and
- (e) any Designated Non-Cash Consideration received by the Parent or any Restricted Subsidiary in such Asset Dispositions having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this Section 5 that is at that time outstanding, not to exceed the greater of \$145.0 million and 3.0% of Total Assets (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).

## 6 LIMITATION ON AFFILIATE TRANSACTIONS

6.1 The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction or series of related transactions (including the purchase, sale, lease or exchange of any property or the rendering of any service) with or for the benefit of any Affiliate of the Parent (such transaction or series of transactions being, an "**Affiliate Transaction**") involving aggregate value in excess of \$12.5 million unless:

- (a) the terms of such Affiliate Transaction taken as a whole are not materially less favourable to the Parent or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm's length dealings with a Person who is not such an Affiliate; and
- (b) in the event such Affiliate Transaction, individually or together with other related Affiliate Transactions, involves an aggregate value in excess of \$25.0 million, the terms of such transaction have been approved by a resolution of the majority of the members of the Board of Directors of the Parent resolving that such transaction complies with paragraph (a) above.

6.2 Any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in paragraph (b) of Section 6.1 if such Affiliate Transaction is approved by a resolution of a majority of the Disinterested Directors. If there are no Disinterested Directors, any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in this Section 6 if the Parent or any of its Restricted Subsidiaries, as the case may be, delivers to the Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Parent or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favourable to the Parent or its 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 on an arm's length basis.

6.3 The provisions of Section 6.1 will not apply to:

- (a) any Restricted Payment permitted to be made pursuant to Section 2 (*Limitation on Restricted Payments*), any Permitted Payments (other than pursuant to paragraph (i)(ii) of Section 2.3) or any Permitted Investment (other than Permitted Investments as defined in paragraphs (a)(ii), (b), (k), (o) and (q) of the definition thereof);

- (b) any issuance or sale of Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, or entering into, or maintenance of, any employment, consulting, collective bargaining or benefit plan, program, agreement or arrangement, related trust or other similar agreement and other compensation arrangements, options, warrants or other rights to purchase Capital Stock of the Parent, any Restricted Subsidiary or any Holding Company, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits or consultants' plans (including valuation, health, insurance, deferred compensation, severance, retirement, savings or similar plans, programs or arrangements) or indemnities provided on behalf of officers, employees, directors or consultants approved by the Board of Directors of the Parent, in each case in the ordinary course of business;
- (c) any Management Advances;
- (d) any transaction between or among the Parent and any Restricted Subsidiary (or entity that becomes a Restricted Subsidiary as a result of such transaction), or between or among Restricted Subsidiaries;
- (e) the payment of reasonable fees and reimbursement of expenses to, and customary indemnities (including under customary insurance policies) and employee benefit and pension expenses provided on behalf of, directors, officers, consultants or employees of the Parent, any Restricted Subsidiary or any Holding Company (whether directly or indirectly and including through any Person owned or controlled by any of such directors, officers or employees);
- (f) the entry into and performance of obligations of the Parent or any of its Restricted Subsidiaries under the terms of any transaction arising out of, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of or on the 2020 Effective Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time in accordance with the other terms of this Section 6 or to the extent not more disadvantageous to the Lenders in any material respect and the entry into and performance of any registration rights or other listing agreement in connection with any Public Offering;
- (g) the formation and maintenance of any consolidated group for tax, accounting or cash pooling or management purposes in the ordinary course of business;
- (h) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, which, in each case, are in the ordinary course of business and are either fair to the Parent or the relevant Restricted Subsidiary in the reasonable determination of the Board of Directors or the Senior Management of the Parent or the relevant Restricted Subsidiary or on terms no less favourable than those that could reasonably have been obtained at such time from an unaffiliated party;
- (i) any transaction in the ordinary course of business between or among the Parent or any Restricted Subsidiary and any Affiliate of the Parent or an Associate or similar entity that would constitute an Affiliate Transaction solely because the Parent or a Restricted Subsidiary or any Affiliate of the Parent or a Restricted Subsidiary owns an equity interest in or otherwise controls such Affiliate, Associate or similar entity; and



- (j) (i) issuances or sales of Capital Stock (other than Disqualified Stock or Designated Preference Shares) of the Parent or options, warrants or other rights to acquire such Capital Stock or Subordinated Shareholder Funding; **provided that** the interest rate and other financial terms of such Subordinated Shareholder Funding are approved by a majority of the members of the Board of Directors of the Parent in their reasonable determination and (ii) any amendment, waiver or other transaction with respect to any Subordinated Shareholder Funding in compliance with the other provisions of this Agreement.

## 7. MERGER AND CONSOLIDATION

### The Parent

7.1 The Parent shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:

- (a) the resulting, surviving or transferee Person (the "**Successor Company**") shall be a Person organised and existing under the laws of the United Kingdom, any member state of the European Union on January 1, 2004 (other than Greece), the United States of America, any State of the United States or the District of Columbia, Canada or any province of Canada, Norway or Switzerland and the Successor Company (if not the Parent) shall expressly assume, to the extent required by applicable law to effect such assumption, all obligations of the Parent under this Agreement and (y) all obligations of the Parent under the Intercreditor Agreement and the Transaction Security Documents;
- (b) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;
- (c) immediately after giving effect to such transaction, either (i) the Successor Company would be able to Incur at least an additional \$1.00 of Indebtedness pursuant to Section 1.1 or (ii) the Fixed Charge Coverage Ratio for the Successor Company and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such transaction; and
- (d) the Parent shall have delivered to the Agent an Officer's Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger or transfer (if any) comply with this Agreement, and that all conditions precedent therein provided for relating to such transaction have been complied with and an Opinion of Counsel to the effect that the assumption (if any) of obligations under paragraph (a) above has been duly authorised, executed and delivered and is a legal, valid and binding agreement enforceable against the Successor Company, and this Agreement constitutes legal, valid and binding obligations of the Successor Company, enforceable in accordance with its terms (in each case, in form and substance reasonably satisfactory to the Agent); **provided that** in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact, including as to satisfaction of paragraphs (b) and (c) above.

- 7.2 Any Indebtedness that becomes an obligation of the Parent or any Restricted Subsidiary (or that is deemed to be Incurred by any Restricted Subsidiary that becomes a Restricted Subsidiary) as a result of any such transaction undertaken in compliance with this Section 7, and any Refinancing Indebtedness with respect thereto, shall be deemed to have been Incurred in compliance with Section 1 (*Limitation on Indebtedness*).
- 7.3 For purposes of this Section 7 only, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all the properties and assets of one or more Subsidiaries of the Parent, which properties and assets, if held by the Parent, as applicable, instead of such Subsidiaries, would constitute all or substantially all the properties and assets of the Parent, on a consolidated basis, shall be deemed to be the transfer of all or substantially all the properties and assets of the Parent.
- 7.4 The Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, the Parent under this Agreement but in the case of a lease of all or substantially all its assets, the predecessor company shall not be released from its obligations under this Agreement.
- 7.5 Notwithstanding the preceding paragraphs (b) and (c) of Section 7.1 (which do not apply to transactions referred to in this Section 7.5) and, other than with respect to Section 7.3, paragraph (d) of Section 7.1, (x) any Restricted Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to the Parent, and (y) any Restricted Subsidiary that is not a Subsidiary Guarantor may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to any other Restricted Subsidiary. Notwithstanding the preceding paragraphs (b) and (c) of Section 7.1 (which do not apply to the transactions referred to in this Section 7.5), the Parent may consolidate or otherwise combine with or merge into an Affiliate incorporated or organised for the purpose of changing the legal domicile of the Parent, reincorporating the Parent in another jurisdiction, or changing the legal form of the Parent.

**Subsidiary Guarantors**

- 7.6 No Subsidiary Guarantor may:
- (a) consolidate with or merge with or into any Person;
  - (b) sell, convey, transfer or dispose of, all or substantially all its assets as an entirety or substantially as an entirety, in one transaction or a series of related transactions, to any Person; or
  - (c) permit any Person to merge with or into a Subsidiary Guarantor, unless:
    - (i) the other Person is a Subsidiary Guarantor or becomes a Subsidiary Guarantor concurrently with the transaction; or
    - (ii)
      - (A) either (x) a Subsidiary Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all the obligations of the Subsidiary Guarantor under this Agreement, the Intercreditor Agreement, to the extent required by applicable law to effect such assumption, and the Transaction Security Documents; and

- (B) immediately after giving effect to the transaction, no Default has occurred and is continuing; or
- (iii) the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Subsidiary Guarantor or the sale or disposition of all or substantially all the assets of the Subsidiary Guarantor (in each case other than to the Parent or a Restricted Subsidiary) otherwise permitted by this Agreement.

**8. SUSPENSION OF COVENANTS ON ACHIEVEMENT OF INVESTMENT GRADE STATUS**

- 8.1. If on any date following the 2020 Effective Date, (w) the Existing Cabot Notes, (x) the Existing Encore Notes, or (y) any Permitted Financial Indebtedness issued by the Restricted Group (i) to refinance or replace the Existing Cabot Notes or in exchange for the Existing Cabot Notes, or (ii) any Refinancing Indebtedness in respect of the Stretch Facility Agreement, have achieved Investment Grade Status and no Default or Event of Default (each as defined in the Existing Cabot Notes Indenture) has occurred and is continuing (a "Suspension Event"), then, the Parent shall notify the Agent of this fact (provided that such notice will not be a precondition of the suspension of the Sections described in this paragraph) and beginning on that day and continuing until the Reversion Date, the following Sections of this Schedule 14 will not apply: Section 1 (*Limitation on Indebtedness*), Section 2 (*Limitation on Restricted Payments*), Section 4 (*Limitation on Restrictions on Distributions from Restricted Subsidiaries*), Section 5 (*Limitation on Sale of Assets and Subsidiary Stock*), Section 6 (*Limitation on Affiliate Transactions*) and the provisions of paragraph (c) of Section 7.1 (*Merger and Consolidation*) and, in each case, any related default provision of this Agreement will cease to be effective and will not be applicable to the Parent and its Restricted Subsidiaries. Such Sections and any related default provisions will again apply according to their terms from the first day on which a Suspension Event ceases to be in effect. Such Sections will not, however, be of any effect with regard to actions of the Parent properly taken during the continuance of the Suspension Event, and Section 2 (*Limitation on Restricted Payments*) will be interpreted as if it has been in effect since the date of this Agreement except that no default will be deemed to have occurred solely by reason of a Restricted Payment made while Section 2 (*Limitation on Restricted Payments*) was suspended. On the Reversion Date, all Indebtedness Incurred during the continuance of the Suspension Event will be classified, at the Parent's option, as having been Incurred pursuant to Section 1.1 or one of the paragraphs set forth in Section 1.2 (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Event and outstanding on the Reversion Date). To the extent such Indebtedness would not be so permitted to be incurred under Section 1.1 or Section 1.2, such Indebtedness will be deemed to have been outstanding on the 2020 Effective Date, so that it is classified as permitted under paragraph (d) of Section 1.2 (without giving effect to the parenthetical contained therein).

**9. IMPAIRMENT OF SECURITY INTEREST**

- 9.1. The Parent shall not, and shall not permit any Restricted Subsidiary to, take or omit to take any action, which action or omission would have the result of materially impairing the security interest with respect to the Collateral (it being understood that the Incurrence of Permitted Collateral Liens shall under no circumstances be deemed to materially impair the security interest with respect to the Collateral) for the benefit of the Finance Parties, and the Parent shall not, and shall not permit any Restricted Subsidiary to, grant to any Person other than the Security Agent,

for the benefit of Secured Parties and the other beneficiaries described in the Transaction Security Documents, any interest whatsoever in any of the Collateral that is prohibited by Section 3 (*Limitation on Liens*); **provided, that** the Parent and its Restricted Subsidiaries may Incur Permitted Collateral Liens and the Collateral may be discharged, transferred or released in accordance with this Agreement, the Intercreditor Agreement or the applicable Transaction Security Documents.

- 9.2. Notwithstanding the above, nothing in this Section 9 shall restrict the discharge and release of any security interest in accordance with this Agreement and the Intercreditor Agreement. Subject to the foregoing, the Transaction Security Documents may be amended, extended, renewed, restated, supplemented or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets) to (i) cure any ambiguity, omission, defect or inconsistency therein; (ii) provide for Permitted Collateral Liens; (iii) add to the Collateral; or (iv) make any other change thereto that does not adversely affect the Lenders in any material respect; **provided, however, that**, except where permitted by this Agreement or the Intercreditor Agreement, no Transaction Security Document may be amended, extended, renewed, restated, supplemented or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), unless contemporaneously with such amendment, extension, renewal, restatement, supplement or modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), the Parent delivers to the Security Agent and the Agent, either (1) a solvency opinion, in form and substance reasonably satisfactory to the Security Agent and the Agent, from an Independent Financial Advisor or appraiser or investment bank of international standing which confirms the solvency of the Parent and its Subsidiaries, taken as a whole, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), (2) a certificate from the chief financial officer or the Board of Directors of the relevant Person which confirms the solvency of the person granting the security interest after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), or (3) an Opinion of Counsel (subject to any qualifications customary for this type of Opinion of Counsel), in form and substance reasonably satisfactory to the Security Agent and the Agent, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), the Lien or Liens created under the Transaction Security Document, so amended, extended, renewed, restated, supplemented, modified or released and retaken are valid and perfected Liens not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Lien or Liens were not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification or release and retake and to which the new Indebtedness secured by the Permitted Collateral Lien is not subject. In the event that the Parent and its Restricted Subsidiaries comply with the requirements of this Section 9.2, the Agent and the Security Agent shall (subject to customary protections and indemnifications) consent to such amendments without the need for instructions from the Lenders.

**PART II  
CERTAIN DEFINITIONS**

Any capitalised terms used in this Part I or Part II of Schedule 14 that are not otherwise defined in this Part I or Part II shall have the respective meanings given to them in Clause 1.1 (*Definitions*) of this Agreement. Terms defined only in Clause 1.1 (*Definitions*) of this Agreement shall be construed when they are used in this Schedule 14 (and only for those purposes), in accordance with English law, notwithstanding that this Schedule 14 is interpreted in accordance with New York law. Unless otherwise expressly stated herein references in this Part II of Schedule 14 are to the Sections of Part I of this Schedule 14.

"**Acquired Indebtedness**" means Indebtedness:

- (a) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary;
- (b) assumed in connection with the acquisition of assets from any Person, in each case whether or not Incurred in connection with such Person becoming a Restricted Subsidiary or such acquisition; or
- (c) of a Person at the time such Person merges with or into or consolidates or otherwise combines with the Parent or any Restricted Subsidiary.

Acquired Indebtedness shall be deemed to have been Incurred, with respect to paragraph (a) above, on the date such Person becomes a Restricted Subsidiary, with respect to paragraph (b) above, on the date of consummation of such acquisition of assets and, with respect to paragraph (c) above, on the date of the relevant merger, consolidation or other combination.

"**Additional Assets**" means:

- (a) any property or assets (other than Indebtedness and Capital Stock) used or to be used by the Parent, a Restricted Subsidiary or otherwise useful in a Similar Business (it being understood that capital expenditures on property or assets already used in a Similar Business or to replace any property or assets that are the subject of such Asset Disposition shall be deemed an investment in Additional Assets);
- (b) the Capital Stock of a Person that is engaged in a Similar Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Parent or a Restricted Subsidiary; or
- (c) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary engaged in a Similar Business.

"**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 the purposes of this definition, "control," when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Asset Disposition**" means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases (other than operating leases entered into in the ordinary course of business),

transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors' qualifying shares), property or other assets (each referred to for the purposes of this definition as a "disposition") by the Parent or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction; **provided that** the sale, conveyance or other disposition of all or substantially all the assets of the Parent and its Restricted Subsidiaries taken as a whole will be governed by Clause 12.1 (*Exit*) of this Agreement and Section 7 (*Merger and Consolidation*) and not by Section 5 (*Limitation on Sales of Assets and Subsidiary Stock*). Notwithstanding the preceding provisions of this definition, the following items shall not be deemed to be Asset Dispositions:

- (a) a disposition by a Restricted Subsidiary to the Parent or by the Parent or a Restricted Subsidiary to a Restricted Subsidiary;
- (b) a disposition of cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;
- (c) a disposition of performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures, claims or other similar assets or instruments or portfolios thereof or inventory or other assets, in each case, in the ordinary course of business, including into a trust in favour of third parties or otherwise;
- (d) a disposition of obsolete, surplus or worn out equipment, or equipment or other property that is no longer useful in the conduct of the business of the Parent and its Restricted Subsidiaries;
- (e) transactions permitted under Section 7.1 (*Merger and Consolidation*) or a transaction that constitutes a Change of Control or a Change of Control as defined in 1.1 (*Definitions*) of this Agreement;
- (f) an issuance of Capital Stock by a Restricted Subsidiary to the Parent or to another Restricted Subsidiary or as part of or pursuant to an equity incentive or compensation plan approved by the Board of Directors of the Parent;
- (g) any dispositions of Capital Stock, properties or assets in a single transaction or series of related transactions with a fair market value (as determined in good faith by the Parent) of less than the greater of (i) \$70.0 million and (ii) 1.5 % of Total Assets;
- (h) any Restricted Payment that is permitted to be made, and is made, under Section 2 (*Limitation on Restricted Payments*) and the making of any Permitted Payment or Permitted Investment or, solely for purposes of the definition of Disposal Proceeds, asset sales, in respect of which (and only to the extent that) the proceeds of which are used to make such Restricted Payments or Permitted Investments;
- (i) dispositions in connection with Permitted Liens;
- (j) dispositions 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;
- (k) the licensing or sub-licensing of intellectual property or other general intangibles and licenses, sub-licenses, leases or subleases of other property, in each case, in the ordinary course of business;

- (l) foreclosure, condemnation or any similar action with respect to any property or other assets;
- (m) any disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary;
- (n) any surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind; and
- (o) any disposition with respect to property built, owned or otherwise acquired by the Parent or any Restricted Subsidiary pursuant to customary sale and leaseback transactions, finance leases, asset securitisations and other similar financings permitted by this Agreement where the fair market value of the assets disposed of, when taken together with all other dispositions made pursuant to this paragraph (o), does not exceed the greater of (i) \$70.0 million and (ii) 1.5% of Total Assets.

"**Associate**" means (1) any Person engaged in a Similar Business of which the Parent or its Restricted Subsidiaries are the legal and beneficial owners of between 20% and 50% of all outstanding Voting Stock and (2) any joint venture entered into by the Parent or any Restricted Subsidiary.

"**Board of Directors**" means (1) with respect to the Parent or any corporation, the board of directors or managers, as applicable, of the corporation, or any duly authorised committee thereof; (2) with respect to any partnership, the board of directors or other governing body of the general partner of the partnership or any duly authorised committee thereof; and (3) with respect to any other Person, the board or any duly authorised committee of such Person serving a similar function. Whenever any provision of this Agreement requires any action or determination to be made by, or any approval of, a Board of Directors, such action, determination or approval shall be deemed to have been taken or made if approved by a majority of the directors (excluding employee representatives, if any) on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting or as a formal board approval).

"**Business Day**" means each day that is not a Saturday, Sunday or other day on which banking institutions in London, United Kingdom, New York, New York, United States or Luxembourg are authorised or required by law to close; **provided, however, that** for any payments to be made under this Agreement, such day shall also be a day on which the second generation Trans-European Automated Real-time Gross Settlement Express Transfer (**TARGET**) payment system is open for the settlement of payments.

"**Capital Stock**" of any Person means any and all shares of, rights to purchase, warrants or options for, or other equivalents of or partnership or other interests in (however designated), equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

"**Capitalised Lease Obligation**" means an obligation that is required to be classified and accounted for as a capitalised lease for financial reporting purposes on the basis of GAAP; *provided, however*, that any obligations in respect of operating leases as determined under GAAP as in effect on the 2020 Effective Date shall not be deemed Capitalised Lease Obligations. The amount of Indebtedness represented by such obligation will be the capitalised amount of such obligation at the time any determination thereof is to be made as determined on the basis of

GAAP, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty.

"Cash Equivalents" means:

- (a) securities issued or directly and fully Guaranteed or insured by the government of the United States, Canada, the United Kingdom, a member state of the European Union (other than Greece and Portugal), Switzerland or Norway or, in each case, any agency or instrumentality thereof (**provided that** the full faith and credit of such country or such member state is pledged in support thereof), having maturities of not more than two years from the date of acquisition;
- (b) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances (in each case, including any such deposits made pursuant to any sinking fund established by the Parent or any Restricted Subsidiary) having maturities of not more than one year from the date of acquisition thereof issued by any lender party to a Credit Facility or by any bank or trust company (a) whose commercial paper is rated at least "A-1" or the equivalent thereof by S&P or at least "P-1" or the equivalent thereof by Moody's or at least "F-1" or the equivalent thereof by Fitch (or, if at the time neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) or (b) (in the event that the bank or trust company does not have commercial paper which is rated) having combined capital and surplus in excess of \$250 million;
- (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in paragraphs (a) and (b) entered into with any bank meeting the qualifications specified in paragraph (b) above;
- (d) commercial paper rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by S&P or "P-2" or the equivalent thereof by Moody's or "F-2" or the equivalent thereof by Fitch or carrying an equivalent rating by a Nationally Recognized Statistical Rating Organization, if both of the two named rating agencies cease publishing ratings of investments or, if no rating is available in respect of the commercial paper, the issuer of which has an equivalent rating in respect of its long-term debt, and in any case maturing within one year after the date of acquisition thereof;
- (e) readily marketable direct obligations issued by any state of the United States of America, any province of Canada, the United Kingdom, any member state of the European Union (other than Greece and Portugal), Switzerland or Norway or any political subdivision thereof, in each case, having one of the two highest rating categories obtainable from either Moody's or S&P or Fitch (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of not more than two years from the date of acquisition;
- (f) Indebtedness or Preferred Stock issued by Persons with a rating of "BBB-" or higher from S&P, "BBB-" or higher from Fitch or "Baa3" or higher from Moody's (or, if at the time neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of 12 months or less from the date of acquisition;



- (g) bills of exchange issued in the United States, Canada, the United Kingdom, a member state of the European Union (other than Greece and Portugal), Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialised equivalent); and
- (h) interests in any investment company, money market or enhanced high yield fund which invests 95% or more of its assets in instruments of the type specified in paragraphs (a) through (g) above.

"**Change of Control**" means:

- (a) the Parent becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) that any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the 2020 Effective Date), is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the 2020 Effective Date), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Parent, **provided** that for the purposes of this paragraph, any holding company whose only asset is the Capital Stock of the Parent will not itself be considered a "person" or "group"; or
- (b) the sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation or other business combination transaction), in one or a series of related transactions, of all or substantially all the assets of the Parent and its Restricted Subsidiaries taken as a whole to a Person, other than a Restricted Subsidiary.

"**Collateral**" means all property and assets, whether now owned or hereafter acquired, in which Liens are, from time to time, purported to be granted to secure the Utilisations pursuant to the Transaction Security Documents.

"**Commodity Hedging Agreements**" means, in respect of a Person, any commodity purchase contract, commodity futures or forward contract, commodities option contract or other similar contract (including commodities derivative agreements or arrangements), to which such Person is a party or a beneficiary.

"**Consolidated EBITDA**" for any period means, without duplication, the Consolidated Net Income for such period, plus the following to the extent deducted in calculating such Consolidated Net Income:

- (a) Fixed Charges plus, to the extent not already included or added back, any costs associated with Hedging Obligations or derivatives;
- (b) Consolidated Income Taxes;
- (c) consolidated depreciation expense;
- (d) consolidated amortisation expense, including any amortisation of portfolio assets;
- (e) any expenses, charges or other costs related to any Equity Offering, Investment, acquisition (including amounts paid in connection with the acquisition or retention of one or more individuals comprising part of a management team retained to manage the acquired business; **provided that** such payments are made in connection with such acquisition and are consistent with the customary practice in the industry at the time of

such acquisition), disposition, recapitalisation or the Incurrence of any Indebtedness permitted by this Agreement (in each case whether or not successful) (including any such fees, expenses or charges related to the Refinancing Transactions), in each case, as determined in good faith by an Officer of the Parent;

- (f) any minority interest expense (whether paid or not) consisting of income attributable to minority equity interests of third parties in such period or any prior period or any net earnings, income or share of profit of any Associates, associated company or undertaking;
- (g) other non-cash charges, write-downs or items reducing Consolidated Net Income (excluding any such non-cash charge, write-down or item to the extent it represents an accrual of or reserve for cash charges in any future period) less other non-cash items of income increasing Consolidated Net Income (excluding any such non-cash item of income to the extent it represents a receipt of cash in any future period);
- (h) the proceeds of any business interruption insurance received or that become receivable during such period to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance were included in computing Consolidated Net Income;
- (i) payments received or that become receivable with respect to expenses that are covered by indemnification provisions in any agreement entered into by such Person in connection with an acquisition to the extent such expenses were included in computing Consolidated Net Income;
- (j) any amount corresponding to any revaluation of portfolio assets, as determined in good faith by the Board of Directors or an Officer of the Parent (to the extent not duplicated with any non-cash charges set forth in paragraph (g) of this definition); and
- (k) settlement fees and related administrative expenses, provided, however, that any such amounts described in this clause (k), individually or collectively, shall not exceed 20% of the amount of Consolidated EBITDA for the relevant period (determined prior to giving effect to any such amounts that are added back);

Notwithstanding the foregoing, the provision for taxes and the depreciation, amortisation, non-cash items, charges and write-downs of a Restricted Subsidiary shall be added to Consolidated Net Income to compute Consolidated EBITDA only to the extent (and in the same proportion, including by reason of minority interests) that the net income (loss) of such Restricted Subsidiary was included in calculating Consolidated Net Income for the purposes of this definition.

**"Consolidated Income Taxes"** means Taxes or other payments, including deferred Taxes, based on income, profits or capital (including without limitation withholding Taxes) and corporation Taxes and franchise Taxes of any of the Parent and its Restricted Subsidiaries whether or not paid, estimated, accrued or required to be remitted to any Governmental Authority.

**"Consolidated Interest Expense"** means, with respect to any Person for any period, without duplication, (1) interest payable (whether in cash or capitalised) on Financial Indebtedness of such Person and its Restricted Subsidiaries for such period, plus (a) any amortisation of debt discount with respect to such Indebtedness and (b) any commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing or bank

guarantees, but, in each case, excluding any expense associated with Subordinated Shareholder Funding less (2) interest income for such period.

**"Consolidated Net Income"** means, for any period, the profit (loss) on ordinary activities after taxation of the Parent and its Restricted Subsidiaries determined on a consolidated basis on the basis of GAAP; **provided, however, that** there will not be included in such Consolidated Net Income:

- (a) subject to the limitations contained in paragraph (c) below, any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that the Parent's equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents (x) actually distributed by such Person during such period to the Parent or a Restricted Subsidiary as a dividend or other distribution or return on investment or (y) solely for the purpose of determining the amount available for Restricted Payments under paragraph (iii)(A) of Section 2.1 that could have been distributed by such Person during such period to the Parent or a Restricted Subsidiary as a dividend or other distribution or return on investment, as reasonably determined by an Officer of the Parent (subject, in the case of a dividend or other distribution or return on investment to a Restricted Subsidiary, to the limitations contained in paragraph (b) below);
- (b) solely for the purpose of determining the amount available for Restricted Payments under paragraph (iii)(A) of Section 2.1, any profit (loss) on ordinary activities after taxation of any Restricted Subsidiary (other than any Subsidiary Guarantor ) if such Restricted 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 Parent or a Subsidiary Guarantor 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, (b) restrictions pursuant to or permitted under this Agreement, the Stretch Facility Agreement, the Encore Private Placement Notes Purchase Agreement, the Existing Cabot Notes, the Existing Encore Notes, the Existing Cabot Notes Indentures and the Existing Encore Notes Indentures, and (c) restrictions specified under paragraph (k) in Section 4.2), 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, to the limitation contained in this paragraph);
- (c) any net gain (or loss) realised 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) which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by an Officer or the Board of Directors of the Parent);
- (d) any extraordinary, exceptional, unusual or nonrecurring gain, loss or charge (as determined in good faith by the Parent), or any charges or reserves in respect of any acquisition, integration, restructuring, redundancy or severance expense;

- (e) the cumulative effect of a change in accounting principles;
- (f) any non-cash compensation charge or expense arising from any grant of stock, stock options or other equity based awards and any non-cash deemed finance charges in respect of any pension liabilities or other provisions;
- (g) all deferred financing costs written off and premiums 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;
- (h) any purchase accounting effects including, but not limited to, adjustments to inventory, property and equipment, software and other intangible assets and deferred revenue in component amounts required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to the Parent and the Restricted Subsidiaries), as a result of any consummated acquisition, or the amortisation or write-off of any amounts thereof (including any write-off of in process research and development);
- (i) any goodwill or other intangible asset impairment charge or write-off; and
- (j) the impact of capitalised, accrued or accreting or pay-in-kind interest or principal on Subordinated Shareholder Funding.

"**Consolidated Net Leverage**" means the sum of the aggregate outstanding Financial Indebtedness of the Parent and its Restricted Subsidiaries less cash and Cash Equivalents (other than cash or Cash Equivalents in an amount equal to amounts collected by the Parent and its Restricted Subsidiaries on behalf of third-party clients and held by the Parent and its Restricted Subsidiaries as of such date and cash and Cash Equivalents that constitute Trust Management Assets or are held on trust for a beneficiary which is not the Parent or a Restricted Subsidiary) of the Parent and its Restricted Subsidiaries as of the relevant date of calculation on a consolidated basis in accordance with GAAP.

"**Consolidated Net Leverage Ratio**" means, as of any date of determination, the ratio of (x) Consolidated Net Leverage at such date to (y) the aggregate amount of Consolidated EBITDA for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which internal consolidated financial statements of the Parent are available; **provided, however, that** for the purposes of calculating Consolidated EBITDA for such period, if, as of such date of determination:

- (a) since the beginning of such period the Parent or any Restricted Subsidiary has disposed of any company, any business, or any group of assets constituting an operating unit of a business (any such disposition, a "**Sale**") or if the transaction giving rise to the need to calculate the Consolidated Net Leverage Ratio is such a Sale, Consolidated EBITDA for such period will be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the assets which are the subject of such Sale for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such period; **provided that** if any such Sale constitutes "discontinued operations" in accordance with the then applicable GAAP, Consolidated Net Income shall be reduced by an amount equal to the Consolidated Net Income (if positive) attributable to such operations for such period or increased by an amount equal to the Consolidated Net Income (if negative) attributable thereto for such period;

- (b) since the beginning of such period, the Parent or any Restricted Subsidiary (by merger or otherwise) has made an Investment in any Person that thereby becomes a Restricted Subsidiary, or otherwise has acquired any company, any business, or any group of assets constituting an operating unit of a business (any such Investment or acquisition, a "**Purchase**"), including any such Purchase occurring in connection with a transaction causing a calculation to be made hereunder, Consolidated EBITDA for such period will be calculated after giving *pro forma* effect thereto as if such Purchase occurred on the first day of such period; and
- (c) since the beginning of such period, any Person (that became a Restricted Subsidiary or was merged or otherwise combined with or into the Parent or any Restricted Subsidiary since the beginning of such period) will have made any Sale or any Purchase that would have required an adjustment pursuant to paragraph (a) or (b) above if made by the Parent or a Restricted Subsidiary since the beginning of such period, Consolidated EBITDA for such period will be calculated after giving *pro forma* effect thereto as if such Sale or Purchase occurred on the first day of such period.

For the purposes of this definition and the definitions of Consolidated EBITDA, Consolidated Income Taxes, Consolidated Interest Expense, Consolidated Net Income and Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries, (a) calculations will be as determined in good faith by a responsible financial or accounting officer of the Parent (including in respect of synergies and cost savings) and (b) in determining the amount of Indebtedness outstanding on any date of determination, *pro forma* effect shall be given to any Incurrence, repayment, repurchase, defeasance or other acquisition, retirement or discharge of Indebtedness as if such transaction had occurred on the first day of the relevant period. For the avoidance of doubt, in determining Consolidated Net Leverage Ratio, no cash or Cash Equivalents shall be included that are the proceeds of Indebtedness in respect of which the calculation of the Consolidated Net Leverage Ratio is to be made.

"**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 does not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**"), including any obligation of such Person, whether or not contingent:

- (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (b) to advance or supply funds:
  - (i) for the purchase or payment of any such primary obligation; or
  - (ii) 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
- (c) 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.

"**Credit Facility**" means, with respect to the Parent or any of its Subsidiaries, one or more debt facilities, indentures or other arrangements (including this Agreement, the Encore Private Placement Notes Purchase Agreement or commercial paper facilities and overdraft facilities) with banks, other financial institutions or investors providing for revolving credit loans, term loans,

notes, 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 or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended from time to time (whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents 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 Facility" shall include any agreement or instrument (a) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (b) adding Subsidiaries of the Parent as additional borrowers or guarantors thereunder, (c) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (d) otherwise altering the terms and conditions thereof.

**"Currency Agreement"** means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency futures contract, currency option contract, currency derivative or other similar agreement to which such Person is a party or beneficiary.

**"Designated Non-Cash Consideration"** means the fair market value (as determined in good faith by the Parent) of non-cash consideration received by the Parent or one of its Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, less the amount of cash, Cash Equivalents or Temporary Cash Investments received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 5 (*Limitation on Sales of Assets and Subsidiary Stock*).

**"Designated Preference Shares"** means, with respect to the Parent or any Parent, Preferred Stock (other than Disqualified Stock) (1) that is issued for cash (other than to the Parent or a Subsidiary of the Parent or an employee stock ownership plan or trust established by the Parent or any such Subsidiary for the benefit of their employees to the extent funded by the Parent or such Subsidiary) and (2) that is designated as "Designated Preference Shares" pursuant to an Officer's Certificate of the Parent at or prior to the issuance thereof, the Net Cash Proceeds of which are excluded from the calculation set forth in paragraph (iii)(B) of Section 2.1.

**"Disinterested Director"** means, with respect to any Affiliate Transaction, a member of the Board of Directors of the Parent having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of the Board of Directors of the Parent shall be deemed not to have such a financial interest solely by reason of such member's holding Capital Stock of the Parent or any Holding Company or any options, warrants or other rights in respect of such Capital Stock.

**"Disqualified Stock"** means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

- (a) matures or is mandatorily redeemable for cash or in exchange for Indebtedness pursuant to a sinking fund obligation or otherwise;
- (b) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Parent or a Restricted Subsidiary); or
- (c) is or may become (in accordance with its terms) upon the occurrence of certain events or otherwise redeemable or repurchasable for cash or in exchange for Indebtedness at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the Termination Date; **provided, however, that** (i) only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock and (ii) any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Parent to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (howsoever defined or referred to) shall not constitute Disqualified Stock if any such redemption or repurchase obligation is subject to compliance by the relevant Person with Section 2 (*Limitation on Restricted Payments*).

**"Dollar Equivalent"** means, with respect to any monetary amount in a currency other than US dollar, at any time of determination thereof by the Parent or the Agent, the amount of US dollar obtained by converting such currency other than US dollar involved in such computation into US dollar at the spot rate for the purchase of US dollar with the applicable currency other than US dollar as published in The Financial Times in the "Currency Rates" section (or, if The Financial Times is no longer published, or if such information is no longer available in The Financial Times, such source as may be selected in good faith by the Parent) on the date of such determination.

**"Encore Private Placement Notes"** means the \$325.0 million senior secured notes due 2024 issued on August 11, 2017 by the Parent pursuant to the third amended and restated senior secured note purchase agreement, as amended on or about the 2020 Effective Date, among the Parent, the guarantors party thereto and the purchasers named therein.

**"Encore Private Placement Notes Purchase Agreement"** means the third amended and restated senior secured note purchase agreement, as amended on or about the 2020 Effective Date, among the Parent, the guarantors party thereto and the purchasers named therein.

**"Equity Offering"** means (x) a sale of Capital Stock of the Parent (other than Disqualified Stock or Designated Preference Shares and other than an Excluded Contribution) other than offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions, or (y) the sale of Capital Stock or other securities of the Holding Company, the proceeds of which are contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of the Parent or any of its Restricted Subsidiaries.

**"ERC"** means, for any date of calculation, the aggregate amount of estimated remaining collections projected to be received by the Parent and its Restricted Subsidiaries from all Right to

Collect Accounts and all performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims or other similar assets or instruments or portfolios thereof owned by the Parent and its Restricted Subsidiaries (excluding, for the avoidance of doubt, any Trust Management Assets and any Right to Collect Accounts, performing, sub-performing or charged-off accounts, cash and bank accounts or other similar assets or instruments which are (or will be) held on trust for a third party which is not the Parent or any Restricted Subsidiary) during the period of 84 months, as calculated by the Portfolio ERC Model, as at the last day of the month most recently ended prior to the date of calculation.

**"Escrowed Proceeds"** means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or Incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term "Escrowed Proceeds" shall include any interest earned on the amounts held in escrow.

**"Exchange Act"** means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

**"Excluded Contribution"** means Net Cash Proceeds or property or assets received by the Parent as capital contributions to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Parent after the 2020 Effective Date or from the issuance or sale (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent or any Subsidiary of the Parent for the benefit of its employees to the extent funded by the Parent or any Restricted Subsidiary) of Capital Stock (other than Disqualified Stock or Designated Preference Shares) of the Parent, in each case, to the extent designated as an Excluded Contribution pursuant to an Officer's Certificate of the Parent.

**"Existing 2021 Encore Convertible Notes"** means the \$161.0 million aggregate principal amount of 2.875% convertible senior notes due 2021 issued by the Parent pursuant to the Existing 2021 Encore Convertible Notes Indenture that remain outstanding.

**"Existing 2021 Encore Convertible Notes Indenture"** means the indenture dated March 11, 2014, as amended, supplemented or modified from time to time, between the Parent, Midland Credit Management, Inc. and Union Bank, N.A.

**"Existing 2022 Encore Convertible Notes"** means the \$150.0 million aggregate principal amount of 3.250% convertible senior notes due 2022 issued by the Parent pursuant to the Existing 2022 Encore Convertible Notes Indenture that remain outstanding.

**"Existing 2022 Encore Convertible Notes Indenture"** means the indenture dated March 3, 2017, as amended, supplemented or modified from time to time, between the Parent, Midland Credit Management, Inc. and MUFG Union Bank, N.A.

**"Existing 2023 Cabot Notes"** means the £512.9 million aggregate principal amount of 7.500% senior secured notes due 2023 issued by the Existing Cabot Fixed Rate Notes Issuer pursuant to the Existing 2023 Cabot Notes Indenture that remain outstanding.

**"Existing 2023 Cabot Notes Indenture"** means the indenture, dated October 6, 2016, among the Existing Cabot Fixed Rate Notes Issuer, Citibank, N.A., London Branch, as trustee, principal paying agent and transfer agent, Citigroup Global Markets Europe AG, as registrar, J.P. Morgan Europe Limited, as security agent, and the guarantors parties thereto.



"**Existing 2023 Encore Exchangeable Notes**" means the \$172.5 million aggregate principal amount of 4.500% exchangeable senior notes due 2023 issued by Encore Capital Europe Finance Limited and guaranteed by the Parent pursuant to the Existing 2023 Encore Exchangeable Notes Indenture that remain outstanding.

"**Existing 2023 Encore Exchangeable Notes Indenture**" means the base indenture dated July 20, 2018, as amended, supplemented or modified from time to time, between Encore Capital Europe Finance Limited, the Parent and MUFG Union Bank, N.A.

"**Existing 2024 Cabot Notes**" means the €400.0 million aggregate principal amount of senior secured floating rate notes due 2024 issued by the Existing Cabot Floating Rate Notes Issuer pursuant to the Existing 2024 Cabot Notes Indenture that remain outstanding.

"**Existing 2024 Cabot Notes Indenture**" means the indenture, dated June 14, 2019 among Existing Cabot Floating Rate Notes Issuer, Citibank, N.A., London Branch, as trustee, principal paying agent, calculation agent and transfer agent, Citigroup Global Markets Europe AG, as registrar, J.P. Morgan Europe Limited, as security agent, and the guarantors parties thereto.

"**Existing 2025 Encore Convertible Notes**" means the \$100.0 million aggregate principal amount of 3.250% convertible senior notes due 2025 issued by the Parent pursuant to the Existing 2025 Encore Convertible Notes Indenture that remain outstanding.

"**Existing 2025 Encore Convertible Notes Indenture**" means the indenture dated September 9, 2019, as amended, supplemented or modified from time to time, between the Parent, Midland Credit Management, Inc. and MUFG Union Bank, N.A.

"**Existing Cabot Fixed Rate Notes Issuer**" means Cabot Financial (Luxembourg) S.A., a wholly owned subsidiary of Cabot Credit Management Group Limited, incorporated as a public limited liability company (*société anonyme*) under the laws of the Grand Duchy of Luxembourg, and registered with the Luxembourg Register of Commerce and Companies under number B 171.245.

"**Existing Cabot Floating Rate Notes Issuer**" means Cabot Financial (Luxembourg) II S.A., a wholly owned subsidiary of Cabot Credit Management Group Limited, incorporated as a public limited liability company (*société anonyme*) under the laws of the Grand Duchy of Luxembourg, and registered with the Luxembourg Register of Commerce and Companies under number B 201.268.

"**Existing Cabot Notes**" means the Existing 2023 Cabot Notes and the Existing 2024 Cabot Notes.

"**Existing Cabot Notes Indentures**" means the Existing 2023 Cabot Notes Indenture and the Existing 2024 Cabot Notes Indenture.

"**Existing Cabot Notes Issuers**" means the Existing Cabot Floating Rate Notes Issuer and the Existing Cabot Fixed Rate Notes Issuer.

"**Existing Encore Convertible Notes**" means the Existing 2021 Encore Convertible Notes, the Existing 2022 Encore Convertible Notes and the Existing 2025 Encore Convertible Notes.

"**Existing Encore Notes**" means the Existing Encore Convertible Notes and the Existing 2023 Encore Exchangeable Notes.

"Existing Encore Notes Indentures" means the Existing 2021 Encore Convertible Notes Indenture, the Existing 2022 Encore Convertible Notes Indenture, the Existing 2025 Encore Convertible Notes Indenture and the Existing 2023 Encore Exchangeable Notes Indenture.

"Existing Encore Senior Facilities" means the existing revolving credit facility and term loan facility made available pursuant to a third amended and restated credit agreement dated December 20, 2016, among the Parent, each of the guarantors and lenders party thereto and SunTrust Bank, as administrative agent, which will be repaid in full in connection with the Refinancing Transactions.

"fair market value" except as otherwise stated herein, may be conclusively established by means of an Officer's Certificate or a resolution of the Board of Directors of the Parent setting out such fair market value as determined by such Officer or such Board of Directors in good faith.

"Financial Indebtedness" means any Indebtedness described under paragraphs (a), (b), (d), (e), (f) and (g) of the definition of "Indebtedness."

"Fitch" means Fitch Ratings Inc., or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"Fixed Charge Coverage Ratio" means, with respect to any Person on any determination date, the ratio of Consolidated EBITDA of such Person for the most recently completed four consecutive fiscal quarters ending immediately prior to such determination date for which internal consolidated financial statements are available to the Fixed Charges of such Person and its Restricted Subsidiaries for such four consecutive fiscal quarters. In the event that the Parent or any Restricted Subsidiary Incurs, assumes, Guarantees, redeems, defeases, retires or extinguishes any Indebtedness (other than, in the case of redemption, defeasance, retirement or extinguishment, Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Fixed Charge Coverage Ratio Calculation Date"), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, assumption, Guarantee, redemption, defeasance, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period; **provided, however, that** the *pro forma* calculation of Fixed Charges shall not give effect to (1) any Indebtedness incurred on the Fixed Charge Coverage Ratio Calculation Date pursuant to the provisions described in Section 1.2 or (2) the discharge on the Fixed Charge Coverage Ratio Calculation Date of any Indebtedness to the extent that such discharge results from the proceeds incurred pursuant to the provisions described in Section 1.2.

For purposes of making the computation referred to above, any Investment, acquisitions, dispositions, mergers, consolidations and disposed or discontinued operations that have been made by the Parent or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations and disposed or discontinued operations (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a

Restricted Subsidiary or was merged with or into the Parent or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation or disposed or discontinued any operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, consolidation or disposed or discontinued operation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to a transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or chief accounting officer of the Parent (including synergies and cost savings). If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalised Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Parent to be the rate of interest implicit in such Capitalised Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Parent may designate.

"**Fixed Charges**" means, with respect to any Person for any period, the sum without duplication, of:

- (a) Consolidated Interest Expense of such Person for such period;
- (b) all cash and non-cash dividends or other distributions payable (excluding items eliminated in consolidation) on any series of Preferred Stock during such period;
- (c) all cash and non-cash dividends or other distributions payable (excluding items eliminated in consolidation) on any series of Disqualified Stock during this period; and
- (d) any interest expense on Indebtedness of another person that is guaranteed by such Person or its Restricted Subsidiaries or secured by a Lien on assets of such Person or its Restricted Subsidiaries, but only to the extent such guarantee or Lien is called upon;

determined on a consolidated basis in accordance with GAAP.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time (other than where specifically provided for in this Agreement), except as otherwise set forth in this Agreement, all ratios and calculations based on GAAP contained in this Agreement shall be computed in accordance with GAAP.

"**Governmental Authority**" means any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory, self-regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

**"Guarantee"** means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

- (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or
- (b) entered into primarily for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), **provided, however, that** the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

**"Hedging Obligations"** of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Hedging Agreement (each, a **"Hedging Agreement"**).

**"Holding Company"** means any Person of which the Parent at any time is or becomes a Subsidiary after the 2020 Effective Date.

**"Incur"** means issue, create, assume, enter into any Guarantee of, incur, extend or otherwise become liable for, and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing; **provided, however, that** any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and any Indebtedness pursuant to any revolving credit or similar facility shall only be deemed to be Incurred at the time any funds are borrowed thereunder.

**"Indebtedness"** means, with respect to any Person on any date of determination (without duplication):

- (a) the principal of indebtedness of such Person for borrowed money;
- (b) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all reimbursement obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of Incurrence);
- (d) Capitalised Lease Obligations of such Person;
- (e) the principal component of all obligations, or liquidation preference, of such Person with respect to any Disqualified Stock or, with respect to any Restricted Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);
- (f) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;

**provided, however, that** the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination (as determined in good faith by the Parent) and (b) the amount of such Indebtedness of such other Persons;

- (g) Guarantees by such Person of the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and
- (h) to the extent not otherwise included in this definition, net obligations of such Person under Currency Agreements and Interest Rate Agreements (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time).

The term "**Indebtedness**" shall not include (i) Subordinated Shareholder Funding, (ii) any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under GAAP as in effect on the 2020 Effective Date, or (iii) any asset retirement obligations, prepayments or deposits received from clients or customers, in each case, with respect to this clause (iii) only, in the ordinary course of business, or (iv) obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) Incurred prior to the 2020 Effective Date or in the ordinary course of business.

The amount of Indebtedness of any Person at any time in the case of a revolving credit or similar facility shall be the total amounts of funds borrowed and then outstanding. The amount of Indebtedness of any Person at any date shall be determined as set forth above or otherwise provided in this Schedule 14, and (other than with respect to letters of credit or Guarantees or Indebtedness specified in paragraphs (e), (f) or (h) above) shall be (a) in the case of any Indebtedness issued with original issue discount, the amount in respect thereof that would appear on the balance sheet of such Person in accordance with GAAP and (b) the principal amount of the Indebtedness, in the case of any other Indebtedness.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

- (i) Contingent Obligations Incurred in the ordinary course of business;
- (ii) 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; **provided, however, that**, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter;
- (iii) for the avoidance of doubt, any 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; or
- (iv) Indebtedness of a Trust Management SPV where the proceeds of such Indebtedness are used to finance the purchase of assets to be held in such trust; **provided that** the incurrence of such Indebtedness is without recourse and contains no obligation on the Parent or any other Restricted Subsidiary or any of their assets in any way.

"**Independent Financial Advisor**" means an investment banking or accounting firm of international standing or any third party appraiser of international standing; **provided, however, that** such firm or appraiser is not an Affiliate of the Parent.

"**Intercreditor Agreement**" means the intercreditor agreement, originally dated September 20, 2012, among the Parent, the Existing Cabot Notes Issuers, the guarantors of the Existing Cabot Notes, Truist Bank, as the Successor Security Agent and Agent in respect of this Agreement and, as Security Agent and Agent in respect of the Stretch Facility Agreement, Truist Bank, as Security Agent in respect of the Encore Private Placement Notes, Citibank, N.A., London Branch, as senior note trustee in respect of the Existing Cabot Notes (each as defined in the Intercreditor Agreement) and the other parties named therein, as amended and restated on or about the 2020 Effective Date and as further amended, restated or otherwise modified or varied from time to time.

"**Interest Rate Agreement**" means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement to which such Person is party or a beneficiary.

"**Investment**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan or other extensions of credit (other than advances or extensions of credit to customers, suppliers, directors, officers or employees of any Person in the ordinary course of business, and excluding any purchase of Underlying Portfolio Assets, any Right to Collect Accounts or any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or the Incurrence of a Guarantee of any obligation of, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such other Persons and all other items that are or would be classified as investments on a balance sheet prepared on the basis of GAAP; **provided, however, that** endorsements of negotiable instruments and documents in the ordinary course of business will not be deemed to be an Investment. If the Parent or any Restricted Subsidiary issues, sells or otherwise disposes of any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any Investment by the Parent or any Restricted Subsidiary in such Person remaining after giving effect thereto will be deemed to be a new Investment at such time equal to the fair market value of the Capital Stock of such Subsidiary not sold or disposed of in an amount determined as provided in Section 2.4.

For purposes of Section 2 (*Limitation on Restricted Payments*):

- (a) "**Investment**" will include the portion (proportionate to the Parent's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; **provided, however, that** upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Parent will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Parent's "Investment" in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Parent's equity interest in such Subsidiary) of the fair market value of the net assets (as conclusively determined by the

Board of Directors of the Parent in good faith) of such Subsidiary at the time that such Subsidiary is so re-designated a Restricted Subsidiary; and

- (b) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Parent.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced (at the Parent's option) by any dividend, distribution, interest payment, return of capital, repayment or other amount or value received in respect of such Investment.

**"Investment Grade Securities"** means:

- (a) securities issued or directly and fully Guaranteed or insured by the United States or Canadian government or any agency or instrumentality thereof (other than Cash Equivalents);
- (b) securities issued or directly and fully guaranteed or insured by the United Kingdom, a member state of the European Union (other than Greece and Portugal), or any agency or instrumentality thereof (other than Cash Equivalents);
- (c) debt securities or debt instruments with a rating of "BBB-" or higher from S&P or "Baa3" or higher by Moody's "BBB-" or higher by Fitch or the equivalent of such rating by such rating organisation or, if no rating of Moody's, Fitch or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Rating Organization, but excluding any debt securities or instruments constituting loans or advances among the Parent and its Subsidiaries; and
- (d) investments in any fund that invests exclusively in investments of the type described in paragraphs (a), (b) and (c) above which fund may also hold cash and Cash Equivalents pending investment or distribution.

**"Investment Grade Status"** shall occur when the Existing Cabot Notes (or any Permitted Financial Indebtedness issued by a member of the Restricted Group (i) to refinance or replace the Existing Cabot Notes or in exchange for the Existing Cabot Notes or (ii) any Refinancing Indebtedness in respect of the Stretch Facility Agreement) receive any two of the following:

- (a) a rating of "BBB-" or higher from S&P;
- (b) a rating of "Baa3" or higher from Moody's; and
- (c) a rating of "BBB-" or higher from Fitch,

or the equivalent of such ratings by either such rating organisations or, if no rating of Moody's, Fitch or S&P then exists, the equivalent of such applicable rating by any other Nationally Recognized Statistical Rating Organization.

**"Lien"** means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

**"LTV Ratio"** means, in respect of any date of calculation, the aggregate Secured Indebtedness of the Parent and its Restricted Subsidiaries less cash and Cash Equivalents (other than cash or Cash Equivalents in an amount equal to amounts collected by the Parent and its Restricted Subsidiaries

on behalf of third-party clients and held by the Parent and its Restricted Subsidiaries as of such date and cash and Cash Equivalents that constitute Trust Management Assets or are held on trust for a beneficiary which is not the Parent or a Restricted Subsidiary) of the Parent and its Restricted Subsidiaries as of such date, divided by ERC; **provided that** ERC shall be adjusted to give effect to purchases or disposals of performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts) made since the last measurement date and prior to such date of calculation, on the basis of estimates made on a *pro forma* basis by management acting in good faith. In determining the LTV Ratio in connection with the Incurrence of Indebtedness and the granting of a Lien, the LTV Ratio shall be determined on a *pro forma* basis for the relevant transaction and the use of proceeds of such Indebtedness; **provided that** no cash or Cash Equivalents shall be included in the calculation of the *pro forma* LTV Ratio that are, or are derived from, the proceeds of Indebtedness in respect of which the *pro forma* calculation is to be made, except, for the avoidance of doubt, to the extent cash or Cash Equivalents will be expended in a transaction to which *pro forma* effect is given; **provided further that** any cash and Cash Equivalents received by the Parent or any of its Restricted Subsidiaries from the issuance or sale of its Capital Stock, Subordinated Shareholder Funding or other capital contributions subsequent to the 2020 Effective Date shall (to the extent they are taken into account in determining the amount available for Restricted Payments under such paragraph) be excluded for purposes of making Restricted Payments and Permitted Payments, as applicable, under paragraphs (iii)(B) and (iii)(C) of Section 2.1 and paragraphs (a) and (m) of Section 2.3 to the extent such cash and Cash Equivalents are included in the calculation of the LTV Ratio.

"**Management Advances**" means loans or advances made to, or Guarantees with respect to loans or advances made to, directors, officers, employees or consultants of the Parent, any Holding Company or any Restricted Subsidiary:

- (a) in respect of travel, entertainment or moving related expenses Incurred in the ordinary course of business;
- (b) in respect of moving related expenses Incurred in connection with any closing or consolidation of any facility or office; or
- (c) not exceeding \$1.25 million in the aggregate outstanding at any time.

"**Management Investors**" means the officers, directors, employees and other members of the management of or consultants to any Holding Company, the Parent or any of their respective Subsidiaries, or spouses, family members or relatives thereof, or any trust, partnership or other entity for the benefit of or the beneficial owner of which (directly or indirectly) is any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Parent, any Restricted Subsidiary or any Holding Company.

"**Market Capitalisation**" means an amount equal to (1) the total number of issued and outstanding shares of common stock or common equity interests of the Parent at market close on 31 December of the prior fiscal year immediately preceding the date of the relevant dividend or share purchase ("**Market Capitalisation Test Date**") multiplied by (2) the arithmetic mean of the closing prices per share of such common stock or common equity interests for the 30 consecutive trading days immediately preceding the Market Capitalisation Test Date.



"**Moody's**" means Moody's Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"**Nationally Recognized Statistical Rating Organization**" means a nationally recognized statistical rating organization within the meaning of Section 3(a)(62) of the Exchange Act.

"**Net Available Cash**" from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or instalment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

- (a) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Taxes paid or required to be paid or accrued as a liability under GAAP (after taking into account any available tax credits or deductions), as a consequence of such Asset Disposition;
- (b) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which are required by applicable law to be repaid out of the proceeds from such Asset Disposition;
- (c) all distributions and other payments required to be made to minority interest holders (other than any Holding Company, the Parent or any of their respective Subsidiaries) in Subsidiaries or joint ventures as a result of such Asset Disposition; and
- (d) the deduction of appropriate amounts required to be provided by the seller as a reserve, on the basis of GAAP, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Parent or any Restricted Subsidiary after such Asset Disposition.

"**Net Cash Proceeds**," with respect to any issuance or sale of Capital Stock or Subordinated Shareholder Funding, means the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions).

"**Officer**" means, with respect to any Person, (1) the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, any Managing Director, any director or the Secretary (a) of such Person or (b) if such Person is owned or managed by a single entity, of such entity, or (2) any other individual designated as an "Officer" for the purposes of this Agreement by the Board of Directors of such Person.

"**Officer's Certificate**" means, with respect to any Person, a certificate signed by one Officer of such Person.

"**Opinion of Counsel**" means a written opinion from legal counsel reasonably satisfactory to the Agent. The counsel may be an employee of or counsel to the Parent or its Subsidiaries.

"**Original Borrower**" means the Subsidiaries of the parent listed in Part I of Schedule 1 (*The Original Parties*) as original borrowers.

"**Parent**" means Encore Capital Group, Inc., a Delaware corporation.

"**Pari Passu Indebtedness**" means Indebtedness of the Parent or any Subsidiary Guarantor that ranks equally in right of payment to the Existing Cabot Notes and which is secured by Liens on the Collateral.

"**Permitted Asset Swap**" means the concurrent purchase and sale or exchange of assets used or useful in a Similar Business or a combination of such assets and cash, Cash Equivalents or Temporary Cash Investments between the Parent or any of its Restricted Subsidiaries and another Person; **provided that** any cash or Cash Equivalents received in excess of the value of any cash or Cash Equivalents sold or exchanged must be applied in accordance with Section 5 (*Limitation on Sales of Assets and Subsidiary Stock*).

"**Permitted Collateral Liens**" means (A) Liens on the Collateral described in one or more of paragraphs (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (r), (s), (t), (u), (v), (w) and (y) of the definition of "Permitted Liens"; (B) Liens on the Collateral to secure Indebtedness of the Parent or a Restricted Subsidiary that is permitted to be Incurred under paragraphs (a), (b) (in the case of paragraph (b), to the extent such Guarantee is in respect of Indebtedness otherwise permitted to be secured and specified in this definition of "Permitted Collateral Liens"), (d)(ii) (if the original Indebtedness was so secured), (f), (k) or (o) of Section 1.2; **provided, however, that** any such Lien ranks equal to (including with respect to the application of proceeds from any realisation or enforcement of the Collateral in accordance with the Intercreditor Agreement) all other Liens on such Collateral securing the Existing Cabot Notes and any Indebtedness incurred under paragraphs (o)(x)(ii) or (o)(y) of Section 1.2 (except that a Lien in favour of Indebtedness incurred under paragraph (a) and paragraph (o)(x)(i) of Section 1.2 and a Lien in favour of Priority Hedging Obligations may have super priority in respect of the application of proceeds from any realisation or enforcement of the Collateral on terms not materially less favourable to the Lenders than that accorded to this Agreement on the 2020 Effective Date as provided in the Intercreditor Agreement as in effect on the 2020 Effective Date), subject always to the terms of this Agreement, (C) Liens on the Collateral securing Indebtedness incurred under Section 1.1; **provided that**, in the case of this paragraph (C), after giving effect to such incurrence on that date, (x) the LTV Ratio is less than 0.725 and (y) any such Lien ranks equal to (including with respect to the application of proceeds from any realisation or enforcement of the Collateral in accordance with the Intercreditor Agreement) all other Liens on such Collateral securing the Existing Cabot Notes and any Refinancing Indebtedness in respect of the Stretch Facility Agreement, (D) Liens on the Collateral securing Indebtedness Incurred under paragraph (e)(ii) of Section 1.2; *provided that*, in the case of this clause (D), after giving *pro forma* effect to the relevant acquisition and the Incurrence of such Indebtedness pursuant to such paragraph (e)(ii), the LTV ratio would not be worse than it was immediately prior to giving *pro forma* effect to the relevant acquisition and the Incurrence of such Indebtedness, or (E) Liens on Collateral securing Refinancing Indebtedness in respect of any Indebtedness secured pursuant to the foregoing paragraphs (A), (B), (C) and (D); **provided that** any such Lien ranks equal to (including with respect to the application of proceeds from any realisation or enforcement of the Collateral in accordance with the Intercreditor Agreement) all other Liens on such Collateral securing the Existing Cabot Notes and any Refinancing Indebtedness in respect of the Stretch Facility Agreement (except as otherwise permitted in paragraph (B)). To the extent that a Lien on the Collateral consists of a mortgage over any real estate located in the United Kingdom, it shall

constitute a Permitted Collateral Lien only to the extent that a mortgage ranking at least *pari passu* is granted in favour of the Security Agent for the benefit of the Finance Parties.

"**Permitted Investment**" means (in each case, by the Parent or any of its Restricted Subsidiaries):

- (a) Investments in (i) a Restricted Subsidiary (including the Capital Stock of a Restricted Subsidiary) or the Parent or (ii) a Person (including the Capital Stock of any such Person) that is engaged in any Similar Business and such Person will, upon the making of such Investment, become a Restricted Subsidiary;
- (b) Investments in another Person if such Person is engaged in any Similar Business and as a result of such Investment such other Person is merged, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets to, the Parent or a Restricted Subsidiary;
- (c) Investments in cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;
- (d) Investments in Receivables owing to the Parent or any Restricted Subsidiary created or acquired in the ordinary course of business;
- (e) Investments in payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;
- (f) Management Advances;
- (g) Investments in Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Parent or any Restricted Subsidiary, or as a result of foreclosure, perfection or enforcement of any Lien, or in satisfaction of judgments or pursuant to any plan of reorganisation or similar arrangement including upon the bankruptcy or insolvency of a debtor;
- (h) Investments made as a result of the receipt of non-cash consideration from a sale or other disposition of property or assets, including an Asset Disposition, in each case, that was made in compliance with Section 5 (*Limitations on Sales of Assets and Subsidiary Stock*);
- (i) Investments in existence on, or made pursuant to legally binding commitments in existence on the 2020 Effective Date, and any extension, modification or renewal of such Investment; **provided that** the amount of the Investment may be increased as required by the terms of the Investment as in existence on the 2020 Effective Date;
- (j) Currency Agreements, Interest Rate Agreements, Commodity Hedging Agreements and related Hedging Obligations, which transactions or obligations are Incurred in compliance with Section 1 (*Limitation on Indebtedness*);
- (k) Investments, taken together with all other Investments made pursuant to this paragraph (k) and at any time outstanding, in an aggregate amount at the time of such Investment not to exceed the greater of 4.5% of Total Assets and \$215.0 million; **provided that**, if an Investment is made pursuant to this paragraph 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 Section 2 (*Limitation on Restricted Payments*), such Investment shall thereafter be deemed to have been made

pursuant to paragraph (a) or (b) of the definition of "Permitted Investments" and not this paragraph;

- (l) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under Section 3 (*Limitation on Liens*);
- (m) any Investment to the extent made using Capital Stock of the Parent (other than Disqualified Stock), Subordinated Shareholder Funding or Capital Stock of any Holding Company as consideration;
- (n) any transaction to the extent constituting an Investment that is permitted and made in accordance with the provisions of Section 6.3 (except those described in paragraphs (a), (c), (f), (h) and (i) of Section 6.3);
- (o) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or licenses or leases of intellectual property, in any case, in the ordinary course of business and in accordance with this Agreement;
- (p) Guarantees not prohibited by Section 1 (*Limitation on Indebtedness*) and (other than with respect to Indebtedness) guarantees, keepwells and similar arrangements in the ordinary course of business;
- (q) Investments in Associates or Unrestricted Subsidiaries in an aggregate amount when taken together with all other Investments made pursuant to this paragraph (q) that are at the time outstanding not to exceed the greater of 3.0% of Total Assets and \$145.0 million;
- (r) Investments in the Existing Cabot Notes, the Encore Private Placement Notes and in any Refinancing Indebtedness in respect of the Stretch Facility Agreement; and
- (s) Investments acquired after the 2020 Effective Date as a result of the acquisition by the Parent or any of its Restricted Subsidiaries 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 Section 7 (*Merger and Consolidation*) to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation.

"**Permitted Liens**" means, with respect to any Person:

- (a) Liens on assets or property of a Restricted Subsidiary that is not a Subsidiary Guarantor securing Indebtedness of any Restricted Subsidiary that is not a Subsidiary Guarantor;
- (b) pledges, deposits or Liens under workmen's compensation laws, unemployment insurance laws, social security laws or similar legislation, or insurance related obligations (including pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements), or in connection with bids, tenders, completion guarantees, contracts (other than for borrowed money) or leases, or to secure utilities, licenses, public or statutory obligations, or to secure surety, indemnity, judgment, appeal or performance bonds, guarantees of government contracts (or other similar bonds, instruments or obligations), or as security for contested Taxes or import or customs duties or for the

payment of rent, or other obligations of like nature, in each case Incurred in the ordinary course of business;

- (c) Liens imposed by law, including carriers', warehousemen's, mechanics', landlords', materialmen's and repairmen's or other like Liens, in each case for sums not yet overdue for a period of more than 60 days or that are bonded or being contested in good faith by appropriate proceedings;
- (d) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings; **provided that** appropriate reserves required pursuant to GAAP have been made in respect thereof;
- (e) Liens in favour of issuers of surety, performance or other bonds, guarantees or letters of credit or bankers' acceptances (not issued to support Indebtedness for borrowed money) issued pursuant to the request of and for the account of the Parent or any Restricted Subsidiary in the ordinary course of its business;
- (f) encumbrances, ground leases, easements (including reciprocal easement agreements), survey exceptions, 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, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of the Parent and its Restricted Subsidiaries or to the ownership of its properties which 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 the Parent and its Restricted Subsidiaries;
- (g) Liens on assets or property of the Parent or any Restricted Subsidiary securing Hedging Obligations permitted under this Agreement;
- (h) leases, licenses, subleases and sublicenses of assets (including real property and intellectual property rights), in each case entered into in the ordinary course of business;
- (i) Liens arising out of judgments, decrees, orders or awards not giving rise to an Event of Default so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree, order or award have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (j) Liens on assets or property of the Parent or any Restricted Subsidiary for the purpose of securing Capitalised Lease Obligations or Purchase Money Obligations, or securing the payment of all or a part of the purchase price of, or securing other Indebtedness Incurred to finance or refinance the acquisition, improvement or construction of, assets or property; **provided that** (a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under this Agreement and (b) any such Lien may not extend to any assets or property of the Parent or any Restricted Subsidiary other than assets or property acquired, improved, constructed or leased with the proceeds of such Indebtedness and any improvements or accessions to such assets and property;
- (k) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution;

- (l) Liens arising from Uniform Commercial Code financing statement filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Parent and its Restricted Subsidiaries in the ordinary course of business;
- (m) Liens existing on, or provided for or required to be granted under written agreements existing on, the 2020 Effective Date after giving effect to the Refinancing Transactions;
- (n) Liens on property, other assets or shares of stock of a Person at the time such Person becomes a Restricted Subsidiary (or at the time the Parent or a Restricted Subsidiary acquires such property, other assets or shares of stock, including any acquisition by means of a merger, consolidation or other business combination transaction with or into the Parent or any Restricted Subsidiary); **provided, however, that** such Liens are not created, incurred or assumed in anticipation of or in connection with such other Person becoming a Restricted Subsidiary (or such acquisition of such property, other assets or stock); **provided, further, that** such Liens do not extend to or cover any property or assets of the Parent and its Restricted Subsidiaries other than (a) the property or assets acquired or (b) the property or assets of the Person acquired, merged with or into or consolidated or combined with the Parent or a Restricted Subsidiary;
- (o) Liens on assets or property of the Parent or any Restricted Subsidiary securing Indebtedness or other obligations of the Parent or such Restricted Subsidiary owing to the Parent or another Restricted Subsidiary, or Liens in favour of the Parent or any Restricted Subsidiary;
- (p) Liens (other than Permitted Collateral Liens) securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under this Schedule 14; **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 or is in respect of property that is or could be the security for or subject to a Permitted Lien hereunder;
- (q) any interest or title of a lessor under any Capitalised Lease Obligation or operating lease;
- (r) (a) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Parent or any Restricted Subsidiary has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;
- (s) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;
- (t) 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;
- (u) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters or arrangers thereof) or on cash set aside at the time of the Incurrence of any Indebtedness or government securities purchased with such

cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose;

- (v) 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, or liens over cash accounts securing cash pooling arrangements;
- (w) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;
- (x) Liens which do not exceed \$50.0 million at any one time outstanding;
- (y) Liens on Capital Stock of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary;
- (z) Liens securing Permitted Purchase Obligations, **provided that** any such Lien is only over the assets and Capital Stock of the relevant Permitted Purchase Obligations SPV;
- (aa) Liens on Right to Collect Accounts, performing accounts, sub-performing accounts, charged-off accounts, cash and bank accounts, loans, receivables, mortgages, debentures, claims or other similar assets or instruments held on trust for third parties; and
- (bb) Liens on Trust Management Assets; **provided that** such Liens do not secure any Indebtedness of the Parent or any Restricted Subsidiary other than a Trust Management SPV.

**"Permitted Purchase Obligations"** means any Indebtedness Incurred by a Permitted Purchase Obligations SPV to finance or refinance the acquisition of performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts) purchased by such Permitted Purchase Obligations SPV, whether directly or through the acquisition of the Capital Stock of any Person owning such assets or otherwise, in an aggregate principal amount not exceeding at the time of the incurrence of such Permitted Purchase Obligations, together with any other Indebtedness incurred pursuant to paragraph (l) of Section 1.2 and then outstanding, 20.0% of the ERC, calculated in good faith on a *pro forma* basis by management as of the date of purchase of such performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims or other similar assets or instruments or such portfolios (including through the use of Right to Collect Accounts), **provided that**:

- (a) except for the granting of a Lien described in paragraph (z) of the definition of "Permitted Liens," no portion of any Permitted Purchase Obligations or any other obligations (contingent or otherwise) of the applicable Permitted Purchase Obligations SPV (a) is guaranteed by the Parent or any other Restricted Subsidiary, (b) is recourse to or obligates the Parent or any other Restricted Subsidiary in any way, or (c) subjects any property or asset of the Parent or any other Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof,
- (b) neither the Parent nor any other Restricted Subsidiary has any obligation to maintain or preserve the applicable Permitted Purchase Obligations SPV's financial condition or cause such entity to achieve certain levels of operating results, and

(c) such Permitted Purchase Obligation is secured (if at all) only over the assets of, and Capital Stock of, the relevant Permitted Purchase Obligations SPV.

**"Permitted Purchase Obligations SPV"** means a Wholly Owned Restricted Subsidiary (1) which engages in no activities other than the acquisition of performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims, or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts), the Incurrence of Permitted Purchase Obligations to finance such acquisition and any business or activities incidental or related to such business and is set up in connection with the Incurrence of Permitted Purchase Obligations, (2) to which the Parent or any Restricted Subsidiary contributes, loans or otherwise transfers no amounts in excess of amounts required, after giving effect to the Incurrence of Permitted Purchase Obligations, to consummate the relevant purchase of assets and amounts required for incidental expenses, costs and fees for the set-up and continuing operations of such Permitted Purchase Obligations SPV, and (3) all the Capital Stock of which is held by a Wholly Owned Restricted Subsidiary which holds no other material assets.

**"Person"** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organisation, limited liability company, government or any agency or political subdivision thereof or any other entity.

**"Portfolio ERC Model"** means the models and methodologies that the Parent uses to calculate the value of its loan portfolios and those of its Subsidiaries, consistently with its most recent audited financial statements as of such date of determination.

**"Preferred Stock,"** as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

**"Priority Hedging Obligations"** means designated Hedging Obligations in an aggregate amount outstanding at any time of up to \$100.0 million.

**"Public Offering"** means any offering of shares of common stock or other common equity interests that are listed on an exchange or publicly offered (which shall include an offering pursuant to Rule 144A and/or Regulation S under the Securities Act to professional market investors or similar persons).

**"Purchase Money Obligations"** means any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

**"Receivable"** means a right to receive payment arising from a sale or lease of goods or services by a Person pursuant to an arrangement with another Person pursuant to which such other Person is obligated to pay for goods or services under terms that permit the purchase of such goods and services on credit, as determined on the basis of GAAP.

**"refinance"** means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms "refinances," "refinanced" and "refinancing" as used for any purpose in this Schedule 14 shall have a correlative meaning.



**"Refinancing Indebtedness"** means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness existing on the date of this Agreement or Incurred in compliance with this Agreement (including Indebtedness of the Parent that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of the Parent or another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; **provided, however, that:**

- (a) if the Indebtedness being refinanced constitutes Subordinated Indebtedness, the Refinancing Indebtedness has a final Stated Maturity at the time such Refinancing Indebtedness is Incurred that is the same as or later than the final Stated Maturity of the Indebtedness being refinanced or, if shorter, the Termination Date;
- (b) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing indebtedness and costs, expenses and fees Incurred in connection therewith); and
- (i) if the Indebtedness being refinanced is expressly subordinated to the Utilisation, such Refinancing Indebtedness is subordinated to the Utilisation on terms at least as favourable to the Lenders as those contained in the documentation governing the Indebtedness being refinanced, **provided, however, that** Refinancing Indebtedness shall not include Indebtedness of the Parent or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary.

Refinancing Indebtedness in respect of any Credit Facility or any other Indebtedness may be Incurred within 120 days after the termination, discharge or repayment of any such Credit Facility or other Indebtedness.

**"Refinancing Transactions"** means the consent solicitation with respect to the Existing Cabot Notes, the amendment and restatement of this Agreement and of the Intercreditor Agreement on or about the 2020 Effective Date, the amendment of the Encore Private Placement Notes Purchase Agreement on or about the 2020 Effective Date, entry into the Stretch Facility Agreement on or about the 2020 Effective Date and the use of proceeds in connection thereto to: (i) repay amounts drawn under this Agreement; (ii) repay amounts drawn under the Existing Encore Senior Facilities, (iii) partially and or fully redeem the Encore Private Placement Notes and (iv) pay estimated commissions, fees and other expenses incurred in connection therewith.

**"Regulation S"** means Regulation S promulgated under the Securities Act.

**"Related Taxes"** means:

- (a) any Taxes (other than (x) Taxes measured by gross or net income, receipts or profits and (y) withholding Taxes), required to be paid (provided such Taxes are in fact paid) by any Holding Company by virtue of its:
  - (i) being organised or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than, directly or indirectly, the Parent or any of the Parent's Subsidiaries);

- (ii) issuing or holding Subordinated Shareholder Funding; or
  - (iii) being a Holding Company parent, directly or indirectly, of the Parent or any of the Parent's Subsidiaries; or
- (b) if and for so long as the Parent is a member of a group filing a consolidated or combined tax return with any Holding Company, any consolidated or combined Taxes measured by income for which such Holding Company is liable up to an amount not to exceed the amount of any such Taxes that the Parent and its Subsidiaries would have been required to pay on a separate company basis or on a consolidated basis if the Parent and its Subsidiaries had paid tax on a consolidated, combined, group, affiliated or unitary basis on behalf of an affiliated group consisting only of the Parent and its Subsidiaries; **provided that** distributions shall be permitted in respect of the income of an Unrestricted Subsidiary only to the extent such Unrestricted Subsidiary distributed cash for such purpose to the Parent or its Restricted Subsidiaries.

"**Restricted Investment**" means any Investment other than a Permitted Investment.

"**Restricted Subsidiary**" means any Subsidiary of the Parent other than an Unrestricted Subsidiary.

"**Reversion Date**" means, after the Existing Cabot Notes (or any permitted Indebtedness issued by the Parent or a Restricted Subsidiary (i) to refinance or replace (i) the Existing Cabot Notes or in exchange for the Existing Cabot Notes or (ii) any Refinancing Indebtedness in respect of the Stretch Facility Agreement) have achieved Investment Grade Status, the date, if any, that such Existing Cabot Notes (or any such permitted Indebtedness issued by the Parent or a Restricted Subsidiary (i) to refinance or replace such Existing Cabot Notes or in exchange for such Existing Cabot Notes or (ii) any Refinancing Indebtedness in respect of the Stretch Facility Agreement) shall cease to have such Investment Grade Status.

"**Right to Collect Account**" means a performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument that is owned by a Person that is not the Parent or one of its Restricted Subsidiaries (a "**Third Party**") and in respect of which (1) such Third Party is unable or unwilling to dispose of the relevant performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument to the Parent or a Restricted Subsidiary; and (2) the Parent or a Restricted Subsidiary is entitled to collect and retain substantially all of the amounts due under such performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument or to receive amounts equivalent thereto.

"**Rule 144A**" means Rule 144A promulgated under the Securities Act.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**S&P**" means Standard & Poor's Investors Ratings Services or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"**Secured Indebtedness**" means any Indebtedness secured by a Lien (other than Indebtedness Incurred pursuant to paragraphs (c), (f), (h), (i), (j) or (n) of Section 1.2).

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"**Senior Management**" means any previous or current officers, directors, and other members of senior management of the Parent or any of its Subsidiaries, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Parent or any Holding Company.

"**Similar Business**" means (1) any businesses, services or activities engaged in by the Parent or any of its Subsidiaries or any Associates on the 2020 Effective Date and (2) any businesses, services and activities engaged in by the Parent or any of its Subsidiaries or any Associates that are related, complementary, incidental, ancillary or similar to any of the foregoing or are extensions or developments of any thereof.

"**Stated Maturity**" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"**Stretch Facility Agreement**" means the senior facilities agreement dated on or about the 2020 Effective Date among the Parent, Truist Bank, as Agent and Security Agent, and the other parties named therein, as amended, restated or otherwise modified or varied from time to time.

"**Subordinated Indebtedness**" means, with respect to any person, any Indebtedness (whether outstanding on the 2020 Effective Date or thereafter Incurred) which is expressly subordinated in right of payment to the Utilisations pursuant to a written agreement (which, for the avoidance of doubt, will not include the Existing Cabot Notes or any Pari Passu Indebtedness).

"**Subordinated Shareholder Funding**" means any funds provided to the Parent by any Holding Company or any Affiliate thereof, in exchange for or pursuant to any security, instrument or agreement other than Capital Stock, in each case issued to and held by a Holding Company, 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 Funding; **provided, however, that** such Subordinated Shareholder Funding:

- (a) does not mature or require any amortisation, redemption or other repayment of principal or any sinking fund payment prior to the first anniversary of the Stated Maturity of the Notes (other than through conversion or exchange of such funding into Capital Stock (other than Disqualified Stock) of the Parent or any funding meeting the requirements of this definition);
- (b) does not require, prior to the first anniversary of the Termination Date, payment of cash interest, cash withholding amounts or other cash gross-ups, or any similar cash amounts;
- (c) contains no change of control or similar provisions and does not accelerate and has no right to declare a default or event of default or take any enforcement action or otherwise require any cash payment, in each case, prior to the first anniversary of the Termination Date;
- (d) does not provide for or require any security interest or encumbrance over any asset of the Parent or any of its Subsidiaries; and
- (e) pursuant to its terms is fully subordinated and junior in right of payment to the Utilisations pursuant to subordination, payment blockage and enforcement limitation

terms which are customary in all material respects for similar funding, **provided, further, however, that** upon the occurrence of any event or circumstance that results in such Indebtedness ceasing to qualify as Subordinated Shareholder Funding, such Indebtedness shall constitute an Incurrence of such Indebtedness by the Parent, and any and all Restricted Payments made through the use of the Net Cash Proceeds from the Incurrence of such Indebtedness since the date of the original issuance of such Subordinated Shareholder Funding shall constitute new Restricted Payments that are deemed to have been made after the date of the original issuance of such Subordinated Shareholder Funding.

**"Subsidiary"** means, with respect to any Person:

- (a) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; or
- (b) any partnership, joint venture, limited liability company or similar entity of which:
  - (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or 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
  - (ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

**"Subsidiary Guarantor"** means a Restricted Subsidiary of the Parent that guarantees the Utilisations.

**"Taxes"** means all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature (including interest, penalties and other liabilities with respect thereto) that are imposed by any government or other taxing authority.

**"Temporary Cash Investments"** means any of the following:

- (a) any investment in
  - (i) direct obligations of, or obligations Guaranteed by, (i) the United States of America or Canada, (ii) the United Kingdom, (iii) any European Union member state (other than Greece and Portugal), (iv) Switzerland or Norway, (v) any country in whose currency funds are being held specifically pending application in the making of an investment or capital expenditure by the Parent or a Restricted Subsidiary in that country with such funds or (vi) any agency or instrumentality of any such country or member state, or
  - (ii) direct obligations of any country recognised by the United States of America rated at least "A" by S&P or "A1" by Fitch or by Moody's (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or

Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);

- (b) overnight bank deposits, and investments in time deposit accounts, certificates of deposit, bankers' acceptances and money market deposits (or, with respect to foreign banks, similar instruments) maturing not more than one year after the date of acquisition thereof issued by:
  - (i) any lender under this Agreement,
  - (ii) any institution authorised to operate as a bank in any of the countries or member states referred to in paragraph (a)(i) above, or
  - (iii) any bank or trust company organised under the laws of any such country or member state or any political subdivision thereof, in each case, having capital and surplus aggregating in excess of \$250 million (or the foreign currency equivalent thereof) and whose long-term debt is rated at least "A-" by S&P, "A" by Fitch or "A3" by Moody's (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;
- (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in paragraph (a) or (b) above entered into with a Person meeting the qualifications described in paragraph (b) above;
- (d) investments in commercial paper, maturing not more than 270 days after the date of acquisition, issued by a Person (other than the Parent or any of its Subsidiaries), with a rating at the time as of which any Investment therein is made of "P-2" (or higher) according to Moody's, "F-2" (or higher) according to Fitch or "A-2" (or higher) according to S&P (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);
- (e) investments in securities maturing not more than one year after the date of acquisition issued or fully Guaranteed by any state, commonwealth or territory of the United States of America, Canada, the United Kingdom, any European Union member state (other than Greece and Portugal), Switzerland or Norway or by any political subdivision or taxing authority of any such state, commonwealth, territory, country or member state, and rated at least "BBB-" by S&P, "BBB-" by Fitch or "Baa3" by Moody's (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);
- (f) bills of exchange issued in the United States, Canada, the United Kingdom, a member state of the European Union (other than Greece and Portugal), Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialised equivalent);
- (g) any money market deposit accounts issued or offered by a commercial bank organised under the laws of a country that is a member of the Organisation for Economic Cooperation and Development, in each case, having capital and surplus in excess of

\$250 million (or the foreign currency equivalent thereof) or whose long-term debt is rated at least "A" by S&P, "A" by Fitch or "A2" by Moody's (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;

- (h) investment funds investing 95% of their assets in securities of the type described in paragraphs (a) through (g) above (which funds may also hold reasonable amounts of cash pending investment and/or distribution); and
- (i) investments in money market funds complying with the risk limiting conditions of Rule 2a-7 (or any successor rule) of the SEC under the U.S. Investment Company Act of 1940, as amended.

"**Total Assets**" means the consolidated total assets of the Parent and its Restricted Subsidiaries in accordance with GAAP as shown on the most recent balance sheet of such Person.

"**Trust Management Assets**" means Right to Collect Accounts, performing accounts, sub performing accounts, charged-off accounts, loans, receivables, mortgages, debentures, claims, cash and bank accounts or other similar assets or instruments held by a Trust Management SPV on trust for a beneficiary which is not the Parent or a Restricted Subsidiary.

"**Trust Management SPV**" means a Restricted Subsidiary whose purpose is managing Trust Management Assets and other activities necessary or ancillary to managing Trust Management Assets, including as necessary to fulfil any obligations or duty of the Trust Management SPV as a trustee.

"**Underlying Portfolio Assets**" means performing, sub-performing or charged-off account, loans, receivables, mortgages, debentures or claims or other similar assets or instruments (in each case, however pooled, aggregated, fractionally owned or contractually divided).

"**Uniform Commercial Code**" means the New York Uniform Commercial Code.

"**Unrestricted Subsidiary**" means:

- (a) any Subsidiary of the Parent that at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Parent in the manner provided below); and
- (b) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Parent may designate any Subsidiary of the Parent (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger, consolidation or other business combination transaction, or Investment therein), other than the Parent or any Borrower, to be an Unrestricted Subsidiary only if:

- (i) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of, or own or hold any Lien on any property of, the Parent or any other Subsidiary of the Parent which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary; and
- (ii) such designation and the Investment of the Parent in such Subsidiary complies with Section 2 (*Limitations on Restricted Payments*).

Any such designation by the Board of Directors of the Parent shall be evidenced to the Agent by filing with the Agent a resolution of the Board of Directors of the Parent giving effect to such designation and an Officer's Certificate certifying that such designation complies with the foregoing conditions.

The Board of Directors of the Parent may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; **provided, that** immediately after giving effect to such designation (1) no Default or Event of Default would result therefrom and (2)(x) the Parent could Incur at least \$1.00 of additional Indebtedness under Section 1.1 or (y) the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries would not be worse than it was immediately prior to giving effect to such designation, in each case, on a *pro forma* basis taking into account such designation. Any such designation by the Board of Directors shall be evidenced to the Agent by promptly filing with the Agent a copy of the resolution of the Board of Directors giving effect to such designation or an Officer's Certificate certifying that such designation complied with the foregoing provisions.

**"Voting Stock"** of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

**"Wholly Owned Restricted Subsidiary"** means a Restricted Subsidiary of the Parent, all the Voting Stock of which (other than directors' qualifying shares or shares required by any applicable law or regulation to be held by a Person other than the Parent or another Wholly Owned Restricted Subsidiary) is owned by the Parent or another Wholly Owned Restricted Subsidiary.

**"Working Capital Intercompany Loan"** means any loan to or by the Parent or any of its Restricted Subsidiaries to or from the Parent or any of its Restricted Subsidiaries from time to time (1) for purposes of consolidated cash and tax management and working capital management and (2) for a duration of less than one year.

**SCHEDULE 15  
FORM OF INCREASE CONFIRMATION**



**SCHEDULE 16**  
**AGREED SECURITY PRINCIPLES**

**SCHEDULE 17  
EXCLUDED BANK ACCOUNTS**

**SCHEDULE 18**  
**FORM OF ADDITIONAL COMMITMENT INCREASE NOTICE**

**SCHEDULE 19**  
**SCREEN RATE CONTINGENCY PERIODS**

<b>Screen Rate</b>	<b>Period</b>
LIBOR	one Month
EURIBOR	one Month

**EXECUTION**

*[Signature Pages intentionally left blank]*

**ENCORE CAPITAL GROUP, INC.**

**5.625% Senior Secured Notes due August 11, 2024**  
**\$325,000,000 Original Aggregate Principal Amount**

**FOURTH AMENDED AND RESTATED**  
**SENIOR SECURED NOTE PURCHASE AGREEMENT**

**September 1, 2020**

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**ENCORE CAPITAL GROUP, INC.**  
350 Camino de la Reina, Suite 100  
San Diego, CA 92108

September 1, 2020

Each of the undersigned holders of 2017 Notes

Ladies and Gentlemen:

Encore Capital Group, Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Company**” or the “**Parent**”), agrees with each of the holders of 2017 Notes whose names appear at the end hereof (each, a “**Purchaser**” and, collectively, the “**Purchasers**”) as follows:

**1. Amendment and Restatement; Issuance of 2017 Notes.**

1.1 Amendment and Restatement. This Agreement amends, restates and replaces in its entirety that certain Third Amended and Restated Senior Secured Note Purchase Agreement, dated as of August 11, 2017 (as amended or otherwise modified prior to the date hereof, the “**2017 Note Agreement**”), by and between the Company, on the one hand, and the Purchasers (as defined therein), on the other hand.

1.2 Issuance of 2017 Notes. Pursuant to the terms of the 2017 Note Agreement, the Company has issued and sold to the 2017 Notes Purchasers (as defined in the 2017 Note Agreement) \$325,000,000 aggregate original principal amount of its 5.625% Senior Secured Notes due August 11, 2024 (the “**2017 Notes**”). After giving effect to the scheduled prepayments previously made pursuant to Section 8.1(a), \$260,000,000 aggregate principal amount of the 2017 Notes is outstanding as of the date of this Agreement. \$103,680,000 aggregate principal amount of the currently outstanding amount of the 2017 Notes held by certain of the original holders of the 2017 Notes will be prepaid in full (the “**Non-Rolling Notes Prepayment**”) on or prior to the Closing Date (as defined below), and \$156,320,000 aggregate principal amount of the currently outstanding amount of the 2017 Notes held by the holders of the 2017 Notes whose names appear at the end of this Agreement will remain outstanding, and such holders have elected to continue to hold their 2017 Notes under and pursuant to the terms of this Agreement, as it amends and restates the 2017 Note Agreement. The Purchasers hereby consent to the Non-Rolling Notes Prepayment not being allocated among all of the 2017 Notes that are outstanding at the time of the making of such partial prepayment of the 2017 Notes, as otherwise required under Section 8.3.

The 2017 Notes are also collectively referred to herein as the “**Notes**”. Notes that have (i) the same final maturity, (ii) the same principal prepayment dates, (iii) the same principal prepayment amounts (as a percentage of the original principal amount of each Note), (iv) the same interest rate, (v) the same interest payment periods, and (vi) the same date of issuance (which, in the case of a Note issued in exchange for another Note, shall be deemed for these purposes the date on which such Note’s ultimate predecessor Note was issued), are herein called a “**Series**” of Notes.

The 2017 Notes are the sole Series of Notes outstanding on the date hereof. Certain capitalized and other terms used in this Agreement are defined in Schedule A and, for purposes of this Agreement, the rules of construction set forth in Section 22.4 shall govern.

**2. [Intentionally Omitted].**

**3. Release of Certain Guarantors; Direction to Collateral Agent under 2017 Note Agreement.** The Purchasers hereby, effective concurrent with the Closing referred to in Section 4 below, release each of Midland International LLC, MRC Receivables Corporation, Midland Funding NCC-2 Corporation, Midland India LLC, Atlantic Credit & Finance, Inc., Atlantic Credit & Finance Special Finance Unit, LLC and Atlantic Credit & Finance Special Finance Unit III, LLC from all of such Person's liabilities and obligations under the Multiparty Guaranty (as defined in the 2017 Note Agreement) and the Indemnity and Contribution Agreement (as defined in the 2017 Note Agreement). Pursuant to Section 20(b) of the Intercreditor Agreement (as defined in the 2017 Note Agreement), each of the Purchasers hereby directs the Collateral Agent (as defined in the 2017 Note Agreement), effective concurrent with the Closing referred to in Section 4 below, to release the Collateral. The Collateral Agent is an intended third-party beneficiary of the immediately preceding sentence.

**4. Conditions Precedent.** The effectiveness of the amendment and restatement of the 2017 Note Agreement provided hereby (the "Closing") is subject to the fulfillment to each Purchaser's satisfaction, at or prior to the Closing, of the following conditions:

4.1 Other Documents. Such Purchaser shall have received the following documents, each duly executed and delivered by the party or parties thereto and in form and substance satisfactory to such Purchaser:

(a) the Intercreditor Agreement, dated as of the Closing Date, among the Security Agent and each of the parties listed therein in the form of Exhibit C (as amended, restated, supplemented or otherwise modified from time to time, the "**Intercreditor Agreement**");

(b) the Amended and Restated Multiparty Guaranty, dated as of the Closing Date, made by the Guarantors in favor and for the benefit of the holders from time to time of the Notes in the form of Exhibit B-1 (as amended, restated, supplemented or otherwise modified from time to time, the "**Multiparty Guaranty**");

(c) the Amended and Restated Indemnity and Contribution Agreement, dated as of the Closing Date, by and among the Obligor in the form of Exhibit B-2 (as amended, restated, supplemented or otherwise modified from time to time, the "**Indemnity and Contribution Agreement**");

(d) the Transaction Security Documents listed in Schedule 2;

(e) favorable opinions of outside counsel to the Obligor, each dated the Closing Date, addressed to the Purchasers and reasonably satisfactory to the

Purchasers, (i) addressing the applicable U.S. and European Transaction Security (covering creation, attachment and perfection (or similar concepts in the applicable jurisdiction) of the applicable Transaction Security and enforceability of the applicable Transaction Security Documents), and (ii) with respect to the newly-joined Guarantors under the Multiparty Guaranty and the Indemnity and Contribution Agreement (a) from counsel in the jurisdiction of organization of such Guarantors, relating to the valid existence, power and authority, due authorization and non-contravention, and (b) from New York counsel as to the enforceability under New York Law of the New York Law-governed Finance Documents to which such Newly-Joined Guarantors are parties, and non-contravention and no consents/authorizations required under New York law. The Company hereby directs each such counsel to deliver such opinion, agrees that the execution and delivery of this Agreement will constitute a reconfirmation of such direction, and understands and agrees that each Purchaser receiving such an opinion will and is hereby authorized to rely on such opinion;

(f) a favorable opinion, dated the Closing Date, of Vedder Price P.C., special counsel for the Purchasers satisfactory to such Purchaser as to such matters incident to the matters herein contemplated related to the Notes as such Purchaser may reasonably request;

(g) an Officer's Certificate from the Company, dated the Closing Date, certifying that the conditions specified in Sections 4.4, 4.5 and 4.6 have been fulfilled;

(h) certified copies of the resolutions of each Obligor, authorizing the execution and delivery of this Agreement and the other Finance Documents, and of all documents evidencing other necessary corporate or similar action and governmental approvals, if any, with respect to the Finance Documents;

(i) a certificate of the Secretary or an Assistant Secretary (or the equivalent thereof) and one other officer (or similar Person) of each of the Obligors, dated the Closing Date, certifying the names and true signatures of the officers (or similar Person) of such Obligor authorized to execute and deliver this Agreement and the other Finance Documents;

(j) certified copies of the articles or certificate of incorporation (or similar charter document) and bylaws or operating agreement (or similar charter document), as applicable, of each Obligor;

(k) a good standing certificate for each Obligor organized in the U.S. from the appropriate Governmental Authority of its jurisdiction of organization, dated as of a recent date prior to the Closing Date, and such other evidence of the status of such Persons as such Purchaser may reasonably request; and

(l) additional documents or certificates with respect to legal matters or corporate or other proceedings related to the transactions contemplated hereby as may be reasonably requested by such Purchaser.

4.2 Payment of Upfront Fees.

The Company shall have paid by wire transfer of immediately available funds to the Purchasers their ratable share of a non-refundable and fully earned modification fee equal to 2.00% of the principal amount of the Notes outstanding on the Closing Date (excluding any Notes being optionally prepaid in full under the Non-Rolling Notes Prepayment).

4.3 Payment of Special Counsel Fees.

Without limiting the provisions of Section 15.1, the Company shall have paid on or before the Closing the reasonable fees, charges and disbursements of Vedder Price P.C., special counsel to the Purchasers to the extent reflected in a statement of such counsel rendered to the Company at least two Business Days prior to the Closing.

4.4 Performance; No Default.

After giving effect to the Closing (including the Refinancing Transactions, which are conditions precedent or conditions concurrent to the Closing), no Default or Event of Default shall have occurred and be continuing, including on a pro-forma basis as of June 30, 2020 (i.e., as if the Refinancing Transactions and such application of proceeds had occurred on June 30, 2020).

4.5 Representations and Warranties.

The representations and warranties of the Obligor in the Finance Documents to which they are a party shall be correct when made and at the time of the Closing, unless stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date.

4.6 Changes in Corporate Structure.

The Company shall not have changed its jurisdiction of incorporation or been a party to any merger or consolidation or succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in Section 5.4.

4.7 Purchase Permitted By Applicable Law, Etc.

The transactions occurring in connection with the Closing shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as Section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including, without limitation, Regulation T, U or X of the Board of Governors of the Federal Reserve System), and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation. If requested by such Purchaser at least ten (10) Business Days prior to the Closing, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as

such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

4.8 Execution of Credit Agreement; Closing of Related Financing Transactions.

(i) Such Purchaser shall have received, on the date when this Agreement is executed and delivered by the parties hereto, the Credit Agreement, duly executed and delivered by the parties thereto and in form and substance satisfactory to such Purchaser; and (ii) thereafter, the closing under the Credit Agreement shall occur concurrently with the Closing, and such Purchaser shall have received a funds flow memorandum (or similar documentation), payoff letters, and such other evidence satisfactory to such Purchaser demonstrating that, on or prior to the Closing Date, after the initial funding under the Credit Agreement and under the other financing transactions of the Company that are closing on the Closing Date: (x) all Notes issued under the 2017 Note Agreement, other than the Notes held by the Purchasers, will be prepaid in full in accordance with the terms required for such prepayment, and (y) all credit facilities under the Credit Agreement (as defined in the 2017 Note Agreement) will be terminated and repaid in full and all Liens in favor of the Collateral Agent (as defined in the 2017 Note Agreement) in the Collateral (as defined in the 2017 Note Agreement) will thereupon be released.

4.9 Proceedings and Documents.

All corporate, organizational and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be reasonably satisfactory to such Purchaser and its special counsel, and such Purchaser and its special counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such counsel may reasonably request.

5. **Representation and Warranties of the Company.** Each Obligor represents and warrants to each Purchaser that:

5.1 Existence and Standing. Each of the Obligors is (i) duly and properly incorporated or organized, as the case may be, (ii) validly existing, (iii) (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation or organization and (iv) has all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except in the case of this clause (iv) where failure to be so authorized could not reasonably be expected to have a Material Adverse Effect (it being understood and agreed, for purposes of this Section, that the failure of any of the Obligors to be authorized to conduct its business in any jurisdiction where such failure could have a material and adverse impact on the ability of such Person to enforce or otherwise collect the Portfolio Accounts of such Person in any such jurisdiction shall be deemed to have a Material Adverse Effect).

5.2 Authorization and Validity. Such Obligor has the power and authority and legal right to execute and deliver the Finance Documents to which it is a party and to perform its obligations thereunder. The execution and delivery by such Obligor of the Finance Documents

to which it is a party and the performance of its obligations thereunder have been duly authorized by proper proceedings, and the Finance Documents to which such Obligor is a party constitute legal, valid and binding obligations of such Obligor enforceable against such Obligor in accordance with their terms, except as enforceability may be limited by (i) bankruptcy, insolvency, fraudulent conveyances, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally, (ii) general equitable principles (whether considered in a proceeding in equity or at law), and (iii) requirements of reasonableness, good faith and fair dealing.

5.3 **No Conflict; Government Consent.** Neither the execution and delivery by the Company or the other Obligors, as applicable, of the Finance Documents to which such Person is a party, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Company or any of the other Obligors, or (ii) the Company's or any other Obligor's articles or certificate of incorporation (or similar charter document), partnership agreement, certificate of partnership, articles or certificate of organization, bylaws, or operating agreement or other management agreement, as the case may be, or (iii) the provisions of any indenture, instrument or agreement to which the Company or any of the other Obligors is a party or is subject, or by which it, or its Property, is bound, or conflict with, or constitute a default thereunder, or result in, or require, the creation or imposition of any Lien in, of or on the Property of the Company or any other Obligor pursuant to the terms of, any such indenture, instrument or agreement. No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority, or any subdivision thereof, which has not been obtained by the Company or any of the other Obligors, is required to be obtained by the Company or any of the other Obligors in connection with the execution and delivery of the Finance Documents by the Company or any of the other Obligors, the borrowings under this Agreement, the payment and performance by the Company of the obligations evidenced by the Notes or under the other Finance Documents or the legality, validity, binding effect or enforceability of any of the Finance Documents.

5.4 **Financial Statements.** The December 31, 2019 and December 31, 2018 audited consolidated financial statements of the Company and its Subsidiaries and the June 30, 2020 and June 30, 2019 unaudited consolidated financial statements of the Company and its Subsidiaries heretofore delivered to the Purchasers were prepared in accordance with generally accepted accounting principles (subject, in the case of the June 30, 2020 and June 30, 2019 financial statements, to normal year-end adjustments) in effect on the date such statements were prepared and fairly present the consolidated financial condition and operations of the Company and its Subsidiaries at such date and the consolidated results of their operations for the period then ended.

5.5 **Material Adverse Change.** Since December 31, 2019, there has been no change in the business, Property, prospects, condition (financial or otherwise) or results of operations of the Company, any Guarantor, or the Company and its Restricted Subsidiaries taken together, in each case which could reasonably be expected to have a Material Adverse Effect.



5.6 Taxes.

(a) Such Obligor (and each member of the Restricted Group) has duly and punctually filed all income and all other material tax returns (together with all necessary information relating thereto) and has paid and discharged all taxes imposed upon it or its assets (in each case within the time period allowed and before the imposition of any interest or penalties), save, in each case, to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b) No claims or investigations are being, or are reasonably likely to be, made or conducted against such Obligor (or against any member of the Restricted Group) with respect to Taxes, which would have, or would reasonably be expected to have, a Material Adverse Effect.

5.7 Litigation and Contingent Obligations. There is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers, threatened against or affecting the Company or any of its Restricted Subsidiaries which could reasonably be expected to have a Material Adverse Effect. Other than liabilities incident to any litigation, arbitration or proceeding which could not reasonably be expected to be in an aggregate amount in excess of \$5,000,000, none of the Company or the other Obligors has any material contingent obligations not provided for or disclosed in the financial statements referred to in Section 5.4.

5.8 Subsidiaries. Schedule 5.8 contains an accurate list of all Subsidiaries of the Company as of the date of this Agreement, setting forth their respective jurisdictions of organization and the percentage of their respective capital stock or other ownership interests owned by the Company or other Subsidiaries. As of the Closing Date there are no Unrestricted Subsidiaries. All of the issued and outstanding shares of capital stock or other ownership interests of the Obligors have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable.

5.9 Employee Benefit Plans.

(a) The Company, each Subsidiary and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Company, any Subsidiary nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by the Company, any Subsidiary or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company, any Subsidiary or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the

granting of a security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans subject to Title IV of ERISA (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan that is funded, determined as of the end of the Company's most recently ended fiscal year on the basis of reasonable actuarial assumptions, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities. The term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in section 3 of ERISA.

(c) The Company, its Subsidiaries and their respective ERISA Affiliates have not incurred (i) withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material or (ii) any obligations in connection with the termination of or withdrawal from any Non-U.S. Plan that individually or in the aggregate are Material.

(d) The expected postretirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification Section 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company and its Subsidiaries is not Material.

(e) [Intentionally Omitted]

(f) All Non-U.S. Plans have been established, operated, administered and maintained in compliance with all laws, regulations and orders applicable thereto, except where failure so to comply could not be reasonably expected to have a Material Adverse Effect. All premiums, contributions and any other amounts required by applicable Non-U.S. Plan documents or applicable laws to be paid or accrued by the Company and its Subsidiaries have been paid or accrued as required, except where failure so to pay or accrue could not be reasonably expected to have a Material Adverse Effect.

5.10 Accuracy of Information. No Finance Document or written statement furnished by the Company or any Obligor to any Purchaser in connection with the negotiation of, or compliance with, the Finance Documents contained, on the date such Finance Document was entered into or such statements were made, any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading in their presentation of the

Company, such as Obligor, their businesses and their Property. The Company makes no representation or warranty concerning the forecasts, estimates, pro forma information, projections and statements as to anticipated future performance or conditions, and the assumptions on which they were based, except that as of the date made (i) such forecasts, estimates, pro forma information, projections and statements were based on good faith assumptions of the management of the Company, and (ii) such assumptions were believed by such management to be reasonable; it being understood and agreed that such forecasts, estimates, pro forma information, projections and statements, and the assumptions on which they are based, may or may not prove to be correct. In addition, the information provided by or on behalf of the Obligors with respect to the Portfolio Accounts owned or to be acquired by the Obligors (or the related purchase agreements) is, to the Company's knowledge and as of the date provided, true and correct in all material respects and, to the Company's knowledge, does not contain any material omissions which would cause such information to be materially misleading with respect to the Portfolio, taken as a whole.

5.11 Regulation U. Neither the Company nor any of the other Obligors is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate of buying or carrying margin stock (as defined in Regulation U). None of the Transaction Security constitutes margin stock (as defined in Regulation U).

5.12 Material Agreements. Neither the Company nor any Restricted Subsidiary is in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any (i) agreement or instrument to which it is a party, which default could reasonably be expected to have a Material Adverse Effect, or (ii) any agreement or instrument evidencing or governing Material Indebtedness.

5.13 Compliance with Laws. The Company and its Restricted Subsidiaries have complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property, except for any failure to comply which could not reasonably be expected to have a Material Adverse Effect.

5.14 Ownership of Properties. The Company and the other Obligors have good title, free of all Liens other than those permitted by Section 3 of Schedule 4 (Restrictive Covenants), to all of the Property and assets reflected in the Company's most recent consolidated financial statements provided to the Purchasers as owned by the Company and the other Obligors, except for minor irregularities in title that (i) do not materially interfere with the business or operations of the Company or the other Obligors as presently conducted and (ii) do not adversely affect the value of any of the Transaction Security in any material respect.

5.15 [Intentionally Omitted].

5.16 Environmental Matters. Given the nature of its business, the Company has concluded that Environmental Laws cannot reasonably be expected to have a Material

Adverse Effect. Neither the Company nor any Restricted Subsidiary has received any notice to the effect that its operations are not in material compliance with any of the requirements of applicable Environmental Laws or are the subject of any federal or state investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could reasonably be expected to have a Material Adverse Effect.

5.17 Investment Company Act. Neither the Company nor any other Obligor is an “investment company” or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended.

5.18 Insurance. The Company maintains, and has caused each other Obligor to maintain, with financially sound and reputable insurance companies insurance on their Property as necessary to conduct their business in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as is consistent with sound business practice.

5.19 No Default or Event of Default. No Default or Event of Default has occurred and is continuing.

5.20 Foreign Assets Control Regulations, Etc.

(a) Neither the Company nor any Controlled Entity (i) is a Blocked Person, (ii) has been notified that its name appears or may in the future appear on a State Sanctions List or (iii) is a target of sanctions that have been imposed by the United Nations or the European Union.

(b) Neither the Company nor any Controlled Entity (i) has violated, been found in violation of, or been charged or convicted under, any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or (ii) to the Company’s knowledge, is under investigation by any Governmental Authority for possible violation of any U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws.

(c) No part of the proceeds from the sale of the 2017 Notes hereunder:

(i) constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by the Company or any Controlled Entity, directly or indirectly, (A) in connection with any investment in, or any transactions or dealings with, any Blocked Person, (B) for any purpose that would cause any Purchaser to be in violation of any U.S. Economic Sanctions Laws or (C) otherwise in violation of any U.S. Economic Sanctions Laws;

(ii) will be used, directly or indirectly, in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Money Laundering Laws; or

(iii) will be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case which would be in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Corruption Laws.

(d) The Company has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that the Company and each Controlled Entity is and will continue to be in compliance with all applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws and Anti-Corruption Laws in all material respects.

5.21 Solvency. After giving effect to the transactions occurring in connection with the Closing, neither the Company nor any other Obligor will be “insolvent,” within the meaning of such term as defined in § 101 of Title 11 of the United States Code, as amended from time to time, or be unable to pay its debts generally as such debts become due, or have an unreasonably small capital to engage in any business or transaction, whether current or contemplated.

5.22 Obligors.

(a) All Material Companies which are members of the Restricted Group are Guarantors.

(b) The aggregate of earnings before interest, tax, depreciation and amortization (calculated on the same basis as Consolidated EBITDA) and the aggregate gross assets (excluding goodwill) of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) exceeds on the Closing Date, 85% of Consolidated EBITDA and consolidated gross assets (excluding goodwill) of the Restricted Group.

(c) For the avoidance of doubt, all calculations in connection with: (i) establishing whether or not any member of the Group is a Material Company; and (ii) the Guarantor coverage test set out in this Section 5.22, shall in each case be calculated in accordance with Fixed GAAP.

5.23 Centre of Main Interests and Establishments.

(a) The Centre of Main Interest of each Obligor incorporated in the European Union is situated in its jurisdiction of incorporation.

(b) No Luxembourg Guarantor has an “establishment” (as that term is used in Article 2(10) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)) in any jurisdiction.

(c) For the avoidance of doubt, this Section 5.23 shall not apply to any Obligor incorporated in the United States.

**6. Representations of the Purchasers.**

6.1. [Intentionally Omitted].

6.2. Source of Funds. Each 2017 Notes Purchaser under the 2017 Note Agreement severally represented on August 11, 2017 that at least one of the following statements was an accurate representation as to each source of funds (a “**Source**”) used by such Purchaser to pay the purchase price of the 2017 Notes purchased by such Purchaser under the 2017 Note Agreement:

(a) the Source is an “insurance company general account” (as the term is defined in the United States Department of Labor’s Prohibited Transaction Exemption (“**PTE**”) 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the NAIC (the “**NAIC Annual Statement**”)) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser’s state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser’s fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an “investment fund” (within the meaning of Part VI of PTE 84-14 (the “**QPAM Exemption**”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan’s assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of

Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be “related” within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a “plan(s)” (within the meaning of Part IV(h) of PTE 96-23 (the “**INHAM Exemption**”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.2, the terms “**employee benefit plan**,” “**governmental plan**,” and “**separate account**” shall have the respective meanings assigned to such terms in section 3 of ERISA.

**7. Information as to Company.** The undertakings in this Section 7 shall remain in force from the date of this Agreement for so long as any Notes remain outstanding or any amount remains unpaid under this Agreement or the Multiparty Guaranty.

In this Section 7:

“**Annual Financial Statements**” means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Section 7.1 (*Financial Statements*).

“**Quarterly Financial Statements**” means the financial statements delivered pursuant to paragraph (b) of Section 7.1 (*Financial Statements*).

7.1 **Financial Statements.** The Parent shall supply to each holder of Notes that is an Institutional Investor:

(a) as soon as they are available, but in any event within 90 days after the end of each of its Financial Years its audited consolidated financial statements for that Financial Year;

(b) as soon as they are available, but in any event within 45 days after the end of each Financial Quarter of each of its Financial Years its consolidated financial statements for that Financial Quarter;

(c) The requirements under paragraphs (a) and (b) of this Section 7.1 shall be deemed satisfied for so long as the Parent:

(i) is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, or elects to comply with such provisions, and it continues to file the reports required by Section 13(a) with the SEC and provided that (i) the Parent complies with any extension to the timing of delivery of financial statements expressly permitted by the SEC from time to time and (ii) the Parent shall have given each holder of a Note that is an Institutional Investor written notice, which may be by e-mail or in accordance with Section 18, of such filing in connection with each delivery (provided that such notice requirement in this clause (ii) will be deemed to have been satisfied so long as Parent makes available on its public website an alert service allowing any holder of a Note that is an Institutional Investor to subscribe for e-mail alerts notifying such holder when SEC filings have been made); or

(ii) the Parent elects to provide to each holder of Notes that is an Institutional Investor reports which, if filed with the SEC, would satisfy (in the good faith judgment of the Parent) the reporting requirements of Section 13(a) or 15(d) of the Exchange Act (other than the provision of certifications, exhibits or information as to internal controls and procedures), for so long as it elects, the Parent will make available to each holder of Notes that is an Institutional Investor, such annual reports, information, documents and other reports that the Parent is, or would be, required to file with the SEC pursuant to such Section 13(a) or 15(d) of the Exchange Act.

7.2 **Provision and Contents of Compliance Certificates.**

(a) The Parent shall supply a Compliance Certificate to each holder of Notes that is an Institutional Investor (i) with each set of its audited consolidated Annual Financial Statements and each set of its consolidated Quarterly Financial Statements and as otherwise required pursuant to this Agreement, and (ii) for purpose of the SSRCF LTV



Ratio if the applicable Test Date is the last day of a Month that is not a Quarter Date, within 45 days after the last day of each such Month.

(b) A Compliance Certificate delivered in accordance with paragraph (a) above shall, amongst other things, set out (in reasonable detail): (i) computations as to compliance with Section 10.1 (*Financial Covenants*) (but only where the Parent is required to demonstrate in such Compliance Certificate compliance in accordance with the provisions of Section 10.1.3 (*Financial Testing*)); and (ii) computations as to the ERC, the LTV Ratio, the SSRCF LTV Ratio and the Fixed Charge Coverage Ratio (regardless of whether the Parent is required to demonstrate in such Compliance Certificate compliance with the provisions of Section 10.1.3 (*Financial Testing*) but provided that where the Parent is not required to demonstrate such compliance, if the computations as to the LTV Ratio and the SSRCF LTV Ratio show that the Parent would not, were it required to demonstrate compliance with the provisions of Section 10.1.3 (*Financial Testing*), comply with such provisions, it will not constitute a breach of the terms of this Agreement or constitute a Default or an Event of Default) in respect of the relevant Quarter Date or other Test Date (in the case of the SSRCF LTV Ratio), together with a certification that:

(i) in respect of any Compliance Certificate delivered with the consolidated Annual Financial Statements or the consolidated Quarterly Financial Statements and subject to paragraph (b) of Section 7.3 (*Requirements as to Financial Statements*) below, ERC as at the last day of the period to which the relevant financial statements relate is identical to the gross amount used as the basis for the calculation of the purchased asset value as reported in the balance sheet of the relevant financial statements;

(ii) subject to paragraph (b) of Section 7.3 (*Requirements as to Financial Statements*) below, there have been no material changes to the methodology used to calculate ERC in respect of the Portfolio Accounts compared to the methodology set out in the ERC Model;

(iii) ERC has been prepared on the basis of recent historical information and based on assumptions believed by the Parent to be fair and reasonable; and

(iv) in respect of the Compliance Certificate delivered with the consolidated Annual Financial Statements only, the Parent is in compliance with Section 9.8 (*Guarantors*) (together with a list identifying which entities within the Restricted Group are Material Companies).

(c) Each Compliance Certificate shall be signed by the Chief Financial Officer or the Chief Executive Officer of the Parent.

7.3 Requirements as to Financial Statements.

(a) The Parent shall procure that each set of Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition, the Parent shall procure that:

(i) each set of Annual Financial Statements shall be audited by the Auditors (which Auditor's opinion shall be without a "going concern" or similar qualification or exception and without any qualification or exception as to the scope of the audit on which such opinion is based); and

(ii) each set of Quarterly Financial Statements is accompanied by commentary on the performance of the Restricted Group for the Financial Quarter to which the financial statements relate and the Financial Year to date and any other material developments or proposals affecting the Restricted Group or its business.

(b) The requirements under paragraph (a)(ii) above shall be deemed satisfied for so long as the Parent:

(i) is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, or elects to comply with such provisions, and it continues to file the reports required by Section 13(a) with the SEC and provided that the Parent shall have given each holder of a Note that is an Institutional Investor written notice, which may be by e-mail or in accordance with Section 18, of such filing in connection with each delivery (provided that such notice requirement in this clause (i) will be deemed to have been satisfied so long as Parent makes available on its public website an alert service allowing any holder of a Note that is an Institutional Investor to subscribe for e-mail alerts notifying such holder when SEC filings have been made); or

(ii) the Parent elects to provide to each holder of Notes that is an Institutional Investor reports which, if filed with the SEC, would satisfy (in the good faith judgment of the Parent) the reporting requirements of Section 13(a) or 15(d) of the Exchange Act (other than the provision of certifications, exhibits or information as to internal controls and procedures), for so long as it elects, the Parent will make available to each holder of Notes that is an Institutional Investor, such annual reports, information, documents and other reports that the Parent is, or would be, required to file with the SEC pursuant to such Section 13(a) or 15(d) of the Exchange Act.

(c) Each set of financial statements delivered pursuant to Section 7.1 (*Financial Statements*) shall be prepared in accordance with GAAP or, in the respect of ERC, the ERC Model. If there has been a material change in the methodology used to calculate ERC and arising as a result of a change determined by the Restricted Group's portfolio valuation committee or accounting practices, then the Parent shall notify each

holder of Notes that is an Institutional Investor in writing of such applicable change and shall also deliver to such holders the information referred to in the following subparagraphs (i) and (ii) below as appropriate:

(i) a description of any change necessary for ERC to reflect the determination of the Restricted Group's portfolio valuation committee or accounting practices;  
and

(ii) sufficient information, in form and substance as may be reasonably required by the Required Holders, to enable the holders of the Notes to determine whether Section 10.1 (Financial Covenants) has been complied with (but only to the extent that the LTV Ratios have been tested by reference to such financial statements in accordance with the provisions of Section 10.1.3 (Financial Testing)), to compare any LTV Ratio and SSRCF LTV Ratio to any previous calculations thereof provided under this Agreement (regardless of whether the Parent is required to demonstrate compliance with the provisions of Section 10.1.3 (Financial Testing)) and to make an accurate comparison between the financial position indicated using the relevant ERC and the applicable Initial ERC as calculated prior to any such change in methodology.

(d) If the Parent notifies each holder of Notes that is an Institutional Investor of a change in accordance with paragraph (c) above, the Parent and the holders of the Notes shall enter into negotiations in good faith with a view to agreeing any amendments to this Agreement which are necessary as a result of the change. These amendments will be such as to ensure that the change does not result in any material alteration in the commercial effect of the obligations contained in this Agreement. If any amendments are agreed they shall take effect and be binding on the Obligors and the holders of the Notes in accordance with their terms.

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

#### 7.4 Budget.

(a) The Parent shall supply to each holder of Notes that is an Institutional Investor, as soon as the same becomes available but in any event within sixty (60) days of the start of each of its Financial Years, an annual budget for that financial year in the form customarily prepared by the Parent (the "**Budget**").

(b) The Parent shall ensure that each Budget:

(i) includes a budgeted consolidated profit and loss, balance sheet and cashflow statement and projected financial covenant calculations;

(ii) is prepared in accordance with GAAP and the accounting practices and financial reference periods applied to financial statements under Section 7.1 (*Financial Statements*); and

(iii) has been approved by the Board of Directors of the Parent.

(c) If the Parent materially updates or changes the Budget, it shall promptly following (but in any event not later than thirty (30) Business Days of) the update or change being made deliver to each holder of Notes that is an Institutional Investor such updated or changed Budget together with a written explanation of the main changes in that Budget.

7.5 Group Companies.

The Compliance Certificate supplied with its Annual Financial Statements shall confirm (i) which members of the Restricted Group are Material Companies and (ii) that the aggregate of earnings before interest, tax, depreciation and amortization (calculated on the same basis as Consolidated EBITDA, as defined in Section 10.1 (*Financial Covenants*)), and aggregate gross assets (excluding goodwill) of the Guarantors in each case (calculated on an unconsolidated basis and excluding all intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) exceeds 85% of Consolidated EBITDA (as defined in Section 10.1 (*Financial Covenants*)) and aggregate gross assets (excluding goodwill) of the Restricted Group. For the avoidance of doubt, all calculations in connection with this Section 7.5 to determine whether or not: (a) any member of the Group is a Material Company; and (b) the Guarantor coverage test set out in clause (ii) of this Section 7.5 has been satisfied, shall in each case be calculated in accordance with Fixed GAAP.

7.6 Year-End. No member of the Restricted Group shall change its Accounting Reference Date.

7.7 Unrestricted Subsidiaries. If any Subsidiaries of the Parent have been designated as Unrestricted Subsidiaries, the information delivered under Section 7.1 (*Financial Statements*), 7.2 (*Provision and Contents of Compliance Certificate*) and 7.4 (*Budget*) will include reasonably detailed information as to the financial condition of the Restricted Group separate from that of the Unrestricted Subsidiaries.

7.8 Notification of Default.

(a) The Parent shall notify the holders of the Notes of any Default (and the steps, if any, being taken to remedy it) promptly upon its becoming aware of such Default (unless the Parent is aware that a notification has already been provided by another Obligor).

(b) If the Required Holders have reasonable grounds for believing that a Default has occurred and is continuing, they may request, and promptly upon such request by the Required Holders, the Parent shall supply to the holders of the Notes, a

certificate signed by two of its senior officers on its behalf certifying, to the best of the knowledge and belief of the senior officers, that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

7.9 “Know Your Customer” Checks.

(a) If:

(i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

(ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or

(iii) a proposed assignment or transfer by a holder of a Note of any of its rights and/or obligations under this Agreement or the Notes to a party that is not a holder of a Note prior to such assignment or transfer,

obliges any holder of a Note (or, in the case of paragraph (iii) above, any prospective new holder of a Note) 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 any holder of a Note supply, or procure the supply of, such documentation and other evidence as is reasonably requested by such holder of a Note in order for such holder or, in the case of the event described in paragraph (iii) above, any prospective new holder of a Note 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, including the USA PATRIOT Act, pursuant to the transactions contemplated in the Finance Documents.

(b) The Parent shall, by not less than ten (10) Business Days’ prior written notice to the holders of the Notes, notify them of its intention to request that one of its Restricted Subsidiaries becomes an Additional Guarantor pursuant to Section 21 (*Changes to Guarantors*).

(c) Following the giving of any notice pursuant to paragraph (b) above, if the accession of such Additional Guarantor obliges the any holder of a Note 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 such holder supply, or procure the supply of, such documentation and other evidence as is reasonably such holder (for itself or on behalf of any prospective new holder of a Note) in order for such holder of a Note or any prospective new holder of a Note 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 Restricted Subsidiary to this Agreement as an Additional Guarantor.

7.10 Inspection; Keeping of Books and Records. The Obligors will permit the holders of Notes, by their respective representatives and agents (at reasonable times and upon reasonable advance written notice, so long as no Default or Event of Default has occurred and is continuing) to inspect (including to conduct an annual field examination of) any of its Property located in the United States and the United Kingdom, including an audit by professionals (including consultants and accountants) retained by the Required Holders of the Company's practices in the computation of the ERC, inspection and audit of the Transaction Security, books and financial records of the Company and each other Obligor, to examine and make copies of the books of account and other financial records of the Company and each other Obligor, and to discuss the affairs, finances and accounts of the Company and each other Obligor with, and to be advised as to the same by, their respective officers and their independent public accountants. The Company shall keep and maintain, and cause each of its Restricted Subsidiaries to keep and maintain, in all material respects, proper books of record and account in which entries in conformity with GAAP (or in accordance with the accounting principles prevailing in the jurisdiction of any Obligor other than the Company) shall be made of all dealings and transactions in relation to their respective businesses and activities. If an Event of Default has occurred and is continuing, the Company, upon the Required Holders' request, shall turn over copies of any such records to the Required Holders or their representatives. Without limiting the Company's obligations under Section 15, the Company shall pay the fees and expenses of the holders of the Notes and such professionals with respect to such examinations, audits and evaluations; provided, that the Required Holders shall undertake only one (1) field examination/audit during any period of twelve (12) consecutive months at the Company's expense. Notwithstanding the foregoing, in addition to the field examinations and audits described above, the Required Holders may have additional field examinations and audits done if an Event of Default shall have occurred and be continuing, at the Company's expense.

**8. Payment and Prepayment of the Notes.**

8.1. Required Prepayments.

(a) Scheduled Prepayments. On November 11, 2019 and on each February 11, May 11, August 11 and November 11 thereafter to and including May 11, 2024 (each, a "Payment Date") the Company will prepay \$16,250,000 principal amount (or such lesser principal amount as shall then be outstanding) of the 2017 Notes at par and without payment of the Make-Whole Amount or any premium, provided that upon any partial prepayment of the 2017 Notes pursuant to Section 8.1(b), (c) or (d), Section 8.2 or Section 8.6 or any partial purchase of the 2017 Notes pursuant to Section 8.5, the principal amount of each required prepayment of the 2017 Notes becoming due under this Section 8.1(a) on and after the date of such prepayment or purchase shall be reduced in the same proportion as the aggregate unpaid principal amount of the 2017 Notes is reduced as a result of such prepayment or purchase. For the avoidance of doubt,

after the Closing, the Company will prepay \$9,770,000 principal amount of the Notes on each Payment Date pursuant to this Section 8.1(a).

(b) Mandatory Credit Agreement Prepayments in Excess of \$10,000,000. If the principal amount of any Mandatory Credit Agreement Prepayment, together with the principal amount of all other Mandatory Credit Agreement Prepayments made during the period of twelve consecutive months immediately preceding the required payment date for such Mandatory Credit Agreement Prepayment (but in each case only to the extent the same permanently reduce the aggregate lending commitments under the Credit Agreement), would exceed \$10,000,000 in the aggregate, then the Company shall, concurrently with the making of such Mandatory Credit Agreement Prepayment, prepay the Notes in an amount equal to the Ratable Share of the amount of such excess (or such lesser principal amount as shall then be outstanding), at 100% of the principal amount so prepaid and the Make-Whole Amount determined for the prepayment date with respect to such principal amount.

(c) [Intentionally Omitted].

(d) [Intentionally Omitted].

(e) [Intentionally Omitted].

(f) Permitted Unsecured Indebtedness Repayment Events. Within 2 Business Days after the occurrence of any Permitted Unsecured Indebtedness Repayment Event, the Company shall deliver an Officer's Certificate to the holders of Notes (notifying the holders of Notes thereof and identifying in reasonable detail the Financial Indebtedness with respect to which such Permitted Unsecured Indebtedness Repayment Event has occurred and the status of current efforts to refinance such Financial Indebtedness). Unless within 5 Business Days after receipt of such Officer's Certificate the Required Holders shall have notified the Company of the Required Holders' election to forgo prepayment, then on the date that is 7 Business Days after the date on which the Company shall have delivered such Officer's Certificate to the holders of Notes the Company shall prepay the Notes in their entirety, at 100% of the principal amount so prepaid and the Make-Whole Amount determined for the prepayment date with respect to such principal amount.

8.2. Optional Prepayments with Make-Whole Amount. The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes of any Series (to the exclusion of the other Series), in an amount not less than \$5,000,000 in the case of partial prepayment, at 100% of the principal amount so prepaid and the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of Notes written notice of each optional prepayment under this Section 8.2 not less than 5 Business Days and not more than 60 days prior to the date (which shall be a Business Day) fixed for such prepayment. Each such notice shall specify such date, the Series of Notes to be prepaid, the aggregate principal amount of such Notes to be prepaid on such date, the principal amount of each Note of such Series held by such holder to be prepaid

(determined in accordance with Section 8.3), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid. Prepayment of the Notes with a distribution made pursuant to the Intercreditor Agreement shall be made at 100% of the principal amount so prepaid and the Make-Whole Amount determined for the prepayment date with respect to such principal amount.

8.3. Allocation of Partial Prepayments. In the case of each partial prepayment of the Notes of each Series, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes of such Series at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

8.4. Maturity, Surrender, Etc. In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment (which shall be a Business Day), together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

8.5. Purchase of Notes. The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes of any Series except (i) upon the payment or prepayment of the Notes of such Series in accordance with the terms of this Section 8 or Section 12.1, or (ii) pursuant to a written offer to purchase Notes of such Series made by the Company or an Affiliate pro rata to the holders of all Notes of such Series at the time outstanding upon the same terms and conditions. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to any provision of this Agreement, and no Notes may be issued in substitution or exchange for any such Notes.

8.6. Change of Control.

(a) Notice of Change of Control or Notice Event. The Company will, within 5 Business Days after any Authorized Officer has knowledge of the occurrence of any Change of Control or Notice Event, give written notice of such Change of Control or Notice Event to each holder of Notes unless notice in respect of such Change of Control (or the Change of Control contemplated by such Notice Event) shall have been given pursuant to Section 8.6(b). If a Change of Control has occurred, such notice shall contain and constitute an offer to prepay Notes as described in Section 8.6(c) and shall be accompanied by the certificate described in Section 8.6(g).

(b) Condition to Obligor Action. The Company will not take any action that consummates or finalizes a Change of Control unless (i) at least 30 days prior to such action it shall have given to each holder of Notes written notice containing and



constituting an offer to prepay Notes as described in Section 8.6(c), accompanied by the certificate described in Section 8.6(g), and (ii) contemporaneously with such action, the Company prepays all Notes required to be prepaid in accordance with this Section 8.6.

(c) Offer to Prepay Notes. The offer to prepay Notes contemplated by Section 8.6(a) and Section 8.6(b) shall be an offer to prepay, in accordance with and subject to this Section 8.6, all, but not less than all, the Notes held by each holder (in this case only, "holder" in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer (the "**Proposed Prepayment Date**"). If such Proposed Prepayment Date is in connection with an offer contemplated by Section 8.6(a), such date shall be not less than 10 days and not more than 60 days after the date of such offer (if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the 30th day after the date of such offer).

(d) Acceptance. A holder of Notes may accept the offer to prepay made pursuant to this Section 8.6 by causing a notice of such acceptance to be delivered to the Company at least 5 days prior to the Proposed Prepayment Date. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 8.6 shall be deemed to constitute an acceptance of such offer by such holder.

(e) Prepayment. Prepayment of the Notes to be prepaid pursuant to this Section 8.6 shall be at 100% of the principal amount of the Notes, plus the Make-Whole Amount determined for the date of prepayment with respect to the principal amount, together with interest on such Notes accrued to the date of prepayment. The prepayment shall be made on the Proposed Prepayment Date except as provided in Section 8.6(f).

(f) Deferral Pending Change of Control. The obligation of the Company to prepay the Notes pursuant to the offers required by Section 8.6(c) and accepted in accordance with Section 8.6(d) is subject to the occurrence of the Change of Control in respect of which such offers and acceptances shall have been made. In the event that such Change of Control does not occur on the Proposed Prepayment Date in respect thereof, the prepayment shall be deferred until and shall be made on the date on which such Change of Control occurs. The Company shall keep each holder of Notes reasonably and timely informed of (i) any such deferral of the date of prepayment, (ii) the date on which such Change of Control and the prepayment are expected to occur, and (iii) any determination by the Company that efforts to effect such Change of Control have ceased or been abandoned (in which case the offers and acceptances made pursuant to this Section 8.6 in respect of such Change of Control shall be deemed rescinded).

(g) Officer's Certificate. Each offer to prepay the Notes pursuant to this Section 8.6 shall be accompanied by a certificate, executed by an Authorized Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this Section 8.6; (iii) the principal amount of each Note offered to be prepaid; (iv) the interest that would be due

on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) that the conditions of this Section 8.6 have been fulfilled; and (vi) in reasonable detail, the nature and date or proposed date of the Change of Control.

8.7. **Make-Whole Amount.** The term “**Make-Whole Amount**” means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal; provided that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

“**Called Principal**” means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.1(b), (c), (d) or (f), Section 8.2, or Section 8.6 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

“**Discounted Value**” means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

“**Reinvestment Yield**” means, with respect to the Called Principal of any Note, the sum of (a) 0.50% plus (b) the yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (“**Reported**”) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (i) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (ii) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then “**Reinvestment Yield**” means, with respect to the Called Principal of any Note, the sum of (x) 0.50% plus (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the

Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

**“Remaining Average Life”** means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a 360 day year comprised of twelve 30-day months and calculated to the nearest one-twelfth year that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

**“Remaining Scheduled Payments”** means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date; provided that if such Settlement Date is not a date on which interest payments are due to be made under the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.1(b), (c), (d) or (f), Section 8.2, Section 8.6 or Section 12.1.

**“Settlement Date”** means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.1(b), (c), (d) or (f), Section 8.2 or Section 8.6, or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

8.8. **Payments Due on Non-Business Days.** Anything in this Agreement or the Notes to the contrary notwithstanding, (x) any payment of interest on any Note that is due on a date that is not a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; and (y) any payment of principal or Make-Whole Amount on any Note (including principal due on the scheduled final maturity date of such Note) that is due on a date that is not a Business Day shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

9. **Affirmative Covenants.** The undertakings in this Section 9 shall remain in force from the date of this Agreement for so long as any Notes remain outstanding or any amount remains unpaid under this Agreement or the Multiparty Guaranty.

9.1. **Authorizations.** Each Obligor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorization (other than as may be

no longer required pursuant to a Permitted Reorganization) required under any applicable law or regulation:

- (a) of a Relevant Jurisdiction to enable it to perform its obligations under the Transaction Documents to which it is a party;
- (b) of a Relevant Jurisdiction to ensure, subject to the Legal Reservations and the Perfection Requirements, the legality, validity, enforceability or admissibility in evidence of any Transaction Document to which it is a party; and
- (c) of a Relevant Jurisdiction or any jurisdiction where it conducts its business to carry on its business except to the extent that failure to obtain or comply with those Authorizations could not reasonably be expected to have a Material Adverse Effect.

9.2. Compliance with Laws. Without limiting Section 10.14, Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will) comply in all respects with all laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

9.3. Taxation.

(a) Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith by appropriate proceedings;
- (ii) adequate reserves established in accordance with GAAP are being maintained for such Taxes and the costs required to contest them; and
- (iii) such payment can be lawfully withheld and failure to pay such Taxes is not reasonably likely to have a Material Adverse Effect.

(b) No Obligor may change its residence for Tax purposes.

9.4. Insurance. The Obligors will maintain with financially sound and reputable insurance companies insurance on their Property in such amounts, subject to such deductibles and self-insurance retentions, and covering such risks as is consistent with sound business practice. Subject to the Agreed Security Principles and the Transaction Security Documents, the Company shall deliver to the Security Agent all general liability and other liability policies naming the Security Agent as an additional insured. The Company shall furnish to any holder of Notes such additional information as such holder may reasonably request regarding the insurance carried by the Obligors. In the event the Obligors at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required herein or to pay any premium in whole or in part relating thereto, then the Security Agent, without waiving or

releasing any obligations or resulting Event of Default hereunder, may at any time or times thereafter (but shall be under no obligation to do so) obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto which the Security Agent deems advisable. All sums so disbursed by the Security Agent shall constitute part of the obligations secured by the Transaction Security, payable as provided in this Agreement.

9.5. Preservation of Assets. Each Obligor shall (and the Parent shall ensure that each 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 where failure to do so would reasonably be expected to have a Material Adverse Effect.

9.6. Pari Passu Ranking. Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of any holder of a Note against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

9.7. Pensions. The Parent shall ensure that all pension schemes operated by or maintained for the benefit of any member of the Restricted Group and/or any of their employees are fully funded to the extent required by their terms and applicable laws where failure to do so would reasonably be expected to have a Material Adverse Effect.

9.8. Guarantors.

(a) The Parent shall ensure that subject to the Agreed Security Principles and paragraphs (b) and (c) below:

(i) all Material Companies which are members of the Restricted Group, and any member of the Restricted Group that is or becomes a guarantor in respect of the Senior Notes, any of the Existing Notes or the Credit Agreement, are Guarantors (in the case of any member of the Restricted Group that is or becomes a guarantor in respect of the Senior Notes, any of the Existing Notes or the Credit Agreement, before or simultaneously to becoming a guarantor in respect of the Senior Notes, any of the Existing Notes or the Credit Agreement); and

(ii) the aggregate of the earnings before interest, tax, depreciation and amortization (calculated on the same basis as Consolidated EBITDA) of the Parent and the Guarantors for each Financial Year and the aggregate gross assets (excluding goodwill) of the Parent and the Guarantors (in each case calculated on an unconsolidated basis and excluding all intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) represents not less than 85% of Consolidated EBITDA for the corresponding Financial Year and consolidated gross assets (excluding goodwill) of all members of the Restricted Group (including the Parent), respectively, in

each case calculated by reference to the most recently delivered set of Annual Financial Statements of the Group delivered under Section 7.1 (*Financial Statements*) and adjusted to give pro forma effect to any acquisitions (including through mergers or consolidations) and dispositions that have taken place prior to the date on which the Financial Year ends.

(b) Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavors lawfully available to avoid any unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Required Holders may (but shall not be obliged to) agree to such a limit if, in their opinion, to do so would avoid the relevant unlawfulness or personal liability.

(c) Subject to the Agreed Security Principles, any member of the Restricted Group that becomes a Material Company and any Material Company acquired in accordance with this Agreement after the Closing Date shall become a Guarantor and grant Security as the Required Holders may require (acting reasonably) (including, for the avoidance of doubt, provision of share security by the immediate Holding Company of the relevant Material Company) and such Material Company shall accede to the Intercreditor Agreement as soon as practicable and in any event within 45 days of delivery of any Annual Financial Statements delivered under Section 7.1 (*Financial Statements*) or within (i) in the case of any Material Company established or incorporated in England and Wales, as soon as is reasonably practicable and in any event, 60 days of its acquisition or (ii) in the case of any other Material Company, as soon as is reasonably practicable and in any event, 90 days of its acquisition, as the case may be.

(d) For the avoidance of doubt, all calculations in connection with: (i) establishing whether or not any member of the Group is a Material Company; and (ii) the Guarantor coverage test set out in this Section 9.8, shall in each case be calculated in accordance with Fixed GAAP.

#### 9.9. Unrestricted Subsidiaries.

(a) Subject to paragraph (c) of Section 10.6 (*Intra-Group Transfers*), nothing in this Agreement shall restrict the Parent from designating any of its Subsidiaries as being Unrestricted Subsidiaries provided that such Subsidiary meets the requirements for such designation set out in Section 2 of Schedule 4 (*Restrictive Covenants*) and in the definition of “Unrestricted Subsidiary” set forth in Part II of Schedule 4 (*Restrictive Covenants*).

(b) If a member of the Restricted Group is designated as an Unrestricted Subsidiary, each Obligor will (i) ensure that the Unrestricted Subsidiary does not (and will, for so long as it is an Unrestricted Subsidiary, not) legally or beneficially own shares in any Restricted Subsidiary; and (ii) use its reasonable endeavors to ensure that no member of the Restricted Group has any material liabilities (including pension, environmental and Tax liabilities) to or in respect of the Unrestricted Subsidiary and if any such material liability arises the Parent will promptly notify the

holders of the Notes and procure that the Unrestricted Subsidiary becomes a Restricted Subsidiary as soon as reasonably practicable and in any event within 20 Business Days of the first date on which the Parent is aware of the material liability.

9.10. Further Assurances.

(a) Each Obligor shall (and the Parent shall procure that each 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 favor of the Security Agent or its nominee(s)):

(i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the holders of the Notes provided by or pursuant to the Finance Documents or by law;

(ii) to confer on the Security Agent or confer for the benefit of the holders of the Notes Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

(iii) to facilitate the realization of the assets which are, or are intended to be, the subject of the Transaction Security.

(b) Each Obligor shall (and the Parent shall procure that each member of the Restricted Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or for the benefit of the holders of the Notes by or pursuant to the Finance Documents.

(c) Paragraphs (a) and (b) above shall be subject to the Agreed Security Principles in relation to any Security granted after the date of this Agreement. Each Obligor must use, and must procure that any other member of the Restricted Group that is a potential provider of Transaction Security uses, all reasonable endeavors lawfully available to avoid or mitigate the legal constraints on the provision of Security provided for in the Agreed Security Principles.

(d) For the avoidance of doubt, no Security will be granted under any Transaction Security Document over any asset which is permitted to be subject to a Permitted Lien under paragraph (aa) of that definition and any purported grant of such Security shall be null and void.

9.11. Bank Accounts.

(a) Each Obligor's bank accounts (and the Parent shall procure that each member of the Restricted Group's bank accounts) save, in each case, for any Excluded Bank Accounts (as defined in the Credit Agreement), shall be held with a Lender (as defined in the Credit Agreement), an Affiliate of a Lender or an Acceptable Bank (as defined in the Credit Agreement).

(b) Each Obligor (and the Parent shall procure that each member of the Restricted Group) shall keep any monies held on trust for third parties segregated from monies belonging to it in separate bank accounts.

9.12. Most Favored Lender. If at any time any of the Credit Agreement, or any agreement or document related to the Credit Agreement or any Principal Credit Facility of the Company, includes (i) any covenant, event of default or similar provision that is not provided for in this Agreement, or (ii) any covenant, event of default or similar provision that is more restrictive than the same or similar covenant, event of default or similar provision provided in this Agreement (all such provisions described in clauses (i) or (ii) of this Section 9.12 being referred to as the "**Most Favored Covenants**"), then (a) such Most Favored Covenant shall immediately and automatically be incorporated by reference in this Agreement as if set forth fully herein, *mutatis mutandis*, and no such provision may thereafter be waived, amended or modified under this Agreement except pursuant to the provisions of Section 17, and (b) the Company shall promptly, and in any event within five (5) Business Days after entering into any such Most Favored Covenant, so advise the holders of Notes in writing. Thereafter, upon the request of the Required Holders, the Company shall enter into an amendment to this Agreement with the Required Holders evidencing the incorporation of such Most Favored Covenant, it being agreed that any failure to make such request or to enter into any such amendment shall in no way qualify or limit the incorporation by reference described in clause (a) of the immediately preceding sentence.

9.13. Information Required by Rule 144A. The Company covenants that it will, upon the request of the holder of any Note, provide such holder, and any Qualified Institutional Buyer designated by such holder, such financial and other information as such holder may reasonably determine to be necessary in order to permit compliance with the information requirements of Rule 144A under the Securities Act in connection with the resale of Notes, except at such times as the Company is subject to and in compliance with the reporting requirements of section 13 or 15(d) of the Exchange Act.

9.14. Rating Confirmation. The Company covenants that, at its sole cost and expense, it will cause to be maintained at all times a Credit Rating from at least one Rating Agency that indicates that it will monitor the rating on an ongoing basis. The Company further covenants and agrees that, within a reasonable period of time after the occurrence of any change in the Credit Rating, the Company will notify each of the holders of the Notes of such change, sent in the manner provided in Section 18. If at any time any Credit Rating is below BB- (if the Rating Agency is S&P Global Ratings) or the equivalent thereof (if the Rating Agency is Fitch Ratings, Inc. or Moody's Investors Service, Inc.), then, notwithstanding anything to the contrary



in the Notes or the other Finance Documents, the coupon on the Notes (including any applicable Default Rate) will automatically be increased by 0.75% per annum until such time (if any) as no Credit Rating is below BB- (or the equivalent thereof).

**10. Negative Covenants.** The undertakings in this Section 10 shall remain in force from the date of this Agreement for so long as any Notes remain outstanding or any amount remains unpaid under this Agreement or the Multiparty Guaranty.

10.1. Financial Covenants.

10.1.1. Financial Condition.

- (a) The Parent shall ensure that on each Test Date the LTV Ratio does not exceed 0.75 to 1.00.
- (b) The Parent shall ensure that on each Test Date the SSRCF LTV Ratio does not exceed 0.275 to 1.00.
- (c) The Parent shall ensure that on each Test Date the Fixed Charge Coverage Ratio is greater than 2.00 to 1.00.

10.1.2. Financial Definitions. In this Agreement:

“**ERC**” means the aggregate amount of estimated remaining collections projected to be received by the Restricted Group from the Portfolio during the period of 84 Months, as calculated by the ERC Model as at the last day of the Month most recently ended prior to the date of calculation which most accurately reflects the latest performance of the portfolios.

“**ERC Model**” means the models and methodologies that the Parent uses to calculate the value of its loan portfolio and those of its Subsidiaries, consistently with:

- (a) for the period from and including the Closing Date to and including February 28, 2021 its most recent quarterly financial statements each as of the date of such determination; and
- (b) thereafter, its most recent audited financial statements each as of the date of such determination.

“**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 Restricted Group ending on the Accounting Reference Date in each year.

“**Fixed Charge Coverage Ratio**” means the ratio of Consolidated EBITDA for any Relevant Period to Fixed Charges of the Parent and the Restricted Subsidiaries for such Relevant Period.

“**LTV Ratio**” means, in respect of any date of calculation, the aggregate Financial Indebtedness of the Restricted Group less cash and Cash Equivalent Investments held by the Restricted Group as of such date (other than cash or Cash Equivalent Investments in an amount equal to amounts collected by the Restricted Group on behalf of third-party clients and held by the Restricted Group as of such date), divided by ERC (provided that, in relation to testing dates other than on any Quarter Date, ERC shall be adjusted to give effect to purchases or disposals of performing, sub-performing or charged off accounts, loans, receivables, mortgages debentures or claims or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts) made since the last day of the Month most recently ended prior to the date of calculation on the basis of estimates made on a pro-forma basis by management acting in good faith).

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

“**Quarter Period**” means the period commencing on the day immediately following a Quarter Date and ending on the next occurring Quarter Date.

“**Relevant Period**” means each period of four consecutive Quarter Periods ending on a Quarter Date.

“**SSRCF LTV Ratio**” means, in respect of any date of calculation, the aggregate drawn amount of any Financial Indebtedness which constitutes “Super Senior Liabilities” under and as defined in the Intercreditor Agreement, less cash and Cash Equivalent Investments held by the Restricted Group as of such date (other than cash or Cash Equivalent Investments in an amount equal to amounts collected by the Restricted Group on behalf of third-party clients and held by the Restricted Group as of such date), divided by ERC (provided that in relation to testing dates other than on any Quarter Date or the last day of any Month, ERC shall be adjusted to give effect to purchases or disposals of performing, sub-performing or charged off accounts, loans, receivables, mortgages debentures or claims or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts) made since the last day of the Month most recently ended prior to the date of calculation on the basis of estimates made on a pro forma basis by management acting in good faith). In calculating ERC for the purposes of the SSRCF LTV Ratio only, ERC shall not include ERC from members of the Group in respect of which the holders of the Notes do not benefit from a first ranking Security interest over that member of the Group’s shares and material assets.

“**Test Condition**” means the aggregate Base Currency Amount (as defined in the Credit Agreement as of the date hereof) of all Utilisations (as defined in the Credit Agreement as of the date hereof) and Ancillary Outstandings (as defined in the Credit Agreement as of the date hereof) (excluding any Letters of Credit (as defined in the Credit Agreement as of the date hereof), guarantee, bond or letters of credit other than to the extent issued in relation to or to support Financial Indebtedness) exceeds 20% of the Total Commitments (as defined in the Credit Agreement as of the date hereof).

“**Test Date**” means: (a) in respect of the LTV Ratio, each Quarter Date on which the Test Condition is met; (b) in respect of the SSRCF LTV Ratio, each Quarter Date and on the last day of each Month; and (c) in respect of the Fixed Charge Coverage Ratio, each Quarter Date.

10.1.3. Financial Testing. The financial covenants set out in Section 10.1.1 (*Financial Condition*) shall only be tested on a Test Date, and if so tested will be calculated in accordance with GAAP wherever appropriate and by reference to:

(a) in the case of the LTV Ratio, each of the applicable financial statements delivered pursuant to paragraphs (a) and (b) of Section 7.1 (*Financial Statements*) and each Compliance Certificate delivered pursuant to paragraph (a)(i) of Section 7.2 (*Provision and Contents of Compliance Certificate*);

(b) in the case of the Fixed Charge Coverage Ratio, each of the applicable financial statements delivered pursuant to paragraphs (a) and (b) of Section 7.1 (*Financial Statements*) and each Compliance Certificate delivered pursuant to paragraph (a)(i) of Section 7.2 (*Provision and Contents of Compliance Certificate*); and

(c) in the case of the SSRCF LTV Ratio, each Compliance Certificate delivered pursuant to paragraph (a)(ii) of Section 7.2 (*Provision and Contents of Compliance Certificate*).

10.2. Restrictive Covenants. Each Obligor shall not fail to comply with the covenants set out in Schedule 4 (*Restrictive Covenants*).

10.3. Change of Business. Other than pursuant to a Permitted Reorganization, the Parent shall procure that no substantial change is made to the general nature of the business of the Obligors or the Restricted Group taken as a whole from that carried on by the Restricted Group at the Closing Date, provided that, for the avoidance of doubt, operations by the Obligors and/or the Restricted Group in relation to any debt servicing business, debt litigation or debt collection activities (or in each case any associated activities) shall not constitute such a change.

10.4. Acquisitions.

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Restricted Group will) undertake the acquisition of:

- (i) a company or any shares or equivalent ownership interest or securities or a business or undertaking (or, in each case, any interest in any of them); or
- (ii) Portfolio Accounts.

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

(i) an acquisition of a company or any shares or equivalent ownership interest or securities or a business or undertaking (or, in each case, any interest in any of them) which is a Permitted Acquisition or Permitted Joint Venture;

(ii) an acquisition of a Portfolio Account which is a Permitted Acquisition;

(iii) the acquisition or incorporation of a newly formed company;

(iv) an acquisition by a member of the Restricted Group from another member of the Restricted Group provided that such acquisition is permitted by the provisions of Schedule 4 (Restrictive Covenants);

(v) Permitted Reorganizations; or

(vi) an acquisition of securities that are Cash Equivalent Investments.

(c) In the case of making a Permitted Acquisition that constitutes a “Business Acquisition” as defined in the definition of “Permitted Acquisition”, the Parent shall deliver (or shall procure that the relevant member of the Group delivers) to the holders of the Notes (on an information-only basis and without any liability including without limitation for the content therein) the most recent audited accounts of, and management information with respect to, the acquired business.

#### 10.5. Joint Ventures.

(a) No Obligor shall (and the Parent shall ensure that no member of the Group will):

(i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in a Joint Venture; or

(ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to a Joint Venture (or agree to do any of the foregoing),

if that Joint Venture is established, or carries on its principal business in a country that is a Sanctioned Jurisdiction.

10.6. Intra-Group Transfers. Notwithstanding any other provision of this Agreement:

- (a) no Obligor may transfer, assign or otherwise dispose of any asset to any non-Obligor if, as a result of such transfer, assignment or disposition, the test in paragraph (a) (ii) of Section 9.8 (Guarantors) would not be met if tested on a pro-forma basis taking into account such transfer, assignment or disposition;
- (b) no Obligor may transfer, assign or otherwise dispose of any asset that is subject to the Transaction Security to any other Obligor, where Transaction Security will not upon or immediately following such transfer be in place in respect of such asset following the assignment, transfer or disposition; and
- (c) the Parent may not designate any member of the Restricted Group as an Unrestricted Subsidiary if, as a result of such designation, the test in paragraph (a)(ii) of Section 9.8 (*Guarantors*) would not be met if tested on a pro-forma basis taking into account such designation.

10.7. Holding Companies. No Holdco shall trade, carry on any business, own any assets or incur any liabilities except for:

- (a) the holding of shares in Subsidiaries and Joint Ventures not prohibited by this Agreement;
- (b) the ownership of intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments but (subject to the Agreed Security Principles) only if those credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security;
- (c) the making of Intra-Group Loans or loans to the extent that (subject to the Agreed Security Principles) such loans are subject to Transaction Security;
- (d) Security and guarantees (or similar) permitted under Schedule 4 (*Restrictive Covenants*);
- (e) the entry into and performance of its obligations (and incurrence of liabilities) under the Transaction Documents and Pari Passu Debt Documents (as defined in the Intercreditor Agreement) to which it is a party;
- (f) subject to the relevant creditors (or an appointed Representative on their behalf) acceding to the Intercreditor Agreement as secured creditors or as unsecured creditors in each case ranking behind the Pari Passu Creditors (as defined in the Intercreditor Agreement), the entry into and performance of its obligations (and incurrence of liabilities) under the customary documentation relating thereto to which it is a party;

- (g) the granting of Transaction Security for the benefit of the holders of the Notes in accordance with the terms of the Finance Documents;
- (h) the provision of administrative, managerial, financial statement accounting and legal services to other members of the Restricted Group of a type customarily provided by a Holding Company to its Subsidiaries and the ownership of assets necessary to provide such services;
- (i) subject to the Intercreditor Agreement, the making of or receipt of any Permitted Payment; and
- (j) general corporate administration and compliance activities including without limitation those relating to entering into engagements and other service contracts on behalf of the Group, paying overhead costs and filing fees and other ordinary course expenses (such as audit fees and Taxes), other related activities and periodic reporting requirements.

10.8. Share Capital. No Obligor shall (and the Parent shall ensure no member of the Restricted Group will) issue any shares except:

- (a) by the Parent;
- (b) shares by a member of the Restricted Group to another member of the Restricted Group and/or pro-rata to its minority shareholder(s) where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares held by the member of the Restricted Group also become subject to the Transaction Security on the same terms; or
- (c) in connection with a Permitted Joint Venture.

10.9. Amendments. No Obligor shall (and the Parent shall ensure that no member of the Restricted Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of the Senior Note Documents or documents relating to any Pari Passu Notes (as defined in the Intercreditor Agreement) or Replacement Debt relating to the Senior Notes or Pari Passu Notes (as defined in the Intercreditor Agreement) which brings forward the maturity or any amortization of the Senior Notes, the Pari Passu Notes (as defined in the Intercreditor Agreement) or such Replacement Debt (as applicable).

10.10. Treasury Transactions. No Obligor shall (and the Parent will procure that no members of the Restricted Group will) enter into any Treasury Transaction, other than:

- (a) the hedging transactions documented by the Hedging Agreements (as defined in the Credit Agreement as of the date hereof);
- (b) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes;

(c) any Treasury Transaction (as defined in the Credit Agreement as of the date hereof) entered into in the ordinary course of business for the hedging of actual or projected real exposures arising in the ordinary course of a member of the Restricted Group's commercial activities and not for speculative purposes; and

(d) any Existing Hedging (as defined in the Credit Agreement as of the date hereof).

10.11. Note Purchase Conditions.

(a) For the purposes of this Section 10.11:

(b) "**Existing Debt Amount**" shall mean the total principal amount of the Senior Notes, Replacement Debt, Financial Indebtedness incurred in connection with any Permitted Purchase Obligations and Term Debt (which shall include, for the avoidance of doubt, the Existing Encore Notes and any Permitted Purchase Obligations) and issued by the Restricted Group as at the Closing Date or as at the effective date of any amendment and restatement agreement in relation to this Agreement or amendment agreement in relation to this Agreement (as applicable) entered into after the Closing Date (a "**Relevant Effective Date**"); and

(c) "**Repurchase**" shall mean a prepayment, purchase, defeasement or redemption (or otherwise retirement for value) of any Senior Notes, Replacement Debt, Financial Indebtedness incurred in connection with any Permitted Purchase Obligations or Term Debt (which shall include, for the avoidance of doubt, the Existing Encore Notes and any Permitted Purchase Obligations) provided that prepayment, purchase, defeasement or redemption (or other retirement) of any Senior Notes, Replacement Debt, Financial Indebtedness incurred in connection with any Permitted Purchase Obligations or Term Debt (which shall include, for the avoidance of doubt, the Existing Encore Notes and any Permitted Purchase Obligations) made solely with the proceeds of Additional Indebtedness (as defined in the Intercreditor Agreement) permitted to be incurred under the Intercreditor Agreement shall not be a "**Repurchase**."

(d) Members of the Restricted Group may Repurchase any Senior Notes, Replacement Debt, Financial Indebtedness incurred in connection with any Permitted Purchase Obligations or Term Debt (which shall include, for the avoidance of doubt, the Existing Encore Notes and any Permitted Purchase Obligations):

(i) if the aggregate principal amount of all such Senior Notes, Replacement Debt, Financial Indebtedness incurred in connection with any Permitted Purchase Obligations and Term Debt Repurchased since the Closing Date or after a Relevant Effective Date (as applicable) does not exceed 35% of the corresponding Existing Debt Amount; and

(ii) if the aggregate principal amount of all such Senior Notes, Replacement Debt, Financial Indebtedness incurred in connection with any

Permitted Purchase Obligations and Term Debt Repurchased since the Closing Date or after a Relevant Effective Date (as applicable) exceeds 35% of the corresponding Existing Debt Amount, only if the Parent complies with Section 8.1(b) (*Mandatory Credit Agreement Prepayments in Excess of \$10,000,000*) to the extent a mandatory prepayment is required pursuant thereto in light of any mandatory prepayments that are made under Section 27.20 of the Credit Agreement as the result of such Repurchase.

(e) No Repurchase may be made:

(i) while an Event of Default is continuing or would result from such Repurchase; or

(ii) if the Restricted Group would not be in compliance with the financial covenants set out in Section 10.1 (*Financial Condition*) on a pro-forma basis after taking into account such Repurchase and to be certified in a Compliance Certificate delivered prior to the making of the Repurchase (amended to set out calculations in respect of the LTV Ratio and SSRCF Ratio only and as calculated by reference to the last day of the most recently ended calendar Month).

10.12. ERC Model. Each Obligor shall ensure that the material terms of the ERC Model are not amended, modified or waived, without the prior written consent of the Required Holders (acting reasonably) other than where (i) such amendments, modifications or waivers relate to reporting format changes for internal management purposes which would not affect the holders of the Notes or (ii) changes are made in accordance with sub-paragraph (c) of Section 7.3 (*Requirements as to Financial Statements*).

10.13. Affiliates. None of the Obligors will enter into any transaction (including the purchase or sale of any Property or service) with, or make any payment or transfer to, any Affiliate (other than the other Obligors) except (i) in the ordinary course of business and pursuant to the reasonable requirements of such Obligor's business and upon fair and reasonable terms no less favorable to such Obligor than such Obligor would obtain in a comparable arm's-length transaction, and (ii) a Permitted Reorganization.

10.14. Economic Sanctions, Etc. The Company will not, and will not permit any Controlled Entity (a) to become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (b) directly or indirectly to have any investment in or engage in any dealing or transaction (including any investment, dealing or transaction involving the proceeds of the Notes) with any Person if such investment, dealing or transaction (i) would cause any holder or any affiliate of such holder to be in violation of, or subject to sanctions under, any U.S. Economic Sanctions Laws, any Anti-Money Laundering Laws or any Anti-Corruption Laws, or (ii) is prohibited by or subject to sanctions under any U.S. Economic Sanctions Laws.



**11. Events of Default.** An “Event of Default” shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Company defaults in the payment of any interest on any Note for more than five (5) Business Days after the same becomes due and payable; or

(c) the Company does not comply with the provisions of paragraphs (a), (b) or (c) of Section 10.1.1 (*Financial Condition*) provided that to the extent that paragraphs (a) and (c) of Section 10.1.1 (*Financial Condition*) are satisfied on a subsequent Test Date and paragraph (b) is satisfied on two subsequent successive Test Dates (and Compliance Certificates have been delivered in respect of such future Test Dates in accordance with this Agreement), any such non-compliance shall be deemed to be waived for all purposes under the Finance Documents. For the avoidance of doubt, prior to the delivery of such subsequent Compliance Certificates demonstrating compliance, any of the rights under Section 12.1 (*Acceleration*) may be exercised and to the extent so exercised the deemed waiver under this Section 11(c) shall not apply; or

(d) the Company defaults in the performance of or compliance with any term contained in Sections 8.6, 9.8 or 10; or

(e) (i) any Obligor defaults in the performance of or compliance with the provisions of Section 7.1 (*Financial Statements*), Section 7.2 (*Provision and Contents of Compliance Certificate*) or paragraphs (a) and (b) of Section 7.3 (*Requirements as to Financial Statements*) and such default is not remedied within five (5) Business Days after the earlier of (x) an Authorized Officer obtaining actual knowledge of such default, and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a “notice of default” and to refer specifically to this paragraph (e)(i) of Section 11); or (ii) any Obligor defaults in the performance of or compliance with any term contained herein (other than those referred to in paragraphs (a), (b), (c), (d) and (e)(i) of this Section 11) or in any other Finance Document and such default is not remedied within thirty (30) days after the earlier of (i) an Authorized Officer obtaining actual knowledge of such default, and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a “notice of default” and to refer specifically to this paragraph (e)(ii) of Section 11); or

(f) any representation or warranty made in writing by or on behalf of any Obligor or by any officer of any Obligor in this Agreement or in any other Finance Document or in any writing furnished in connection with the transactions contemplated hereby or thereby proves to have been false or incorrect in any material respect on the date as of which made; or

(g) (i) the Company or any Restricted Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any outstanding Material Indebtedness beyond any period of grace provided with respect thereto which default has not been (x) timely cured or (y) waived in writing by the requisite holders of such Material Indebtedness, or (ii) the Company or any Restricted Subsidiary is in default in the performance of or compliance with any term of any Material Indebtedness or of any mortgage, indenture or other agreement relating thereto or any other condition exists, such default has not been (x) cured within any period of grace provided with respect thereto or (y) waived in writing by the requisite holders of such Material Indebtedness and as a consequence of such default or condition such Financial Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Material Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Financial Indebtedness to convert such Financial Indebtedness into equity interests), (x) the Company or any Restricted Subsidiary has become obligated to purchase or repay Material Indebtedness before its regular maturity or before its regularly scheduled dates of payment, or (y) one or more Persons have the right to require the Company or any Restricted Subsidiary so to purchase or repay such Material Indebtedness; or

(h) the Company or any Restricted Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(i) a court or Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Restricted Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Restricted Subsidiaries, or any such petition shall be filed against the Company or any of its Restricted Subsidiaries and such petition shall not be dismissed within 60 days; or any event occurs with respect to the Company or any Restricted Subsidiary which under the laws of any jurisdiction is analogous to any of the events described in Section 11(h) or the foregoing portions of this Section 11(i), provided that the applicable grace period, if any, which shall apply shall be the one applicable to the relevant

proceeding which most closely corresponds to the proceeding described in Section 11(h) or the foregoing portions of this Section 11(i); or

(j) the Company or any of its Restricted Subsidiaries shall fail within 30 days to pay, bond or otherwise discharge one or more (i) judgments or orders for the payment of money in excess of \$25,000,000 (or its equivalent in other currencies) in the aggregate, or (ii) nonmonetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgment(s) or order(s), in any such case, is/are not stayed on appeal or otherwise being appropriately contested in good faith or otherwise not covered by a creditworthy insurer or indemnitor which has acknowledged in writing coverage thereof; or

(k) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, together with the amount by which the aggregate present value of accrued benefit liabilities under all funded Non-U.S. Plans exceeds the aggregate current value of the assets of such Non-U.S. Plans, shall exceed \$25,000,000 (or its equivalent in other currencies), (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder, (vii) the aggregate unfunded liability (excluding the accrued funding liability for the then current fiscal year) with respect to all benefit plans (other than pension plans) maintained by the Company and the Subsidiaries exceeds \$25,000,000 (or its equivalent in other currencies), (viii) the unfunded liability with respect to any pension plan maintained by the Company or any Subsidiary exceeds the maximum amount prescribed by any applicable laws or regulations of any Governmental Authority, (ix) the Company or any Subsidiary fails to administer or maintain a Non-U.S. Plan in compliance with the requirements of any and all applicable laws, statutes, rules, regulations or court orders or any Non-U.S. Plan is involuntarily terminated or wound up, (x) the Company or any Subsidiary becomes subject to the imposition of a financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non-U.S. Plans; or (xi) the Company or any Subsidiary shall otherwise fail to comply with any laws, regulations or orders in the establishment, administration or maintenance of any pension plan or shall fail to pay or accrue any premiums,

contributions or other amounts required by applicable pension plan documents or applicable laws; and any such event or events described in clauses (i) through (xi) above, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; or

(l) any member of the Restricted Group or any Structural Creditor (as defined in the Intercreditor Agreement) that is party to the Intercreditor Agreement fails to comply in any material respect with the provisions of, or does not perform its obligations under, the Intercreditor Agreement and if the non-compliance or failure to perform is capable of remedy, it is not remedied within fifteen (15) Business Days of the earlier of the Required Holders giving notice to that party or that party becoming aware of the non-compliance or failure to perform; or

(m) (x) after the Closing Date, an Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent other than as a result of a Permitted Reorganization or transaction permitted under this Agreement, or (y) an Obligor ceases to own at least the same percentage of shares in a Material Company as on the Closing Date, except as a result of a Permitted Reorganization or transaction permitted under this Agreement; or

(n) any Senior Notes or Existing Notes are not refinanced in full by the date falling 90 days before the scheduled principal repayment date specified in the relevant Senior Notes or Existing Notes (but excluding the Notes, the Existing 2023 Encore Exchangeable Notes and any Existing Encore Convertible Notes and any other convertible notes or exchangeable notes issued by any member of the Restricted Group which prohibits optional or early redemption at par prior to their stated maturity date but in each case only for so long as the Existing Encore Convertible Notes or the Existing 2023 Encore Exchangeable Notes or any other convertible notes contain a prohibition on optional or early redemption at par prior to their stated maturity date); or

(o) this Agreement (including amendments, supplements or other modifications hereto), the Multiparty Guaranty (including amendments, supplements or other modifications thereto) or any Transaction Security Document (including amendments, supplements or other modifications thereto) shall fail to remain in full force or effect or any action shall be taken to assert the invalidity or unenforceability of (including any action taken on the part of any Obligor to assert such invalidity or unenforceability of), or which results in the invalidity or unenforceability of, any such Finance Document, or any Transaction Security Document shall, other than as permitted thereby, fail to create or maintain for any reason a valid and perfected security interest in any collateral purported to be covered thereby.

As used in Section 11(k), the terms “**employee benefit plan**” and “**employee welfare benefit plan**” shall have the respective meanings assigned to such terms in section 3 of ERISA.

## 12. Remedies on Default, Etc.

### 12.1. Acceleration.

(a) If an Event of Default with respect to the Company described in Section 11(h) or (i) (other than an Event of Default described in clause (i) of Section 11(h) or described in clause (vi) of Section 11(h) by virtue of the fact that such clause encompasses clause (i) of Section 11(h)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any Event of Default described in Section 11(a) or (b) has occurred and is continuing, in addition to any action that may be taken pursuant to Section 12.1(c), any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

(c) If any other Event of Default has occurred and is continuing, any holder or holders of a majority in principal amount of the Notes of any Series at the time outstanding may at any time at its or their option, by notice or notices to the Company, declare all the Notes of such Series then outstanding to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon (including interest accrued thereon at the Default Rate), and (y) the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from prepayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

12.2. Other Remedies. If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note or other Finance Document, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

12.3. Rescission. At any time after any Notes of any Series have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the holders of not less than a majority in principal amount of the Notes of such Series then outstanding, by written notice to

the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the Notes of such Series, all principal of and Make-Whole Amount, if any, on any Notes of such Series that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes of such Series, at the Default Rate, (b) neither the Company nor any other Person shall have paid any amounts which have become due solely by reason of such declaration, (c) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17, and (d) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

12.4. No Waivers or Election of Remedies, Expenses, Etc. No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement, any Note or any other Finance Document upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including reasonable attorneys' fees, expenses and disbursements.

12.5. Notice of Acceleration or Rescission. Whenever any Note shall be declared immediately due and payable pursuant to Section 12.1 or any such declaration shall be rescinded and annulled pursuant to Section 12.3, the Company shall forthwith give written notice thereof to the holder of each Note at the time outstanding.

### **13. Registration; Exchange; Substitution of Notes.**

13.1. Registration of Notes. The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. If any holder of one or more Notes is a nominee, then (a) the name and address of the beneficial owner of such Note or Notes shall also be registered in such register as an owner and holder thereof and (b) at any such beneficial owner's option, either such beneficial owner or its nominee may execute any amendment, waiver or consent pursuant to this Agreement. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

13.2. Transfer and Exchange of Notes. Upon surrender of any Note to the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)) for registration of transfer or exchange (and, in the case of a surrender for registration of transfer, accompanied by a written instrument of transfer duly executed by the registered holder of such Note or such holder's attorney duly authorized in writing and accompanied by the relevant name, address and other information for notices of each transferee of such Note or part thereof), within ten Business Days thereafter, the Company shall execute and deliver, at the Company's expense (except as provided below), one or more replacement Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such replacement Note shall be payable to such Person as such holder may request and shall be substantially in the form of Exhibit A. Each such replacement Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$1,000,000 (or its equivalent if denominated in another currency); provided that if necessary to enable the registration of transfer by a holder of its entire holding of Notes of a Series, one Note may be in a denomination of less than \$1,000,000 (or its equivalent if denominated in another currency). Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.2.

13.3. Replacement of Notes. Upon receipt by the Company at the address and to the attention of the designated officer (all as specified in Section 18(iii)) of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least \$5,000,000 or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

within ten Business Days thereafter, the Company at its own expense shall execute and deliver, in lieu thereof, a replacement Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

#### **14. Payments on Notes.**

14.1. Place of Payment. Subject to Section 14.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in New York, New York at such place as the holder thereof shall designate to the Company in

writing. The holder of a Note may at any time, by notice to the Company, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

14.2. Home Office Payment. So long as any Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, and interest by the method and at the address specified for such purpose in the case of the 2017 Notes, below such Purchaser's name in Schedule A to the 2017 Agreement; or by such method or at such other address as such Purchaser shall have most recently specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee, such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a replacement Note or Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by any Purchaser under this Agreement and that has made the same agreement relating to such Note as the Purchaser has made in this Section 14.2.

14.3. Tax Indemnification; FATCA Information.

(a) All payments whatsoever under this Agreement, the Notes and the Multiparty Guaranty will be made by the applicable Obligor in lawful currency of the United States of America free and clear of, and without liability for withholding or deduction for or on account of, any present or future Taxes of whatever nature imposed or levied by or on behalf of any jurisdiction other than the United States (or any political subdivision or taxing authority of or in such jurisdiction) (hereinafter a "**Taxing Jurisdiction**"), unless the withholding or deduction of such Tax is compelled by law.

(b) If any deduction or withholding for any Tax of a Taxing Jurisdiction shall at any time be required in respect of any amounts to be paid by any Obligor under this Agreement, the Notes or the Multiparty Guaranty, such Obligor will pay to the relevant Taxing Jurisdiction the full amount required to be withheld, deducted or otherwise paid before penalties attach thereto or interest accrues thereon and pay to each holder of a Note such additional amounts as may be necessary in order that the net amounts paid to such holder pursuant to the terms of this Agreement, the Notes and the Multiparty Guaranty after such deduction, withholding or payment (including any required deduction or withholding of Tax on or with respect to such additional amount), shall be not less than the amounts then due and payable to such holder under the terms of



this Agreement, the Notes or the Multiparty Guaranty before the assessment of such Tax, provided that no payment of any additional amounts shall be required to be made for or on account of:

(i) any Tax that would not have been imposed but for the existence of any present or former connection between such holder (or a fiduciary, settlor, beneficiary, member of, shareholder of, or possessor of a power over, such holder, if such holder is an estate, trust, partnership or corporation or any Person other than the holder to whom the Notes or any amount payable thereon is attributable for the purposes of such Tax) and the Taxing Jurisdiction, other than the mere holding of the relevant Note or the receipt of payments thereunder or in respect thereof or the exercise of remedies in respect thereof, including such holder (or such other Person described in the above parenthetical) being or having been a citizen or resident thereof, or being or having been present or engaged in trade or business therein or having or having had an establishment, office, fixed base or branch therein, provided that this exclusion shall not apply with respect to a Tax that would not have been imposed but for the Company, after the Closing Date, opening an office in, moving an office to, reincorporating in, or changing the Taxing Jurisdiction from or through which payments on account of this Agreement, the Notes or the Multiparty Guaranty are made to, the Taxing Jurisdiction imposing the relevant Tax;

(ii) any Tax that would not have been imposed but for the delay or failure by such holder (following a written request by the Company) in the filing with the relevant Taxing Jurisdiction of Forms (as defined below) that are required to be filed by such holder to avoid or reduce such Taxes (including for such purpose any re-filings or renewals of filings that may from time to time be required by the relevant Taxing Jurisdiction), provided that the filing of such Forms would not (in such holder's reasonable judgment) impose any unreasonable burden (in time, resources or otherwise) on such holder or result in any confidential or proprietary income tax return information being revealed, either directly or indirectly, to any Person and such delay or failure could have been lawfully avoided by such holder, and provided, further that such holder shall be deemed to have satisfied the requirements of this clause (b)(ii) upon the good faith completion and submission of such Forms (including re-filings or renewals of filings) as may be specified in a written request of the Company no later than 60 days after receipt by such holder of such written request (accompanied by copies of such Forms and related instructions, if any, all in the English language or with an English translation thereof); or

(iii) any combination of clauses (i) and (ii) above;

provided, further that in no event shall any Obligor be obligated to pay such additional amounts to any holder (i) not resident in the United States of America or any other jurisdiction in which an original Purchaser was resident for tax

purposes on the date of the Closing (as defined in the 2017 Note Agreement) in excess of the amounts that such Obligor would be obligated to pay if such holder had been a resident of the United States of America or such other jurisdiction, as applicable, for purposes of, and eligible for the benefits of, any double taxation treaty from time to time in effect between the United States of America or such other jurisdiction and the relevant Taxing Jurisdiction or (ii) registered in the name of a nominee if under the law of the relevant Taxing Jurisdiction (or the current regulatory interpretation of such law) securities held in the name of a nominee do not qualify for an exemption from the relevant Tax and such Obligor shall have given timely notice of such law or interpretation to such holder.

(c) The holder of each Note agrees, subject to the limitations of clause (b)(ii) above, that it will from time to time with reasonable promptness (x) duly complete and deliver to or as reasonably directed by the Company all such forms, certificates, documents and returns provided to such holder by the Company (collectively, together with instructions for completing the same, "**Forms**") required to be filed by or on behalf of such holder in order to avoid or reduce any such Tax pursuant to the provisions of an applicable statute, regulation or administrative practice of the relevant Taxing Jurisdiction or of a tax treaty between the United States and such Taxing Jurisdiction and (y) provide the Company with such information with respect to such holder as the Company may reasonably request in order to complete any such Forms, provided that nothing in this Section 14.3 shall require any holder to provide information with respect to any such Form or otherwise if in the opinion of such holder such Form or disclosure of information would involve the disclosure of tax return or other information that is confidential or proprietary to such holder, and provided, further that each such holder shall be deemed to have complied with its obligation under this paragraph with respect to any Form if such Form shall have been duly completed and delivered by such holder to the Company or mailed to the appropriate taxing authority, whichever is applicable, within 60 days following a written request of the Company (which request shall be accompanied by copies of such Form and English translations of any such Form not in the English language) and, in the case of a transfer of any Note, at least 90 days prior to the relevant interest payment date.

(d) If any payment is made by any Obligor to or for the account of the holder of any Note after deduction for or on account of any Taxes, and increased payments are made by such Obligor pursuant to this Section 14.3, then, if such holder at its sole discretion determines that it has received or been granted a refund of such Taxes, such holder shall, to the extent that it can do so without prejudice to the retention of the amount of such refund, reimburse to such Obligor such amount as such holder shall, in its sole discretion, determine to be attributable to the relevant Taxes or deduction or withholding. Nothing herein contained shall interfere with the right of the holder of any Note to arrange its tax affairs in whatever manner it thinks fit and, in particular, no holder of any Note shall be under any obligation to claim relief from its corporate profits or similar tax liability in respect of such Tax in priority to any other claims, reliefs, credits or deductions available to it or (other than as set forth in Section 14.3(b)(ii)) oblige any

holder of any Note to disclose any information relating to its tax affairs or any computations in respect thereof.

(e) The Company will furnish the holders of Notes, promptly and in any event within 60 days after the date of any payment by any Obligor of any Tax in respect of any amounts paid under this Agreement, the Notes or the Multiparty Guaranty, the original tax receipt issued by the relevant taxation or other authorities involved for all amounts paid as aforesaid (or if such original tax receipt is not available or must legally be kept in the possession of the Company, a duly certified copy of the original tax receipt or any other reasonably satisfactory evidence of payment), together with such other documentary evidence with respect to such payments as may be reasonably requested from time to time by any holder of a Note.

(f) If any Obligor is required by any applicable law, as modified by the practice of the taxation or other authority of any relevant Taxing Jurisdiction, to make any deduction or withholding of any Tax in respect of which such Obligor would be required to pay any additional amount under this Section 14.3, but for any reason does not make such deduction or withholding with the result that a liability in respect of such Tax is assessed directly against the holder of any Note, and such holder pays such liability, then such Obligor or the Company will promptly reimburse such holder for such payment (including any related interest or penalties to the extent such interest or penalties arise by virtue of a default or delay by such Obligor or the Company) upon demand by such holder accompanied by an official receipt (or a duly certified copy thereof) issued by the taxation or other authority of the relevant Taxing Jurisdiction.

(g) If any Obligor makes payment to or for the account of any holder of a Note and such holder is entitled to a refund of the Tax to which such payment is attributable upon the making of a filing (other than a Form described above), then such holder shall, as soon as practicable after receiving written request from the Company (which shall specify in reasonable detail and supply the refund forms to be filed) use reasonable efforts to complete and deliver such refund forms to or as directed by the Company, subject, however, to the same limitations with respect to Forms as are set forth above.

(h) The obligations of the Obligors under this Section 14.3 shall survive the payment or transfer of any Note and the provisions of this Section 14.3 shall also apply to successive transferees of the Notes.

(i) By acceptance of any Note, the holder of such Note agrees that such holder will with reasonable promptness duly complete and deliver to the Company, or to such other Person as may be reasonably requested by the Company, from time to time (a) in the case of any such holder that is a United States Person, such holder's United States tax identification number or other Forms reasonably requested by the Company necessary to establish such holder's status as a United States Person under FATCA and as may otherwise be necessary for the Company to comply with its obligations under FATCA and (b) in the case of any such holder that is not a United

States Person, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for the Company to comply with its obligations under FATCA and to determine that such holder has complied with such holder's obligations under FATCA or to determine the amount (if any) to deduct and withhold from any such payment made to such holder. Nothing in this Section 14.3(i) shall require any holder to provide information that is confidential or proprietary to such holder unless the Company is required to obtain such information under FATCA and, in such event, the Company shall treat any such information it receives as confidential.

**15. Expenses, Etc.**

15.1. Transaction Expenses. Whether or not the transactions contemplated hereby are consummated, the Company will pay all reasonable costs and expenses (including reasonable attorneys' fees of a special counsel, local counsel and, if reasonably required by the Required Holders, other counsel) incurred by the Purchasers, any holder of a Note or the Security Agent in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement, the Notes or any of the other Finance Documents (whether or not such amendment, waiver or consent becomes effective), and the Company will, in addition, pay: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, the Notes or any of the other Finance Documents or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, the Notes or any of the other Finance Documents, or by reason of being a holder of any Note, (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes, and (c) the costs and expenses incurred in connection with the initial filing of this Agreement and all related documents and financial information with the SVO.

In addition to, and not in limitation of, any of the obligations of the Company set forth above in this Section 15.1, the Company will pay, and will save each Purchaser and each other holder of a Note harmless from, (i) all claims in respect of any fees, costs or expenses, if any, of brokers and finders (other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Notes), (ii) any and all wire transfer fees that any bank or other financial institution deducts from any payment under such Note to such holder or otherwise charges to a holder of a Note with respect to a payment under such Note and (iii) any judgment, liability, claim, order, decree, fine, penalty, cost, fee, expense (including reasonable attorneys' fees and expenses) or obligation resulting from the consummation of the transactions contemplated hereby, including the use of the proceeds of the Notes by the Company, provided that the Company shall not be liable for the payment of any portion of such amounts described in this clause (iii) resulting from such Purchaser's or such other holder of a Note's gross negligence or willful misconduct.

15.2. Certain Taxes. The Company agrees to pay all stamp, documentary or similar taxes or fees which may be payable in respect of the execution and delivery or the enforcement of this Agreement or any other Finance Document or the execution and delivery (but not the transfer) or the enforcement of any of the Notes in the United States or any other jurisdiction where the Company or any other Obligor has assets or of any amendment of, or waiver or consent under or with respect to, this Agreement or any other Finance Document or of any of the Notes, and to pay any value added tax due and payable in respect of reimbursement of costs and expenses by the Company pursuant to this Section 15, and will save each holder of a Note to the extent permitted by applicable law harmless against any loss or liability resulting from nonpayment or delay in payment of any such tax or fee required to be paid by the Company hereunder.

15.3. Survival. The obligations of the Company under this Section 15 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement, the Notes or any other Finance Document, and the termination of this Agreement or any other Finance Document.

**16. Survival of Representations and Warranties; Entire Agreement.** All representations and warranties contained herein or in any of the other Finance Documents shall survive the execution and delivery of this Agreement, the Notes and the other Finance Documents, the purchase or transfer by any Purchaser of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company or any other Obligor pursuant to this Agreement or any of the other Finance Documents shall be deemed representations and warranties of the Company or such other Obligor under this Agreement or such other Finance Document. Subject to the preceding sentence, this Agreement, the Notes and the other Finance Documents embody the entire agreement and understanding between each Purchaser and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

**17. Amendment and Waiver.**

17.1. Requirements.

(a) This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company and the Required Holders of the Notes of each Series, except that (a) no amendment or waiver of any of Section 1, 2, 3, 4, 5 or 6 hereof, or any defined term (as it is used therein), will be effective as to any Purchaser unless consented to by such Purchaser in writing, and (b) no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (i) subject to Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (ii) change the percentage of the principal

amount of the Notes the holders of which are required to consent to any such amendment or waiver, or (iii) amend any of Sections 8, 11(a), 11(b), 12, 17 or 20.

(b) For so long as the Senior Notes or any Permitted Financial Indebtedness issued by a member of the Restricted Group to refinance or replace the Senior Notes or in exchange for the Senior Notes) have an Investment Grade Status (the "**Suspense Period**"), the following clauses of this Agreement shall not apply:

- (i) Section 7.6 (*Year-End*); and
- (ii) Sections 9.7 (*Pensions*), 10.8 (*Share Capital*) and 10.10 (*Treasury Transactions*).

17.2. Solicitation of Holders of Notes.

(a) Solicitation. The Company will provide each holder of a Note (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to this Section 17 to each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) Payment. The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any Security or provide other credit support, to any holder of a Note as consideration for or as an inducement to the entering into by such holder of any waiver or amendment of any of the terms and provisions hereof or of any Note or any other Finance Document unless such remuneration is concurrently paid, or Security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each holder of a Note then outstanding even if such holder did not consent to such waiver or amendment.

(c) Consent in Contemplation of Transfer. Any consent given pursuant to this Section 17 or any other Finance Document by a holder of a Note that has transferred or has agreed to transfer its Note to (i) the Company, (ii) any Subsidiary or any other Affiliate or (iii) any other Person in connection with, or in anticipation of, such other Person acquiring, making a tender offer for or merging with the Company and/or any of its Affiliates, in each case in connection with such consent, shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

17.3. Binding Effect Etc. Any amendment or waiver consented to as provided in this Section 17 or any other Finance Document applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and any holder of a Note nor any delay in exercising any rights hereunder or under any Note or other Finance Document shall operate as a waiver of any rights of any holder of such Note.

17.4. Notes Held by Company, Etc. Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes or any Series thereof then outstanding have approved or consented to any amendment, waiver or consent to be given under this Agreement, the Notes or any Series thereof or any other Finance Document, or have directed the taking of any action provided herein or in the Notes or any Series thereof or in any other Finance Document to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes or any Series thereof then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

**18. Notices.** All notices and communications provided for hereunder shall be in writing and sent (a) by telefacsimile if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

(i) if to a 2017 Notes Purchaser or its nominee, to such Person at the address specified for such communications in Schedule A to the 2017 Note Agreement, or at such other address as such Person or nominee shall have specified to the Company in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or

(iii) if to the Company, to the Company at its address set forth at the beginning hereof to the attention of the Chief Financial Officer, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 18 will be deemed to have been given only when actually received.

**19. Reproduction of Documents.** This Agreement, and all documents relating hereto, including (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser on the Closing Date (as defined in this Agreement) or on the Closing Date (as defined in the 2017 Note Agreement) (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to

any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, electronic, digital or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit the Company or any holder of a Note from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

**20. Confidential Information.** For the purposes of this Section 20, “**Confidential Information**” means information delivered to any Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature, whether or not labeled as confidential when received by such Purchaser, provided that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser’s behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary, or (d) constitutes financial statements delivered to such Purchaser under Section 7.1 that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, provided that such Purchaser may deliver or disclose Confidential Information to (i) its directors, officers, employees, agents, attorneys, trustees and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by its Notes), (ii) its auditors, financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with this Section 20, (iii) any other holder of any Note, (iv) any Institutional Investor to which it sells or offers to sell such Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (v) any Person from which it offers to purchase any security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 20), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the NAIC or the SVO or, in each case, any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser’s investment portfolio, or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser’s Notes, this Agreement or any other Finance Document. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20 as though it were a party to this Agreement. On



reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying this Section 20.

In the event that as a condition to receiving access to information relating to the Company or its Subsidiaries in connection with the transactions contemplated by or otherwise pursuant to this Agreement, any Purchaser or holder of a Note is required to agree to a confidentiality undertaking (whether through IntraLinks, another secure website, a secure virtual workspace or otherwise) which is different from this Section 20, this Section 20 shall not be amended thereby and, as between such Purchaser or such holder and the Company, this Section 20 shall supersede any such other confidentiality undertaking.

## 21. Changes to Guarantors.

### 21.1. Additional Guarantors.

(a) Subject to compliance with the provisions of paragraphs (b) and (c) of Section 7.9 (“*Know Your Customer*” checks), the Parent may request that any of its Subsidiaries become a Guarantor.

(b) A member of the Group shall become an Additional Guarantor if:

(i) such member of the Group shall execute and deliver a joinder to each of the Multiparty Guaranty and the Indemnity and Contribution Agreement, and such member of the Group and other applicable Obligor shall execute and deliver such other Transaction Security Documents as are required by the Security Agent in light of the requirements of the Finance Documents with respect to the Transaction Security; and

(ii) the Parent shall deliver such other documentation as the Required Holders may reasonably request in connection with the foregoing, including certified resolutions and other authority documents of such member of the Group and, to the extent requested by the Required Holders, favorable opinions of counsel to such member of the Group (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to above), all in form, content and scope reasonably satisfactory to the Required Holders.

### 21.2. Resignation of a Guarantor.

(a) The Parent may request that a Guarantor cease to be a Guarantor by delivering to the holders of the Notes a written notice of such request (a “**Resignation**”

**Letter**”), certifying that no Default is continuing or would result from the acceptance of such request, if:

(i) that Guarantor is being disposed of by way of a Third Party Disposal (as defined in the following clause (iii)) or as a result of the disposal of Charged Property that is otherwise permitted by this Agreement or the Intercreditor Agreement or is designated as an Unrestricted Subsidiary to the extent permitted by this Agreement, and the Parent has confirmed this is the case; or

(ii) subject to clause 30.2(b) (*Amendments and Waivers: Transaction Security Documents*) of the Intercreditor Agreement, the Required Holders have consented to the resignation of that Guarantor.

(iii) For purpose of this Section 21.2, “**Third Party Disposal**” means the disposal of an Obligor or a Holding Company of an Obligor to a person which is not a member of the Group where that disposal is permitted by this Agreement or the Intercreditor Agreement (and the Parent has confirmed this is the case).

(b) The Required Holders shall accept a Resignation Letter and notify the Parent of their acceptance if:

(i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter and the test in paragraph (a)(ii) of Section 9.8 (Guarantors) will be met following acceptance of the Resignation Letter;

(ii) no payment is due from the Guarantor under the Multiparty Guaranty at such time; and

(iii) no consideration is being paid to any creditor party to the Intercreditor Agreement ranking *pari passu* with the Notes for the resignation of such Guarantor unless the holders of the Notes simultaneously receive their ratable share of such consideration.

(c) Subject to compliance with paragraph (b) above, the resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal or disposal of Charged Property, or until the confirmation of the Parent referred to in paragraph (b) above is received or the consent referred to in Section 21.2(a)(ii) above is granted (as applicable), 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.

21.3. Repetition of Representations. Delivery of the joinders to the Multiparty Guaranty and Indemnity and Contribution Agreement constitutes confirmation by the relevant

Subsidiary that the representations and warranties of Section 5 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.

21.4. Resignation and Release of Transaction Security Upon Disposal. If a Guarantor (or Holding Company of a Guarantor) is or is proposed to be the subject of a Third Party Disposal, or there is a disposal of Charged Property that is otherwise permitted under Schedule 4 (Restrictive Covenants) or the Intercreditor Agreement, then:

(a) where that Guarantor created Transaction Security over any of its assets or business (or Transaction Security otherwise exists over the Charged Property to be disposed of) in favor of the Security Agent or, as applicable, for the benefit of the holders of the Notes, or Transaction Security in favor of the Security Agent or, as applicable, for the benefit of the holders of the Notes was created over the shares (or equivalent) of that Guarantor, the Security Agent or, as applicable, the holders of the Notes shall, at the cost and request of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallization;

(b) the resignation of that Guarantor and related release of Transaction Security referred to in paragraph (a) above shall not become effective until the date of that disposal; and

(c) if the disposal of that Guarantor or Holding Company of that Guarantor is not made, the Resignation Letter with respect to that Guarantor and the related release of Transaction Security referred to in paragraph (a) above shall have no effect and the obligations of the Guarantor and the Transaction Security created or intended to be created by or over that Guarantor shall continue in such force and effect as if that release had not been effected.

## 22. Miscellaneous.

22.1. Successors and Assigns. All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including any subsequent holder of a Note) whether so expressed or not, except that the Company may not assign or otherwise transfer any of its rights or obligations hereunder, under the Notes or under any other Finance Document without the prior written consent of each holder. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

22.2. Accounting Terms. All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Except as otherwise specifically provided herein, (i) all computations made pursuant to this Agreement shall be made in accordance with GAAP, and (ii) all financial statements shall be prepared in accordance with GAAP.

22.3. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

22.4. Construction, Etc. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Defined terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein) and, for purposes of the Notes, shall also include any such notes issued in substitution therefor pursuant to Section 13, (b) subject to Section 22.1, any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Exhibits and Schedules shall be construed to refer to Sections of, Exhibits to, and Schedules to, this Agreement, and (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

For all purposes under the Finance Documents, in connection with any Division or plan of Division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person; and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

22.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

22.6. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such state that would permit the application of the laws of a jurisdiction other than such state

22.7. Jurisdiction and Process; Waiver of Jury Trial. (a) The Company irrevocably submits to the exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement, the Notes or the other Finance Documents. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company agrees, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in Section 22.7(a) brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States of America or the State of New York (or any other courts to the jurisdiction of which it or any of its assets are or may be subject) by a suit upon such judgment.

(c) The Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in Section 22.7(a) by mailing a copy thereof by registered, certified, priority or express mail (or any substantially similar form of mail), postage prepaid, return receipt or delivery confirmation requested, to it at its address specified in Section 18 or at such other address of which such holder shall then have been notified pursuant to said Section. The Company agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding, and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(d) Nothing in this Section 22.7 shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(e) Each Guarantor which is organized under a jurisdiction other than the United States of America or any state thereof hereby irrevocably appoints the Company to receive for it, and on its behalf, service of process in the United States; and the Company hereby accepts such appointment.

(f) THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, THE NOTES OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH.

22.8. Transaction References. The Company agrees that Prudential Private Capital may (a) refer to its role in originating the purchase of the Notes from the Company, as well as the identity of the Company and the aggregate principal amount and issue date of the Notes, on its internet site, social media channels or in marketing materials, press releases, published “tombstone” announcements or any other print or electronic medium, and (b) display the Company’s corporate logo in conjunction with any such reference.

22.9. Independent Investigation. Each Purchaser represents to and agrees with each other Purchaser that it has made its own independent investigation of the condition (financial or otherwise), prospects and affairs of the Company and its Subsidiaries in connection with its entering into of this Agreement, and has made and shall continue to make its own appraisal of the creditworthiness of the Company and its Subsidiaries. No holder of Notes shall have any duty or responsibility to any other holder of Notes, either initially or on a continuing basis, to make any such investigation or appraisal or to provide any credit or other information with respect thereto. No holder of Notes is acting as agent or in any other fiduciary capacity on behalf of any other holder of Notes.

22.10. Obligation to Make Payments in Dollars. Any payment on account of an amount that is payable hereunder or under the Notes or Multiparty Guaranty in Dollars which is made to or for the account of any holder in any other currency, whether as a result of any judgment or order or the enforcement thereof or the realization of any security or the liquidation of any Obligor, shall constitute a discharge of the obligation of such Obligor under this Agreement, the Notes or the Multiparty Guaranty only to the extent of the amount of Dollars which such holder could purchase in the foreign exchange markets in London, England, with the amount of such other currency in accordance with normal banking procedures at the rate of exchange prevailing on the London Banking Day following receipt of the payment first referred to above. If the amount of Dollars that could be so purchased is less than the amount of Dollars originally due to such holder, such Obligor agrees to the fullest extent permitted by law, to indemnify and save harmless such holder from and against all loss or damage arising out of or as a result of such deficiency. This indemnity shall, to the fullest extent permitted by law, constitute an obligation separate and independent from the other obligations contained in this Agreement, the Notes and the Multiparty Guaranty, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by such holder from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due hereunder or under the Notes or the Multiparty Guaranty or under any judgment or order. As used herein the term “**London Banking Day**” shall mean any day other than Saturday or Sunday or a day on which commercial banks are required or authorized by law to be closed in London, England.

22.11. Appointment of Private Placement Noteholders Representatives. Each of The Prudential Insurance Company of America (in its capacity as a holder of a Note) and each of its undersigned affiliates which is a holder of a Note hereby appoints The Prudential Insurance Company of America to act as its "Private Placement Noteholders Representative" as defined in and for purpose of the Intercreditor Agreement, and The Prudential Insurance Company of America hereby accepts such appointment. Each of the undersigned affiliates of Guggenheim Partners Investment Management, LLC which is a holder of a Note hereby appoints Guggenheim Partners Investment Management, LLC to act as its "Private Placement Noteholders Representative" as defined in and for purpose of the Intercreditor Agreement, and Guggenheim Partners Investment Management, LLC hereby accepts such appointment. Each of the undersigned affiliates of Apollo Insurance Solutions Group LP which is a holder of a Note hereby appoints Apollo Insurance Solutions Group LP to act as its "Private Placement Noteholders Representative" as defined in and for purpose of the Intercreditor Agreement, and Apollo Insurance Solutions Group LP hereby accepts such appointment.

22.12. Amendment and Restatement; No Novation. This Agreement is not intended to be, and shall not be construed to create, a novation or accord and satisfaction, and, except as otherwise provided herein, the 2017 Note Agreement, as amended or otherwise modified from time to time prior to the effectiveness of the amendment and restatement provided hereby, shall remain in full force and effect with respect to breaches of representations and warranties or breaches of obligations which may have occurred prior to the effectiveness of the amendment and restatement provided hereby.

\* \* \* \* \*

If you are in agreement with the foregoing, please sign the form of agreement on a counterpart of this Agreement and return it to the Company, whereupon this Agreement shall become a binding agreement between you and the Company.

Very truly yours,

**ENCORE CAPITAL GROUP, INC.**

By:         /s/ Jonathan Clark          
Name: Jonathan Clark  
Title: Executive Vice President and Chief Financial Officer



The foregoing is hereby agreed to as of the date thereof.

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**, solely for purpose of Section 22.11

By: /s/ T.J. Flanagan III  
Vice President

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**, as a 2017 Notes Purchaser

By: /s/ T.J. Flanagan III  
Vice President

**PRUDENTIAL RETIREMENT INSURANCE AND ANNUITY COMPANY**, as a 2017 Notes Purchaser

By: PGIM, Inc., as investment manager

By: /s/ T.J. Flanagan III  
Vice President

**PAR U HARTFORD LIFE & ANNUITY COMFORT TRUST**, as a 2017 Notes Purchaser

By: Prudential Arizona Reinsurance Universal Company, as Grantor

By: PGIM, Inc., as investment manager

By: /s/ T.J. Flanagan III  
Vice President

**PICA HARTFORD LIFE & ANNUITY COMFORT TRUST**, as a 2017 Notes Purchaser

By: The Prudential Insurance Company of America, as Grantor

By: /s/ T.J. Flanagan III  
Vice President

**PRUDENTIAL ARIZONA REINSURANCE TERM COMPANY**, as a 2017 Notes Purchaser

By: PGIM, Inc., as investment manager

By: /s/ T.J. Flanagan III  
Vice President

**PRUDENTIAL LEGACY INSURANCE COMPANY OF NEW JERSEY**, as a 2017 Notes Purchaser

By: PGIM, Inc., as investment manager

By: /s/ T.J. Flanagan III  
Vice President

**PRUCO LIFE INSURANCE COMPANY**, as a 2017 Notes Purchaser

By: /s/ T.J. Flanagan III  
Assistant Vice President

**GUGGENHEIM PARTNERS INVESTMENT MANAGEMENT, LLC**, solely for purpose of Section 22.11

By: /s/ Kevin M. Robinson  
Name: Kevin M. Robinson  
Title: Attorney-in-Fact

**MIDLAND NATIONAL LIFE INSURANCE COMPANY**, as a 2017 Notes Purchaser

By: Guggenheim Partners Investment Management, LLC as Investment Manager

By: /s/ Kevin M. Robinson  
Name: Kevin M. Robinson  
Title: Attorney-in-Fact

**GUARANTY INCOME LIFE INSURANCE COMPANY**, as a 2017 Notes Purchaser

By: Guggenheim Partners Investment Management, LLC as Investment Manager

By: /s/ Kevin M. Robinson  
Name: Kevin M. Robinson  
Title: Attorney-in-Fact

**HORACE MANN LIFE INSURANCE COMPANY**, as a 2017 Notes Purchaser

By: Guggenheim Partners Investment Management, LLC as Investment Manager

By: /s/ Kevin M. Robinson  
Name: Kevin M. Robinson  
Title: Attorney-in-Fact

**WILTON REASSURANCE LIFE COMPANY OF NEW YORK**, as a 2017 Notes Purchaser

By: Guggenheim Partners Investment Management, LLC as Investment Manager

By: /s/ Kevin M. Robinson

Name: Kevin M. Robinson

Title: Attorney-in-Fact

**TEXAS LIFE INSURANCE COMPANY**, as a 2017 Notes Purchaser

By: Guggenheim Partners Investment Management, LLC as Investment Manager

By: /s/ Kevin M. Robinson

Name: Kevin M. Robinson

Title: Attorney-in-Fact

**WILTON REASSURANCE COMPANY**, as a 2017 Notes Purchaser

By: Guggenheim Partners Investment Management, LLC as Investment Manager

By: /s/ Kevin M. Robinson

Name: Kevin M. Robinson

Title: Attorney-in-Fact

**APOLLO INSURANCE SOLUTIONS GROUP LP**, solely for purpose of Section 22.11

By: Apollo Capital Management, L.P., its sub adviser

By: Apollo Capital Management, GP, its General Partner

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**ATHENE ANNUITY & LIFE ASSURANCE COMPANY**, as a 2017 Notes Purchaser

By: Apollo Insurance Solutions Group LP, its investment adviser

By: Apollo Capital Management, L.P., its sub adviser

By: Apollo Capital Management, GP, its General Partner

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

**ATHENE ANNUITY AND LIFE COMPANY**, as a 2017 Notes Purchaser

By: Apollo Insurance Solutions Group LP, its investment adviser

By: Apollo Capital Management, L.P., its sub adviser

By: Apollo Capital Management, GP, its General Partner

By: /s/ Joseph D. Glatt

Name: Joseph D. Glatt

Title: Vice President

Each of the undersigned Guarantors consents to the amendments effected in this Fourth Amended and Restated Senior Secured Note Purchase Agreement and the transactions contemplated hereby, reaffirms its obligations under the Multiparty Guaranty and its waivers, as set forth in the Multiparty Guaranty, of each and every one of the possible defenses to such obligations. In addition, each undersigned Guarantor reaffirms that its obligations under the Multiparty Guaranty are separate and distinct from the Company's obligations. Each of the undersigned Guarantors agrees that it is bound by any and all provisions of this Agreement which purport to bind any Guarantor or any Obligor.

MIDLAND CREDIT MANAGEMENT, INC.  
MIDLAND INTERNATIONAL LLC  
MIDLAND PORTFOLIO SERVICES, INC.  
MIDLAND FUNDING LLC  
MRC RECEIVABLES CORPORATION  
MIDLAND FUNDING NCC-2 CORPORATION  
ASSET ACCEPTANCE CAPITAL CORP.  
ASSET ACCEPTANCE, LLC  
ATLANTIC CREDIT & FINANCE, INC.  
MIDLAND INDIA LLC  
ATLANTIC CREDIT & FINANCE SPECIAL FINANCE UNIT, LLC  
ATLANTIC CREDIT & FINANCE SPECIAL FINANCE UNIT III, LLC

By:         /s/ Ryan Bell        

Name: Ryan Bell

Title: President

**SCHEDULE A**  
**DEFINED TERMS**

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

“**Accounting Reference Date**” means December 31.

“**Additional Guarantor**” means a company which becomes an Additional Guarantor in accordance with Section 21 (*Changes to Guarantor*).

“**Affiliate**” of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if the controlling Person is the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of 10% or more of any class of voting securities (or other ownership interests) of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of voting securities, by contract or otherwise.

“**Agreed Security Principles**” means the principles set out in Schedule 3 (*Agreed Security Principles*).

“**Agreement**” means this Fourth Amended and Restated Senior Secured Note Purchase Agreement, dated as of September 1, 2020, between the Company, on the one hand, and the Purchasers, on the other hand, as it may from time to time be amended, supplemented or otherwise modified.

“**Anti-Corruption Laws**” means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

“**Anti-Money Laundering Laws**” means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, including the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

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

“**Auditors**” means BDO USA LLP or any other accounting firm appointed by the Parent or the relevant member of the Group to act as its statutory auditors.

“**Authorization**” means an authorization, consent, approval, resolution, license, exemption, filing, notarization or registration.

“**Authorized Officer**” means any of the President and Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Treasurer, Assistant Treasurer, Controller or Secretary of the Company, or such other officer of the Company as may be designated by the Company in writing to the holders of Notes from time to time, acting singly.

“**Blocked Person**” means (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (b) a Person, entity, organization, country or regime that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (c) a Person that is an agent, department or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, any Person, entity, organization, country or regime described in clause (a) or (b).

“**Budget**” means the budget required to be delivered by the Parent pursuant to Section 7.4 (*Budget*).

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York or London, United Kingdom are required or authorized to be closed.

“**Cash Equivalent Investments**” has the meaning given to “Cash Equivalents” in Part II of Schedule 4 (*Restrictive Covenants*).

“**Center of Main Interests**” means the “centre of main interests” as such term is used in Article 3(1) of the Regulation (EC) no. 2015/848 of 20 May 2015 on insolvency proceedings (recast).

“**Change of Control**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**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.

“**Chief Executive Officer**” means the chief executive officer of the Parent or, if no chief executive officer is appointed, such other person fulfilling the functions of chief executive officer of the Parent.

“**Chief Financial Officer**” means the chief financial officer of the Parent or, if no chief financial officer is appointed, such other person fulfilling the functions of chief financial officer of the Parent.

“**Closing**” is defined in the introductory paragraph of Section 4.

“**Closing Date**” means the date on which the Closing occurs.



“**Code**” means the Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder from time to time.

“**Company**” is defined in the introductory paragraph.

“**Compliance Certificate**” shall mean a certificate from the chief financial officer, treasurer or assistant treasurer of the Borrower and containing the certifications described in Section 7.2

“**Confidential Information**” is defined in Section 20.

“**Consolidated EBITDA**” is defined in Part II of Schedule 4 (Restrictive Covenants).

“**Constitutional Documents**” means the constitutional documents of the Parent.

“**Consumer Debt or Account**” means any debt or account where the debtor is (i) an individual, or (ii) any other person in circumstances where an individual provides any surety, guarantee, credit support, Security, or other financial assistance which represents the principal credit support for the relevant debt or account in respect of that debt or account.

“**Continuing Director**” means, with respect to any Person as of any date of determination, any member of the board of directors of such Person who (i) was a member of such board of directors on the Closing Date, or (ii) was nominated for election or elected to such board of directors with the approval of the required majority of the Continuing Directors who were members of such board at the time of such nomination or election.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Controlled Entity**” means (a) any of the Subsidiaries of the Company and any of their or the Company’s respective Controlled Affiliates and (b) if the Company has a parent company, such parent company and its Controlled Affiliates.

“**Credit Agreement**” means that certain Senior Facilities Agreement relating to a \$1,050,000,000 Committed Revolving Facility, dated as of the date of this Agreement, by and among the Company, the Lenders and the other Persons party thereto and Truist Bank, as administrative agent thereunder, as amended, amended and restated, supplemented, refinanced, replaced or otherwise modified from time to time.

“**Credit Rating**” means the private or public credit rating of the 2017 Notes issued by a Rating Agency, which credit rating identifies the 2017 Notes by their applicable Private Placement Number issued by Standard & Poor’s CUSIP Bureau.

“**Default**” means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**“Default Rate”** means, as to any 2017 Note, that rate of interest that is the greater of (a) 7.625% per annum and (b) 2% over the rate of interest publicly announced by JPMorgan Chase Bank in New York, New York as its “base” or “prime” rate.

**“Division”** means, in reference to any Person which is an entity, the division of such Person into two (2) or more separate Persons, with the dividing Person either continuing or terminating its existence as part of the division including as contemplated under Section 18-217 of the Delaware Limited Liability Act for limited liability companies formed under Delaware law or any analogous action taken pursuant to any applicable law with respect to any corporation, limited liability company, partnership or other entity. The word **“Divide,”** when capitalized shall have correlative meaning.

**“Dollars”** and **“\$”** means lawful currency of the United States of America.

**“Domestic Subsidiary”** means any Restricted Subsidiary of any Person organized under the laws of a jurisdiction located in the United States of America.

**“Encore Affiliate”** means any Person directly or indirectly controlling, controlled by or under common control with the Company. A Person shall be deemed to control another Person if the controlling Person is the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of 10% or more of any class of voting securities (or other ownership interests) of the controlled Person and possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of voting securities, by contract or otherwise.

**“Environmental Laws”** means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) the protection of the environment, (ii) the effect of the environment on human health, (iii) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, ground water or land, or (iv) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean-up or other remediation thereof.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, and the rules and regulations promulgated thereunder from time to time in effect.

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company or a Subsidiary under section 414 of the Code.

**“ERC”** is defined in Section 10.1.2.

**“Event of Default”** is defined in Section 11.

“**Exchange Act**” means the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder from time to time in effect.

“**Existing Cabot Notes**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**Existing 2023 Encore Exchangeable Notes**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**Existing Encore Convertible Notes**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**Existing Encore Notes**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**Existing Notes**” means the Existing Cabot Notes and the Existing Encore Notes.

“**FATCA**” means (a) sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), together with any current or future regulations or official interpretations thereof, (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of the foregoing clause (a), and (c) any agreements entered into pursuant to section 1471(b)(1) of the Code.

“**Finance Document**” means this Agreement, the Notes, the Multiparty Guaranty, the Indemnity and Contribution Agreement, the Intercreditor Agreement, any Transaction Security Document and any other document designated as a “Finance Document” by the Required Holders and the Parent.

“**Financial Indebtedness**” has the meaning given to “Indebtedness” in Part II of Schedule 4 (*Restrictive Covenants*).

“**Financial Quarter**” is defined in Section 10.1.2 (*Financial Definitions*).

“**Financial Year**” is defined in Section 10.1.2 (*Financial Definitions*).

“**Fixed Charge Coverage Ratio**” is defined in Section 10.1.2 (*Financial Definitions*).

“**Fixed Charges**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**Fixed GAAP**” means GAAP as in effect on the Closing Date or at any date after the Closing Date if the Parent makes an irrevocable election to establish that “Fixed GAAP” shall mean GAAP as in effect on a date that is on or prior to the date of such election.

“**GAAP**” means generally accepted accounting principles as in effect in the United States from time to time; provided, that “GAAP” shall exclude the effects of Accounting Standards Codification 825-10-25 (previously referred to as SFAS 159) or any successor or similar provision to the extent it relates to “fair value” accounting for liabilities.

**“Governmental Authority”** means

- (a) the government of
- (i) the United States of America or any state or other political subdivision thereof, or
- (ii) any other jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or
- (b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

**“Governmental Official”** means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

**“Group”** means, at any time, the Parent and each of its Subsidiaries at such time.

**“Guarantors”** means the Original Guarantors and any Additional Guarantors, and **“Guarantor”** means any one of them.

**“Holdco”** means the Parent.

**“holder”** means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 13.1, provided, however, that if such Person is a nominee, then for the purposes of Sections 7, 12, 17.2 and 18 and any related definitions in this Schedule A, **“holder”** shall mean the beneficial owner of such Note whose name and address appears in such register.

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

**“including”** means, unless the context clearly requires otherwise, **“including without limitation.”**

**“Indemnity and Contribution Agreement”** is defined in Section 4.1.

**“Initial ERC”** means the ERC forecast for the Group dated June 30, 2020.

**“Institutional Investor”** means (a) any Purchaser of a Note, (b) any holder of a Note holding (together with one or more of its Affiliates) more than 5% of the aggregate principal amount of the Notes then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance

company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form, and (d) any Related Fund of any holder of any Note.

“**Intercreditor Agreement**” is defined in Section 4.1.

“**Intra-Group Loans**” means any loans made by one member of the Restricted Group to another member of the Restricted Group.

“**Investment Grade Status**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**Joint Venture**” means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity in which the interests of all members of the Restricted Group (taken together) are not more than 50%.

“**Junior Lien Indebtedness**” means Financial Indebtedness of the Company or any of its Restricted Subsidiaries that is secured by Liens that are junior to the Liens of the Security Agent with respect to any of the Transaction Security.

“**Legal Reservations**” means:

(a) the principle that certain remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganization and other laws generally affecting the rights of creditors;

(b) the time barring of claims under any applicable limitation law (including the Limitation Acts), the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defenses of acquiescence, set-off or counterclaim;

(c) the principle that in certain circumstances Security granted by way of fixed charge may be recharacterized as a floating charge or that Security purported to be constituted as an assignment may be recharacterized as a charge;

(d) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;

(e) the principle that an English court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;

(f) the principle that the creation or purported creation of Security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which Security has purportedly been created;

(g) similar principles, rights and defenses under the laws of any Relevant Jurisdiction; and

(h) any other matters which are set out as qualifications or reservations as to matters of law of general application in legal opinions.

“**Lenders**” means the several lenders from time to time party to the Credit Agreement in their capacities as such.

“**Lien**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

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

“**LTV Ratio**” is defined in Section 10.1.2 (*Financial Definitions*).

“**LTV Ratios**” means the LTV Ratio and the SSRCF LTV Ratio.

“**Luxembourg Guarantor**” means Cabot Financial (Luxembourg) S.A., Cabot Financial (Luxembourg) II S.A. and any other Guarantor which is incorporated and/or established in the Grand Duchy of Luxembourg from time to time.

“**Make-Whole Amount**” is defined in Section 8.7.

“**Mandatory Credit Agreement Prepayment**” means any mandatory prepayment or repayment required to be made on any term facility or revolving credit facility under the Credit Agreement now or hereafter in effect, other than (i) any prepayment contemplated in connection with the Refinancing Transactions, (ii) any such mandatory prepayment or repayment triggered by events or circumstances which are otherwise addressed in this Agreement under Section 8.1(f) or Section 8.6, and (iii) the requirement to repay the outstanding principal amount of all revolving loans under the Credit Agreement on the Termination Date (as defined in the Credit Agreement on the date hereof), as the scheduled Termination Date may be extended from time to time hereafter.

“**Material**” means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of the Company and its Subsidiaries taken as a whole.

“**Material Adverse Effect**” means a material adverse effect on (i) the business, Property, condition (financial or otherwise), operations or results of operations of the Company, or the Company and its Restricted Subsidiaries taken as a whole, (ii) the ability of the Company or any Obligor to perform its obligations under the Finance Documents, or (iii) the validity or enforceability of any of the Finance Documents or the rights or remedies of the Security Agent or the holders of Notes thereunder or their rights with respect to the Transaction Security.

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

- (a) an Obligor; or
- (b) a wholly-owned member of the Restricted Group that is the Holding Company of an Obligor; or

(c) a member of the Restricted Group (other than a Permitted Purchase Obligations SPV or any Subsidiary of the Parent whose only material assets are the Capital Stock of a Permitted Purchase Obligations SPV) which:

(i) has earnings before interest, tax, depreciation and amortization calculated on the same basis as Consolidated EBITDA (but on an unconsolidated basis and excluding intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) representing more than 5% of Consolidated EBITDA of the Restricted Group calculated on a consolidated basis; or

(ii) has gross assets (on an unconsolidated basis excluding intra-Restricted Group items, goodwill and investments in Restricted Subsidiaries of any member of the Restricted Group) representing 5% or more of the gross assets of the Restricted Group calculated on a consolidated basis (excluding goodwill),

but does not include:

(d) a Permitted Purchase Obligations SPV; or

(e) a Restricted Subsidiary whose only assets are the Capital Stock in a Permitted Purchase Obligations SPV.

Compliance with the conditions set out in paragraph (c) above shall be determined by reference to:

(i) the most recent Annual Financial Statements of the Group (adjusted in accordance with Section 7.7 (*Unrestricted Subsidiaries*)) supplied under paragraph (a) of Section 7.1 (*Financial Statements*) and the Compliance Certificate relating thereto; and

(ii) the latest (if applicable) consolidated financial statements of the Subsidiary (audited to the extent required by law). However, if a Subsidiary has been acquired since the date as at which the latest Annual Financial Statements of the Group were prepared, the Annual Financial Statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary (that adjustment being certified by the Chief Financial Officer or the Chief Executive Officer of the Parent as representing an accurate reflection of the revised Consolidated EBITDA or gross assets of the Restricted 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. All calculations in connection with establishing whether or not any member of the Group is a Material Company shall be calculated in accordance with Fixed GAAP.

**“Material Indebtedness”** means any Financial Indebtedness of the Company or any Restricted Subsidiary in an outstanding principal amount of \$25,000,000 or more in the aggregate (or the equivalent thereof in any currency other than Dollars).

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

(a) 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; and

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

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

**“Most Favored Covenants”** is defined in Section 9.12.

**“Multiemployer Plan”** means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

**“Multiparty Guaranty”** is defined in Section 4.1.

**“NAIC”** means the National Association of Insurance Commissioners or any successor thereto.

**“Non-Consumer Debt or Accounts”** means any debt or account that is not a Consumer Debt or Account.

**“Non-Permitted Jurisdiction Originated Account”** means a Portfolio Account originally issued or extended to a person:

(a) outside the United Kingdom, the United States or a Permitted Jurisdiction, unless such person was resident in the United Kingdom, the United States or a Permitted Jurisdiction at such time; and

(b) in a jurisdiction which is not a Sanctioned Jurisdiction.

**“Non-UK/Non-US Originated Account”** means a Portfolio Account originally issued or extended to a person outside the United Kingdom or the United States unless such person was resident in the United Kingdom or the United States at such time.

**“Non-U.S. Plan”** means any plan, fund or other similar program that (a) is established or maintained outside the United States of America by the Company or any Subsidiary primarily for the benefit of employees of the Company or one or more Subsidiaries residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement



income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and (b) is not subject to ERISA or the Code.

“**Notes**” is defined in the flush language at the end of Section 1.

“**Notice Event**” means:

- (i) the execution by the Company or any Subsidiary or Affiliate of any agreement or letter of intent with respect to any proposed transaction or event or series of transactions or events which, individually or in the aggregate, may reasonably be expected to result in a Change of Control; or
- (ii) the execution of any written agreement which, when fully performed by the parties thereto, would result in a Change of Control.

“**Obligors**” means the Parent and the Guarantors and “**Obligor**” means any one of them.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**OFAC Sanctions Program**” means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

“**Officer’s Certificate**” means a certificate of an Authorized Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

“**Original Financial Statements**” means:

- (a) the audited financial statements of the Group ending December 31, 2019; and
- (b) in relation to any other Obligor, its audited (to the extent required by law to be audited) financial statements (to the extent required by law to be produced) delivered as required by Section 21 (*Changes to Guarantors*).

“**Original Guarantors**” means the Companies listed in Schedule 1 (*The Original Guarantors*).

“**Parent**” is defined in the introductory paragraph.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“**Perfection Requirements**” means the making or procuring of appropriate registrations, filings, endorsements, stampings, intimation in accordance with local laws, notations in stock registries, notarizations, legalization and/or notifications of the Transaction Security Documents and/or the Transaction Security created thereunder.

**“Permitted Acquisition”** means an acquisition:

(a) of shares or other ownership interests in a company representing at least 50.1% of the issued share capital or other ownership interests of such company or of a business or undertaking carried on as a going concern (each a **“Business Acquisition”**); or

(b) an acquisition of Portfolio Accounts for consideration in cash,

but only if:

(i) in relation to a Business Acquisition, no Event of Default has occurred and is continuing at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition or would result therefrom;

(ii) in relation to an acquisition of Portfolio Accounts, no Event of Default has occurred and is continuing at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition or would result therefrom;

(iii) in relation to a Business Acquisition, the acquired company, business, or undertaking is engaged in a business, service or activity that is related, complementary, incidental, ancillary or similar to any of the businesses, services or activities that are carried on by the Restricted Group at the time of such Business Acquisition;

(iv) in relation to an acquisition of a Portfolio Account:

(A) if the aggregate purchase value of Portfolio Accounts acquired by the Restricted Group since the most recent Quarter Date exceeds or will as a result of such acquisition of Portfolio Accounts exceed an amount equal to 50% of the amount budgeted for acquisitions of Portfolio Accounts in the Budget for the relevant Financial Year, the Parent has delivered a Compliance Certificate (amended to set out calculations in respect of the LTV Ratios and the acquired Portfolio Accounts only) signed by the Chief Financial Officer or the Chief Executive Officer showing in reasonable detail calculations demonstrating that it is in compliance with the LTV Ratios (calculated by reference to the last day of the most recently ended calendar Month);

(B) in the case of a Portfolio Account constituting either (i) a Non-Consumer Debt or Account, or (ii) a Non-UK/Non-US Originated Account, having regard to the circumstances applying at the time the relevant member of the Restricted Group contractually commits to the

relevant acquisition, the relevant acquisition would not result in a failure to comply with the definition of "Portfolio Account"; and

(C) such acquisition is in compliance with Schedule 4 (Restrictive Covenants);

(v) in relation to a Business Acquisition of less than 100% but more than 50.1% of the issued share capital or other ownership interest interests of a company which following the acquisition would constitute a Material Company, subject to such company becoming an Obligor and granting Security (on substantially the same or equivalent terms to the Transaction Security granted as a condition precedent to Closing and subject to the Agreed Security Principles) over all its assets in favor of the Security Agent for the benefit of the Secured Parties as soon as practicable and in any event within:

(A) in the case of a Business Acquisition in England and Wales, 60 days; or

(B) in the case of a Business Acquisition in any other jurisdiction, 90 days,

of consummation of the relevant acquisition;

(vi) in relation to a Business Acquisition, the Parent has delivered a Compliance Certificate (amended to set out calculations in respect of the LTV Ratios and the Portfolio Accounts only) signed by the Chief Financial Officer or the Chief Executive Officer showing in reasonable detail calculations demonstrating:

(A) that it will remain in compliance with the LTV Ratios immediately following completion of the relevant acquisition (calculated by reference to the last day of the most recently ended Financial Quarter and on a pro forma basis for the proposed Business Acquisition taking into account any Financial Indebtedness incurred or to be incurred by any member of the Restricted Group in relation to the proposed acquisition); and

(B) to the extent that the Business Acquisition includes an acquisition of any Non-Consumer Debt or Account or any Non-UK/Non-US Originated Accounts, having regard to the circumstances applying at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition, that the relevant acquisition would not result in a failure to comply with the definition of "Portfolio Account;"

(vii) in relation to a Business Acquisition, the acquired company, business or undertaking is incorporated or established, and carries on its principal

business, in the United Kingdom, European Union, European Economic Area, India, United States of America or Canada;

(viii) in the reasonable opinion of the Parent, such acquisitions are directly or indirectly EBITDA-enhancing over the next three Financial Years after the completion of such acquisition having regard to the Group as a whole and the nature of the Group's business in the debt purchase and debt collection market; and

(ix) in relation to an acquisition of Portfolio Accounts to be funded by a borrowing under the Credit Agreement in an amount of more than:

(A) 7.5% of ERC (as determined by reference to the Compliance Certificate most recently delivered under this Agreement or (if relevant) the last day of the most recently ended calendar month on a pro forma basis for such acquisition), the Parent notifies the holders of the Notes of such acquisition promptly following its completion and provides them with such information in relation to the acquisition as the Required Holders may reasonably require promptly upon request; or

(B) 15% of ERC (as determined by reference to the Compliance Certificate most recently delivered under this Agreement or (if relevant) the last day of the most recently ended calendar month on a pro forma basis for such acquisition), the prior written consent of the Required Holders has been obtained.

**"Permitted Financial Indebtedness"** means any Financial Indebtedness which is permitted under Section 1.2 of Schedule 4 (*Restrictive Covenants*).

**"Permitted Joint Venture"** means any investment in a Joint Venture that is not prohibited by Section 10.5 (*Joint Venture*).

**"Permitted Jurisdiction"** means each of Ireland, France, Spain, Portugal, Italy, Germany, The Netherlands, Australia, New Zealand and Poland.

**"Permitted Jurisdiction Non-UK/Non-US Originated Account"** means a Portfolio Account originally issued or extended to a person outside the United Kingdom or the United States unless such person was resident in the United Kingdom or the United States at such time, provided that:

(a) the aggregate "ERC" amount of all Permitted Jurisdiction Originated Accounts in any individual Permitted Jurisdiction (calculated on the same basis as ERC and as set out in the further proviso below) at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition does not exceed (i) in the case of each of Ireland, France and Spain, an amount equal to 20% of ERC and (ii) in the case of each other individual Permitted Jurisdiction, an amount equal to 10% of ERC

(as determined in each case by reference to the Compliance Certificate most recently delivered under this Agreement or if relevant the last day of the most recently ended calendar Month adjusted on a pro forma basis for the proposed acquisition); and

(b) the aggregate “ERC” amount of all Non-Permitted Jurisdiction Originated Accounts (calculated on the same basis as ERC and as set out in the further proviso below) at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition does not exceed an amount equal to 5% of ERC (as determined by reference to the Compliance Certificate most recently delivered under this Agreement or if relevant the last day of the most recently ended calendar Month adjusted on a pro forma basis for the proposed acquisition),

and provided, further, that for the purposes of this definition, when calculating the aggregate “ERC” amount of all such Permitted Jurisdiction Originated Accounts or all such Non-Permitted Jurisdiction Originated Accounts debt, it shall refer to the estimated remaining collections projected to be received over 84 Months from the debt portfolio of which such debt is a component multiplied by the ratio of Permitted Jurisdiction Originated Accounts or Non-Permitted Jurisdiction Originated Accounts to total accounts in that debt portfolio, respectively.

“**Permitted Jurisdiction Originated Account**” means a Portfolio Account originally issued or extended to a person in a Permitted Jurisdiction.

“**Permitted Payment**” is defined in the Intercreditor Agreement.

“**Permitted Purchase Obligations**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**Permitted Purchase Obligations SPV**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**Permitted Refinancing Indebtedness**” means any Refinancing Indebtedness (as defined in Part II of Schedule 4 (*Restrictive Covenants*)).

“**Permitted Reorganization**” means:

(a) an amalgamation, merger, transfer, consolidation, liquidation, dissolution or corporate reconstruction (each a “**Reorganization**”) on a solvent basis of a member of the Restricted Group where:

(i) all of the business and assets of that member of the Restricted Group remain within the Restricted Group (and if that member of the Restricted Group was an Obligor immediately prior to such Reorganization being implemented, all of the business and assets of that member are retained by one or more other Obligors);

(ii) if it or its assets or the shares in it were subject to the Transaction Security immediately prior to such Reorganization, the Security Agent will enjoy

substantially the same or equivalent Security over the same assets or, as the case may be, over it or the shares in it (or in each case over the shares of its successor) or, where a member of the Group is being dissolved or liquidated, its assets (after payment of creditors) are passed up to its Holding Company (subject to such Holding Company granting the same or equivalent Security over the relevant assets in favor of the Security Agent); and

(iii) in the case of an amalgamation, merger or corporate reconstruction, if such member of the Group is an Obligor, the surviving entity is or becomes an Obligor to at least the same extent as such first mentioned Obligor immediately prior to the said amalgamation, merger or corporate reconstruction;

(b) any Reorganization permitted under Schedule 4 (*Restrictive Covenants*); or

(c) any other Reorganization of one or more members of the Restricted Group approved by the Required Holders (acting reasonably).

**“Permitted Unsecured Indebtedness Repayment Event”** means (i) any unsecured Financial Indebtedness, Subordinated Indebtedness or Junior Lien Indebtedness that has a scheduled final maturity or is subject to scheduled mandatory prepayment, redemption or defeasance prior to the scheduled final maturity of the Notes, and (ii) if such Financial Indebtedness has not been refinanced in its entirety in compliance with the terms of this Agreement on or before the date that is 10 Business days prior to the date that is three months prior to the earliest of the date of the scheduled final maturity or any scheduled mandatory prepayment, redemption or defeasance of such Financial Indebtedness.

**“Person”** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

**“Plan”** means an “employee benefit plan” (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

**“Portfolio”** means the Portfolio Accounts.

**“Portfolio Account”** means:

(a) (i) a performing, sub-performing or charged-off consumer account, loan, receivable, mortgage, debenture, claim or other similar asset or instrument or any other consumer account owned by the Restricted Group (in each case, a **“Consumer Portfolio Account”**); (ii) (to the extent that, when calculating the aggregate “ERC” amount under the Senior Notes, this is also taken into account and the same methodology is used) any sale, lease, license, transfer or other disposal of any asset (including but not limited to

real estate) owned or held (as relevant) by the Restricted Group following any acceleration, enforcement or similar action or proceeding or following any restructuring arrangement (such action or proceeding, or restructuring arrangement, (in each case, as appropriate) having taken place prior to or following such asset being owned or held (as relevant) by the Restricted Group) in connection with any Consumer Portfolio Account; or (iii) any Non-Consumer Debt or Account; or

(b) a Right to Collect Account,

provided that:

(i) the aggregate "ERC" amount of all Non-Consumer Debt or Accounts (calculated on the same basis as ERC and as set out in the further proviso below) at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition does not exceed an amount equal to 7.5% of ERC (as determined by reference to the Compliance Certificate most recently delivered under this Agreement or if relevant the last day of the most recently ended calendar Month adjusted on a pro forma basis for the proposed acquisition); and

(ii) the aggregate "ERC" amount of all Permitted Jurisdiction Non-UK/Non-US Originated Accounts (calculated on the same basis as ERC and as set out in the further proviso below) at the time the relevant member of the Restricted Group contractually commits to the relevant acquisition does not exceed an amount equal to 50% of ERC (as determined by reference to the Compliance Certificate most recently delivered under this Agreement or if relevant the last day of the most recently ended calendar Month adjusted on a pro forma basis for the proposed acquisition),

and provided, further, that for the purposes of this definition, when calculating the aggregate "ERC" amount of all such Non-Consumer Debt or Accounts or all such Permitted Jurisdiction Non-UK/Non-US Originated Accounts, it shall refer to the estimated remaining collections projected to be received over 84 Months from the debt portfolio of which such debt is a component multiplied by the ratio of Non-Consumer Debt or Accounts or Permitted Jurisdiction Non-UK/Non-US Originated Accounts to total accounts in that debt portfolio, respectively.

**"Principal Credit Facility"** means any loan agreement, credit agreement, note purchase agreement, indenture or similar document under which credit facilities in the aggregate original principal or commitment amount of at least \$20,000,000 are provided for.

**"Property"** of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

**"Purchasers"** is defined in the is defined in the introductory paragraph.

**“Qualified Institutional Buyer”** means any Person who is a “qualified institutional buyer” within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

**“Quarter Date”** is defined in Section 10.1.2 (*Financial Definitions*).

**“Quarter Period”** is defined in Section 10.1.2 (*Financial Definitions*).

**“Ratable Share”** means, at any time, the aggregate principal amount of Notes outstanding at such time as a percentage of the sum of (x) the aggregate principal amount of Loans (as defined in the Credit Agreement as of the Closing Date) outstanding at such time plus (y) the aggregate principal amount of Notes outstanding at such time.

**“Rating Agency”** means, at any time, any of Fitch Ratings, Inc., Moody’s Investors Service, Inc. or S&P Global Ratings so long as such nationally recognized statistical rating organization qualifies at such time for the ratings exception of the SVO.

**“Regulation U”** means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by banks, non-banks and non-broker lenders for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

**“Related Fund”** means, with respect to any holder of any Note, any fund or entity that (i) invests in securities or bank loans, and (ii) is advised or managed by such holder, the same investment advisor as such holder or by an affiliate of such holder or such investment advisor.

**“Relevant Acceleration Event”** is defined in Schedule 3 (*Agreed Security Principles*).

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

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where it conducts a substantial part of its business or its principal place of business; and
- (c) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

**“Relevant Period”** is defined in Section 10.1.2 (*Financial Definitions*).

**“Replacement Debt”** means Permitted Refinancing Indebtedness where the proceeds are applied within one (1) day of the incurrence of the Permitted Refinancing Indebtedness (provided that the Parent shall use its reasonable endeavors to procure that it is applied on the same day) in prepayment, purchase, defeasance, satisfaction and discharge or redemption of (a) the Senior Notes, Indebtedness incurred in connection with any Permitted Purchase Obligations or any Term Debt; or (b) any Permitted Refinancing Indebtedness.



“**Representative**” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

“**Reportable Event**” means a reportable event as defined in section 4043 of ERISA and the regulations issued under such section, with respect to a Plan subject to Title IV of ERISA, excluding, however, such events as to which the PBGC has by regulation waived the requirement of section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, provided, however, that a failure to meet the minimum funding standard of section 412 of the Code and of section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either section 4043(a) of ERISA or variance from the minimum funding standard allowed under section 412(c) of the Code.

“**Required Holders**” means, at any time, the holder or holders of a majority of the aggregate principal amount of the Notes or of a Series of Notes, as the context may require, from time to time outstanding (exclusive of Notes then owned by the Company, any Subsidiary or any of their respective Affiliates).

“**Restricted Group**” means the Parent and the Restricted Subsidiaries.

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

“**Right to Collect Account**” means a performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument that is owned by a Person that is not a member of the Restricted Group (a “**Third Party**”) and in respect of which:

(a) such Third Party is unable or unwilling to dispose of, or is not established for the purpose of disposing of, the relevant performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument to a member of the Restricted Group and:

(i) a member of the Restricted Group is entitled to collect and retain substantially all of the amounts due under such performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument or to receive amounts equivalent thereto; or

(ii) a member of the Restricted Group shall be entitled to the transfer of all such amounts received under such performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument and such amounts will be transferred to a member of the Restricted Group within a period of not more than 45 days from the date of their collection; or

(b)

(i) a member of the Restricted Group shall have legal (and beneficial) or beneficial title (or the relevant local law equivalent in each case) to such relevant performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or other claim or other similar asset or instrument and any amounts collected thereunder. Any amounts collected thereunder shall be transferred to a member of the Restricted Group within a period of not more than 45 days from the date of their collection; or

(ii) a member of the Restricted Group shall be legally (and beneficially) or beneficially entitled (or the relevant local law equivalent in each case) to collect and retain substantially all of the amounts due under such performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument or to receive amounts equivalent thereto.

For the avoidance of doubt, nothing in this definition shall restrict any Unrestricted Subsidiary from engaging in any of the activities applicable to Restricted Subsidiaries provided that such activity shall not constitute a Right to Collect Account unless a Restricted Subsidiary has the rights with respect to such Right to Collect Account detailed under paragraph (a) or (b) above.

“**Sanctioned Jurisdiction**” means a country or territory which is subject to:

(a) general trade, economic or financial sanctions or embargoes imposed, administered or enforced by (i) the US Department of Treasury’s Office of Foreign Assets Control, (ii) the United Nations Security Council, (iii) the European Union or (iv) the United Kingdom, including Her Majesty’s Treasury of the United Kingdom; or

(b) general economic or financial sanctions embargoes imposed by the US federal government and administered by the US State Department, the US Department of Commerce or the US Department of the Treasury.

“**SEC**” means the Securities and Exchange Commission of the United States.

“**Secured Obligations**” is defined in the Intercreditor Agreement.

“**Secured Parties**” is defined in the Intercreditor Agreement.

“**Securities Act**” means the Securities Act of 1933, and the rules and regulations promulgated thereunder from time to time in effect.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Security Agent**” means Truist Bank, in its capacity as security trustee for the Secured Parties.

“**Senior Note Documents**” means the Senior Note Documents (as such term is defined in the Intercreditor Agreement).

“**Senior Notes**” means the Senior Notes (as such term is defined in the Intercreditor Agreement).

“**Series**” is defined in the flush language at the end of Section 1.

“**SSRCF LTV Ratio**” is defined in Section 10.1.2 (*Financial Definitions*).

“**State Sanctions List**” means a list that is adopted by any state Governmental Authority within the United States of America pertaining to Persons that engage in investment or other commercial activities in Iran or any other country that is a target of economic sanctions imposed under U.S. Economic Sanctions Laws.

“**Stretch Facility**” means any “Facility” as defined in the Stretch Facility Agreement.

“**Stretch Facility Agreement**” means the facility agreement comprising a term loan facility of up to \$300,000,000 made between the Parent and the other parties thereto.

“**Structural Debt Documents**” means any document or agreement evidencing the terms of any Structural Liabilities.

“**Structural Liabilities**” is defined in the Intercreditor Agreement.

“**Subordinated Indebtedness**” of a Person means any Financial Indebtedness (other than Financial Indebtedness arising from intercompany loans and advances) of such Person the payment of which is subordinated to payment of the Secured Obligations.

“**Subsidiary**” of a Person means (i) any corporation more than 50% of the outstanding securities having ordinary voting power of which shall at the time be owned or controlled, directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (ii) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled. Unless otherwise expressly provided, all references herein to a “Subsidiary” shall mean a Subsidiary of the Company.

“**SVO**” means the Securities Valuation Office of the NAIC.

“**Tax**” means any tax (whether income, documentary, sales, stamp, registration, issue, capital, property, excise or otherwise), duty, assessment, levy, impost, fee, compulsory loan, charge or withholding.

“**Taxing Jurisdiction**” is defined in Section 14.3(a).

“**Term Debt**” means on any date, Financial Indebtedness with a scheduled maturity date 12 Months or more from the date on which such Financial Indebtedness was incurred (and for the avoidance of doubt excluding the Facilities and any Ancillary Facility (as such terms are defined in the Credit Agreement)). In no event shall the Notes be “Term Debt.”

“**Transaction Documents**” means the Finance Documents, the Senior Note Documents, the Structural Debt Documents and the Constitutional Documents.

“**Transaction Security**” means the Security created or expressed to be created in respect of the obligations of any of the Obligors under any of the Finance Documents pursuant to the Transaction Security Documents.

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

“**United States Person**” has the meaning set forth in Section 7701(a)(30) of the Code.

“**Unrestricted Subsidiary**” is defined in Part II of Schedule 4 (*Restrictive Covenants*).

“**USA PATRIOT Act**” means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 and the rules and regulations promulgated thereunder from time to time in effect.

“**U.S. Economic Sanctions Laws**” means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

“**Wholly-Owned Subsidiary**” means (i) any Restricted Subsidiary all of the outstanding voting securities of which shall at the time be owned or controlled, directly or indirectly, by the Company or one or more wholly-owned Restricted Subsidiaries of the Company, or by the Company and one or more wholly-owned Restricted Subsidiaries of the Company, or (ii) any partnership, limited liability company, association, joint venture or similar business organization 100% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled by one or more Persons referred to in clause (i) above.

“**2017 Note Agreement**” is defined in Section 1.1.

“**2017 Notes**” is defined in Section 1.2.

“**2017 Notes Purchasers**” means the Purchasers of the 2017 Notes specified in the Purchaser Schedule attached to the 2017 Note Agreement as Schedule A.

**SCHEDULE 1**  
**THE ORIGINAL GUARANTORS**

<b>Name of Original Guarantor</b>	<b>Registration number</b>	<b>Place of incorporation</b>
Cabot Credit Management Limited	5754978	England & Wales
Cabot Financial (UK) Limited	3757424	England & Wales
Cabot Financial (Luxembourg) S.A.	B-171245	Luxembourg
Cabot Financial (Luxembourg) II S.A.	B-201268	Luxembourg
Cabot Financial Limited	5714535	England & Wales
Cabot Financial Holdings Group Limited	4934534	England & Wales
Cabot Credit Management Group Limited	4071551	England & Wales
Cabot Financial Debt Recovery Services Limited	3936134	England & Wales
Cabot Financial (Europe) Limited	3439445	England & Wales
Financial Investigations and Recoveries (Europe) Limited	3958421	England & Wales
Apex Credit Management Limited	3967099	England & Wales
Cabot Financial (Ireland) Limited	144084	Ireland
Cabot Asset Purchases (Ireland) Limited	349016	Ireland
Cabot Securitisation Europe Limited	572606	Ireland
Cabot UK Holdco Limited	08467515	England & Wales
Cabot Holdings S.à.r.l.	B176902	Luxembourg
Marlin Financial Group Limited	7195881	England & Wales
Marlin Financial Intermediate Limited	7196379	England & Wales

Marlin Financial Intermediate II Limited	8346249	England & Wales
Marlin Midway Limited	8255990	England & Wales
Black Tip Capital Holdings Limited	5927496	England & Wales
Marlin Senior Holdings Limited	8215555	England & Wales
Marlin Portfolio Holdings Limited	8215352	England & Wales
Marlin Legal Services Limited	6200270	England & Wales
Midland Credit Management, Inc.	0048421	Kansas
Midland Portfolio Services, Inc.	3978399	Delaware
Midland Funding, LLC	3978393	Delaware
Asset Acceptance Capital Corp.	3706574	Delaware
Asset Acceptance, LLC	3568396	Delaware
Janus Holdings Luxembourg S.à.r.l.	B178454	Luxembourg
Encore Capital Group UK Limited	11309536	England & Wales
Encore Holdings Luxembourg S.a. r.l.	B198551	Luxembourg
Marlin Intermediate Holdings Limited	08248105	England & Wales

**SCHEDULE 2**  
**TRANSACTION SECURITY DOCUMENTS**

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**SCHEDULE 3**  
**AGREED SECURITY PRINCIPLES**

**SCHEDULE 4**  
**RESTRICTIVE COVENANTS**  
**PART II**  
**COVENANTS**

**1. LIMITATION ON INDEBTEDNESS**

- 1.1 The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness); **provided, however, that** the Parent or a Subsidiary Guarantor may Incur Indebtedness if on the date of such Incurrence and after giving *pro forma* effect thereto (including *pro forma* application of the proceeds thereof), the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries is greater than 2.0 to 1.0.
- 1.2 Section 1.1 shall not prohibit the Incurrence of the following Indebtedness:
- (a) Indebtedness Incurred pursuant to any Credit Facility (including letters of credit or bankers' acceptances issued or created under any Credit Facility), and any Refinancing Indebtedness in respect thereof and Guarantees in respect of such Indebtedness in a maximum aggregate principal amount at any time outstanding not exceeding (i) the greater of (x) \$1,210.0 million and (y) 17.5% of ERC, plus (ii) in the case of any refinancing of any Indebtedness permitted under this paragraph (a) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such refinancing;
  - (b)
    - (i) Guarantees by the Parent or any Restricted Subsidiary of Indebtedness of Parent or any Restricted Subsidiary in each case so long as the Incurrence of such Indebtedness being guaranteed is permitted under the terms of this Agreement; **provided, that** if the Indebtedness being guaranteed is subordinated to the Encore Private Placement Notes, then the guarantee must be subordinated to the obligations of the Guarantors under the Multiparty Guaranty to the same extent as the Indebtedness guaranteed; or
    - (ii) without limiting Section 3 (*Limitation on Liens*), Indebtedness arising by reason of any Lien granted by or applicable to such Person securing Indebtedness of the Parent or any Restricted Subsidiary so long as the Incurrence of such Indebtedness is permitted under the terms of this Agreement;
  - (c) Indebtedness of the Parent owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Parent or any Restricted Subsidiary; **provided, however, that:**
    - (i) if any Obligor is the obligor on any such Indebtedness and the obligee is not an Obligor, it is either a Working Capital Intercompany Loan or unsecured and expressly subordinated in right of payment to prior payment in full of the Encore Private Placement Notes; and
    - (ii) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being beneficially held by a Person other than the Parent or a Restricted Subsidiary, and any sale or other transfer of any such Indebtedness to a Person other than the Parent or a Restricted Subsidiary;

Subsidiary, shall be deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this paragraph (c) by the Parent or such Restricted Subsidiary, as the case may be;

- (d) Indebtedness represented by (i) any Indebtedness (other than Indebtedness described in paragraphs (a), (c), (g) or (o)) outstanding on the Closing Date after giving *pro forma* effect to the Refinancing Transactions as if they had occurred on such date, including the Existing Cabot Notes and the Existing Encore Notes, (ii) Refinancing Indebtedness Incurred in respect of any Indebtedness described in this paragraph (d) or paragraph (e) or Incurred pursuant to Section 1.1 and (iii) Management Advances;
- (e) Indebtedness of any Person (i) outstanding on the date on which such Person becomes a Restricted Subsidiary or is merged, consolidated, amalgamated or otherwise combined with (including pursuant to any acquisition of assets and assumption of related liabilities) the Parent or any Restricted Subsidiary or (ii) Incurred to provide all or any portion of the funds utilised 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 paragraph (e), that at the time of such acquisition or other transaction (x) the Parent would have been able to Incur \$1.00 of additional Indebtedness pursuant to Section 1.1 after giving *pro forma* effect to the relevant acquisition and Incurrence of such Indebtedness pursuant to this paragraph (e) or (y) the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such acquisition or other transaction;
- (f) Indebtedness under Currency Agreements, Interest Rate Agreements and Commodity Hedging Agreements entered into for bona fide hedging purposes of the Parent or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or Senior Management of the Parent);
- (g) Indebtedness represented by Capitalised Lease Obligations or Purchase Money Obligations, in each case, Incurred for the purpose of financing 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 in the business of the Parent or any of its Restricted Subsidiaries, and in each case any Refinancing Indebtedness in respect thereof, in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this paragraph (g) and then outstanding, will not exceed at any time outstanding the greater of (i) \$145.0 million and (ii) 3.0% of Total Assets;
- (h) Indebtedness in respect of (i) workers' compensation claims, self-insurance obligations, performance, indemnity, surety, judgment, appeal, advance payment, customs, VAT or other tax or other guarantees or other similar bonds, instruments or obligations and completion guarantees and warranties provided by the Parent or a Restricted Subsidiary or relating to liabilities, obligations, indemnities or guarantees Incurred in the ordinary course of business or for governmental or regulatory requirements, in each case not in connection with the borrowing of money, (ii) letters of credit, bankers' acceptances, guarantees or other similar instruments or obligations issued or relating to liabilities or obligations Incurred in the ordinary course of business, (iii) the financing of insurance premiums in the ordinary course of business and (iv) any customary cash management, cash pooling or netting or setting off

arrangements 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;

- (i) Indebtedness arising from agreements providing for customary guarantees, indemnification, obligations in respect of earn-outs or other adjustments of purchase price or, in each case, similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Capital Stock of a Subsidiary (other than Guarantees of Indebtedness Incurred by any Person acquiring or disposing of such business or assets or such Subsidiary for the purpose of financing such acquisition or disposition); **provided that**, in the case of a disposition, 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 disposition;
- (j)
  - (i) Indebtedness arising from the honouring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; **provided, however, that** such Indebtedness is extinguished within five Business Days of Incurrence;
  - (ii) Customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business; and
  - (iii) Indebtedness Incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of Receivables for credit management purposes, in each case, not in connection with the borrowing of money and Incurred or undertaken in the ordinary course of business on arm's length commercial terms;
- (k) Indebtedness in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the principal amount of all other Indebtedness Incurred pursuant to this paragraph (k) and then outstanding, will not exceed the greater of (i) \$285.0 million and (ii) 6.0% of Total Assets;
- (l) Indebtedness represented by Permitted Purchase Obligations;
- (m) Indebtedness in an aggregate outstanding principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the principal amount of all other Indebtedness Incurred pursuant to this paragraph (m) and then outstanding, will not exceed 100% of the Net Cash Proceeds received by the Parent from the issuance or sale (other than to a Restricted Subsidiary) of its Subordinated Shareholder Funding or Capital Stock (other than Disqualified Stock, Designated Preference Shares or an Excluded Contribution) or otherwise contributed to the equity (other than through the issuance of Disqualified Stock, Designated Preference Shares or an Excluded Contribution) of the Parent, in each case, subsequent to the Closing Date; **provided, however, that** (i) any such Net Cash Proceeds that are so received or contributed shall be excluded for purposes of making Restricted Payments under Section 2.1 and paragraphs (a), (f), (j) and (n) of Section 2.3 to the extent the Parent and its Restricted Subsidiaries incur Indebtedness in reliance thereon and (ii) any Net

Cash Proceeds that are so received or contributed shall be excluded for purposes of Incurring Indebtedness pursuant to this paragraph (m) to the extent the Parent or any of its Restricted Subsidiaries makes a Restricted Payment under Section 2.1 and/or paragraphs (a), (f), (j) or (n) of Section 2.3 in reliance thereon;

- (n) Indebtedness represented by the unpaid purchase price for portfolio assets acquired in the ordinary course of business; **provided, however, that** such amounts are due within one year of the acquisition of the related portfolio assets; and
- (o) Indebtedness Incurred pursuant to (x) (i) the Stretch Facility Agreement (including letters of credit or bankers' acceptances issued or created thereunder) or (ii) any other Indebtedness Incurred in lieu of the Stretch Facility Agreement outstanding on the Closing Date, and (y) any Refinancing Indebtedness in respect thereof, in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this paragraph (o) and then outstanding, will not exceed at any time outstanding \$300.0 million, plus in the case of any refinancing of any Indebtedness permitted under this paragraph (o) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing.

1.3 For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this Section 1:

- (a) in the event that Indebtedness meets the criteria of more than one of the types of Indebtedness described in this Section 1, the Parent, in its sole discretion, will classify, and may from time to time reclassify, such item of Indebtedness and will only be required to include the amount and type of such Indebtedness in one of the paragraphs of Section 1.1 or Section 1.2; **provided that** (i) Indebtedness Incurred pursuant to paragraph (a) of Section 1.2 may not be reclassified, and the Encore Private Placement Notes and Indebtedness under the Credit Agreement outstanding or Incurred on the Closing Date will be deemed to have been Incurred on such date in reliance on the exception provided in paragraph (a) of Section 1.2; and (ii) Indebtedness Incurred pursuant to paragraph (o) of Section 1.2 may not be reclassified, and Indebtedness under the Stretch Facility Agreement Incurred or outstanding on the Closing Date will be deemed to have been Incurred on such date in reliance on the exception provided in paragraph (o) of Section 1.2;
- (b) Guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included;
- (c) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are Incurred pursuant to any Credit Facility and are being treated as Incurred pursuant to paragraphs (a), (g), (k) or (o) of Section 1.2 or pursuant to Section 1.1 and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;
- (d) the principal amount of any Disqualified Stock of the Parent or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;

- (e) for the purposes of determining "ERC" under paragraphs (a)(i)(y) of Section 1.2, (i) *pro forma* effect shall be given to ERC on the same basis as for calculating the LTV Ratio for the Parent and its Restricted Subsidiaries and (ii) ERC shall be measured on or about the date on which the Parent obtains new commitments (in the case of revolving facilities) or incurs new Indebtedness (in the case of term facilities);
  - (f) Indebtedness permitted by this Section 1 need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this Section 1 permitting such Indebtedness; and
  - (g) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined on the basis of GAAP.
- 1.4 Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortisation of original issue discount, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock or the reclassification of commitments or obligations not treated as Indebtedness due to a change in GAAP, will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 1. The amount of any Indebtedness outstanding as of any date shall be calculated as specified under the definition of "Indebtedness."
- 1.5 If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall 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 this Section 1, the Parent shall be in default of this Section 1).
- 1.6 For purposes of determining compliance with any US dollar-denominated restriction on the Incurrence of Indebtedness, the Dollar Equivalent of the principal amount of Indebtedness denominated in another currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or, at the option of the Parent, first committed, in the case of Indebtedness Incurred under a revolving credit facility; **provided that** (a) if such Indebtedness is Incurred to refinance other Indebtedness denominated in a currency other than US dollars, and such refinancing would cause the applicable US dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such US dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced; (b) the Dollar 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; and (c) if and for so long as any such Indebtedness is subject to a Currency Agreement with respect to the currency in which such Indebtedness is denominated covering principal and interest on such Indebtedness, the amount of such Indebtedness, if denominated in US dollars, will be the amount of the principal payment required to be made under such Currency Agreement and, otherwise, the Dollar Equivalent of such amount plus the Dollar Equivalent of any premium which is at such time due and payable but is not covered by such Currency Agreement. For purposes of calculating compliance with paragraphs (a) or (o) of Section 1.2 or for calculating the amount of Indebtedness outstanding under any revolving credit facility, to the extent a Credit Facility is

utilised for the purpose of guaranteeing or cash collateralising any letter of credit or guarantee, such guarantee or collateralisation and issuance of such letter of credit or guarantee shall be deemed to be a utilisation of such Credit Facility permitted under paragraphs (a) or (o) of Section 1.2 without double counting.

- 1.7 Notwithstanding any other provision of this Section 1, the maximum amount of Indebtedness that the Parent or a Restricted Subsidiary may Incur pursuant to this Section shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

## 2. LIMITATIONS ON RESTRICTED PAYMENTS

- 2.1 The Parent shall not, and shall not permit any of its Restricted Subsidiaries, directly or indirectly, to:

- (a) declare or pay any dividend or make any other payment or other distribution on or in respect of the Parent's or any Restricted Subsidiary's Capital Stock (including any payment in connection with any merger or consolidation involving the Parent or any of its Restricted Subsidiaries) except:
  - (i) dividends or distributions payable in Capital Stock of the Parent (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Parent or in Subordinated Shareholder Funding; and
  - (ii) dividends or distributions payable to the Parent or a Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to holders of its Capital Stock other than the Parent or another Restricted Subsidiary on no more than a pro rata basis, measured by value);
- (b) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Parent or any direct or indirect Holding Company held by Persons other than the Parent or a Restricted Subsidiary (other than in exchange for Capital Stock of the Parent (other than Disqualified Stock));
- (c) make any payment on or in respect of, or purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any (x) Subordinated Indebtedness (other than, in each case, any capitalisation of Subordinated Indebtedness or (i) any such payment, purchase, repurchase, redemption, defeasance or other acquisition or retirement or in anticipation of satisfying a sinking fund obligation, principal instalment or final maturity, in each case, due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement (ii) a payment of interest at the applicable interest payment date and (iii) any Indebtedness Incurred pursuant to paragraph (c) of Section 1.2) or (y) any Subordinated Shareholder Funding, other than any payment of interest thereon in the form of additional Subordinated Shareholder Funding; or
- (d) make any Restricted Investment in any Person;

(any such dividend, distribution, payment, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in paragraphs (a) to (d) above are referred to herein as a "**Restricted Payment**"), if at the time the Parent or such Restricted Subsidiary makes such Restricted Payment:

- (i) a Default shall have occurred and be continuing (or would result immediately thereafter therefrom);
- (ii) the Parent is not able to Incur an additional \$1.00 of Indebtedness pursuant to Section 1.1 after giving effect, on a *pro forma* basis, to such Restricted Payment; or
- (iii) the aggregate amount of such Restricted Payment and all other Restricted Payments made subsequent to the Closing Date (and not returned or rescinded) (including, with respect to paragraphs (A) through (E) below only, Permitted Payments permitted below by clause 2.2 and by paragraphs (e) (without duplication of amounts paid pursuant to any other paragraph of Section 2.3), (j) or (k) of Section 2.3 but excluding all other Restricted Payments permitted by Section 2.3) would exceed the sum of (without duplication):
  - (A) 50% of Consolidated Net Income for the period (treated as one accounting period) from the first day of the first fiscal quarter commencing prior to the Closing Date to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which internal consolidated financial statements of the Parent are available (or, in the case such Consolidated Net Income is a deficit, minus 100% of such deficit);
  - (B) 100% of the aggregate Net Cash Proceeds, and the fair market value (as determined in accordance with Section 2.2) of property or assets or marketable securities, received by the Parent from the issue or sale of its Capital Stock (other than Disqualified Stock or Designated Preference Shares) or Subordinated Shareholder Funding subsequent to the Closing Date or otherwise contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Parent subsequent to the Closing Date (other than (x) Net Cash Proceeds or property or assets or marketable securities received from an issuance or sale of such Capital Stock to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent or any Subsidiary of the Parent for the benefit of its employees to the extent funded by the Parent or any Restricted Subsidiary, (y) Net Cash Proceeds or property or assets or marketable securities to the extent that any Restricted Payment has been made subsequent to the Closing Date from such proceeds in reliance on paragraph (f) of Section 2.3 and (z) Excluded Contributions);
  - (C) 100% of the aggregate Net Cash Proceeds, and the fair market value (as determined in accordance with Section 2.2) of property or assets or marketable securities, received by the Parent or any Restricted Subsidiary from the issuance or sale (other than to the Parent or a Restricted Subsidiary or an employee stock ownership plan or trust



established by the Parent or any Subsidiary of the Parent for the benefit of its employees to the extent funded by the Parent or any Restricted Subsidiary) by the Parent or any Restricted Subsidiary subsequent to the Closing Date of any Indebtedness that has been converted into or exchanged for Capital Stock of the Parent (other than Disqualified Stock or Designated Preference Shares) or Subordinated Shareholder Funding (plus the amount of any cash, and the fair market value (as determined in accordance with Section 2.2) of property or assets or marketable securities, received by the Parent or any Restricted Subsidiary upon such conversion or exchange) but excluding (x) Net Cash Proceeds to the extent that any Restricted Payment has been made subsequent to the Closing Date from such proceeds in reliance on paragraph (f) of Section 2.3, (y) Excluded Contributions;

- (D) the amount equal to the net reduction in Restricted Investments made by the Parent or any of its Restricted Subsidiaries resulting from:
- (1) repurchases, redemptions or other acquisitions or retirements of any such Restricted Investment, proceeds realised upon the sale or other disposition to a Person other than the Parent or a Restricted Subsidiary of any such Restricted Investment, repayments of loans or advances or other transfers of assets (including by way of dividend, distribution, interest payments or returns of capital) to the Parent or any Restricted Subsidiary; or
  - (2) the redesignation of Unrestricted Subsidiaries as Restricted Subsidiaries (valued, in each case, as provided in the definition of "**Investment**") not to exceed, in the case of any Unrestricted Subsidiary, the amount of Investments previously made by the Parent or any Restricted Subsidiary in such Unrestricted Subsidiary, which amount, in each case under this paragraph (iii)(D), was included in the calculation of the amount of Restricted Payments referred to in the first sentence of this paragraph (iii); **provided, however, that** no amount will be included in Consolidated Net Income for purposes of the preceding paragraph (iii)(A) to the extent that it is (at the Parent's option) included under this paragraph (iii)(D); and
- (E) the amount of the cash and the fair market value (as determined in accordance with Section 2.2) of property or assets or of marketable securities received by the Parent or any of its Restricted Subsidiaries in connection with:
- (1) the sale or other disposition (other than to the Parent or a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent or any Subsidiary of the Parent for the benefit of its employees to the extent funded by the Parent or any Restricted Subsidiary) of Capital Stock of an Unrestricted Subsidiary of the Parent; and

(2) any dividend or distribution made by an Unrestricted Subsidiary to the Parent or a Restricted Subsidiary,

**provided, however, that** no amount will be included in Consolidated Net Income for purposes of the preceding paragraph (iii)(A) to the extent that it is (at the Parent's option) included under this paragraph (iii)(E); **provided further, however,** that such amount shall not exceed the amount included in the calculation of the amount of Restricted Payments referred to in the first sentence of this paragraph (iii)(E); and

(F) \$150,000,000.

2.2 The fair market value of property or assets other than cash covered by paragraph (iii)(C) of Section 2.1 shall be the fair market value thereof as determined in good faith by the Board of Directors of the Parent.

2.3 The foregoing provisions will not prohibit any of the following (collectively, "**Permitted Payments**"):

- (a) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Capital Stock, Disqualified Stock, Designated Preference Shares, Subordinated Shareholder Funding or Subordinated Indebtedness made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Parent (other than Disqualified Stock or Designated Preference Shares), Subordinated Shareholder Funding or a substantially concurrent contribution to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares, through an Excluded Contribution) of the Parent; **provided, however, that** to the extent so applied, the Net Cash Proceeds, or fair market value (as determined in accordance with Section 2.2) of property or assets or of marketable securities, from such sale of Capital Stock, Subordinated Shareholder Funding or such contribution will be excluded from paragraph (iii)(B) of Section 2.1;
- (b) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the substantially concurrent sale of, Refinancing Indebtedness permitted to be Incurred pursuant to Section 1 (*Limitation on Indebtedness*);
- (c) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Preferred Stock of the Parent or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Preferred Stock of the Parent or a Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to Section 1 (*Limitation on Indebtedness*), and that in each case, constitutes Refinancing Indebtedness;
- (d) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness:
  - (i) from Net Available Cash to the extent permitted under Section 5 (*Limitation on sales of Assets and Subsidiary Stock*), but only (A) if the Parent shall have first complied with the terms described under Section 5 (*Limitation on sales*)

of Assets and Subsidiary Stock) and repaid all Encore Private Placement Notes required to be repaid thereby, prior to such purchase, repurchase, redemption, defeasance or other acquisition or retirement of such Subordinated Indebtedness and (B) at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest; or

- (ii) to the extent required by the agreement governing such Subordinated Indebtedness, following the occurrence of a Change of Control (or other similar event described therein as a "change of control"), but only (A) if the Parent shall have first complied with the terms of Section 8.6 of this Agreement, prior to such purchase, repurchase, redemption, defeasance or other acquisition or retirement of such Subordinated Indebtedness and (B) at a purchase price not greater than 101% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest;
- (e) (i) any dividends paid within 60 days after the date of declaration if at such date of declaration such dividend would have complied with this covenant, and (ii) payments associated with the Refinancing Transactions;
  - (f) the purchase, repurchase, redemption, defeasance or other acquisition, cancellation or retirement for value of Capital Stock of the Parent or any Holding Company (including any options, warrants or other rights in respect thereof) and loans, advances, dividends or distributions by the Parent to any Holding Company to permit any Holding Company to purchase, repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of any Holding Company (including any options, warrants or other rights in respect thereof), or payments to purchase, repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of any Holding Company (including any options, warrants or other rights in respect thereof), in each case from Management Investors; **provided that** such payments, loans, advances, dividends or distributions do not exceed an amount (net of repayments of any such loans or advances) equal to (A) \$12.5 million plus (B) \$5.0 million multiplied by the number of calendar years that have commenced since the Closing Date plus (C) the Net Cash Proceeds received by the Parent or its Restricted Subsidiaries since the Closing Date (including through receipt of proceeds from the issuance or sale of its Capital Stock or Subordinated Shareholder Funding to a Holding Company) from, or as a contribution to the equity (in each case under this limb (C), other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Parent from, the issuance or sale to Management Investors of Capital Stock (including any options, warrants or other rights in respect thereof), to the extent such Net Cash Proceeds are not included in any calculation under paragraph (iii)(B) or paragraph (iii)(C) of Section 2.1;
  - (g) the declaration and payment of dividends to holders of any class or series of Disqualified Stock, or of any Preferred Stock of a Restricted Subsidiary, Incurred in accordance with Section 1 (*Limitation on Indebtedness*);
  - (h) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof;

- (i) dividends, loans, advances or distributions to any Holding Company or other payments by the Parent or any Restricted Subsidiary in amounts equal to (without duplication):
  - (i) the amounts required for any Holding Company to pay any Related Taxes; or
  - (ii) amounts constituting or to be used for purposes of making payments to the extent specified in paragraphs (b), (c), (e), and (g) of Section 6.3;
- (j) so long as no Default or Event of Default has occurred and is continuing (or would result therefrom), (i) the declaration and payment by the Parent of, or loans, advances, dividends or distributions to pay, dividends on the common stock or common equity interests of the Parent or (ii) the purchase, repurchase, redemption, defeasance or other acquisition, cancellation or retirement for value of Capital Stock of the Parent (including any options, warrants or other rights in respect thereof) in an aggregate amount not to exceed in any fiscal year the greater of:
  - (i) 7% of the Market Capitalisation, provided that after giving *pro forma* effect to such payments, loans, advances, dividends or distributions, the Consolidated Net Leverage Ratio for the Parent and its Restricted Subsidiaries shall be equal to or less than 3.0 to 1.0; and
  - (ii) 6% of the Market Capitalisation, **provided that** after giving *pro forma* effect to such payments, loans, advances, dividends or distributions, the Consolidated Net Leverage Ratio for the Parent and its Restricted Subsidiaries shall be equal to or less than 3.5 to 1.0;
- (k) so long as no Default or Event of Default has occurred and is continuing (or would result therefrom), (a) Restricted Payments (including loans or advances) in an aggregate amount outstanding at any time not to exceed \$90.0 million and (b) any Restricted Payment (including loans or advances); **provided that**, in respect of clause (b), the Consolidated Net Leverage Ratio on a *pro forma* basis after giving effect to any such Restricted Payment does not exceed 2.00 to 1.0;
- (l) payments by the Parent, or loans, advances, dividends or distributions to any Holding Company to make payments, to holders of Capital Stock of the Parent or any Holding Company in lieu of the issuance of fractional shares of such Capital Stock; **provided, however, that** any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this Section 2 or otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Board of Directors of the Parent);
- (m) Investments in an aggregate amount outstanding at any time not to exceed the aggregate cash amount of Excluded Contributions, or consisting of non-cash Excluded Contributions, or Investments to the extent made in exchange for or using as consideration Investments previously made under this paragraph (m);
- (n) (i) the declaration and payment of dividends to holders of any class or series of Designated Preference Shares of the Parent issued after the Closing Date; and (ii) the declaration and payment of dividends to any Holding Company or any Affiliate thereof, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preference Shares of such Holding Company issued after the Closing Date; **provided, however, that**, the amount of all

dividends declared or paid pursuant to this paragraph (n) shall not exceed the Net Cash Proceeds received by the Parent or, in the case of Designated Preference Shares issued by any Holding Company or any Affiliate thereof, the aggregate amount contributed in cash to the equity (other than through the issuance of Disqualified Stock or an Excluded Contribution) of the Parent or loaned as Subordinated Shareholder Funding to the Parent, from the issuance or sale of such Designated Preference Shares; and

(o) dividends or other distributions of Capital Stock, Indebtedness or other securities of Unrestricted Subsidiaries.

2.4 The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Parent or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount, and the fair market value of any non-cash Restricted Payment shall be determined conclusively by the Board of Directors of the Parent acting in good faith.

### 3. LIMITATIONS ON LIENS

The Parent shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur or suffer to exist any Lien upon any of its property or assets (including Capital Stock of a Subsidiary), whether owned on the Closing Date or acquired after that date, or any interest therein or any income or profits therefrom, which Lien is securing any Indebtedness (such Lien, the "Initial Lien"), except (a) in the case of any property or asset that does not constitute Collateral, (1) Permitted Liens or (2) Liens on property or assets that are not Permitted Liens if, contemporaneously with the Incurrence of such Initial Lien, the Secured Obligations are secured at least equally and rateably with, or prior to, in the case of Liens with respect to Subordinated Indebtedness, the Indebtedness secured by such Initial Lien for so long as such Indebtedness is so secured, and (b) in the case of any property or asset that constitutes Collateral, Permitted Collateral Liens.

### 4. LIMITATION ON RESTRICTIONS ON DISTRIBUTIONS FROM RESTRICTED SUBSIDIARIES

5.1 The Parent shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:

- (a) pay dividends or make any other distributions in cash or otherwise on its Capital Stock or pay any Indebtedness or other obligations owed to the Parent or any Restricted Subsidiary;
- (b) make any loans or advances to the Parent or any Restricted Subsidiary; or
- (c) sell, lease or transfer any of its property 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 requirements to) loans or advances made to the Parent or any Restricted Subsidiary to other Indebtedness Incurred by the Parent or any Restricted Subsidiary shall not be deemed to constitute such an encumbrance or restriction.

5.2 The provisions of Section 4.1 shall not prohibit:

- (a) any encumbrance or restriction pursuant to (i) this Agreement, (ii) the Stretch Facility Agreement, (iii) the Credit Agreement, (iv) the Existing Cabot Notes Indentures or the Existing Encore Notes Indentures, or (v) any other agreement or instrument, in each case, in effect at or entered into on the Closing Date;
- (b) any encumbrance or restriction pursuant to an agreement or instrument of a Person or relating to any Capital Stock or Indebtedness of a Person, entered into on or before the date on which such Person was acquired by or merged, consolidated or otherwise combined with or into the Parent or any Restricted Subsidiary, or on which such agreement or instrument is assumed by the Parent or any Restricted Subsidiary in connection with an acquisition of assets (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilised to consummate, the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was acquired by or was merged, consolidated or otherwise combined with or into the Parent or any Restricted Subsidiary or entered into in connection with such transaction) and outstanding on such date; **provided that**, for the purposes of this paragraph (b), if another Person is the Successor Company, any Subsidiary thereof or agreement or instrument of such Person or any such Subsidiary shall be deemed acquired or assumed by the Parent or any Restricted Subsidiary when such Person becomes the Successor Company;
- (c) any encumbrance or restriction pursuant to an agreement or instrument effecting a refinancing of Indebtedness Incurred pursuant to, or that otherwise refinances, an agreement or instrument referred to in paragraphs (a) or (b) of this Section 4.2 or this paragraph (c) (an "Initial Agreement") or contained in any amendment, supplement or other modification to an agreement referred to in paragraphs (a) or (b) of this Section 4.2 or this paragraph (c); **provided, however, that** the encumbrances and restrictions with respect to the Parent or any Restricted Subsidiary contained in any such agreement or instrument are no less favourable in any material respect to the holders of the Encore Private Placement Notes taken as a whole than the encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such refinancing or amendment, supplement or other modification relates (as determined in good faith by the Parent);
- (d) any encumbrance or restriction:
  - (i) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract, or the assignment or transfer of any lease, license or other contract;
  - (ii) contained in mortgages, pledges, charges or other security agreements permitted under this Agreement or securing Indebtedness of the Parent or a Restricted Subsidiary permitted under this Agreement to the extent such encumbrances or restrictions restrict the transfer of the property or assets subject to such mortgages, pledges, charges or other security agreements; or
  - (iii) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Parent or any Restricted Subsidiary;

- (e) any encumbrance or restriction pursuant to Purchase Money Obligations and Capitalised Lease Obligations permitted under this Agreement, in each case, that impose encumbrances or restrictions on the property so acquired or any encumbrance or restriction pursuant to a joint venture agreement that imposes restrictions on the transfer of the assets of the joint venture;
- (f) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;
- (g) customary provisions in leases, licenses, joint venture agreements, debt purchase agreements and other similar agreements and instruments entered into in the ordinary course of business;
- (h) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order, the terms of any licence, authorisation, concession or permit or required by any regulatory authority;
- (i) any encumbrance or restriction 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 agreements entered into in the ordinary course of business;
- (j) any encumbrance or restriction pursuant to Currency Agreements, Interest Rate Agreements or Commodity Hedging Agreements;
- (k) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be Incurred subsequent to the Closing Date pursuant to Section 1 (*Limitation on Indebtedness*) if (a) the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favourable to the holders of the Encore Private Placement Notes than (i) the encumbrances and restrictions contained in this Agreement, together with the security documents associated therewith as in effect on the Closing Date, or (ii) as is customary in comparable financings (as determined in good faith by the Parent), or (b) the Parent determines at the time such Indebtedness is Incurred that such encumbrances or restrictions will not adversely affect, in any material respect, the Parent's ability to make principal or interest payments on the Encore Private Placement Notes;
- (l) restrictions relating to Permitted Purchase Obligations SPVs effected in connection with the incurrence of Permitted Purchase Obligations that, in the good faith determination of the Board of Directors of the Parent, are necessary or advisable;
- (m) any encumbrance or restriction existing by reason of any lien permitted under Section 3 (*Limitation on Liens*);
- (n) any encumbrance or restriction on assets held in trust for a third party, including pursuant to the relevant trust agreement; or
- (o) any encumbrance or restriction existing under any agreement that extends, renews, refinances or replaces the agreements containing the encumbrances or restrictions under Section 6.3; **provided that** the terms and conditions of any such encumbrances or restrictions are, in the good faith judgment of the Board of Directors of the Parent,

no more restrictive in any material respect than those under or pursuant to the agreement so extended, renewed, refinanced or replaced.

## 5.5 LIMITATION ON SALES OF ASSETS AND SUBSIDIARY STOCK

5.1 The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:

- (a) the Parent or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at least equal to the fair market value (such fair market value to be determined on the date of contractually agreeing to such Asset Disposition), as determined in good faith by the Board of Directors of the Parent, of the shares and assets subject to such Asset Disposition (including, for the avoidance of doubt, if such Asset Disposition is a Permitted Asset Swap); and
- (b) in any such Asset Disposition, or series of related Asset Dispositions (except to the extent the Asset Disposition is a Permitted Asset Swap), at least 75% of the consideration from such Asset Disposition (excluding any consideration by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, other than Indebtedness) received by the Parent or such Restricted Subsidiary, as the case may be, is in the form of cash, Cash Equivalents or Temporary Cash Investments.

5.2 Pending the final application of any such Net Available Cash in accordance with the terms of this Agreement, the Parent and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise invest such Net Available Cash in any manner not prohibited by this Agreement.

5.3 For the purposes of paragraph (b) of Section 5.1 the following (or any combination thereof) will be deemed to be cash:

- (a) the assumption by the transferee of Indebtedness of the Parent or Indebtedness of a Restricted Subsidiary (other than Subordinated Indebtedness of the Parent or a Subsidiary Guarantor) and the release of the Parent or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition;
- (b) securities, notes or other obligations received by the Parent or any Restricted Subsidiary from the transferee that are converted by the Parent or such Restricted Subsidiary into cash or Cash Equivalents within 180 days following the closing of such Asset Disposition;
- (c) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that the Parent and each other Restricted Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with such Asset Disposition;
- (d) consideration consisting of Indebtedness of the Parent or any Subsidiary Guarantor (other than Subordinated Indebtedness) received after the Closing Date from Persons who are not the Parent or any Restricted Subsidiary; and
- (e) any Designated Non-Cash Consideration received by the Parent or any Restricted Subsidiary in such Asset Dispositions having an aggregate fair market value, taken



together with all other Designated Non-Cash Consideration received pursuant to this Section 5 that is at that time outstanding, not to exceed the greater of \$145.0 million and 3.0% of Total Assets (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).

## 6. LIMITATION ON AFFILIATE TRANSACTIONS

6.1 The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction or series of related transactions (including the purchase, sale, lease or exchange of any property or the rendering of any service) with or for the benefit of any Affiliate of the Parent (such transaction or series of transactions being, an "**Affiliate Transaction**") involving aggregate value in excess of \$12.5 million unless:

- (a) the terms of such Affiliate Transaction taken as a whole are not materially less favourable to the Parent or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm's length dealings with a Person who is not such an Affiliate; and
- (b) in the event such Affiliate Transaction, individually or together with other related Affiliate Transactions, involves an aggregate value in excess of \$25.0 million, the terms of such transaction have been approved by a resolution of the majority of the members of the Board of Directors of the Parent resolving that such transaction complies with paragraph (a) above.

6.2 Any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in paragraph (b) of Section 6.1 if such Affiliate Transaction is approved by a resolution of a majority of the Disinterested Directors. If there are no Disinterested Directors, any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in this Section 6 if the Parent or any of its Restricted Subsidiaries, as the case may be, delivers to the holders of the Encore Private Placement Notes a letter from an Independent Financial Advisor stating that such transaction is fair to the Parent or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favourable to the Parent or its 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 on an arm's length basis.

6.3 The provisions of Section 6.1 will not apply to:

- (a) any Restricted Payment permitted to be made pursuant to Section 2 (*Limitation on Restricted Payments*), any Permitted Payments (other than pursuant to paragraph (i)(ii) of Section 2.3) or any Permitted Investment (other than Permitted Investments as defined in paragraphs (a)(ii), (b), (k), (o) and (q) of the definition thereof);
- (b) any issuance or sale of Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, or entering into, or maintenance of, any employment, consulting, collective bargaining or benefit plan, program, agreement or arrangement, related trust or other similar agreement and other compensation arrangements, options, warrants or other rights to purchase Capital Stock of the Parent, any Restricted Subsidiary or any Holding Company, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar

employee benefits or consultants' plans (including valuation, health, insurance, deferred compensation, severance, retirement, savings or similar plans, programs or arrangements) or indemnities provided on behalf of officers, employees, directors or consultants approved by the Board of Directors of the Parent, in each case in the ordinary course of business;

- (c) any Management Advances;
- (d) any transaction between or among the Parent and any Restricted Subsidiary (or entity that becomes a Restricted Subsidiary as a result of such transaction), or between or among Restricted Subsidiaries;
- (e) the payment of reasonable fees and reimbursement of expenses to, and customary indemnities (including under customary insurance policies) and employee benefit and pension expenses provided on behalf of, directors, officers, consultants or employees of the Parent, any Restricted Subsidiary or any Holding Company (whether directly or indirectly and including through any Person owned or controlled by any of such directors, officers or employees);
- (f) the entry into and performance of obligations of the Parent or any of its Restricted Subsidiaries under the terms of any transaction arising out of, and any payments pursuant to or for purposes of funding, any agreement or instrument in effect as of or on the Closing Date, as these agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time in accordance with the other terms of this Section 6 or to the extent not more disadvantageous to the holders of the Encore Private Placement Notes in any material respect and the entry into and performance of any registration rights or other listing agreement in connection with any Public Offering;
- (g) the formation and maintenance of any consolidated group for tax, accounting or cash pooling or management purposes in the ordinary course of business;
- (h) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, which, in each case, are in the ordinary course of business and are either fair to the Parent or the relevant Restricted Subsidiary in the reasonable determination of the Board of Directors or the Senior Management of the Parent or the relevant Restricted Subsidiary or on terms no less favourable than those that could reasonably have been obtained at such time from an unaffiliated party;
- (i) any transaction in the ordinary course of business between or among the Parent or any Restricted Subsidiary and any Affiliate of the Parent or an Associate or similar entity that would constitute an Affiliate Transaction solely because the Parent or a Restricted Subsidiary or any Affiliate of the Parent or a Restricted Subsidiary owns an equity interest in or otherwise controls such Affiliate, Associate or similar entity; and
- (j) (i) issuances or sales of Capital Stock (other than Disqualified Stock or Designated Preference Shares) of the Parent or options, warrants or other rights to acquire such Capital Stock or Subordinated Shareholder Funding; **provided that** the interest rate and other financial terms of such Subordinated Shareholder Funding are approved by a majority of the members of the Board of Directors of the Parent in their reasonable determination and (ii) any amendment, waiver or other transaction with respect to any

Subordinated Shareholder Funding in compliance with the other provisions of this Agreement.

## 7.7 MERGER AND CONSOLIDATION

### The Parent

- 7.1 The Parent shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:
- (a) the resulting, surviving or transferee Person (the "**Successor Company**") shall be a Person organised and existing under the laws of the United Kingdom, any member state of the European Union on January 1, 2004 (other than Greece), the United States of America, any State of the United States or the District of Columbia, Canada or any province of Canada, Norway or Switzerland and the Successor Company (if not the Parent) shall expressly assume, to the extent required by applicable law to effect such assumption, all obligations of the Parent under this Agreement and the Encore Private Placement Notes and (y) all obligations of the Parent under the Intercreditor Agreement and the Transaction Security Documents;
  - (b) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;
  - (c) immediately after giving effect to such transaction, either (i) the Successor Company would be able to Incur at least an additional \$1.00 of Indebtedness pursuant to Section 1.1 or (ii) the Fixed Charge Coverage Ratio for the Successor Company and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such transaction; and
  - (d) the Parent shall have delivered to the holders of the Encore Private Placement Notes an Officer's Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger or transfer (if any) comply with this Agreement, and that all conditions precedent therein provided for relating to such transaction have been complied with and an Opinion of Counsel to the effect that the assumption (if any) of obligations under paragraph (a) above has been duly authorised, executed and delivered and is a legal, valid and binding agreement enforceable against the Successor Company, and this Agreement constitutes legal, valid and binding obligations of the Successor Company, enforceable in accordance with its terms (in each case, in form and substance reasonably satisfactory to the Required Holders); **provided that** in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact, including as to satisfaction of paragraphs (b) and (c) above.
- 7.2 Any Indebtedness that becomes an obligation of the Parent or any Restricted Subsidiary (or that is deemed to be Incurred by any Restricted Subsidiary that becomes a Restricted Subsidiary) as a result of any such transaction undertaken in compliance with this Section 7, and any Refinancing Indebtedness with respect thereto, shall be deemed to have been Incurred in compliance with Section 1 (*Limitation on Indebtedness*).

- 7.3 For purposes of this Section 7 only, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all the properties and assets of one or more Subsidiaries of the Parent, which properties and assets, if held by the Parent, as applicable, instead of such Subsidiaries, would constitute all or substantially all the properties and assets of the Parent, on a consolidated basis, shall be deemed to be the transfer of all or substantially all the properties and assets of the Parent.
- 7.4 The Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, the Parent under this Agreement but in the case of a lease of all or substantially all its assets, the predecessor company shall not be released from its obligations under this Agreement.
- 7.5 Notwithstanding the preceding paragraphs (b) and (c) of Section 7.1 (which do not apply to transactions referred to in this Section 7.5) and, other than with respect to Section 7.3, paragraph (d) of Section 7.1, (x) any Restricted Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to the Parent, and (y) any Restricted Subsidiary that is not a Subsidiary Guarantor may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to any other Restricted Subsidiary. Notwithstanding the preceding paragraphs (b) and (c) of Section 7.1 (which do not apply to the transactions referred to in this Section 7.5), the Parent may consolidate or otherwise combine with or merge into an Affiliate incorporated or organised for the purpose of changing the legal domicile of the Parent, reincorporating the Parent in another jurisdiction, or changing the legal form of the Parent.

#### **Subsidiary Guarantors**

- 7.6 No Subsidiary Guarantor may:
- (a) consolidate with or merge with or into any Person;
  - (b) sell, convey, transfer or dispose of, all or substantially all its assets as an entirety or substantially as an entirety, in one transaction or a series of related transactions, to any Person; or
  - (c) permit any Person to merge with or into a Subsidiary Guarantor, unless:
    - (i) the other Person is a Subsidiary Guarantor or becomes a Subsidiary Guarantor concurrently with the transaction; or
    - (ii)
      - (A) either (x) a Subsidiary Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all the obligations of the Subsidiary Guarantor under the Multiparty Guaranty, the Indemnity and Contribution Agreement, the Intercreditor Agreement, and, to the extent required by applicable law to effect such assumption, the Transaction Security Documents; and
      - (B) immediately after giving effect to the transaction, no Default has occurred and is continuing; or

- (iii) the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Subsidiary Guarantor or the sale or disposition of all or substantially all the assets of the Subsidiary Guarantor (in each case other than to the Parent or a Restricted Subsidiary) otherwise permitted by this Agreement.

#### 8. SUSPENSION OF COVENANTS ON ACHIEVEMENT OF INVESTMENT GRADE STATUS

- 8.1 If, on any date following the Closing Date, Investment Grade Status shall be attained and no Default or Event of Default has occurred and is continuing (a "**Suspension Event**"), then the Parent shall notify the holders of the Encore Private Placement Notes of this fact (*provided* that such notice will not be a precondition of the suspension of the Sections described in this paragraph) and beginning on that day and continuing until the Reversion Date, the following Sections of this Schedule 4 will not apply: Section 1 (*Limitation on Indebtedness*), Section 2 (*Limitation on Restricted Payments*), Section 4 (*Limitation on Restrictions on Distributions from Restricted Subsidiaries*), Section 5 (*Limitation on Sale of Assets and Subsidiary Stock*), Section 6 (*Limitation on Affiliate Transactions*) and the provisions of paragraph (c) of Section 7.1 (*Merger and Consolidation*) and, in each case, any related default provision of this Agreement will cease to be effective and will not be applicable to the Parent and its Restricted Subsidiaries. Such Sections and any related default provisions will again apply according to their terms upon and following any Reversion Date. Such Sections will not, however, be of any effect with regard to actions of the Parent properly taken during the continuance of the Suspension Event, and Section 2 (*Limitation on Restricted Payments*) will be interpreted as if it has been in effect since the date of this Agreement except that no default will be deemed to have occurred solely by reason of a Restricted Payment made while Section 2 (*Limitation on Restricted Payments*) was suspended. On the Reversion Date, all Indebtedness Incurred during the continuance of the Suspension Event will be classified, at the Parent's option, as having been Incurred pursuant to Section 1.1 or one of the paragraphs set forth in Section 1.2 (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Event and outstanding on the Reversion Date). To the extent such Indebtedness would not be so permitted to be incurred under Section 1.1 or Section 1.2, such Indebtedness will be deemed to have been outstanding on the Closing Date, so that it is classified as permitted under paragraph (d) of Section 1.2 (without giving effect to the parenthetical contained therein).

#### 9. IMPAIRMENT OF SECURITY INTEREST

- 9.1 The Parent shall not, and shall not permit any Restricted Subsidiary to, take or omit to take any action, which action or omission would have the result of materially impairing the security interest with respect to the Collateral (it being understood that the Incurrence of Permitted Collateral Liens shall under no circumstances be deemed to materially impair the security interest with respect to the Collateral) for the benefit of the Secured Parties, and the Parent shall not, and shall not permit any Restricted Subsidiary to, grant to any Person other than the Security Agent, for the benefit of the Secured Parties and the other beneficiaries described in the Transaction Security Documents, any interest whatsoever in any of the Collateral that is prohibited by Section 3 (*Limitation on Liens*); **provided, that** the Parent and its Restricted Subsidiaries may Incur Permitted Collateral Liens and the Collateral may be discharged, transferred or released in accordance with this Agreement, the Intercreditor Agreement or the applicable Transaction Security Documents.
- 9.2 Notwithstanding the above, nothing in this Section 9 shall restrict the discharge and release of any security interest in accordance with this Agreement and the Intercreditor Agreement.

Subject to the foregoing, the Transaction Security Documents may be amended, extended, renewed, restated, supplemented or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets) to (i) cure any ambiguity, omission, defect or inconsistency therein; (ii) provide for Permitted Collateral Liens; (iii) add to the Collateral; or (iv) make any other change thereto that does not adversely affect the holders of the Encore Private Placement Notes in any material respect; **provided, however, that**, except where permitted by this Agreement or the Intercreditor Agreement, no Transaction Security Document may be amended, extended, renewed, restated, supplemented or otherwise modified or released (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), unless contemporaneously with such amendment, extension, renewal, restatement, supplement or modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), the Parent delivers to the Security Agent and the holders of the Encore Private Placement Notes, either (1) a solvency opinion, in form and substance reasonably satisfactory to the Security Agent and the Required Holders, from an Independent Financial Advisor or appraiser or investment bank of international standing which confirms the solvency of the Parent and its Subsidiaries, taken as a whole, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), (2) a certificate from the chief financial officer or the Board of Directors of the relevant Person which confirms the solvency of the person granting the security interest after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), or (3) an Opinion of Counsel (subject to any qualifications customary for this type of Opinion of Counsel), in form and substance reasonably satisfactory to the Security Agent and the Required Holders, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), the Lien or Liens created under the Transaction Security Document, so amended, extended, renewed, restated, supplemented, modified or released and retaken are valid and perfected Liens not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Lien or Liens were not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification or release and retake and to which the new Indebtedness secured by the Permitted Collateral Lien is not subject. In the event that the Parent and its Restricted Subsidiaries comply with the requirements of this Section 9.2, the holders of the Encore Private Placement Notes and the Security Agent shall (subject to customary protections and indemnifications) consent to such amendments without the need for instructions from the holders of the Encore Private Placement Notes.

### PART III

#### CERTAIN DEFINITIONS

Any capitalised terms used in Part I or this Part II of Schedule 4 or that are not otherwise defined in Part I or this Part II shall have the respective meanings given to them in Schedule A (*Defined Terms*) of this Agreement. Terms defined only in Schedule A (*Defined Terms*) of this Agreement shall be construed when they are used in this Schedule 4 (and only for those purposes), in accordance with English law, notwithstanding that this Schedule 4 is interpreted in accordance with New York law. Unless otherwise expressly stated herein references in this Part II of Schedule 4 are to the Sections of Part I of this Schedule 4.

"**Acquired Indebtedness**" means Indebtedness:

- (a) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary;
- (b) assumed in connection with the acquisition of assets from any Person, in each case whether or not Incurred in connection with such Person becoming a Restricted Subsidiary or such acquisition; or
- (c) of a Person at the time such Person merges with or into or consolidates or otherwise combines with the Parent or any Restricted Subsidiary.

Acquired Indebtedness shall be deemed to have been Incurred, with respect to paragraph (a) above, on the date such Person becomes a Restricted Subsidiary, with respect to paragraph (b) above, on the date of consummation of such acquisition of assets and, with respect to paragraph (c) above, on the date of the relevant merger, consolidation or other combination.

"**Additional Assets**" means:

- (a) any property or assets (other than Indebtedness and Capital Stock) used or to be used by the Parent, a Restricted Subsidiary or otherwise useful in a Similar Business (it being understood that capital expenditures on property or assets already used in a Similar Business or to replace any property or assets that are the subject of such Asset Disposition shall be deemed an investment in Additional Assets);
- (b) the Capital Stock of a Person that is engaged in a Similar Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Parent or a Restricted Subsidiary; or
- (c) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary engaged in a Similar Business.

"**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 the purposes of this definition, "control," when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the

ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Asset Disposition**" means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases (other than operating leases entered into in the ordinary course of business), transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors' qualifying shares), property or other assets (each referred to for the purposes of this definition as a "disposition") by the Parent or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction; **provided that** the sale, conveyance or other disposition of all or substantially all the assets of the Parent and its Restricted Subsidiaries taken as a whole will be governed by Section 8.6 of this Agreement and Section 7 (*Merger and Consolidation*) and not by Section 5 (*Limitation on Sales of Assets and Subsidiary Stock*). Notwithstanding the preceding provisions of this definition, the following items shall not be deemed to be Asset Dispositions:

- (a) a disposition by a Restricted Subsidiary to the Parent or by the Parent or a Restricted Subsidiary to a Restricted Subsidiary;
- (b) a disposition of cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;
- (c) a disposition of performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures, claims or other similar assets or instruments or portfolios thereof or inventory or other assets, in each case, in the ordinary course of business, including into a trust in favour of third parties or otherwise;
- (d) a disposition of obsolete, surplus or worn out equipment, or equipment or other property that is no longer useful in the conduct of the business of the Parent and its Restricted Subsidiaries;
- (e) transactions permitted under Section 7.1 (*Merger and Consolidation*) or a transaction that constitutes a Change of Control;
- (f) an issuance of Capital Stock by a Restricted Subsidiary to the Parent or to another Restricted Subsidiary or as part of or pursuant to an equity incentive or compensation plan approved by the Board of Directors of the Parent;
- (g) any dispositions of Capital Stock, properties or assets in a single transaction or series of related transactions with a fair market value (as determined in good faith by the Parent) of less than the greater of (i) \$70.0 million and (ii) 1.5% of Total Assets;
- (h) any Restricted Payment that is permitted to be made, and is made, under Section 2 (*Limitation on Restricted Payments*) and the making of any Permitted Payment or Permitted Investment or, solely for purposes of the definition of Disposal Proceeds, asset sales, in respect of which (and only to the extent that) the proceeds of which are used to make such Restricted Payments or Permitted Investments;
- (i) dispositions in connection with Permitted Liens;



- (j) dispositions 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;
- (k) the licensing or sub-licensing of intellectual property or other general intangibles and licenses, sub-licenses, leases or subleases of other property, in each case, in the ordinary course of business;
- (l) foreclosure, condemnation or any similar action with respect to any property or other assets;
- (m) any disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary;
- (n) any surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind; and
- (o) any disposition with respect to property built, owned or otherwise acquired by the Parent or any Restricted Subsidiary pursuant to customary sale and leaseback transactions, finance leases, asset securitisations and other similar financings permitted by this Agreement where the fair market value of the assets disposed of, when taken together with all other dispositions made pursuant to this paragraph (o), does not exceed the greater of (i) \$70.0 million and (ii) 1.5% of Total Assets.

"Associate" means (1) any Person engaged in a Similar Business of which the Parent or its Restricted Subsidiaries are the legal and beneficial owners of between 20% and 50% of all outstanding Voting Stock and (2) any joint venture entered into by the Parent or any Restricted Subsidiary.

"Board of Directors" means (1) with respect to the Parent or any corporation, the board of directors or managers, as applicable, of the corporation, or any duly authorised committee thereof; (2) with respect to any partnership, the board of directors or other governing body of the general partner of the partnership or any duly authorised committee thereof; and (3) with respect to any other Person, the board or any duly authorised committee of such Person serving a similar function. Whenever any provision of this Agreement requires any action or determination to be made by, or any approval of, a Board of Directors, such action, determination or approval shall be deemed to have been taken or made if approved by a majority of the directors (excluding employee representatives, if any) on any such Board of Directors (whether or not such action or approval is taken as part of a formal board meeting or as a formal board approval).

"Business Day" means each day that is not a Saturday, Sunday or other day on which banking institutions in London, United Kingdom, New York, New York, United States or Luxembourg are authorised or required by law to close; **provided, however, that** for any payments to be made under this Agreement, such day shall also be a day on which the second generation Trans-European Automated Real-time Gross Settlement Express Transfer (**TARGET**) payment system is open for the settlement of payments.

"Capital Stock" of any Person means any and all shares of, rights to purchase, warrants or options for, or other equivalents of or partnership or other interests in (however designated),

equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

"**Capitalised Lease Obligation**" means an obligation that is required to be classified and accounted for as a capitalised lease for financial reporting purposes on the basis of GAAP; *provided*, however, that any obligations in respect of operating leases as determined under GAAP as in effect on the Closing Date shall not be deemed Capitalised Lease Obligations. The amount of Indebtedness represented by such obligation will be the capitalised amount of such obligation at the time any determination thereof is to be made as determined on the basis of GAAP, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty.

"**Cash Equivalents**" means:

- (a) securities issued or directly and fully Guaranteed or insured by the government of the United States, Canada, the United Kingdom, a member state of the European Union (other than Greece and Portugal), Switzerland or Norway or, in each case, any agency or instrumentality thereof (**provided that** the full faith and credit of such country or such member state is pledged in support thereof), having maturities of not more than two years from the date of acquisition;
- (b) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances (in each case, including any such deposits made pursuant to any sinking fund established by the Parent or any Restricted Subsidiary) having maturities of not more than one year from the date of acquisition thereof issued by any lender party to a Credit Facility or by any bank or trust company (a) whose commercial paper is rated at least "A-1" or the equivalent thereof by S&P or at least "P-1" or the equivalent thereof by Moody's or at least "F-1" or the equivalent thereof by Fitch (or, if at the time neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) or (b) (in the event that the bank or trust company does not have commercial paper which is rated) having combined capital and surplus in excess of \$250 million;
- (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in paragraphs (a) and (b) entered into with any bank meeting the qualifications specified in paragraph (b) above;
- (d) commercial paper rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by S&P or "P-2" or the equivalent thereof by Moody's or "F-2" or the equivalent thereof by Fitch or carrying an equivalent rating by a Nationally Recognized Statistical Rating Organization, if both of the two named rating agencies cease publishing ratings of investments or, if no rating is available in respect of the commercial paper, the issuer of which has an equivalent rating in respect of its long-term debt, and in any case maturing within one year after the date of acquisition thereof;
- (e) readily marketable direct obligations issued by any state of the United States of America, any province of Canada, the United Kingdom, any member state of the European Union (other than Greece and Portugal), Switzerland or Norway or any political subdivision thereof, in each case, having one of the two highest rating categories obtainable from

either Moody's or S&P or Fitch (or, if at the time, neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of not more than two years from the date of acquisition;

- (f) Indebtedness or Preferred Stock issued by Persons with a rating of "BBB-" or higher from S&P, "BBB-" or higher from Fitch or "Baa3" or higher from Moody's (or, if at the time neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) with maturities of 12 months or less from the date of acquisition;
- (g) bills of exchange issued in the United States, Canada, the United Kingdom, a member state of the European Union (other than Greece and Portugal), Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialised equivalent); and
- (h) interests in any investment company, money market or enhanced high yield fund which invests 95% or more of its assets in instruments of the type specified in paragraphs (a) through (g) above.

"Change of Control" means:

- (a) the Parent becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) that any "person" or "group" of related persons (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Closing Date), is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Parent, **provided** that for the purposes of this paragraph, any holding company whose only asset is the Capital Stock of the Parent will not itself be considered a "person" or "group"; or
- (b) the sale, lease, transfer, conveyance or other disposition (other than by way of merger, consolidation or other business combination transaction), in one or a series of related transactions, of all or substantially all the assets of the Parent and its Restricted Subsidiaries taken as a whole to a Person, other than a Restricted Subsidiary.

"Collateral" means all property and assets, whether now owned or hereafter acquired, in which Liens are, from time to time, purported to be granted to secure the Secured Obligations pursuant to the Transaction Security Documents.

"Commodity Hedging Agreements" means, in respect of a Person, any commodity purchase contract, commodity futures or forward contract, commodities option contract or other similar contract (including commodities derivative agreements or arrangements), to which such Person is a party or a beneficiary.

"Consolidated EBITDA" for any period means, without duplication, the Consolidated Net Income for such period, plus the following to the extent deducted in calculating such Consolidated Net Income:

- (a) Fixed Charges plus, to the extent not already included or added back, any costs associated with Hedging Obligations or derivatives;
- (b) Consolidated Income Taxes;
- (c) consolidated depreciation expense;
- (d) consolidated amortisation expense, including any amortisation of portfolio assets;
- (e) any expenses, charges or other costs related to any Equity Offering, Investment, acquisition (including amounts paid in connection with the acquisition or retention of one or more individuals comprising part of a management team retained to manage the acquired business; **provided that** such payments are made in connection with such acquisition and are consistent with the customary practice in the industry at the time of such acquisition), disposition, recapitalisation or the Incurrence of any Indebtedness permitted by this Agreement (in each case whether or not successful) (including any such fees, expenses or charges related to the Refinancing Transactions), in each case, as determined in good faith by an Officer of the Parent;
- (f) any minority interest expense (whether paid or not) consisting of income attributable to minority equity interests of third parties in such period or any prior period or any net earnings, income or share of profit of any Associates, associated company or undertaking;
- (g) other non-cash charges, write-downs or items reducing Consolidated Net Income (excluding any such non-cash charge, write-down or item to the extent it represents an accrual of or reserve for cash charges in any future period) less other non-cash items of income increasing Consolidated Net Income (excluding any such non-cash item of income to the extent it represents a receipt of cash in any future period);
- (h) the proceeds of any business interruption insurance received or that become receivable during such period to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance were included in computing Consolidated Net Income;
- (i) payments received or that become receivable with respect to expenses that are covered by indemnification provisions in any agreement entered into by such Person in connection with an acquisition to the extent such expenses were included in computing Consolidated Net Income;
- (j) any amount corresponding to any revaluation of portfolio assets, as determined in good faith by the Board of Directors or an Officer of the Parent (to the extent not duplicated with any non-cash charges set forth in paragraph (g) of this definition); and
- (k) settlement fees and related administrative expenses, *provided, however*, that any such amounts described in this clause (k), individually or collectively, shall not exceed 20% of the amount of Consolidated EBITDA for the relevant period (determined prior to giving effect to any such amounts that are added back).

Notwithstanding the foregoing, the provision for taxes and the depreciation, amortisation, non-cash items, charges and write-downs of a Restricted Subsidiary shall be added to Consolidated Net Income to compute Consolidated EBITDA only to the extent (and in the same proportion, including by reason of minority interests) that the net income (loss) of such Restricted Subsidiary was included in calculating Consolidated Net Income for the purposes of this definition.

**"Consolidated Income Taxes"** means Taxes or other payments, including deferred Taxes, based on income, profits or capital (including without limitation withholding Taxes) and corporation Taxes and franchise Taxes of any of the Parent and its Restricted Subsidiaries whether or not paid, estimated, accrued or required to be remitted to any Governmental Authority.

**"Consolidated Interest Expense"** means, with respect to any Person for any period, without duplication, (1) interest payable (whether in cash or capitalised) on Financial Indebtedness of such Person and its Restricted Subsidiaries for such period, plus (a) any amortisation of debt discount with respect to such Indebtedness and (b) any commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing or bank guarantees, but, in each case, excluding any expense associated with Subordinated Shareholder Funding less (2) interest income for such period.

**"Consolidated Net Income"** means, for any period, the profit (loss) on ordinary activities after taxation of the Parent and its Restricted Subsidiaries determined on a consolidated basis on the basis of GAAP; **provided, however, that** there will not be included in such Consolidated Net Income:

- (a) subject to the limitations contained in paragraph (c) below, any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that the Parent's equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash or Cash Equivalents (x) actually distributed by such Person during such period to the Parent or a Restricted Subsidiary as a dividend or other distribution or return on investment or (y) solely for the purpose of determining the amount available for Restricted Payments under paragraph (iii)(A) of Section 2.1 that could have been distributed by such Person during such period to the Parent or a Restricted Subsidiary as a dividend or other distribution or return on investment, as reasonably determined by an Officer of the Parent (subject, in the case of a dividend or other distribution or return on investment to a Restricted Subsidiary, to the limitations contained in paragraph (b) below);
- (b) solely for the purpose of determining the amount available for Restricted Payments under paragraph (iii)(A) of Section 2.1, any profit (loss) on ordinary activities after taxation of any Restricted Subsidiary (other than any Subsidiary Guarantor ) if such Restricted 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 Parent or a Subsidiary Guarantor 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, (b) restrictions pursuant to or permitted under this Agreement, the Stretch Facility Agreement, the Encore Private Placement Notes Purchase Agreement, the Existing Cabot Notes, the Existing Encore Notes, the Existing Cabot Notes Indentures and the Existing

Encore Notes Indentures, and (c) restrictions specified under paragraph (k) in Section 4.2), 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, to the limitation contained in this paragraph);

- (c) any net gain (or loss) realised 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) which is not sold or otherwise disposed of in the ordinary course of business (as determined in good faith by an Officer or the Board of Directors of the Parent);
- (d) any extraordinary, exceptional, unusual or nonrecurring gain, loss or charge (as determined in good faith by the Parent), or any charges or reserves in respect of any acquisition, integration, restructuring, redundancy or severance expense;
- (e) the cumulative effect of a change in accounting principles;
- (f) any non-cash compensation charge or expense arising from any grant of stock, stock options or other equity based awards and any non-cash deemed finance charges in respect of any pension liabilities or other provisions;
- (g) all deferred financing costs written off and premiums 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;
- (h) any purchase accounting effects including, but not limited to, adjustments to inventory, property and equipment, software and other intangible assets and deferred revenue in component amounts required or permitted by GAAP and related authoritative pronouncements (including the effects of such adjustments pushed down to the Parent and the Restricted Subsidiaries), as a result of any consummated acquisition, or the amortisation or write-off of any amounts thereof (including any write-off of in process research and development);
- (i) any goodwill or other intangible asset impairment charge or write-off; and
- (j) the impact of capitalised, accrued or accreting or pay-in-kind interest or principal on Subordinated Shareholder Funding.

"**Consolidated Net Leverage**" means the sum of the aggregate outstanding Financial Indebtedness of the Parent and its Restricted Subsidiaries less cash and Cash Equivalents (other than cash or Cash Equivalents in an amount equal to amounts collected by the Parent and its Restricted Subsidiaries on behalf of third-party clients and held by the Parent and its Restricted Subsidiaries as of such date and cash and Cash Equivalents that constitute Trust Management Assets or are held on trust for a beneficiary which is not the Parent or a Restricted Subsidiary) of the Parent and its Restricted Subsidiaries as of the relevant date of calculation on a consolidated basis in accordance with GAAP.

"**Consolidated Net Leverage Ratio**" means, as of any date of determination, the ratio of (x) Consolidated Net Leverage at such date to (y) the aggregate amount of Consolidated EBITDA for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which internal consolidated financial statements of the Parent are available; **provided, however, that** for the purposes of calculating Consolidated EBITDA for such period, if, as of such date of determination:

- (a) since the beginning of such period the Parent or any Restricted Subsidiary has disposed of any company, any business, or any group of assets constituting an operating unit of a business (any such disposition, a "**Sale**") or if the transaction giving rise to the need to calculate the Consolidated Net Leverage Ratio is such a Sale, Consolidated EBITDA for such period will be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the assets which are the subject of such Sale for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such period; **provided that** if any such Sale constitutes "discontinued operations" in accordance with the then applicable GAAP, Consolidated Net Income shall be reduced by an amount equal to the Consolidated Net Income (if positive) attributable to such operations for such period or increased by an amount equal to the Consolidated Net Income (if negative) attributable thereto for such period;
- (b) since the beginning of such period, the Parent or any Restricted Subsidiary (by merger or otherwise) has made an Investment in any Person that thereby becomes a Restricted Subsidiary, or otherwise has acquired any company, any business, or any group of assets constituting an operating unit of a business (any such Investment or acquisition, a "**Purchase**"), including any such Purchase occurring in connection with a transaction causing a calculation to be made hereunder, Consolidated EBITDA for such period will be calculated after giving *pro forma* effect thereto as if such Purchase occurred on the first day of such period; and
- (c) since the beginning of such period, any Person (that became a Restricted Subsidiary or was merged or otherwise combined with or into the Parent or any Restricted Subsidiary since the beginning of such period) will have made any Sale or any Purchase that would have required an adjustment pursuant to paragraph (a) or (b) above if made by the Parent or a Restricted Subsidiary since the beginning of such period, Consolidated EBITDA for such period will be calculated after giving *pro forma* effect thereto as if such Sale or Purchase occurred on the first day of such period.

For the purposes of this definition and the definitions of Consolidated EBITDA, Consolidated Income Taxes, Consolidated Interest Expense, Consolidated Net Income and Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries, (a) calculations will be as determined in good faith by a responsible financial or accounting officer of the Parent (including in respect of synergies and cost savings) and (b) in determining the amount of Indebtedness outstanding on any date of determination, *pro forma* effect shall be given to any Incurrence, repayment, repurchase, defeasance or other acquisition, retirement or discharge of Indebtedness as if such transaction had occurred on the first day of the relevant period. For the avoidance of doubt, in determining Consolidated Net Leverage Ratio, no cash or Cash Equivalents shall be included that are the proceeds of Indebtedness in respect of which the calculation of the Consolidated Net Leverage Ratio is to be made.

**"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 does not constitute Indebtedness ("**primary obligations**") of any other Person (the "**primary obligor**"), including any obligation of such Person, whether or not contingent:

- (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (b) to advance or supply funds:
  - (i) for the purchase or payment of any such primary obligation; or
  - (ii) 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
- (c) 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.

**"Credit Facility"** means, with respect to the Parent or any of its Subsidiaries, one or more debt facilities, indentures or other arrangements (including this Agreement, the Credit Agreement or commercial paper facilities and overdraft facilities) with banks, other financial institutions or investors providing for revolving credit loans, term loans, notes, 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 or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended from time to time (whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents 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 Facility" shall include any agreement or instrument (a) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (b) adding Subsidiaries of the Parent as additional borrowers or guarantors thereunder, (c) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (d) otherwise altering the terms and conditions thereof.

**"Currency Agreement"** means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency futures contract, currency option contract, currency derivative or other similar agreement to which such Person is a party or beneficiary.

**"Designated Non-Cash Consideration"** means the fair market value (as determined in good faith by the Parent) of non-cash consideration received by the Parent or one of its Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, less the amount of cash, Cash Equivalents or Temporary Cash Investments received in connection



with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with Section 5 (*Limitation on Sales of Assets and Subsidiary Stock*).

"**Designated Preference Shares**" means, with respect to the Parent or any Parent, Preferred Stock (other than Disqualified Stock) (1) that is issued for cash (other than to the Parent or a Subsidiary of the Parent or an employee stock ownership plan or trust established by the Parent or any such Subsidiary for the benefit of their employees to the extent funded by the Parent or such Subsidiary) and (2) that is designated as "Designated Preference Shares" pursuant to an Officer's Certificate of the Parent at or prior to the issuance thereof, the Net Cash Proceeds of which are excluded from the calculation set forth in paragraph (iii)(B) of Section 2.1.

"**Disinterested Director**" means, with respect to any Affiliate Transaction, a member of the Board of Directors of the Parent having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of the Board of Directors of the Parent shall be deemed not to have such a financial interest solely by reason of such member's holding Capital Stock of the Parent or any Holding Company or any options, warrants or other rights in respect of such Capital Stock.

"**Disqualified Stock**" means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

- (a) matures or is mandatorily redeemable for cash or in exchange for Indebtedness pursuant to a sinking fund obligation or otherwise;
- (b) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Parent or a Restricted Subsidiary); or
- (c) is or may become (in accordance with its terms) upon the occurrence of certain events or otherwise redeemable or repurchasable for cash or in exchange for Indebtedness at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the Termination Date; **provided, however, that** (i) only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock and (ii) any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Parent to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (howsoever defined or referred to) shall not constitute Disqualified Stock if any such redemption or repurchase obligation is subject to compliance by the relevant Person with Section 2 (*Limitation on Restricted Payments*).

"**Dollar Equivalent**" means, with respect to any monetary amount in a currency other than US dollars, at any time of determination thereof by the Parent or the holders of the Encore Private Placement Notes, the amount of US dollars obtained by converting such currency other than US dollars involved in such computation into US dollars at the spot rate for the purchase of US dollars with the applicable currency other than US dollars as published in The Financial Times in

the "Currency Rates" section (or, if The Financial Times is no longer published, or if such information is no longer available in The Financial Times, such source as may be selected in good faith by the Parent) on the date of such determination.

**"Encore Private Placement Notes"** means the \$325.0 million original principal amount of senior secured notes due 2024 issued on August 11, 2017 by the Parent pursuant to the third amended and restated senior secured note purchase agreement, as amended and restated on the Closing Date, among the Parent and the purchasers named therein.

**"Encore Private Placement Notes Purchase Agreement"** means the fourth amended and restated senior secured note purchase agreement relating to the Encore Private Placement Notes, among the Parent and the purchasers named therein.

**"Equity Offering"** means (x) a sale of Capital Stock of the Parent (other than Disqualified Stock or Designated Preference Shares and other than an Excluded Contribution) other than offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions, or (y) the sale of Capital Stock or other securities of the Holding Company, the proceeds of which are contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of the Parent or any of its Restricted Subsidiaries.

**"ERC"** means, for any date of calculation, the aggregate amount of estimated remaining collections projected to be received by the Parent and its Restricted Subsidiaries from all Right to Collect Accounts and all performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims or other similar assets or instruments or portfolios thereof owned by the Parent and its Restricted Subsidiaries (excluding, for the avoidance of doubt, any Trust Management Assets and any Right to Collect Accounts, performing, sub-performing or charged-off accounts, cash and bank accounts or other similar assets or instruments which are (or will be) held on trust for a third party which is not the Parent or any Restricted Subsidiary) during the period of 84 months, as calculated by the Portfolio ERC Model, as at the last day of the month most recently ended prior to the date of calculation.

**"Escrowed Proceeds"** means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or Incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term "Escrowed Proceeds" shall include any interest earned on the amounts held in escrow.

**"Exchange Act"** means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

**"Excluded Contribution"** means Net Cash Proceeds or property or assets received by the Parent as capital contributions to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Parent after the Closing Date or from the issuance or sale (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent or any Subsidiary of the Parent for the benefit of its employees to the extent funded by the Parent or any Restricted Subsidiary) of Capital Stock (other than Disqualified Stock or

Designated Preference Shares) of the Parent, in each case, to the extent designated as an Excluded Contribution pursuant to an Officer's Certificate of the Parent.

**"Existing 2021 Encore Convertible Notes"** means the \$161.0 million aggregate principal amount of 2.875% convertible senior notes due 2021 issued by the Parent pursuant to the Existing 2021 Encore Convertible Notes Indenture that remain outstanding.

**"Existing 2021 Encore Convertible Notes Indenture"** means the indenture dated March 11, 2014, as amended, supplemented or modified from time to time, between the Parent, Midland Credit Management, Inc. and Union Bank, N.A.

**"Existing 2022 Encore Convertible Notes"** means the \$150.0 million aggregate principal amount of 3.250% convertible senior notes due 2022 issued by the Parent pursuant to the Existing 2022 Encore Convertible Notes Indenture that remain outstanding.

**"Existing 2022 Encore Convertible Notes Indenture"** means the indenture dated March 3, 2017, as amended, supplemented or modified from time to time, between the Parent, Midland Credit Management, Inc. and MUFG Union Bank, N.A.

**"Existing Encore Senior Facilities"** means the existing revolving credit facility and term loan facility made available pursuant to a third amended and restated credit agreement dated December 20, 2016, among the Parent, each of the guarantors and lenders party thereto and SunTrust Bank, as administrative agent, which will be repaid in full in connection with the Refinancing Transactions.

**"Existing 2023 Cabot Notes"** means the £512.9 million aggregate principal amount of 7.500% senior secured notes due 2023 issued by the Existing Cabot Fixed Rate Notes Issuer pursuant to the Existing 2023 Cabot Notes Indenture that remain outstanding.

**"Existing 2023 Cabot Notes Indenture"** means the indenture, dated October 6, 2016, among the Existing Cabot Fixed Rate Notes Issuer, Citibank, N.A., London Branch, as trustee, principal paying agent and transfer agent, Citigroup Global Markets Europe AG, as registrar, J.P. Morgan Europe Limited, as security agent, and the guarantors parties thereto.

**"Existing 2025 Encore Convertible Notes"** means the \$100.0 million aggregate principal amount of 3.250% convertible senior notes due 2025 issued by the Parent pursuant to the Existing 2025 Encore Convertible Notes Indenture that remain outstanding.

**"Existing 2025 Encore Convertible Notes Indenture"** means the indenture dated September 9, 2019, as amended, supplemented or modified from time to time, between the Parent, Midland Credit Management, Inc. and MUFG Union Bank, N.A.

**"Existing 2023 Encore Exchangeable Notes"** means the \$172.5 million aggregate principal amount of 4.500% exchangeable senior notes due 2023 issued by Encore Capital Europe Finance Limited and guaranteed by the Parent pursuant to the Existing 2023 Encore Exchangeable Notes Indenture that remain outstanding.

**"Existing 2023 Encore Exchangeable Notes Indenture"** means the base indenture dated July 20, 2018, as amended, supplemented or modified from time to time, between Encore Capital Europe Finance Limited, the Parent and MUFG Union Bank, N.A.

"**Existing 2024 Cabot Notes**" means the €400.0 million aggregate principal amount of senior secured floating rate notes due 2024 issued by the Existing Cabot Floating Rate Notes Issuer pursuant to the Existing 2024 Cabot Notes Indenture that remain outstanding.

"**Existing 2024 Cabot Notes Indenture**" means the indenture, dated June 14, 2019 among Existing Cabot Floating Rate Notes Issuer, Citibank, N.A., London Branch, as trustee, principal paying agent, calculation agent and transfer agent, Citigroup Global Markets Europe AG, as registrar, J.P. Morgan Europe Limited, as security agent, and the guarantors parties thereto.

"**Existing Cabot Fixed Rate Notes Issuer**" means Cabot Financial (Luxembourg) S.A., a wholly owned subsidiary of Cabot Credit Management Group Limited, incorporated as a public limited liability company (*société anonyme*) under the laws of the Grand Duchy of Luxembourg, and registered with the Luxembourg Register of Commerce and Companies under number B 171.245.

"**Existing Cabot Floating Rate Notes Issuer**" means Cabot Financial (Luxembourg) II S.A., a wholly owned subsidiary of Cabot Credit Management Group Limited, incorporated as a public limited liability company (*société anonyme*) under the laws of the Grand Duchy of Luxembourg, and registered with the Luxembourg Register of Commerce and Companies under number B 201.268.

"**Existing Cabot Notes**" means the Existing 2023 Cabot Notes and the Existing 2024 Cabot Notes.

"**Existing Cabot Notes Indentures**" means the Existing 2023 Cabot Notes Indenture and the Existing 2024 Cabot Notes Indenture.

"**Existing Cabot Notes Issuers**" means the Existing Cabot Floating Rate Notes Issuer and the Existing Cabot Fixed Rate Notes Issuer.

"**Existing Encore Notes**" means the Existing Encore Convertible Notes and the Existing 2023 Encore Exchangeable Notes.

"**Existing Encore Convertible Notes**" means the Existing 2021 Encore Convertible Notes, the Existing 2022 Encore Convertible Notes and the Existing 2025 Encore Convertible Notes.

"**Existing Encore Notes Indentures**" means the Existing 2021 Encore Convertible Notes Indenture, the Existing 2022 Encore Convertible Notes Indenture, the Existing 2025 Encore Convertible Notes Indenture and the Existing 2023 Encore Exchangeable Notes Indenture.

"**fair market value**" except as otherwise stated herein, may be conclusively established by means of an Officer's Certificate or a resolution of the Board of Directors of the Parent setting out such fair market value as determined by such Officer or such Board of Directors in good faith.

"**Financial Indebtedness**" means any Indebtedness described under paragraphs (a), (b), (d), (e), (f) and (g) of the definition of "Indebtedness."

"**Fitch**" means Fitch Ratings Inc., or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

**"Fixed Charge Coverage Ratio"** means, with respect to any Person on any determination date, the ratio of Consolidated EBITDA of such Person for the most recently completed four consecutive fiscal quarters ending immediately prior to such determination date for which internal consolidated financial statements are available to the Fixed Charges of such Person and its Restricted Subsidiaries for such four consecutive fiscal quarters. In the event that the Parent or any Restricted Subsidiary Incurs, assumes, Guarantees, redeems, defeases, retires or extinguishes any Indebtedness (other than, in the case of redemption, defeasance, retirement or extinguishment, Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the **"Fixed Charge Coverage Ratio Calculation Date"**), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, assumption, Guarantee, redemption, defeasance, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period; **provided, however, that the *pro forma* calculation of Fixed Charges shall not give effect to (1) any Indebtedness incurred on the Fixed Charge Coverage Ratio Calculation Date pursuant to the provisions described in Section 1.2 or (2) the discharge on the Fixed Charge Coverage Ratio Calculation Date of any Indebtedness to the extent that such discharge results from the proceeds incurred pursuant to the provisions described in Section 1.2.**

For purposes of making the computation referred to above, any Investment, acquisitions, dispositions, mergers, consolidations and disposed or discontinued operations that have been made by the Parent or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations and disposed or discontinued operations (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Parent or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation or disposed or discontinued any operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, consolidation or disposed or discontinued operation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to a transaction, the *pro forma* calculations shall be made in good faith by a responsible financial or chief accounting officer of the Parent (including synergies and cost savings). If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalised Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Parent to be the rate of interest implicit in such Capitalised Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a

revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Parent may designate.

"**Fixed Charges**" means, with respect to any Person for any period, the sum without duplication, of:

- (a) Consolidated Interest Expense of such Person for such period;
- (b) all cash and non-cash dividends or other distributions payable (excluding items eliminated in consolidation) on any series of Preferred Stock during such period;
- (c) all cash and non-cash dividends or other distributions payable (excluding items eliminated in consolidation) on any series of Disqualified Stock during this period; and
- (d) any interest expense on Indebtedness of another person that is guaranteed by such Person or its Restricted Subsidiaries or secured by a Lien on assets of such Person or its Restricted Subsidiaries, but only to the extent such guarantee or Lien is called upon;

determined on a consolidated basis in accordance with GAAP.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time (other than where specifically provided for in this Agreement. Except as otherwise set forth in this Agreement, all ratios and calculations based on GAAP contained in this Agreement shall be computed in accordance with GAAP.

"**Governmental Authority**" means any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory, self-regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

"**Guarantee**" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person, including any such obligation, direct or indirect, contingent or otherwise, of such Person:

- (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or
- (b) entered into primarily for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), **provided, however, that** the term "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"**Hedging Obligations**" of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Hedging Agreement (each, a "**Hedging Agreement**").

"**Holding Company**" means any Person of which the Parent at any time is or becomes a Subsidiary after the Closing Date.

"**Incur**" means issue, create, assume, enter into any Guarantee of, incur, extend or otherwise become liable for, and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing; **provided, however, that** any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary and any Indebtedness pursuant to any revolving credit or similar facility shall only be deemed to be Incurred at the time any funds are borrowed thereunder.

"**Indebtedness**" means, with respect to any Person on any date of determination (without duplication):

- (a) the principal of indebtedness of such Person for borrowed money;
- (b) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all reimbursement obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have been reimbursed) (except to the extent such reimbursement obligations relate to trade payables and such obligations are satisfied within 30 days of Incurrence);
- (d) Capitalised Lease Obligations of such Person;
- (e) the principal component of all obligations, or liquidation preference, of such Person with respect to any Disqualified Stock or, with respect to any Restricted Subsidiary, any Preferred Stock (but excluding, in each case, any accrued dividends);
- (f) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; **provided, however, that** the amount of such Indebtedness will be the lesser of (a) the fair market value of such asset at such date of determination (as determined in good faith by the Parent) and (b) the amount of such Indebtedness of such other Persons;
- (g) Guarantees by such Person of the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and
- (h) to the extent not otherwise included in this definition, net obligations of such Person under Currency Agreements and Interest Rate Agreements (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time).

The term "**Indebtedness**" shall not include (i) Subordinated Shareholder Funding, (ii) any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under GAAP as in effect on the Closing Date, or (iii) any asset retirement obligations, prepayments or deposits received from clients or customers, in each case, with respect to this clause (iii) only, in the ordinary course of business, or (iv) obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) Incurred prior to the Closing Date or in the ordinary course of business.

The amount of Indebtedness of any Person at any time in the case of a revolving credit or similar facility shall be the total amounts of funds borrowed and then outstanding. The amount of Indebtedness of any Person at any date shall be determined as set forth above or otherwise provided in this Schedule 4, and (other than with respect to letters of credit or Guarantees or Indebtedness specified in paragraphs (e), (f) or (h) above) shall be (a) in the case of any Indebtedness issued with original issue discount, the amount in respect thereof that would appear on the balance sheet of such Person in accordance with GAAP and (b) the principal amount of the Indebtedness, in the case of any other Indebtedness.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

- (i) Contingent Obligations Incurred in the ordinary course of business;
- (ii) 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; **provided, however, that**, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter;
- (iii) for the avoidance of doubt, any 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; or
- (iv) Indebtedness of a Trust Management SPV where the proceeds of such Indebtedness are used to finance the purchase of assets to be held in such trust; **provided that** the incurrence of such Indebtedness is without recourse and contains no obligation on the Parent or any other Restricted Subsidiary or any of their assets in any way.

**"Independent Financial Advisor"** means an investment banking or accounting firm of international standing or any third party appraiser of international standing; **provided, however, that** such firm or appraiser is not an Affiliate of the Parent.

**"Intercreditor Agreement"** means the intercreditor agreement, originally dated September 20, 2012, among the Company, the Existing Cabot Notes Issuers, the guarantors of the Existing Cabot Notes, Truist Bank, as the Successor Security Agent and Agent in respect of the Credit Agreement, and as Security Agent and Agent in respect of the Stretch Facility Agreement, Truist Bank, as Security Agent in respect of the Encore Private Placement Notes, Citibank, N.A., London Branch, as senior note trustee in respect of the Existing Cabot Notes (each as defined in



the Intercreditor Agreement) and the other parties named therein, as amended and restated on or about the 2020 Effective Date and as further amended, restated or otherwise modified or varied from time to time.

**"Interest Rate Agreement"** means, with respect to any Person, any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement to which such Person is party or a beneficiary.

1. **"Investment"** means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan or other extensions of credit (other than advances or extensions of credit to customers, suppliers, directors, officers or employees of any Person in the ordinary course of business, and excluding any purchase of Underlying Portfolio Assets, any Right to Collect Accounts or any debt or extension of credit represented by a bank deposit other than a time deposit) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or the Incurrence of a Guarantee of any obligation of, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such other Persons and all other items that are or would be classified as investments on a balance sheet prepared on the basis of GAAP; **provided, however, that** endorsements of negotiable instruments and documents in the ordinary course of business will not be deemed to be an Investment. If the Parent or any Restricted Subsidiary issues, sells or otherwise disposes of any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any Investment by the Parent or any Restricted Subsidiary in such Person remaining after giving effect thereto will be deemed to be a new Investment at such time equal to the fair market value of the Capital Stock of such Subsidiary not sold or disposed of in an amount determined as provided in Section 2.4.

For purposes of Section 2 (*Limitation on Restricted Payments*):

- (a) **"Investment"** will include the portion (proportionate to the Parent's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; **provided, however, that** upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Parent will be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Parent's "Investment" in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Parent's equity interest in such Subsidiary) of the fair market value of the net assets (as conclusively determined by the Board of Directors of the Parent in good faith) of such Subsidiary at the time that such Subsidiary is so re-designated a Restricted Subsidiary; and
- (b) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Parent.

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced (at the Parent's option) by any dividend, distribution, interest payment, return of capital, repayment or other amount or value received in respect of such Investment.

**"Investment Grade Securities"** means:

- (a) securities issued or directly and fully Guaranteed or insured by the United States or Canadian government or any agency or instrumentality thereof (other than Cash Equivalents);
- (b) securities issued or directly and fully guaranteed or insured by the United Kingdom, a member state of the European Union (other than Greece and Portugal), or any agency or instrumentality thereof (other than Cash Equivalents);
- (c) debt securities or debt instruments with a rating of "BBB-" or higher from S&P or "Baa3" or higher by Moody's "BBB-" or higher by Fitch or the equivalent of such rating by such rating organisation or, if no rating of Moody's, Fitch or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Rating Organization, but excluding any debt securities or instruments constituting loans or advances among the Parent and its Subsidiaries; and
- (d) investments in any fund that invests exclusively in investments of the type described in paragraphs (a), (b) and (c) above which fund may also hold cash and Cash Equivalents pending investment or distribution.

**"Investment Grade Status"** shall occur when (i) the Existing Cabot Notes (or any Permitted Financial Indebtedness issued by a member of the Restricted Group to refinance or replace all of the Existing Cabot Notes or in exchange for all of the Existing Cabot Notes) or (ii) any Refinancing Indebtedness to refinance or replace all indebtedness under the Stretch Facility Agreement upon the termination of such credit facility, receive (or receives) any two of the following:

- (a) a rating of "BBB-" or higher from S&P;
- (b) a rating of "Baa3" or higher from Moody's; and
- (c) a rating of "BBB-" or higher from Fitch,

or, if any of S&P, Moody's or Fitch shall cease to exist or to provide credit ratings, then the equivalent of such applicable rating by any other Nationally Recognized Statistical Rating Organization.

**"Lien"** means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

**"LTV Ratio"** means, in respect of any date of calculation, the aggregate Secured Indebtedness of the Parent and its Restricted Subsidiaries less cash and Cash Equivalents (other than cash or Cash Equivalents in an amount equal to amounts collected by the Parent and its Restricted Subsidiaries on behalf of third-party clients and held by the Parent and its Restricted Subsidiaries as of such date and cash and Cash Equivalents that constitute Trust Management Assets or are held on trust

for a beneficiary which is not the Parent or a Restricted Subsidiary) of the Parent and its Restricted Subsidiaries as of such date, divided by ERC; **provided that** ERC shall be adjusted to give effect to purchases or disposals of performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts) made since the last measurement date and prior to such date of calculation, on the basis of estimates made on a *pro forma* basis by management acting in good faith. In determining the LTV Ratio in connection with the Incurrence of Indebtedness and the granting of a Lien, the LTV Ratio shall be determined on a *pro forma* basis for the relevant transaction and the use of proceeds of such Indebtedness; **provided that** no cash or Cash Equivalents shall be included in the calculation of the *pro forma* LTV Ratio that are, or are derived from, the proceeds of Indebtedness in respect of which the *pro forma* calculation is to be made, except, for the avoidance of doubt, to the extent cash or Cash Equivalents will be expended in a transaction to which *pro forma* effect is given; **provided further that** any cash and Cash Equivalents received by the Parent or any of its Restricted Subsidiaries from the issuance or sale of its Capital Stock, Subordinated Shareholder Funding or other capital contributions subsequent to the Closing Date shall (to the extent they are taken into account in determining the amount available for Restricted Payments under such paragraph) be excluded for purposes of making Restricted Payments and Permitted Payments, as applicable, under paragraphs (iii)(B) and (iii)(C) of Section 2.1 and paragraphs (a) and (m) of Section 2.3 to the extent such cash and Cash Equivalents are included in the calculation of the LTV Ratio.

**"Management Advances"** means loans or advances made to, or Guarantees with respect to loans or advances made to, directors, officers, employees or consultants of the Parent, any Holding Company or any Restricted Subsidiary:

- (a) in respect of travel, entertainment or moving related expenses Incurred in the ordinary course of business;
- (b) in respect of moving related expenses Incurred in connection with any closing or consolidation of any facility or office; or
- (c) not exceeding \$1.25 million in the aggregate outstanding at any time.

**"Management Investors"** means the officers, directors, employees and other members of the management of or consultants to any Holding Company, the Parent or any of their respective Subsidiaries, or spouses, family members or relatives thereof, or any trust, partnership or other entity for the benefit of or the beneficial owner of which (directly or indirectly) is any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Parent, any Restricted Subsidiary or any Holding Company.

**"Market Capitalisation"** means an amount equal to (1) the total number of issued and outstanding shares of common stock or common equity interests of the Parent at market close on 31 December of the prior fiscal year immediately preceding the date of the relevant dividend or share purchase ("**Market Capitalisation Test Date**") multiplied by (2) the arithmetic mean of the closing prices per share of such common stock or common equity interests for the 30 consecutive trading days immediately preceding the Market Capitalisation Test Date.

"**Moody's**" means Moody's Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"**Nationally Recognized Statistical Rating Organization**" means a nationally recognized statistical rating organization within the meaning of Section 3(a)(62) of the Exchange Act.

"**Net Available Cash**" from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or instalment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

- (a) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Taxes paid or required to be paid or accrued as a liability under GAAP (after taking into account any available tax credits or deductions), as a consequence of such Asset Disposition;
- (b) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which are required by applicable law to be repaid out of the proceeds from such Asset Disposition;
- (c) all distributions and other payments required to be made to minority interest holders (other than any Holding Company, the Parent or any of their respective Subsidiaries) in Subsidiaries or joint ventures as a result of such Asset Disposition; and
- (d) the deduction of appropriate amounts required to be provided by the seller as a reserve, on the basis of GAAP, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Parent or any Restricted Subsidiary after such Asset Disposition.

"**Net Cash Proceeds**," with respect to any issuance or sale of Capital Stock or Subordinated Shareholder Funding, means the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions).

"**Officer**" means, with respect to any Person, (1) the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, any Managing Director, any director or the Secretary (a) of such Person or (b) if such Person is owned or managed by a single entity, of such entity, or (2) any other individual designated as an "Officer" for the purposes of this Agreement by the Board of Directors of such Person.

"**Officer's Certificate**" means, with respect to any Person, a certificate signed by one Officer of such Person.

"**Opinion of Counsel**" means a written opinion from legal counsel reasonably satisfactory to the Required Holders. The counsel may be an employee of or counsel to the Parent or its Subsidiaries.

"**Original Borrower**" means the Subsidiaries of the parent listed in Part I of Schedule 1 (*The Original Parties*) of the Credit Agreement as original borrowers.

"**Parent**" means Encore Capital Group, Inc., a Delaware corporation.

"**Pari Passu Indebtedness**" means Indebtedness of the Parent or any Subsidiary Guarantor that ranks equally in right of payment to the Existing Cabot Notes and which is secured by Liens on the Collateral.

"**Permitted Asset Swap**" means the concurrent purchase and sale or exchange of assets used or useful in a Similar Business or a combination of such assets and cash, Cash Equivalents or Temporary Cash Investments between the Parent or any of its Restricted Subsidiaries and another Person; **provided that** any cash or Cash Equivalents received in excess of the value of any cash or Cash Equivalents sold or exchanged must be applied in accordance with Section 5 (*Limitation on Sales of Assets and Subsidiary Stock*).

"**Permitted Collateral Liens**" means (A) Liens on the Collateral described in one or more of paragraphs (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (r), (s), (t), (u), (v), (w) and (y) of the definition of "Permitted Liens"; (B) Liens on the Collateral to secure Indebtedness of the Parent or a Restricted Subsidiary that is permitted to be Incurred under paragraphs (a), (b) (in the case of paragraph (b), to the extent such Guarantee is in respect of Indebtedness otherwise permitted to be secured and specified in this definition of "Permitted Collateral Liens"), (d)(ii) (if the original Indebtedness was so secured), (f), (k) or (o) of Section 1.2; **provided, however, that** any such Lien ranks equal to (including with respect to the application of proceeds from any realisation or enforcement of the Collateral in accordance with the Intercreditor Agreement) all other Liens on such Collateral securing the Existing Cabot Notes and any Indebtedness incurred under paragraphs (o)(x)(ii) or (o)(y) of Section 1.2 (except that a Lien in favour of Indebtedness incurred under paragraph (a) and paragraph (o)(x)(i) of Section 1.2 and a Lien in favour of Priority Hedging Obligations may have super priority in respect of the application of proceeds from any realisation or enforcement of the Collateral on terms not materially less favourable to the holders of the Encore Private Placement Notes than that accorded to this Agreement on the Closing Date as provided in the Intercreditor Agreement as in effect on the Closing Date), subject always to the terms of this Agreement, (C) Liens on the Collateral securing Indebtedness incurred under Section 1.1; **provided that**, in the case of this paragraph (C), after giving effect to such incurrence on that date, (x) the LTV Ratio is less than 0.725 and (y) any such Lien ranks equal to (including with respect to the application of proceeds from any realisation or enforcement of the Collateral in accordance with the Intercreditor Agreement) all other Liens on such Collateral securing the Existing Cabot Notes and any Refinancing Indebtedness in respect of the Stretch Facility Agreement, (D) Liens on the Collateral securing Indebtedness Incurred under paragraph (e)(ii) of Section 1.2; *provided that*, in the case of this clause (D), after giving *pro forma* effect to the relevant acquisition and the Incurrence of such Indebtedness pursuant to such paragraph (e)(ii), the LTV ratio would not be worse than it was immediately prior to giving *pro forma* effect to the relevant acquisition and the Incurrence of such Indebtedness, or (E) Liens on Collateral securing Refinancing Indebtedness in respect of any Indebtedness secured pursuant to the foregoing paragraphs (A), (B), (C) and (D); **provided that** any such Lien ranks equal to

(including with respect to the application of proceeds from any realisation or enforcement of the Collateral in accordance with the Intercreditor Agreement) all other Liens on such Collateral securing the Existing Cabot Notes and any Refinancing Indebtedness in respect of the Stretch Facility Agreement (except as otherwise permitted in paragraph (B)). To the extent that a Lien on the Collateral consists of a mortgage over any real estate located in the United Kingdom, it shall constitute a Permitted Collateral Lien only to the extent that a mortgage ranking at least *pari passu* is granted in favour of the Security Agent for the benefit of the Secured Parties.

"**Permitted Investment**" means (in each case, by the Parent or any of its Restricted Subsidiaries):

- (a) Investments in (i) a Restricted Subsidiary (including the Capital Stock of a Restricted Subsidiary) or the Parent or (ii) a Person (including the Capital Stock of any such Person) that is engaged in any Similar Business and such Person will, upon the making of such Investment, become a Restricted Subsidiary;
- (b) Investments in another Person if such Person is engaged in any Similar Business and as a result of such Investment such other Person is merged, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets to, the Parent or a Restricted Subsidiary;
- (c) Investments in cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;
- (d) Investments in Receivables owing to the Parent or any Restricted Subsidiary created or acquired in the ordinary course of business;
- (e) Investments in payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;
- (f) Management Advances;
- (g) Investments in Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Parent or any Restricted Subsidiary, or as a result of foreclosure, perfection or enforcement of any Lien, or in satisfaction of judgments or pursuant to any plan of reorganisation or similar arrangement including upon the bankruptcy or insolvency of a debtor;
- (h) Investments made as a result of the receipt of non-cash consideration from a sale or other disposition of property or assets, including an Asset Disposition, in each case, that was made in compliance with Section 5 (*Limitations on Sales of Assets and Subsidiary Stock*);
- (i) Investments in existence on, or made pursuant to legally binding commitments in existence on the Closing Date, and any extension, modification or renewal of such Investment; **provided that** the amount of the Investment may be increased as required by the terms of the Investment as in existence on the Closing Date;
- (j) Currency Agreements, Interest Rate Agreements, Commodity Hedging Agreements and related Hedging Obligations, which transactions or obligations are Incurred in compliance with Section 1 (*Limitation on Indebtedness*);

- (k) Investments, taken together with all other Investments made pursuant to this paragraph (k) and at any time outstanding, in an aggregate amount at the time of such Investment not to exceed the greater of 4.5% of Total Assets and \$215.0 million; **provided that**, if an Investment is made pursuant to this paragraph 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 Section 2 (*Limitation on Restricted Payments*), such Investment shall thereafter be deemed to have been made pursuant to paragraph (a) or (b) of the definition of "Permitted Investments" and not this paragraph;
- (l) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under Section 3 (*Limitation on Liens*);
- (m) any Investment to the extent made using Capital Stock of the Parent (other than Disqualified Stock), Subordinated Shareholder Funding or Capital Stock of any Holding Company as consideration;
- (n) any transaction to the extent constituting an Investment that is permitted and made in accordance with the provisions of Section 6.3 (except those described in paragraphs (a), (c), (f), (h) and (i) of Section 6.3);
- (o) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or licenses or leases of intellectual property, in any case, in the ordinary course of business and in accordance with this Agreement;
- (p) Guarantees not prohibited by Section 1 (*Limitation on Indebtedness*) and (other than with respect to Indebtedness) guarantees, keepwells and similar arrangements in the ordinary course of business;
- (q) Investments in Associates or Unrestricted Subsidiaries in an aggregate amount when taken together with all other Investments made pursuant to this paragraph (q) that are at the time outstanding not to exceed the greater of 3.0% of Total Assets and \$145.0 million;
- (r) Investments in the Existing Cabot Notes, the Encore Private Placement Notes and in any Refinancing Indebtedness in respect of the Stretch Facility Agreement; and
- (s) Investments acquired after the Closing Date as a result of the acquisition by the Parent or any of its Restricted Subsidiaries 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 Section 7 (*Merger and Consolidation*) to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation.

"Permitted Liens" means, with respect to any Person:

- (a) Liens on assets or property of a Restricted Subsidiary that is not a Subsidiary Guarantor securing Indebtedness of any Restricted Subsidiary that is not a Subsidiary Guarantor;

- (b) pledges, deposits or Liens under workmen's compensation laws, unemployment insurance laws, social security laws or similar legislation, or insurance related obligations (including pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements), or in connection with bids, tenders, completion guarantees, contracts (other than for borrowed money) or leases, or to secure utilities, licenses, public or statutory obligations, or to secure surety, indemnity, judgment, appeal or performance bonds, guarantees of government contracts (or other similar bonds, instruments or obligations), or as security for contested Taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case Incurred in the ordinary course of business;
- (c) Liens imposed by law, including carriers', warehousemen's, mechanics', landlords', materialmen's and repairmen's or other like Liens, in each case for sums not yet overdue for a period of more than 60 days or that are bonded or being contested in good faith by appropriate proceedings;
- (d) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings; **provided that** appropriate reserves required pursuant to GAAP have been made in respect thereof;
- (e) Liens in favour of issuers of surety, performance or other bonds, guarantees or letters of credit or bankers' acceptances (not issued to support Indebtedness for borrowed money) issued pursuant to the request of and for the account of the Parent or any Restricted Subsidiary in the ordinary course of its business;
- (f) encumbrances, ground leases, easements (including reciprocal easement agreements), survey exceptions, 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, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of the Parent and its Restricted Subsidiaries or to the ownership of its properties which 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 the Parent and its Restricted Subsidiaries;
- (g) Liens on assets or property of the Parent or any Restricted Subsidiary securing Hedging Obligations permitted under this Agreement;
- (h) leases, licenses, subleases and sublicenses of assets (including real property and intellectual property rights), in each case entered into in the ordinary course of business;
- (i) Liens arising out of judgments, decrees, orders or awards not giving rise to an Event of Default so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree, order or award have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (j) Liens on assets or property of the Parent or any Restricted Subsidiary for the purpose of securing Capitalised Lease Obligations or Purchase Money Obligations, or securing the payment of all or a part of the purchase price of, or securing other Indebtedness Incurred to finance or refinance the acquisition, improvement or construction of, assets or



property; **provided that** (a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under this Agreement and (b) any such Lien may not extend to any assets or property of the Parent or any Restricted Subsidiary other than assets or property acquired, improved, constructed or leased with the proceeds of such Indebtedness and any improvements or accessions to such assets and property;

- (k) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution;
- (l) Liens arising from Uniform Commercial Code financing statement filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Parent and its Restricted Subsidiaries in the ordinary course of business;
- (m) Liens existing on, or provided for or required to be granted under written agreements existing on, the Closing Date after giving effect to the Refinancing Transactions;
- (n) Liens on property, other assets or shares of stock of a Person at the time such Person becomes a Restricted Subsidiary (or at the time the Parent or a Restricted Subsidiary acquires such property, other assets or shares of stock, including any acquisition by means of a merger, consolidation or other business combination transaction with or into the Parent or any Restricted Subsidiary); **provided, however, that** such Liens are not created, Incurred or assumed in anticipation of or in connection with such other Person becoming a Restricted Subsidiary (or such acquisition of such property, other assets or stock); **provided, further, that** such Liens do not extend to or cover any property or assets of the Parent and its Restricted Subsidiaries other than (a) the property or assets acquired or (b) the property or assets of the Person acquired, merged with or into or consolidated or combined with the Parent or a Restricted Subsidiary;
- (o) Liens on assets or property of the Parent or any Restricted Subsidiary securing Indebtedness or other obligations of the Parent or such Restricted Subsidiary owing to the Parent or another Restricted Subsidiary, or Liens in favour of the Parent or any Restricted Subsidiary;
- (p) Liens (other than Permitted Collateral Liens) securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, and permitted to be secured under this Schedule 4; **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 or is in respect of property that is or could be the security for or subject to a Permitted Lien hereunder;
- (q) any interest or title of a lessor under any Capitalised Lease Obligation or operating lease;
- (r) (a) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Parent or any Restricted Subsidiary has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;

- (s) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;
- (t) 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;
- (u) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters or arrangers thereof) or on cash set aside at the time of the Incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose;
- (v) 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, or liens over cash accounts securing cash pooling arrangements;
- (w) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;
- (x) Liens which do not exceed \$50.0 million at any one time outstanding;
- (y) Liens on Capital Stock of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary;
- (z) Liens securing Permitted Purchase Obligations, **provided that** any such Lien is only over the assets and Capital Stock of the relevant Permitted Purchase Obligations SPV;
- (aa) Liens on Right to Collect Accounts, performing accounts, sub-performing accounts, charged-off accounts, cash and bank accounts, loans, receivables, mortgages, debentures, claims or other similar assets or instruments held on trust for third parties; and
- (bb) Liens on Trust Management Assets; **provided that** such Liens do not secure any Indebtedness of the Parent or any Restricted Subsidiary other than a Trust Management SPV.

**"Permitted Purchase Obligations"** means any Indebtedness Incurred by a Permitted Purchase Obligations SPV to finance or refinance the acquisition of performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts) purchased by such Permitted Purchase Obligations SPV, whether directly or through the acquisition of the Capital Stock of any Person owning such assets or otherwise, in an aggregate principal amount not exceeding at the time of the incurrence of such Permitted Purchase Obligations, together with any other Indebtedness incurred pursuant to paragraph (1) of Section 1.2 and then outstanding, 20.0% of the ERC, calculated in good faith on a *pro forma* basis by management as of the date of purchase of such performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims or other similar assets or

instruments or such portfolios (including through the use of Right to Collect Accounts), **provided that:**

- (a) except for the granting of a Lien described in paragraph (z) of the definition of "Permitted Liens," no portion of any Permitted Purchase Obligations or any other obligations (contingent or otherwise) of the applicable Permitted Purchase Obligations SPV (a) is guaranteed by the Parent or any other Restricted Subsidiary, (b) is recourse to or obligates the Parent or any other Restricted Subsidiary in any way, or (c) subjects any property or asset of the Parent or any other Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof,
- (b) neither the Parent nor any other Restricted Subsidiary has any obligation to maintain or preserve the applicable Permitted Purchase Obligations SPV's financial condition or cause such entity to achieve certain levels of operating results, and
- (c) such Permitted Purchase Obligation is secured (if at all) only over the assets of, and Capital Stock of, the relevant Permitted Purchase Obligations SPV.

**"Permitted Purchase Obligations SPV"** means a Wholly Owned Restricted Subsidiary (1) which engages in no activities other than the acquisition of performing, sub-performing or charged-off accounts, loans, receivables, mortgages, debentures or claims, or other similar assets or instruments or portfolios thereof (including through the use of Right to Collect Accounts), the Incurrence of Permitted Purchase Obligations to finance such acquisition and any business or activities incidental or related to such business and is set up in connection with the Incurrence of Permitted Purchase Obligations, (2) to which the Parent or any Restricted Subsidiary contributes, loans or otherwise transfers no amounts in excess of amounts required, after giving effect to the Incurrence of Permitted Purchase Obligations, to consummate the relevant purchase of assets and amounts required for incidental expenses, costs and fees for the set-up and continuing operations of such Permitted Purchase Obligations SPV, and (3) all the Capital Stock of which is held by a Wholly Owned Restricted Subsidiary which holds no other material assets.

**"Person"** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organisation, limited liability company, government or any agency or political subdivision thereof or any other entity.

**"Portfolio ERC Model"** means the models and methodologies that the Parent uses to calculate the value of its loan portfolios and those of its Subsidiaries, consistently with its most recent audited financial statements as of such date of determination.

**"Preferred Stock,"** as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

**"Priority Hedging Obligations"** means designated Hedging Obligations in an aggregate amount outstanding at any time of up to \$100.0 million.

**"Public Offering"** means any offering of shares of common stock or other common equity interests that are listed on an exchange or publicly offered (which shall include an offering

pursuant to Rule 144A and/or Regulation S under the Securities Act to professional market investors or similar persons).

**"Purchase Money Obligations"** means any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (including Capital Stock), and whether acquired through the direct acquisition of such property or assets or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

**"Receivable"** means a right to receive payment arising from a sale or lease of goods or services by a Person pursuant to an arrangement with another Person pursuant to which such other Person is obligated to pay for goods or services under terms that permit the purchase of such goods and services on credit, as determined on the basis of GAAP.

**"refinance"** means refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell, extend or increase (including pursuant to any defeasance or discharge mechanism) and the terms "refinances," "refinanced" and "refinancing" as used for any purpose in this Schedule 4 shall have a correlative meaning.

**"Refinancing Indebtedness"** means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness existing on the date of this Agreement or Incurred in compliance with this Agreement (including Indebtedness of the Parent that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of the Parent or another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; **provided, however, that:**

- (a) if the Indebtedness being refinanced constitutes Subordinated Indebtedness, the Refinancing Indebtedness has a final Stated Maturity at the time such Refinancing Indebtedness is Incurred that is the same as or later than the final Stated Maturity of the Indebtedness being refinanced or, if shorter, the Termination Date;
- (b) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest or premiums required by the instruments governing such existing indebtedness and costs, expenses and fees Incurred in connection therewith); and
- (c) if the Indebtedness being refinanced is expressly subordinated to the Encore Private Placement Notes or any guarantees in respect thereof, such Refinancing Indebtedness is subordinated to the Encore Private Placement Notes and any guarantees in respect thereof on terms at least as favourable to the holders of the Encore Private Placement Notes as those contained in the documentation governing the Indebtedness being refinanced, **provided, however, that** Refinancing Indebtedness shall not include Indebtedness of the Parent or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary.

Refinancing Indebtedness in respect of any Credit Facility or any other Indebtedness may be Incurred within 120 days after the termination, discharge or repayment of any such Credit Facility or other Indebtedness.

"**Refinancing Transactions**" means the consent solicitation with respect to the Existing Cabot Notes, the amendment and restatement of this Agreement and of the Intercreditor Agreement on or about the Closing Date, the amendment of the Credit Agreement on or about the Closing Date, the entry into the Stretch Facility Agreement on or about the Closing Date and the use of proceeds from certain of the foregoing facilities to: (i) repay amounts drawn under the Existing Encore Senior Facilities and repay in full certain of the Encore Private Placement Notes and (ii) pay estimated commissions, fees and other expenses incurred in connection thereto.

"**Regulation S**" means Regulation S promulgated under the Securities Act.

"**Related Taxes**" means:

- (a) any Taxes (other than (x) Taxes measured by gross or net income, receipts or profits and (y) withholding Taxes), required to be paid (provided such Taxes are in fact paid) by any Holding Company by virtue of its:
  - (i) being organised or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than, directly or indirectly, the Parent or any of the Parent's Subsidiaries);
  - (ii) issuing or holding Subordinated Shareholder Funding; or
  - (iii) being a Holding Company parent, directly or indirectly, of the Parent or any of the Parent's Subsidiaries; or
- (b) if and for so long as the Parent is a member of a group filing a consolidated or combined tax return with any Holding Company, any consolidated or combined Taxes measured by income for which such Holding Company is liable up to an amount not to exceed the amount of any such Taxes that the Parent and its Subsidiaries would have been required to pay on a separate company basis or on a consolidated basis if the Parent and its Subsidiaries had paid tax on a consolidated, combined, group, affiliated or unitary basis on behalf of an affiliated group consisting only of the Parent and its Subsidiaries; **provided that** distributions shall be permitted in respect of the income of an Unrestricted Subsidiary only to the extent such Unrestricted Subsidiary distributed cash for such purpose to the Parent or its Restricted Subsidiaries.

"**Restricted Investment**" means any Investment other than a Permitted Investment.

"**Restricted Subsidiary**" means any Subsidiary of the Parent other than an Unrestricted Subsidiary.

"**Reversion Date**" means, after the occurrence (if any) of Investment Grade Status, the date (if any) that Investment Grade Status shall cease to exist.

"**Right to Collect Account**" means a performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument that is owned by a

Person that is not the Parent or one of its Restricted Subsidiaries (a "**Third Party**") and in respect of which (1) such Third Party is unable or unwilling to dispose of the relevant performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument to the Parent or a Restricted Subsidiary; and (2) the Parent or a Restricted Subsidiary is entitled to collect and retain substantially all of the amounts due under such performing, sub-performing or charged-off account, loan, receivable, mortgage, debenture or claim or other similar asset or instrument or to receive amounts equivalent thereto.

"**Rule 144A**" means Rule 144A promulgated under the Securities Act.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**S&P**" means Standard & Poor's Investors Ratings Services or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

"**Secured Indebtedness**" means any Indebtedness secured by a Lien (other than Indebtedness Incurred pursuant to paragraphs (c), (f), (h), (i), (j) or (n) of Section 1.2).

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

"**Senior Management**" means any previous or current officers, directors, and other members of senior management of the Parent or any of its Subsidiaries, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Parent or any Holding Company.

"**Similar Business**" means (1) any businesses, services or activities engaged in by the Parent or any of its Subsidiaries or any Associates on the Closing Date and (2) any businesses, services and activities engaged in by the Parent or any of its Subsidiaries or any Associates that are related, complementary, incidental, ancillary or similar to any of the foregoing or are extensions or developments of any thereof.

"**Stated Maturity**" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"**Stretch Facility Agreement**" means the senior facilities agreement dated on or about the Closing Date among the Parent, Truist Bank, as Agent and Security Agent, and the other parties named therein, as amended, restated or otherwise modified or varied from time to time.

"**Subordinated Indebtedness**" means, with respect to any person, any Indebtedness (whether outstanding on the Closing Date or thereafter Incurred) which is expressly subordinated in right of payment to the Encore Private Placement Notes pursuant to a written agreement (which, for the avoidance of doubt, will not include the Existing Cabot Notes or any Pari Passu Indebtedness).

"**Subordinated Shareholder Funding**" means any funds provided to the Parent by any Holding Company or any Affiliate thereof, in exchange for or pursuant to any security, instrument or agreement other than Capital Stock, in each case issued to and held by a Holding Company,

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 Funding; **provided, however, that** such Subordinated Shareholder Funding:

- (a) does not mature or require any amortisation, redemption or other repayment of principal or any sinking fund payment prior to the first anniversary of the Stated Maturity of the Notes (other than through conversion or exchange of such funding into Capital Stock (other than Disqualified Stock) of the Parent or any funding meeting the requirements of this definition);
- (b) does not require, prior to the first anniversary of the Termination Date, payment of cash interest, cash withholding amounts or other cash gross-ups, or any similar cash amounts;
- (c) contains no change of control or similar provisions and does not accelerate and has no right to declare a default or event of default or take any enforcement action or otherwise require any cash payment, in each case, prior to the first anniversary of the Termination Date;
- (d) does not provide for or require any security interest or encumbrance over any asset of the Parent or any of its Subsidiaries; and
- (e) pursuant to its terms is fully subordinated and junior in right of payment to the Encore Private Placement Notes pursuant to subordination, payment blockage and enforcement limitation terms which are customary in all material respects for similar funding, **provided, further, however, that** upon the occurrence of any event or circumstance that results in such Indebtedness ceasing to qualify as Subordinated Shareholder Funding, such Indebtedness shall constitute an Incurrence of such Indebtedness by the Parent, and any and all Restricted Payments made through the use of the Net Cash Proceeds from the Incurrence of such Indebtedness since the date of the original issuance of such Subordinated Shareholder Funding shall constitute new Restricted Payments that are deemed to have been made after the date of the original issuance of such Subordinated Shareholder Funding.

"Subsidiary" means, with respect to any Person:

- (a) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; or
- (b) any partnership, joint venture, limited liability company or similar entity of which:
  - (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or 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

- (ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

**"Subsidiary Guarantor"** means a Restricted Subsidiary of the Parent that guarantees the Encore Private Placement Notes.

**"Taxes"** means all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature (including interest, penalties and other liabilities with respect thereto) that are imposed by any government or other taxing authority.

**"Temporary Cash Investments"** means any of the following:

- (a) any investment in
  - (i) direct obligations of, or obligations Guaranteed by, (i) the United States of America or Canada, (ii) the United Kingdom, (iii) any European Union member state (other than Greece and Portugal), (iv) Switzerland or Norway, (v) any country in whose currency funds are being held specifically pending application in the making of an investment or capital expenditure by the Parent or a Restricted Subsidiary in that country with such funds or (vi) any agency or instrumentality of any such country or member state, or
  - (ii) direct obligations of any country recognised by the United States of America rated at least "A" by S&P or "A1" by Fitch or by Moody's (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);
- (b) overnight bank deposits, and investments in time deposit accounts, certificates of deposit, bankers' acceptances and money market deposits (or, with respect to foreign banks, similar instruments) maturing not more than one year after the date of acquisition thereof issued by:
  - (i) any lender under this Agreement,
  - (ii) any institution authorised to operate as a bank in any of the countries or member states referred to in paragraph (a)(i) above, or
  - (iii) any bank or trust company organised under the laws of any such country or member state or any political subdivision thereof, in each case, having capital and surplus aggregating in excess of \$250 million (or the foreign currency equivalent thereof) and whose long-term debt is rated at least "A-" by S&P, "A" by Fitch or "A3" by Moody's (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;
- (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in paragraph (a) or (b) above entered into with a Person meeting the qualifications described in paragraph (b) above;



- (d) investments in commercial paper, maturing not more than 270 days after the date of acquisition, issued by a Person (other than the Parent or any of its Subsidiaries), with a rating at the time as of which any Investment therein is made of "P-2" (or higher) according to Moody's, "F-2" (or higher) according to Fitch or "A-2" (or higher) according to S&P (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);
- (e) investments in securities maturing not more than one year after the date of acquisition issued or fully Guaranteed by any state, commonwealth or territory of the United States of America, Canada, the United Kingdom, any European Union member state (other than Greece and Portugal), Switzerland or Norway or by any political subdivision or taxing authority of any such state, commonwealth, territory, country or member state, and rated at least "BBB-" by S&P, "BBB-" by Fitch or "Baa3" by Moody's (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);
- (f) bills of exchange issued in the United States, Canada, the United Kingdom, a member state of the European Union (other than Greece and Portugal), Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialised equivalent);
- (g) any money market deposit accounts issued or offered by a commercial bank organised under the laws of a country that is a member of the Organisation for Economic Cooperation and Development, in each case, having capital and surplus in excess of \$250 million (or the foreign currency equivalent thereof) or whose long-term debt is rated at least "A" by S&P, "A" by Fitch or "A2" by Moody's (or, in either case, the equivalent of such rating by such organisation or, if no rating of S&P, Fitch or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;
- (h) investment funds investing 95% of their assets in securities of the type described in paragraphs (a) through (g) above (which funds may also hold reasonable amounts of cash pending investment and/or distribution); and
- (i) investments in money market funds complying with the risk limiting conditions of Rule 2a-7 (or any successor rule) of the SEC under the U.S. Investment Company Act of 1940, as amended.

"**Total Assets**" means the consolidated total assets of the Parent and its Restricted Subsidiaries in accordance with GAAP as shown on the most recent balance sheet of such Person.

"**Trust Management Assets**" means Right to Collect Accounts, performing accounts, sub performing accounts, charged-off accounts, loans, receivables, mortgages, debentures, claims, cash and bank accounts or other similar assets or instruments held by a Trust Management SPV on trust for a beneficiary which is not the Parent or a Restricted Subsidiary.

"**Trust Management SPV**" means a Restricted Subsidiary whose purpose is managing Trust Management Assets and other activities necessary or ancillary to managing Trust Management

Assets, including as necessary to fulfil any obligations or duty of the Trust Management SPV as a trustee.

"**Underlying Portfolio Assets**" means performing, sub-performing or charged-off account, loans, receivables, mortgages, debentures or claims or other similar assets or instruments (in each case, however pooled, aggregated, fractionally owned or contractually divided).

"**Uniform Commercial Code**" means the New York Uniform Commercial Code.

"**Unrestricted Subsidiary**" means:

- (a) any Subsidiary of the Parent that at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Parent in the manner provided below); and
- (b) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Parent may designate any Subsidiary of the Parent (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger, consolidation or other business combination transaction, or Investment therein), other than the Parent or any Borrower, to be an Unrestricted Subsidiary only if:

- (i) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of, or own or hold any Lien on any property of, the Parent or any other Subsidiary of the Parent which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary; and
- (ii) such designation and the Investment of the Parent in such Subsidiary complies with Section 2 (*Limitations on Restricted Payments*).

Any such designation by the Board of Directors of the Parent shall be evidenced to the holders of the Encore Private Placement Notes by filing with the holders of the Encore Private Placement Notes a resolution of the Board of Directors of the Parent giving effect to such designation and an Officer's Certificate certifying that such designation complies with the foregoing conditions.

The Board of Directors of the Parent may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; **provided, that** immediately after giving effect to such designation (1) no Default or Event of Default would result therefrom and (2)(x) the Parent could Incur at least \$1.00 of additional Indebtedness under Section 1.1 or (y) the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries would not be worse than it was immediately prior to giving effect to such designation, in each case, on a *pro forma* basis taking into account such designation. Any such designation by the Board of Directors shall be evidenced to the holders of the Encore Private Placement Notes by promptly filing with the holders of the Encore Private Placement Notes a copy of the resolution of the Board of Directors giving effect to such designation or an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"**Voting Stock**" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

**"Wholly Owned Restricted Subsidiary"** means a Restricted Subsidiary of the Parent, all the Voting Stock of which (other than directors' qualifying shares or shares required by any applicable law or regulation to be held by a Person other than the Parent or another Wholly Owned Restricted Subsidiary) is owned by the Parent or another Wholly Owned Restricted Subsidiary.

**"Working Capital Intercompany Loan"** means any loan to or by the Parent or any of its Restricted Subsidiaries to or from the Parent or any of its Restricted Subsidiaries from time to time (1) for purposes of consolidated cash and tax management and working capital management and (2) for a duration of less than one year.

**SCHEDULE 5.8**

Schedule 5.8

EXHIBIT A

[FORM OF 2017 NOTE]

ENCORE CAPITAL GROUP, INC.

5.625% SENIOR SECURED NOTE DUE AUGUST 11, 2024

No. [\_\_\_\_]  
\$[\_\_\_\_\_]

[Date]  
PPN: 292554 A#9

**FOR VALUE RECEIVED**, the undersigned, **ENCORE CAPITAL GROUP, INC.** (herein called the “**Company**”), a company organized and existing under the laws of Delaware, hereby promises to pay to [\_\_\_\_], or registered assigns, the principal sum of [\_\_\_\_] DOLLARS (or so much thereof as shall not have been prepaid) on August 11, 2024, with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the rate of 5.625% per annum from the date hereof, payable at maturity and quarterly, on the 11th day of each February, May, August and November in each year, commencing with the February 11, May 11, August 11 or November 11 next succeeding the date hereof until the principal hereof shall have become due and payable, and (b) at a rate per annum from time to time equal to the greater of (i) 7.625% and (ii) 2% over the rate of interest publicly announced by JPMorgan Chase Bank from time to time in New York, New York as its “base” or “prime” rate (A) on any overdue payment of interest, and (B) following the occurrence and during the continuance of an Event of Default on the unpaid principal balance, any overdue payment of interest and any overdue payment of any Make-Whole Amount, in the case of this clause (b), payable at maturity and quarterly as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at such place as the holder hereof shall designate to the Company in writing as provided in the Agreement referred to below.

This Note is one of a series of senior secured notes (herein called the “**Notes**”) issued pursuant to a Fourth Amended and Restated Senior Secured Note Purchase Agreement, dated as of September 1, 2020 (as from time to time amended, amended and restated, supplemented or otherwise modified, the “**Agreement**”), between the Company, on the one hand, and the other Persons party thereto, on the other hand, and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (i) agreed to the confidentiality provisions set forth in Section 20 of the Agreement, and (ii) made the representation set forth in Section 6.2 of the Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Agreement.

This Note is a registered Note and, as provided in the Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a replacement Note for a like principal amount will be issued to, and registered in the

name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

The Company will make required prepayments of principal on the dates and in the amounts specified in the Agreement. This Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Agreement, but not otherwise.

This Note has the benefit provided by the Multiparty Guaranty. This Note and the Multiparty Guaranty are secured by, and entitled to the benefits of, the Transaction Security Documents. Reference is made to the Transaction Security Documents for the terms and conditions governing the Transaction Security for the obligations of the Company hereunder and the obligations of the Guarantors under the Multiparty Guaranty.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect, provided in the Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such state that would permit the application of the laws of a jurisdiction other than such state.

**ENCORE CAPITAL GROUP, INC.**

By: \_\_\_\_\_  
Name:  
Title:



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# Encore Capital Group, Inc.

Investor Presentation  
September 2020

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# CAUTIONARY NOTE ABOUT FORWARD-LOOKING STATEMENTS

This presentation has been prepared by Encore Capital Group, Inc. ("Encore" or the "Company") solely for informational purposes. For the purposes of this disclaimer, the presentation that follows shall mean and include the slides that follow, the oral presentation of the slides by the Company or any person on its behalf, any question-and-answer session that follows the oral presentation, hard copies of this document and any materials distributed in connection with the presentation.

The Company has included non-GAAP financial measures in this presentation. These measurements may not be comparable to those of other companies. Reference to these non-GAAP financial measures should be considered in addition to GAAP financial measures, but should not be considered a substitute for results that are presented in accordance with GAAP. The information contained in this presentation has not been subject to any independent audit or review. No representation, warranty or undertaking, express or implied, is made to, and no reliance should be placed on, the fairness, accuracy, completeness or correctness of the information or opinions herein. No responsibility or liability (including in respect of direct, indirect or consequential loss or damage) is assumed by any person for such information or opinions or for any errors or omissions. A significant portion of the information contained in this document, including all market data and trend information, is based on estimates or expectations of the Company, and there can be no assurance that these estimates or expectations are or will prove to be accurate. Our internal estimates have not been verified by an external expert, and we cannot guarantee that a third party using different methods to assemble, analyze or compute market information and data would obtain or generate the same results. We have not verified the accuracy of such information, data or predictions contained in this report that were taken or derived from industry publications, public documents of our competitors or other external sources. Further, our competitors may define our and their markets differently than we do. In addition, past performance of the Company is not indicative of future performance. The future performance of the Company will depend on numerous factors which are subject to uncertainty. Certain statements contained in this document that are not statements of historical fact, including, without limitation, any statements preceded by, followed by or including the words "targets," "believes," "expects," "aims," "intends," "may," "anticipates," "would," "could" or similar expressions or the negative thereof, constitute forward-looking statements, notwithstanding that such statements are not specifically identified. In addition, certain statements may be contained in press releases, and in oral and written statements made by or with the approval of the Company that are not statements of historical fact and constitute forward-looking statements.

Examples of forward-looking statements include, but are not limited to: (i) statements about future financial and operating results; (ii) statements of strategic objectives, business prospects, future financial condition, budgets, potential synergies to be derived from acquisitions, projected levels of production, projected costs and projected levels of revenues and profits of the Company or its management or board of directors; (iii) statements of future economic performance; and (iv) statements of assumptions underlying such statements. Forward-looking statements are not guarantees of future performance and involve certain risks, uncertainties and assumptions which are difficult to predict and outside of the control of the management of the Company. Therefore, actual outcomes and results may differ materially from what is expressed or forecasted in such forward-looking statements. We have based these assumptions on information currently available to us, if any one or more of these assumptions turn out to be incorrect, actual market results may differ from those predicted. While we do not know what impact any such differences may have on our business, if there are such differences, our future results of operations and financial condition,

and the market price of the notes, could be materially adversely affected. You should not place undue reliance on these forward-looking statements. All subsequent written and oral forward-looking statements attributable to the Company or any person acting on its behalf are expressly qualified in their entirety by the cautionary statements referenced above. Forward-looking statements speak only as of the date on which such statements are made. The Company expressly disclaims any obligation or undertaking to disseminate any updates or revisions to any forward-looking statement to reflect events or circumstances after the date on which such statement is made, or to reflect the occurrence of unanticipated events.

The presentation does not constitute or form part of, and should not be construed as, an offer to sell or issue, or the solicitation of an offer to purchase, subscribe to or acquire the Company or the Company's securities, or an inducement to enter into investment activity. No part of this presentation, nor the fact of its distribution, should form the basis of, or be relied on in connection with, any contract or commitment or investment decision whatsoever. This presentation is not for publication, release or distribution.



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# TODAY'S PRESENTERS

*President & CEO,  
Encore*



**Ashish Masih**

Capital One   McKimsey & Company   KPMG

30 11

*CEO, Cabot*



**Craig Buick**

GE Capital   pwc

31 4

*EVP & CFO,  
Encore*



**Jonathan Clark**

SallieMae   CREDIT SUISSE

34 5

*Managing VP,  
Corporate  
Development &  
Treasury, Encore*



**Scott Goverman**

SAIC   LEHMAN BROTHERS

34 9

*Managing VP,  
Global Treasury &  
Corporate  
Development*



**Tomas Hernanz**

h b k   ONDRA

19 4



- Years of experience
- Years at Encore / Cabot

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## EXECUTIVE SUMMARY

- ▶ We are excited to present to you today our strategy and value proposition for the combined business of Encore Capital Group, Inc Cabot Credit Management
- ▶ Encore has been in the business of purchasing debt for over 25 years, the Company operates internationally with approximately 7 employees<sup>1)</sup> and owns c.120 million accounts representing c.64 million unique consumers in the U.S. and U.K.
- ▶ On July 24, 2018, Encore acquired the remaining equity interest in Cabot from existing shareholders and formalized the union of Encore's leadership position in two of the world's most valuable credit markets (U.S. and the U.K.)
- ▶ While the acquisition provided benefits such as the ability to rationalize European operations and simplifying financial reporting, to the two balance sheets remain legally separate and non-recourse to one another
- ▶ We are now pursuing a joint financing strategy to combine the two balance sheets, which we believe will result in an enhanced credit profile for both existing and prospective Encore and Cabot lenders and investors:
  - ▶ Fully leverage the combined size of Encore and Cabot to create the Global leader in the debt purchasing sector
  - ▶ Significantly enhance geographic reach to create a highly diversified footprint across the most mature markets
  - ▶ Maximize financial flexibility to leverage global borrowing base and enhance access to capital markets
  - ▶ Allows Encore to satisfy financial reporting requirements with its quarterly and annual SEC filings
  - ▶ Allows allocation of capital to the markets with the best returns so as to maximize overall Encore returns and take advantage varying market cycles impacting pricing and supply across the globe



1) Number of employees as of Q1 2020, as not publicly disclosed in Q2 2020.

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# TRANSACTION OVERVIEW

## Description

- ▶ New global funding structure with Encore Capital Group, Inc. serving as the parent entity of the new borrowing group
  - ▶ Structure leverages the combined Encore global ERC base, including Cabot
  - ▶ Proposed funding structure implemented through consent solicitation on Cabot's existing SSNs to move the current Parent of the Cabot Restricted Group to Encore Capital Group, Inc. ("New Restricted Group")
  - ▶ Existing Cabot Restricted Group covenants as amended by the consent will apply to the new Restricted Group<sup>(1)</sup>
  - ▶ Guarantors will comprise all material subsidiaries representing at least 85% of Consolidated EBITDA and Gross Assets<sup>(2)</sup>
- ▶ No legal re-organization envisioned

## Key highlights

- ▶ The transaction will include a New Global RCF (\$1,050m) and roll of certain Private Placement Notes (\$156m), incurred under the existing super senior credit facility basket of 17.5% of 84m ERC (\$6.9bn)
  - ▶ \$471m liquidity available at closing
- ▶ Additional financing of \$300m is provided with a one-off super senior "stretch" facility at closing
  - ▶ New stretch facility is intended to be refinanced at the earliest opportunity on a pari passu basis with the amended existing Cabot SSNs (the "New Secured Financing")
- ▶ Conservative leverage in line with Company's target of 2.0-3.0x
- ▶ Consolidated net debt / Adjusted EBITDA of 2.5x<sup>(3)</sup> and consolidated net debt / 84-month ERC of 46.4%<sup>(3)</sup>



- 1) Amended appropriately to reflect the combined group.
- 2) Requirement under the New Global RCF which bonds indirectly benefit from.
- 3) Represents Q2 2020 metrics pro forma for the transaction.

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# ENCORE CAPITAL GROUP PROPOSED GLOBAL FUNDING STRUCTURE

## Sources and Uses

Sources	\$m	Uses
New Global RCF drawn at closing	739	Cabot existing RCF
New Secured Financing	300	Encore existing RCF
		Encore existing Term Loan
		Non-Participating Private Placement Notes
		Transaction costs (estimate)
		Cash on balance sheet
<b>Total</b>	<b>1,039</b>	<b>Total</b>

## Capitalisation table

	Current <sup>(4)</sup> 30-Jun-20			Adj.	Pro forma 30-Jun-20			Mat
	(\$m)	x EBITDA <sup>(1)</sup>	LTV <sup>(2)</sup>		(\$m)	x EBITDA <sup>(1)</sup>	LTV <sup>(2)</sup>	
Encore RCF <sup>(4)</sup>	488	0.4x	7.1%	(488)	–	–	–	20
Encore Term Loan	164	0.1x	2.4%	(164)	–	–	–	20
Cabot RCF	203	0.2x	3.0%	(203)	–	–	–	
New Global RCF	–	–	–	739	739	0.6x	10.7%	
Private Placement Notes <sup>(4)</sup>	260	0.2x	3.8%	(104)	156	0.1x	2.3%	
<b>Total gross super senior secured debt</b>	<b>1,115</b>	<b>0.9x</b>	<b>16.2%</b>	<b>(220)</b>	<b>895</b>	<b>0.7x</b>	<b>13.0%</b>	
<b>Total net super senior secured debt</b>	<b>988</b>	<b>0.8x</b>	<b>14.4%</b>	<b>(253)</b>	<b>735</b>	<b>0.6x</b>	<b>10.7%</b>	
Existing SSNs	1,085	0.8x	15.8%		1,085	0.8x	15.8%	20
New Secured Financing <sup>(3)</sup>	–	–	–	300	300	0.2x	4.4%	
UK ABL	434	0.3x	6.3%		434	0.3x	6.3%	
Other Debt	21	0.0x	0.3%		21	0.0x	0.3%	
<b>Total gross secured debt</b>	<b>2,655</b>	<b>2.0x</b>	<b>38.6%</b>	<b>80</b>	<b>2,735</b>	<b>2.1x</b>	<b>39.8%</b>	
<b>Total net secured debt</b>	<b>2,528</b>	<b>1.9x</b>	<b>36.8%</b>	<b>47</b>	<b>2,575</b>	<b>2.0x</b>	<b>37.4%</b>	
Convertibles / Exchangeable Debt <sup>(4)</sup>	584	0.4x	8.5%		584	0.4x	8.5%	20
Other Debt <sup>(5)</sup>	32	0.0x	0.5%		32	0.0x	0.5%	
<b>Total gross debt</b>	<b>3,271</b>	<b>2.5x</b>	<b>47.6%</b>	<b>80</b>	<b>3,351</b>	<b>2.6x</b>	<b>48.7%</b>	
<b>Total net debt</b>	<b>3,144</b>	<b>2.4x</b>	<b>45.7%</b>	<b>47</b>	<b>3,191</b>	<b>2.5x</b>	<b>46.4%</b>	
<b>Cash and equivalents (net of client cash)<sup>(4)</sup></b>	<b>(127)</b>	<b>(0.1x)</b>	<b>(1.8%)</b>	<b>(33)</b>	<b>(160)</b>	<b>(0.1x)</b>	<b>(2.3%)</b>	



1) Based on LTM Adjusted EBITDA (\$561m) and collections applied to principal balance (\$740m).

2) Based on 84-month Estimated Remaining Collections (\$6,878m).

3) Assumes that the stretch facility is fully refinanced with debt which is pari passu to the existing Cabot SSNs.

4) Pro forma for \$40.0m repayment of Encore RCF in July, \$89.4m repayment of Convertibles in July and \$16.3m repayment of Encore Private Placement Notes in August.

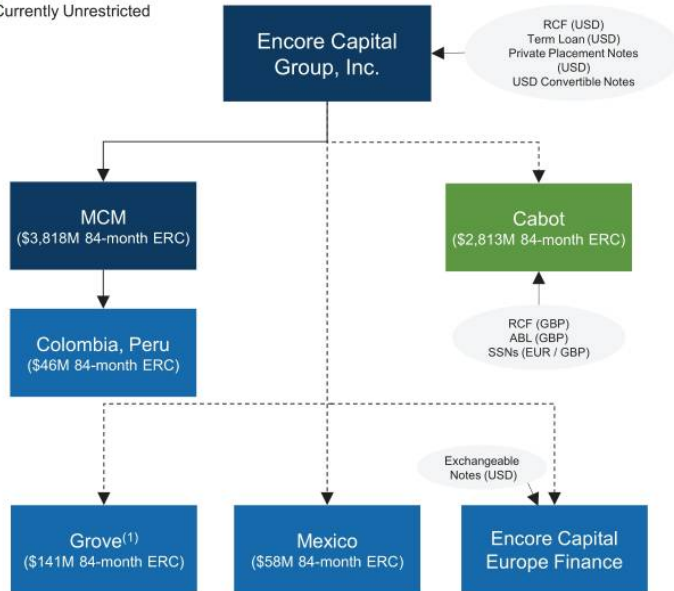
5) Includes \$9.0m of finance leases.

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# SIMPLIFIED ORGANIZATION CHART

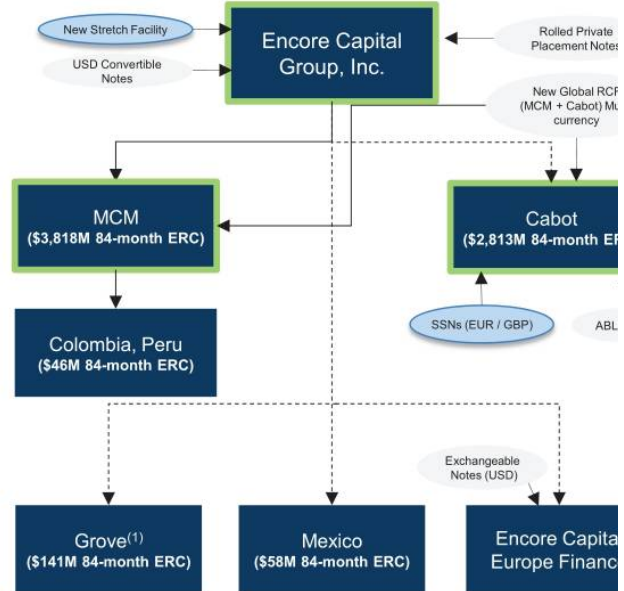
## Pre-transaction

- Current Encore/MCM Restricted Group
- Current Cabot Restricted Group
- Currently Unrestricted



## Post-transaction

### New Restricted Group Will Include All Entities



Guarantor package for the amended existing Cabot SSNs, the new Global RCF, the rolled Private Placement Notes and any New Secured Financing



Note: ERC figures are illustrative and as of 30-Jun-20.  
 1) Includes primarily Spanish portfolios held outside of Cabot.

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## **2. Company overview and update**

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# ENCORE AT A GLANCE

## Business Overview

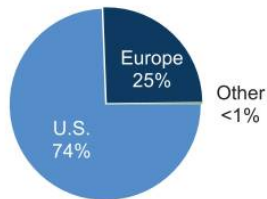
- ▶ Based in San Diego, CA, Encore Capital Group, Inc. ("Encore" or the "Company") provides debt recovery solutions for consumers across a broad range of assets
- ▶ Purchasing debt for over 25 years, the Company operates internationally with approximately 7,600 employees<sup>(1)</sup> and owns c.120 million accounts representing c.64 million unique consumers in the U.S. and U.K.
  - ▶ MCM is the largest debt buyer in the United States
  - ▶ Cabot is one of the largest credit management services providers in Europe and the market leader in the UK and Ireland by ERC
- ▶ Publicly traded NASDAQ Global Select company (ticker: ECPG) with a market capitalization of ~\$1.5bn
- ▶ Purchases portfolios of defaulted consumer receivables from credit originators, including banks, credit unions, consumer finance companies and commercial retailers
- ▶ Partners with individuals as they repay their debt obligations, helping them towards financial recovery and improving their economic well-being

## Main trading brands



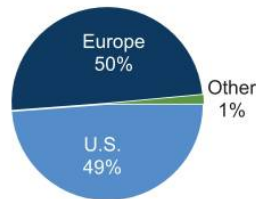
## Capital Deployed

LTM Q2 2020 Deployments  
Total \$857mn



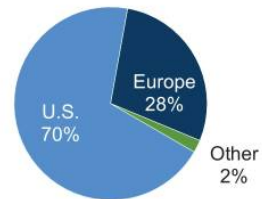
## ERC<sup>(2)</sup>

Q2 2020 180m ERC  
Total \$8.4bn



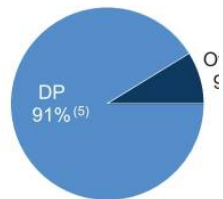
## Collections

LTM Q2 2020 Collections  
Total \$2.0bn



## Revenues<sup>(3)</sup>

LTM Q2 2020 Revenues  
Total \$1.4bn



Source: Company filings. Market data as of 28-Aug-20.

1) Number of employees as of Q1 2020, as not publicly disclosed in Q2 2020.

2) ERC represents estimated remaining gross collections for purchased receivables.







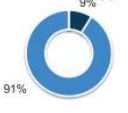

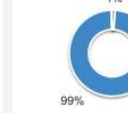












3) For periods prior to 2020, represents total revenues adjusted for allowances and allowance reversals, net.

4) Represents servicing revenue and other revenues.

5) DP (debt purchasing) represents revenues from owned receivable portfolios.

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# ENCORE IS A LEADER IN THE GLOBAL DEBT PURCHASING & RECOVERY SECTOR

	Peers <sup>(1)</sup>					
		<b>intrum</b>				
In USDm						
<b>ERC</b>	 8,382 <sup>(2)</sup> (180m)	6,942 (Total ERC)	6,352 (Total ERC)	5,089 (180m)	2,622 (180m)	2,177 (120m)
<b>Revenue mix</b>						
<b>Geographical diversification</b>						
<b>LTM Collections</b>	 2,034	1,162	1,914	954	573	559
<b>LTM Adj. EBITDA<sup>(5)</sup></b>	 561 + 740	1,207	1,225	632	405	376
<b>LTM Portfolio Purchases</b>	 857	808	1,176	434	286	224
<b>Net Debt / LTM Adj. EBITDA<sup>(5)</sup></b>	2.5x <sup>(6)</sup>	4.4x	2.0x	4.8x	3.1x	4.1x
<b>LTM Adj. EBITDA<sup>(5)</sup> / Interest</b>	6.1x	6.7x	8.5x	2.2x	4.9x	5.5x



Note: Data as of latest reported quarter; Encore, Arrow Global, B2Holding, Intrum, Lowell and PRA Group as of Q2 2020. Net debt represents debt less unrestricted cash and cash equivalents excluding client cash. See Appendix for a reconciliation of Net Debt to GAAP Debt.

1) Peers leverage sourced from public filings.  
 2) Includes \$79.8m of real estate-owned assets in Q2 2020. Prior year reported ERC figures did not include real estate-owned assets.  
 3) Represents servicing revenue and other revenues.  
 4) Arrow debt purchasing revenue based on pre-impairment income from investment business.  
 5) Adjusted EBITDA includes collections applied to principal balance. See appendix for a reconciliation of Adjusted EBITDA to GAAP net income.  
 6) Represents Q2 2020 metrics pro forma for the transaction.

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## WE ARE MAKING STEADY PROGRESS ON THREE STRATEGIC PRIORITIES

1

### Market Focus

Concentrating on the U.S. and the U.K. markets, where we have the highest risk-adjusted returns

2

### Competitive Advantage

Innovating to continually enhance our competitive advantages

3

### Balance Sheet Strength

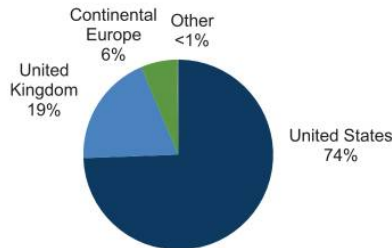
Strengthening our balance sheet while delivering strong results



# OUR MAJOR FOCUS IS ON OUR MOST VALUABLE MARKETS - THE U.S. AND THE U.K.

## 1 Our major focus is on our most valuable markets – U.S. and U.K.

Global Deployment LTM Q2 2020



LTM Q2 2020 Global Deployments = \$857M

### Focused Actions

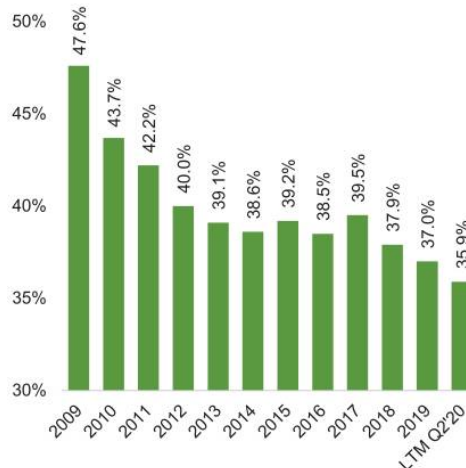
- ▶ U.S. deployments in LTM Q2 2020 of \$638m exceeded U.S. deployments in LTM Q2 2019 of \$610m
- ▶ U.K. deployments in LTM Q2 2020 of \$164m compared to U.K. deployments in LTM Q2 2019 of \$296m
  - ▶ Cabot entered into two co-investment agreements in 2019 to capture emerging market opportunities
- ▶ Divested our interest in Refinancia (Colombia & Peru) in December 2018
- ▶ Divested our interest in Baycorp (Australia and New Zealand) in August 2019
- ▶ Divested Brazil portfolio in April 2020

## 2 Business model transformation has driven operational efficiencies

### Primary drivers of cost reduction:

- ✓ India / Costa Rica operations
- ✓ Analytics & consumer-focused call model driving increase in call center/digital collections vs. legal channel
- ✓ Continuous technology / process improvement

### Encore Overall Cost-to-Collect<sup>(1)</sup>



## 3 We are growing our ERC while reducing our leverage

- ▶ Net Debt/Adjusted EBITDA<sup>(2)</sup> ratio reduced from 3.2x to 2.4x
- ▶ ERC increased by 14% in constant currency<sup>(3)</sup>
- ▶ Extended maturities of Encore convertible note, Encore RCF, and Cabot high yield bonds

### ERC vs. Leverage



Source: Company information.  
 1) Cost to Collect, also known as Cost Per Dollar Collected, is related to Encore's portfolio purchasing and recovery business and is defined and provided in Encore's annual and quarterly filings with the SEC.  
 2) Adjusted EBITDA includes collections applied to principal balance. See appendix for a reconciliation of Adjusted EBITDA to GAAP net income.  
 3) ERC growth in constant currency calculated by employing Q2 2019 foreign currency exchange rates to recalculate Q2 2020 ERC.  
 4) Q3 2019 ERC total reflects reduction of \$120 million of ERC associated with the sale of Baycorp.  
 5) Gross ERC includes expected collections on real estate-owned assets of approximately \$86.2million.  
 6) Gross ERC includes expected collections on real estate-owned assets of approximately \$79.8million.

# IMPACT OF COVID-19 ON THE BUSINESS

## COVID-19 impact on overall business

### Encore's 2020 YTD results reflect strong continued earnings growth trajectory

- ▶ In Q1, anticipated collection delays due to the COVID-19 pandemic caused us to change our collections forecast in line with CECL accounting requirements, resulting in a \$109m non-cash charge to revenues
- ▶ The vast majority of the changes in our forecast reflected estimated delays in collections, not permanent loss of collection
- ▶ Q2 was an outstanding operating period for Encore with record revenues, profits and cash generation, with global collections exceeding our revised collections forecast by 26%
- ▶ Through YTD July, on a consolidated basis we have achieved our ERC forecast for the period based on our reported Dec 31, 2019 ERC forecast<sup>(2)</sup>:
  - ▶ U.S. = 107%
  - ▶ U.K. = 94%
  - ▶ Other = 67%
  - ▶ Encore Consolidated = 100%
- ▶ Additionally, collection figures for the month of August are trending in line with YTD July figures

## Impact on MCM



### MCM has been able to successfully navigate and adjust to the changing environment caused by COVID-19

- ▶ Record MCM collections of \$386m in Q2 reflect strong growth in call center & digital collections channel
- ▶ MCM moved swiftly in transforming to a remote workforce with broad operational capabilities equipped to work from home
- ▶ Prioritized efforts on high value activities including servicing in-bound calls, maintaining paying accounts, responding to consumer inquiries, and managing in-process litigation
- ▶ Throughout the COVID-19 pandemic, the volume of portfolio sales of charged-off credit cards have remained largely in line with our expectations at the beginning of the year; industry expectations are for supply to grow meaningfully in 2021 and preparing accordingly

## Impact on Cabot



### Cabot adapted quickly to varying conditions in each market with the U.K. business experiencing the smallest impact

- ▶ Outlook for the U.K. and Europe has improved as Q2 collections exceeded our revised curves
- ▶ Q2 collections better than forecasted at Q1 with the initial impact of COVID-19 not as severe as anticipated
- ▶ FCA guidance of offering forbearance in hardship cases is already embedded in Cabot's collections process
- ▶ Collections performance varied by country, with largest impact for Cabot in Spain, representing less than 7% of Encore E
- ▶ Due to COVID-19 outbreak, banks paused portfolio sales to address customers' needs - expect a lower level of supply to market in the near-term, followed by an increase in medium-term opportunities at attractive returns as charge-offs are expected to rise meaningfully



Source: Company information.  
 1) In the U.S. – for Q2-Q4 2020, estimated delays of 12 to 21 months; in Europe – for Q2-Q3 2020, estimated delays over a number of years, due in part to the nature of long payment plans.  
 2) Beginning in Q1 2020, ERC and collections include recovered court costs and 15-year rolling curves.



### **3. Credit highlights**

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# ENCORE – A HIGHLY ATTRACTIVE CREDIT STORY



## Encore attributes

Scale & efficiency	Regulatory & compliance excellence	Consumer focus	Data and analytical leadership	Disciplined capital allocation
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### Unsecured consumer finance market attributes

- Large market size
- High degree of market sophistication
- Consistency of front-book opportunities
- Granular, diversified portfolios
- Back-book resilience

### These factors make Encore what it is today ...

- A** We are a leading operator in our core U.S. and U.K. markets with attractive long term growth prospects and strong competitive advantages
- B** Our scale, operational differentiation and compliance excellence drive strong risk adjusted returns
- C** 20+ years of experience have created a large, diversified back-book generating resilient cash flows
- D** Strong operating performance and capital allocation discipline support Encore's healthy financial profile







**A. A leading operator in our core U.S. and U.K. markets with attractive long term growth prospects & strong competitive advantages**

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# FOCUS ON MARKETS WITH ATTRACTIVE STRUCTURAL CHARACTERISTICS

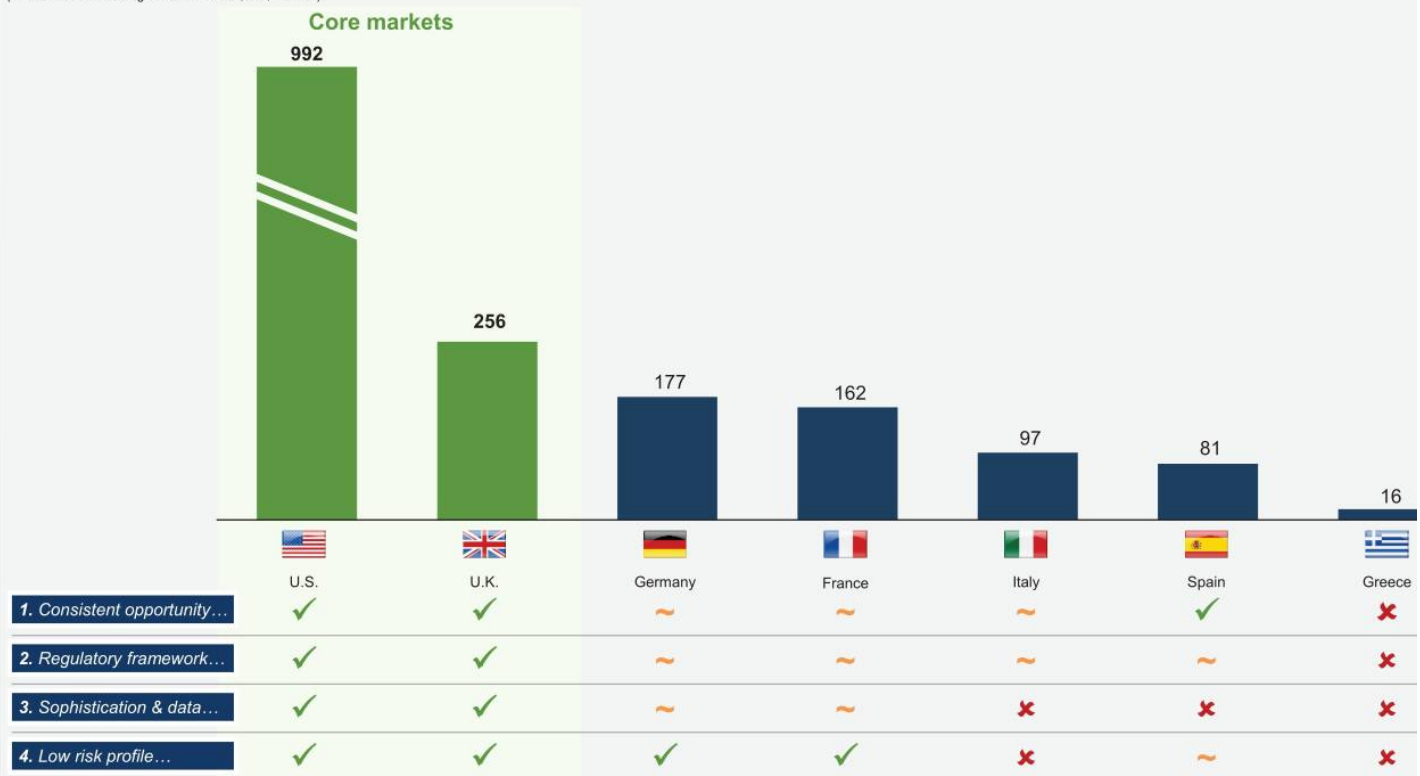
## Attributes that we believe make a market attractive

<b>1</b>	<b>Large, consistent opportunity</b>	<ul style="list-style-type: none"><li>▶ Ability to develop sustainable scale</li><li>▶ Consistent, long term flow of front-book opportunities as a result of debt sales being an embedded part of the financial ecosystem</li><li>▶ Fresh, early bucket delinquent debt sales</li></ul>
<b>2</b>	<b>Regulatory framework</b>	<ul style="list-style-type: none"><li>▶ Strong regulatory framework that supports banks to outsource or sell</li><li>▶ Mature legal framework providing enhanced risk management</li></ul>
<b>3</b>	<b>High degree of sophistication and data availability</b>	<ul style="list-style-type: none"><li>▶ Availability of data to enable informed investment decisions</li><li>▶ Sophisticated sellers who recognize the benefits of credit management services</li><li>▶ Operations and data analytics that drive outperformance and competitive advantage</li></ul>
<b>4</b>	<b>Low through-the-cycle risk profile</b>	<ul style="list-style-type: none"><li>▶ Low volatility of long term returns</li><li>▶ Risk management – granular, diversified portfolios that provide effective mitigation of risk</li><li>▶ Resilience in the event of macroeconomic shocks</li></ul>

# OUR CORE MARKETS ARE UNDERPINNED BY LARGE, ESTABLISHED CONSUMER SECTORS

## Key markets in the U.S. & Europe

(Unsecured outstanding consumer credit, US\$ billions).



Source: U.S. Federal Reserve data for June 2020, as of August 2020, European Central Bank data for June 2020 as of August 2020 and Bank of England data for June 2020 as of August 2020, Management insights.

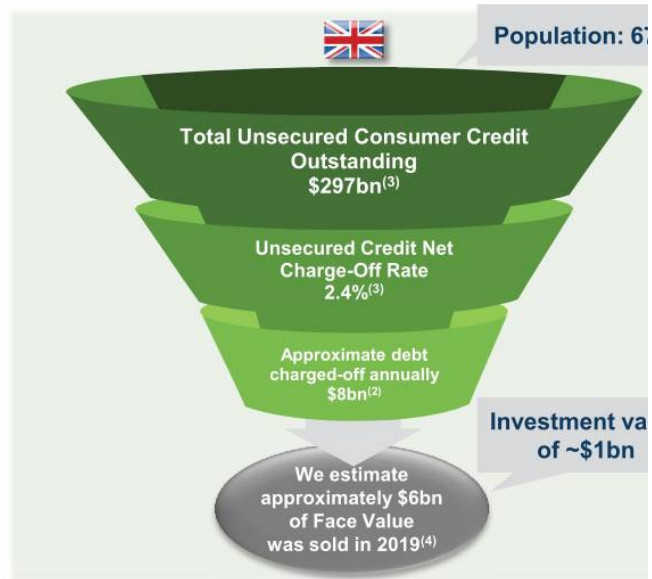
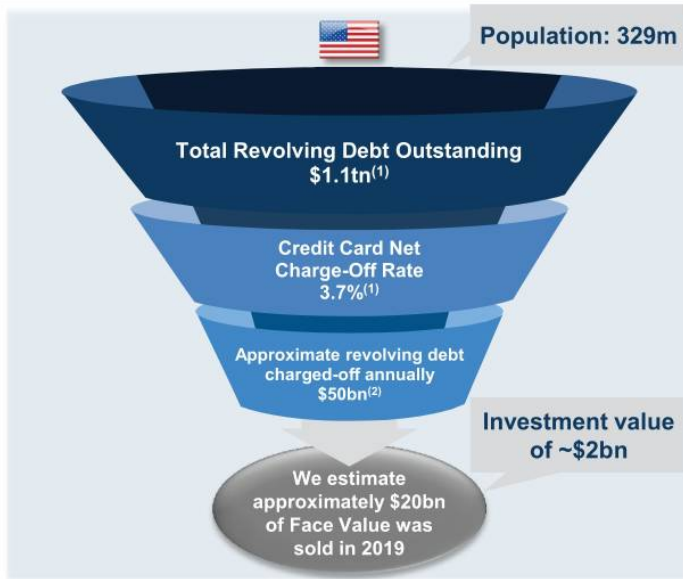
Note: Consumer credit converted to US\$ at FX rate prevailing on June 30, 2020 for Bank of England data and for European Central Bank data. U.S. unsecured outstanding consumer credit defined as total revolving debt outstanding, excluding student loans.



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# THE MARKET OPPORTUNITY IS SIGNIFICANT...



## Key global factors driving NPL supply



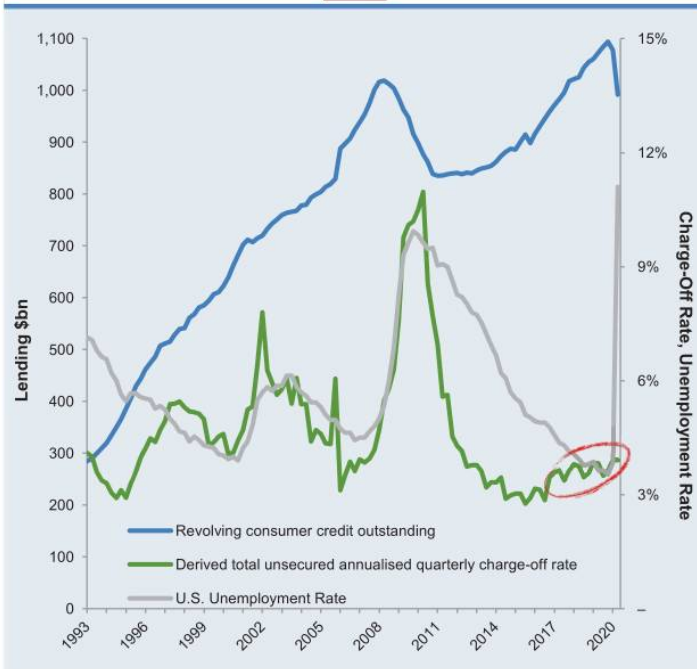
Source: Federal Reserve, Bank of England, U.S. Bureau of the Census, U.K. Office for National Statistics, Encore management estimates.  
 Note: Dollar denominated data in United Kingdom funnel converted from GBP to US\$ at exchange rate of 1.2400 prevailing on 31-Mar-20 and 1.2356 prevailing on 30-Jun-20.  
 1) Federal Reserve update for Q4 2019 as of Q2 2020, not seasonally adjusted and excludes loans secured by real estate.  
 2) Assumes 17.5% Recovery Rate to Estimate Gross Charge-Offs.  
 3) Bank of England consumer credit data as of December 2019.

4) U.K. Face Value sold is close to 100% of approximate debt charge offs due to backlog of debts as well as new entrants in the market and existing sellers selling more.  
 5) Deployments in 2019.  
 6) European Central Bank implementing tougher rules on NPL inventory.  
 7) Banks facing constraints on compliance expertise, IT capex and operations headcount, deemphasizing in-house credit management.  
 8) As a result of accelerated impairment recognition under IFRS 9, provisions are estimated to increase by 9% with a day-one impact on CET1 of 51bps.  
 European Banking Authority quantitative impact analysis, December 2018.

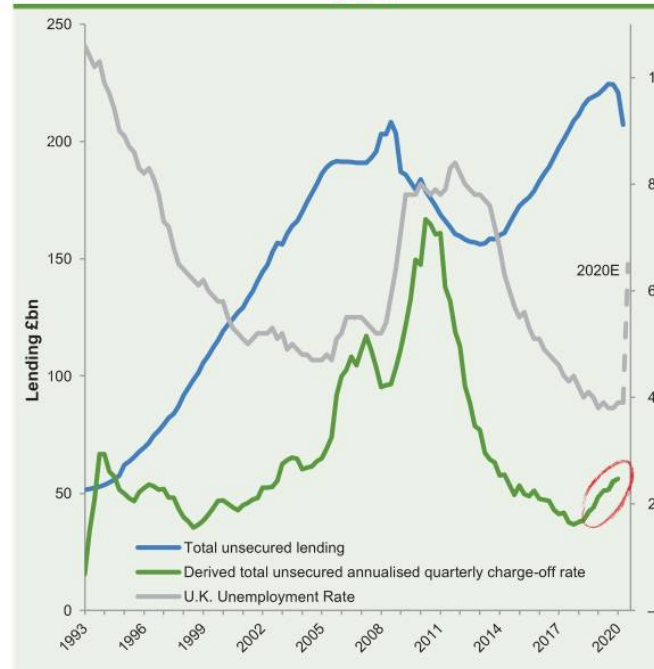
# ... WITH NEW NPL GENERATION LIKELY TO GROW SIGNIFICANTLY

## Unsecured consumer lending and total charge-off rate

- ▶ Banks' charge-off rates and loan loss allowances at highest level in the last six years
- ▶ As the current situation runs its course, we expect the charge-off rate to react to the spike in unemployment in the U.S.



- ▶ Rapid consumer credit growth in the U.K. will drive meaningful supply growth
- ▶ Early signs of increasing default rates visible – potential further acceleration due to Brexit implications



Source: For U.S. – June 2020 - U.S. Federal Reserve revolving consumer credit, seasonally adjusted & credit card net charge-off rate. Unemployment rate – St. Louis Fed as of June 2020.  
 For U.K. – Bank of England – March 2020 for charge-offs and June 2020 for unsecured lending – excludes student loans. Unemployment rate – Office of National Statistics as of June 2020.  
 JPM report.



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# FEWER SCALED PLAYERS WILL BENEFIT FROM THE CURRENT CREDIT CYCLE AS A RESULT OF INDUSTRY CONSOLIDATION





Source: Company and peer websites, annual filings and press releases.



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# WE BENEFIT FROM STRONG COMPETITIVE ADVANTAGES

			
<b>Regulation</b>	<ul style="list-style-type: none"> <li>• Mature markets entail high legal, regulatory and compliance obligations</li> <li>• Replicating Encore's compliance infrastructure would entail prohibitive time, cost &amp; licensing requirements</li> </ul>	<ul style="list-style-type: none"> <li>▶ State-by-state regulation – often demands licensing</li> <li>▶ Significant prescriptive regulation – proposed CFPB rules 500+ pages</li> </ul>	<ul style="list-style-type: none"> <li>▶ FCA authorization required for servicing / SRA for litigation</li> <li>▶ Principles based – intense focus on consumer treatment</li> </ul>
<b>Client relationships</b>	<ul style="list-style-type: none"> <li>• Banks reduce number of servicers to handful of trusted key partners</li> <li>• Comprehensive and regular client audits</li> </ul>	<ul style="list-style-type: none"> <li>▶ Agile response to issuer requests for spot transactions</li> <li>▶ Bank restrictions on resale of debt</li> </ul>	<ul style="list-style-type: none"> <li>▶ Deeper relationships from BPO and debt servicing history leads to proprietary purchase opportunities</li> </ul>
<b>Proprietary data</b>	<ul style="list-style-type: none"> <li>• High frequency of consumer interaction enables consumer centric outcomes</li> <li>• Large data warehouse leads to improved pricing, collections efficiency and fair consumer treatment</li> </ul>	<ul style="list-style-type: none"> <li>▶ Over 2,900 portfolios acquired / 25+ years of data</li> <li>▶ Relationship with 1/5 U.S. consumers</li> </ul>	<ul style="list-style-type: none"> <li>▶ Over 2,000 portfolios acquired / 20+ years of data</li> <li>▶ Relationship with 1/8 U.K. consumers</li> </ul>
<b>Scale</b>	<ul style="list-style-type: none"> <li>• Scale of operations allows investment in infrastructure and compliance</li> <li>• Diversified access to capital markets lowers cost of funding and facilitates liquidity management</li> </ul>	<ul style="list-style-type: none"> <li>▶ Ability to operate in all 50 states with licenses in every state where required, with approximately 4,300 employees<sup>(1)</sup></li> </ul>	<ul style="list-style-type: none"> <li>▶ Largest U.K. financial services portfolio with approximately 3,300 employees<sup>(1)</sup></li> </ul>

Note: CFPB = Consumer Financial Protection Bureau, FCA = Financial Conduct Authority, and SRA = Solicitors Regulation Authority.  
 1) Total global employees contributing to the U.S. business. Number of employees as of Q1 2020, as not publicly disclosed in Q2 2020.



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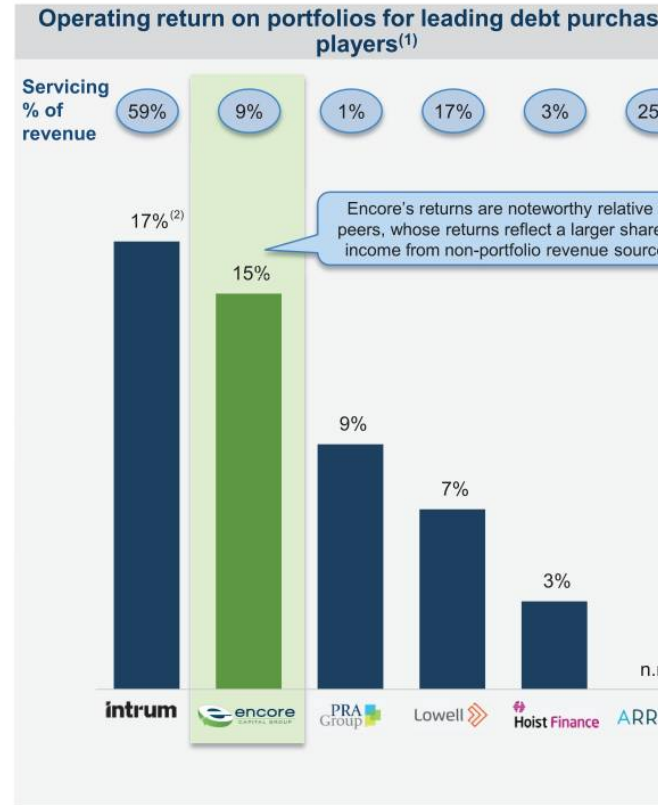


## **B. Our scale, operational differentiation and compliance excellence drive strong risk adjusted returns**

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# OUR MARKET-LEADING SCALE AND OPERATIONAL DIFFERENTIATION DELIVER MARKET-LEADING RETURNS



Source: Company filings for Encore and relevant peers as of LTM latest available quarter.  
 1) Calculated as operating profit divided by average book value of portfolios. Data as of period lasting last twelve months to Q2 2020 for Encore, Arrow Global, Hoist Finance, Intrum, Lowell and PRA Group.  
 2) Based on operating profit adjusted for goodwill impairments.  
 3) Company information as of latest reported quarter; Non-USD figures translated at spot rate as of quarter end. ERC as reported for Encore; PRA Group; (total); Lowell; (180 months), geographic split of 120 months ERC applied to 180 months; Intrum (total) and Hoist Finance (180 months), U.K. share of ERC calculated by applying U.K. net carrying value of NPL portfolios as of June 2020 to global ERC; Arrow Global; (120 months), U.K. share of ERC calculated by applying 84 months U.K. split of ERC.  
 4) Gross ERC includes expected collections on real estate-owned assets of approximately \$79.8 million in other geographies.  
 5) In Q2 2020, Arrow Global recorded a £133m impairment charge in relation to COVID-19, resulting in an operating loss for the twelve months to Q2 2020.

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# SUPERIOR DATA ANALYTICS DRIVES OUR ENHANCED CONSUMER CENTRIC APPROACH



## Data assets



- ▶ ~109 million accounts
- ▶ ~60 million consumers
- ▶ On average, we have an existing relationship with ~40% of consumers in each new portfolio

- ▶ ~9 million accounts
- ▶ ~1.7 billion transaction records
- ▶ ~160 million financial transactions
- ▶ ~780 million dialer records
- ▶ ~17 million litigation records

## Advanced analytics



- ▶ Sophisticated use of speech analytics
  - Real-time analytics
  - Call library for training
- ▶ Speech analytics underpins valuation and pricing rigor
- ▶ Substantial experience & expertise: more than 20 years of data, insights, modelling and operational integration
- ▶ Advanced and sophisticated set of litigation scorecard models
- ▶ Proprietary scorecards for legal placement, direct mail, call center effort

## Consumer centric execution



- ▶ Real-time sentiment analysis informing approach to next interaction with consumer
- ▶ Insights from data and analytics integrated across business processes
- ▶ Automated process to update consumer profile and treatment based on real time internal and external data
- ▶ Post call consumer feedback
- ▶ Proprietary data, advanced analytics, supporting appropriate consumer-level engagement

Source: Company information.

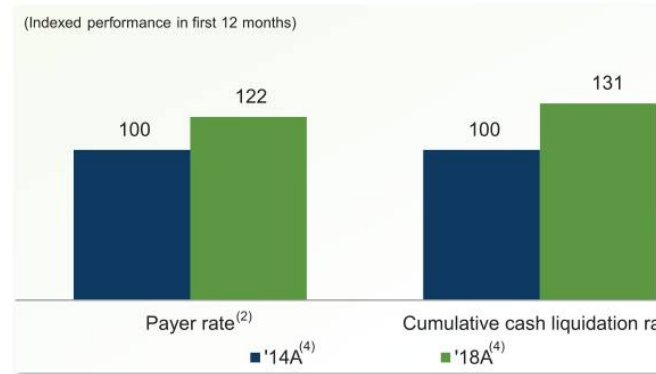
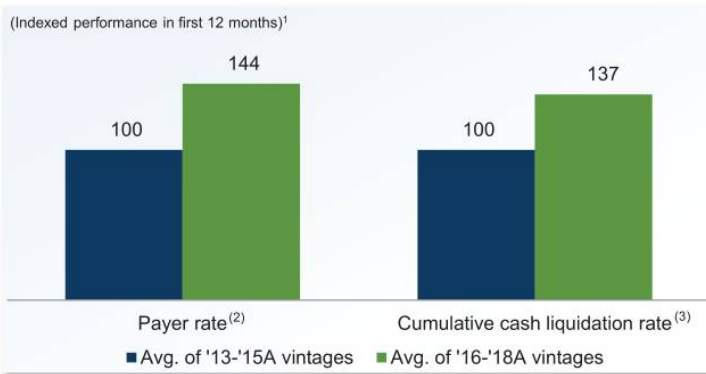


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# CONSUMER FOCUS AND OPERATIONAL ENHANCEMENTS HAVE IMPROVED LIQUIDATION EFFECTIVENESS



**Improved collection efficiency**



1) Average payer rate and cumulative cash liquidation rate on 2013 to 2015 vintages indexed to 100 and benchmarked against vintages raised in 2016 to 2018.  
 2) Payer rate represents percentage of accounts paying in the first 12 months.  
 3) Cumulative cash liquidation rate represents percentage of face value collected in the first 12 months.  
 4) Comparable portfolios for 2014 and 2018 sold by the same vendor.

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# OUR FOCUS ON RISK MANAGEMENT AND COMPLIANCE IS A COMPETITIVE ADVANTAGE

## Encore is highly focused on regulatory compliance

<p><b>Principled treatment of consumers</b></p>	<ul style="list-style-type: none"> <li>▶ MCM Consumer Bill of Rights</li> </ul> 
<p><b>Compliance capabilities</b></p>	<ul style="list-style-type: none"> <li>▶ Encore has heavily invested in both personnel and processes to support the changing regulatory landscape</li> <li>▶ Large team of specialists ensuring regulatory compliance</li> </ul>
<p><b>Collaborative relationship with regulators</b></p>	 <p>Consumer Financial Protection Bureau</p>  <p>FEDERAL TRADE COMMISSION PROTECTING AMERICA'S CONSUMERS</p>

## Encore's issuer certification program is a key differentiator

MCM averages roughly 35 issuer audits and due diligence exercises per year

- ▶ The certifications received through these audits are a prerequisite for purchasing debt from issuers
- ▶ Encore has achieved certification from all major U.S. issuers who sell their charged-off accounts

### Issuer Review / Audit Process



“Encore by far is the most transparent, prepared, and buttoned up of any debt buyer we've audited. You have raised and set a new bar for the industry.”

- Top 5 Credit Card Issuer

Source: Company information.



Proprietary and Confidential



# HIGHLY EXPERIENCED OPERATOR IN TIGHTLY REGULATED ENVIRONMENT

## Leading track record of regulatory approval

- ▶ First large U.K. CMS company to receive full FCA authorization
- ▶ In-house legal expertise regulated by the Solicitor Regulation Authority (SRA)



## Recognized industry leadership



**Best vulnerable consumer strategy**  
**WINNER**



**Best Use of Technology**  
**WINNER**



**Best Debt Purchaser & Best Vulnerable Strategy**  
**WINNER**



**Best legal service provider**  
**WINNER**



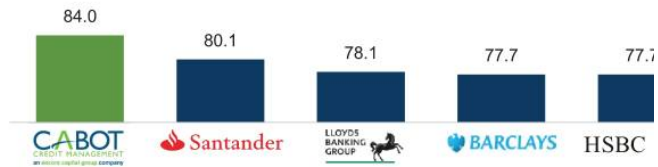
**UK Customer Satisfaction Awards 2019**  
**WINNER**



**Law Firm of the Year**  
**WINNER**

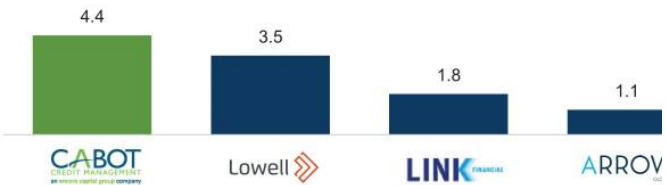
## U.K. consumer satisfaction index<sup>(1)</sup>

(Comparison with selected banks)



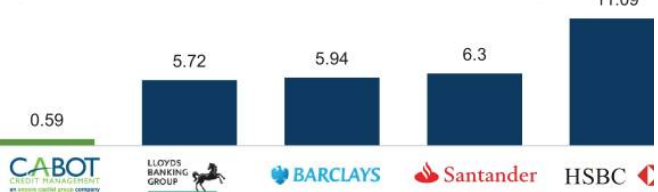
## Google reviews<sup>(2)</sup>

(Google rating out of 5 stars, selection of peers that management believes are key competitors for comparison purposes)



## Self-reported complaints<sup>(3)</sup>

(# of complaints received per 1,000 accounts, comparison with selected banks)



Source: Company information.

Note: Debt purchasing peers are not part of the U.K. consumer satisfaction index.

1) Consumer satisfaction survey run by the Institute of Consumer Service. Respondents are asked to rate their experience of individual organizations they have dealt with in the previous three months, using a scale of 1 – 10. These scores are then multiplied by ten so that the index scores are expressed as a number out of 100.

2) Data collected from Google reviews web page as of 13-Aug-20. Cabot rating represents Cabot Financial, our UK debt purchase subsidiary.

3) Self reported complaints data for the period H1 2020 for Cabot and for H1 2019 for selected banks.

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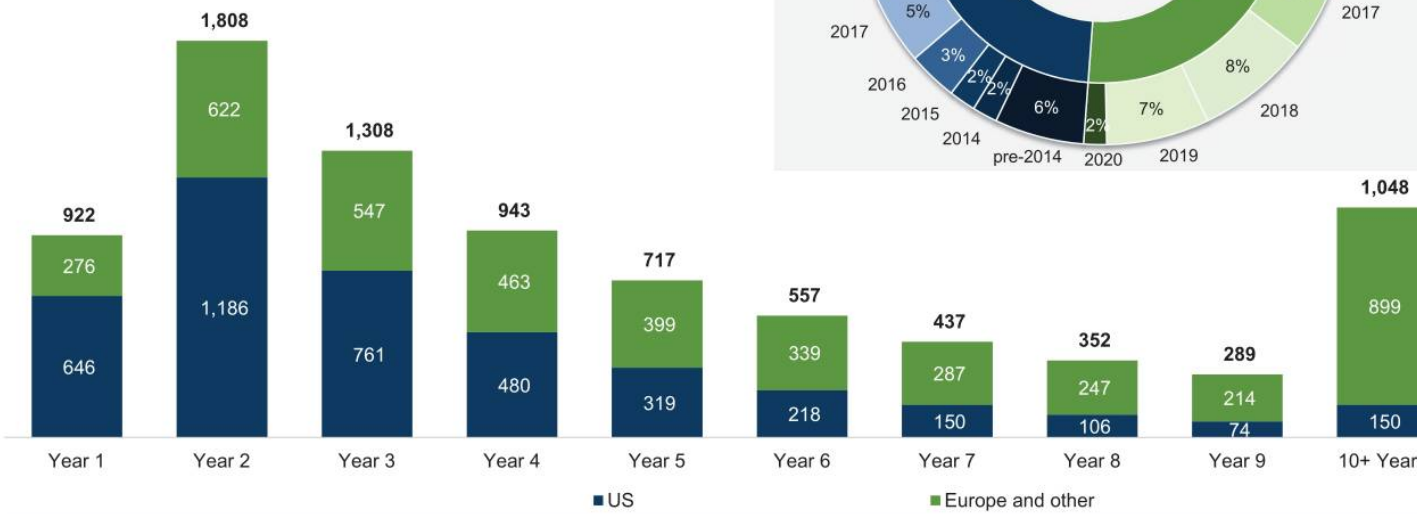
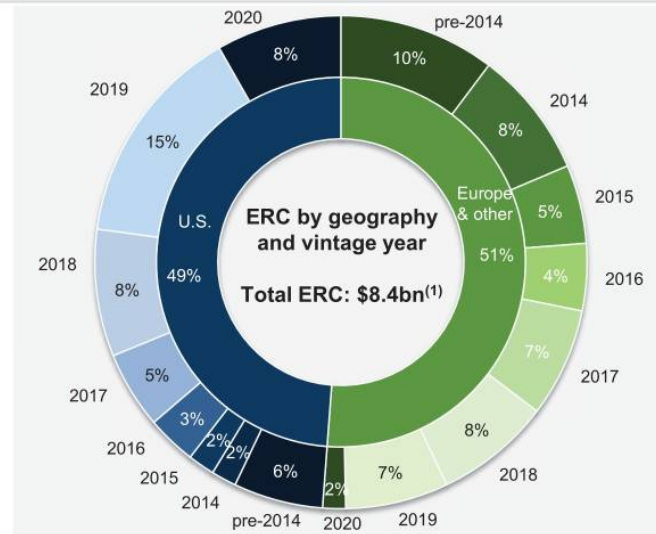
**C. 20+ years of experience have created a large, diversified back-book generating resilient cash flows**

---

# HIGHLY DIVERSIFIED BACK-BOOK

Estimated remaining collections, US\$ millions

- ✓ Short-tailed curve in U.S. reduces performance risk
- ✓ Long-tailed curve in Europe represents higher focus on payment plans, thus reducing reinvestment risk



Source: Company information, public filings.  
 Note: ERC as of Q2 2020; Year 1 amount represents Estimated Remaining Collections for the 6 month period from July 2020 to December 2020.  
 1) Includes \$79.8m of real estate-owned assets in Q2 2020.

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# DEMONSTRATED BACK-BOOK RESILIENCE DURING PERIODS OF ECONOMIC STRESS

## Unprecedented stress during financial crisis

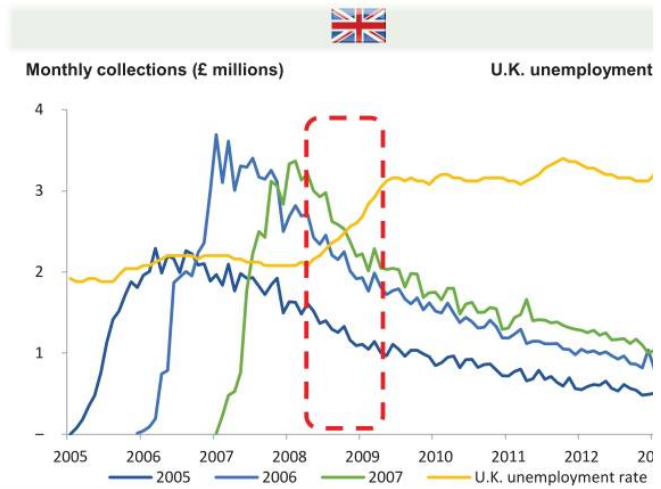
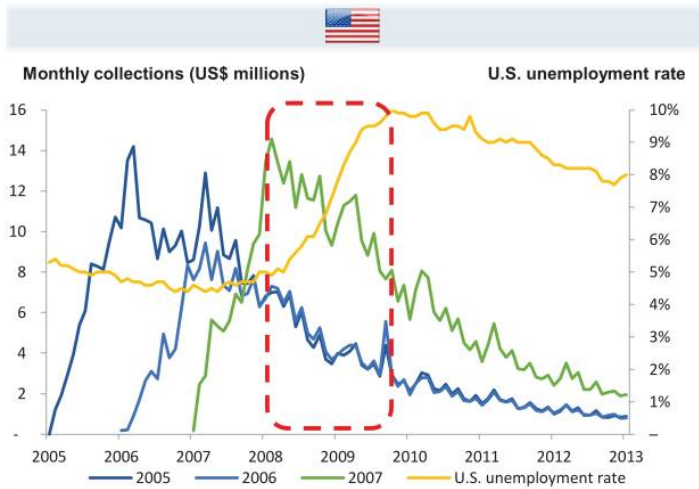
Extract from Encore 2008 10-K:

*“The United States and global economies are currently in turmoil. In the U.S., the availability of credit is limited, unemployment rates are at 25-year highs as more layoffs are announced weekly, credit card charge-offs and delinquencies have increased more than 33% in the last year, home foreclosures have dramatically increased and the housing market is experiencing a significant downturn...”*

*... As a result of the deteriorating economic conditions, ... we have seen a shift in payments from consumers from single payment settlements to payment plans...*

*... prices for fresh charge-offs (receivables that are sold immediately after charge-off) have declined from 8% – 13% of face value in early 2008 to 6-10% of face value in late 2008.”*

## Limited impact on back-book collections



Source: Company information, United Kingdom Office of National Statistics, Federal Reserve.



 Period of rising unemployment

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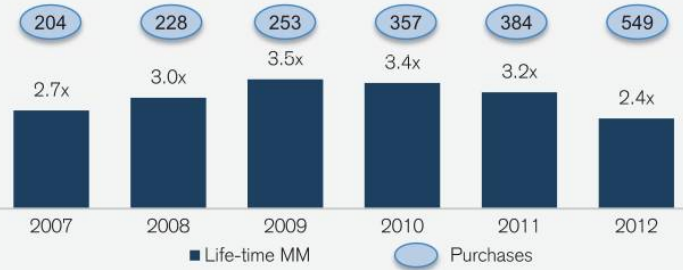




# FINANCIAL CRISIS PROVIDED SIGNIFICANT OPPORTUNITIES FOR MCM AND HIGHLIGHTED BACK-BOOK RESILIENCE

## MCM increased its level of investment at attractive returns...

Purchases and life-time money multiples, US\$ millions

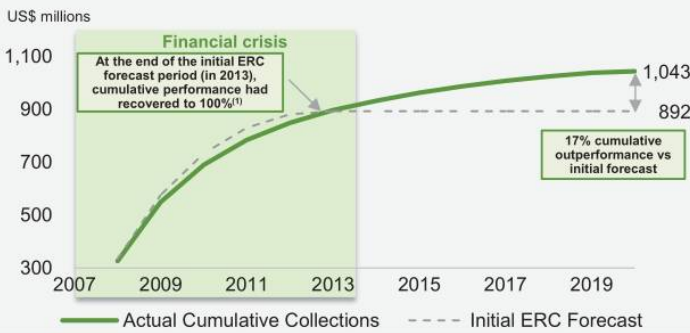


## ... and significantly improved its collection efficiency

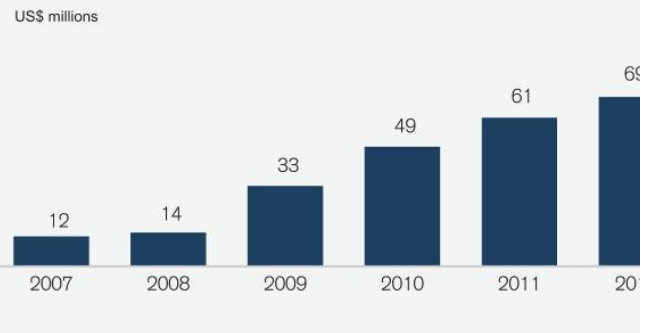
Collections and cost-to-collect, US\$ millions



## Cumulative collections vs. original 2007 ERC forecast<sup>(1)</sup>



## Net income through the crisis

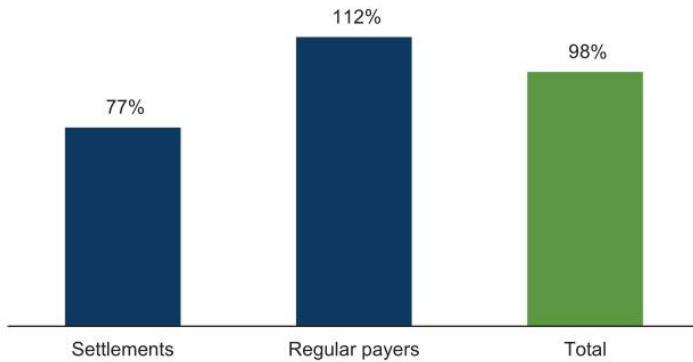


Source: Company information.  
 Note: As of Q2 2020, Life-time money multiples: actual collections plus estimated remaining collections for a given vintage as a multiple of original purchase price. Management utilizes adjusted operating expenses in order to facilitate a comparison of approximate costs to cash collections for our portfolio purchasing and recovery business (cost-to-collect). Adjusted operating expenses for our portfolio purchasing and recovery business are calculated by starting with GAAP total operating expenses and backing out operating expenses related to non-portfolio purchasing and recovery business, acquisition, integration and restructuring related operating expenses, stock-based compensation expense, settlement fees and related administrative expenses and other charges or gains that are not indicative of ongoing operations. In 2007, ERC forecast was through 2013 only.



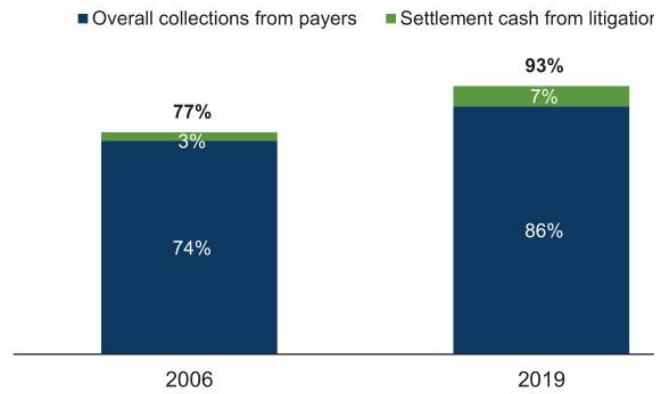
# U.K. PAYERS ARE RESILIENT – PAYING ACCOUNTS COMPRISE MORE OF OUR U.K. COLLECTIONS POST CRISIS

## Cumulative performance of 2005 vintage vs IC<sup>(1)</sup> estimates



- ✓ Overall cumulative performance at 98% of initial pricing curve
- ✓ Cash flow tail still generates incremental value – 3.9% of investment value in 2019
- ✓ Demonstrates resilience of regular payers during financial crisis

## Greater proportion of collections from resilient sources



- ✓ Greater proportion of collections from payers (payment plans and settlements), who demonstrated resilience during the financial crisis
- ✓ Increase in collections from litigation activity (including security over property)
- ✓ Significant reduction in collections expected to be at risk the event of macro economic stress (down from 23% to 7%)



Note: Cabot + Marlin U.K. portfolios originated in 2005.  
 1) Cumulative performance up until Q2 2020. IC estimates refer to initial estimates approved by the investment committee.

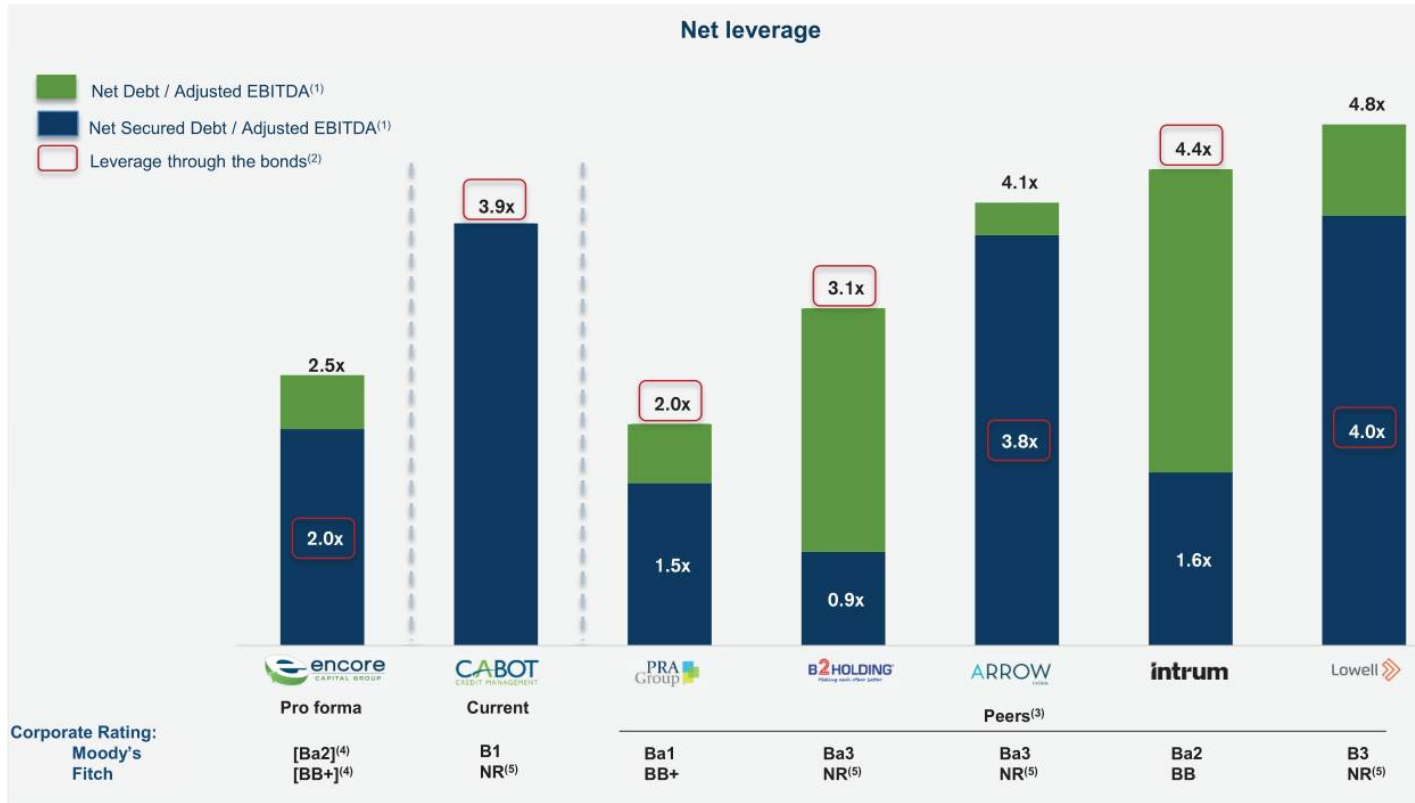


## **D. Strong operating performance and discipline support Encore's healthy financial profile**

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# CREDIT STRENGTH DEMONSTRATED BY CONSERVATIVE LEVERAGE PROFILE

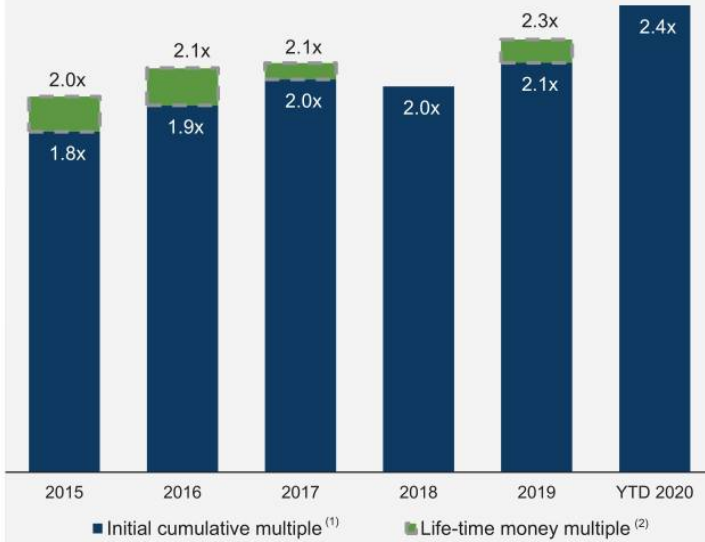


Note: Data as of most recent reported quarter – Pro Forma for the transaction for Encore, Cabot, Encore, Arrow Global, B2 Holding, Intrum, Lowell and PRA Group as of Q2 2020. Net debt represents debt less unrestricted cash and cash equivalents excluding client cash. See Appendix for a reconciliation of Net Debt to GAAP Debt. For Cabot, based on IFRS and therefore not comparable to Encore's financial presented throughout this presentation.  
 1) Adjusted EBITDA includes collections applied to principal balance. See appendix for a reconciliation of Adjusted EBITDA to GAAP net income.  
 2) Refers to secured bonds for Lowell.  
 3) All data sourced from public filings.  
 4) Expected ratings.  
 5) NR: Not rated.

# DEPLOYING CAPITAL AT STRONGER MONEY MULTIPLES AND ACHIEVING GREATER OPERATIONAL EFFICIENCY...

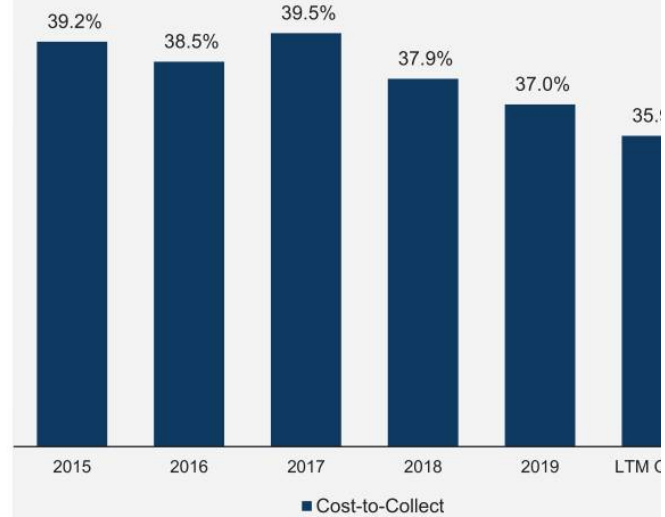
## Global collections multiples

- ▶ MCM deployments at consistently improving multiples since 2015 as market conditions have improved
- ▶ Cabot deployments at improving returns, albeit with a shift in 2017 and 2018 to paying portfolios (lower purchase multiples but strong returns due to lower cost to collect)



## Overall cost-to-collect<sup>(3)</sup>

- ▶ Over 300bps reduction in cost-to-collect leveraging scale to drive improvements
- ▶ MCM driving cost efficiencies through collection channel optimization and effective operations growth in lower cost locations
- ▶ Cabot delivering margin improvements through ongoing program cost efficiencies, and recent focus on paying portfolios

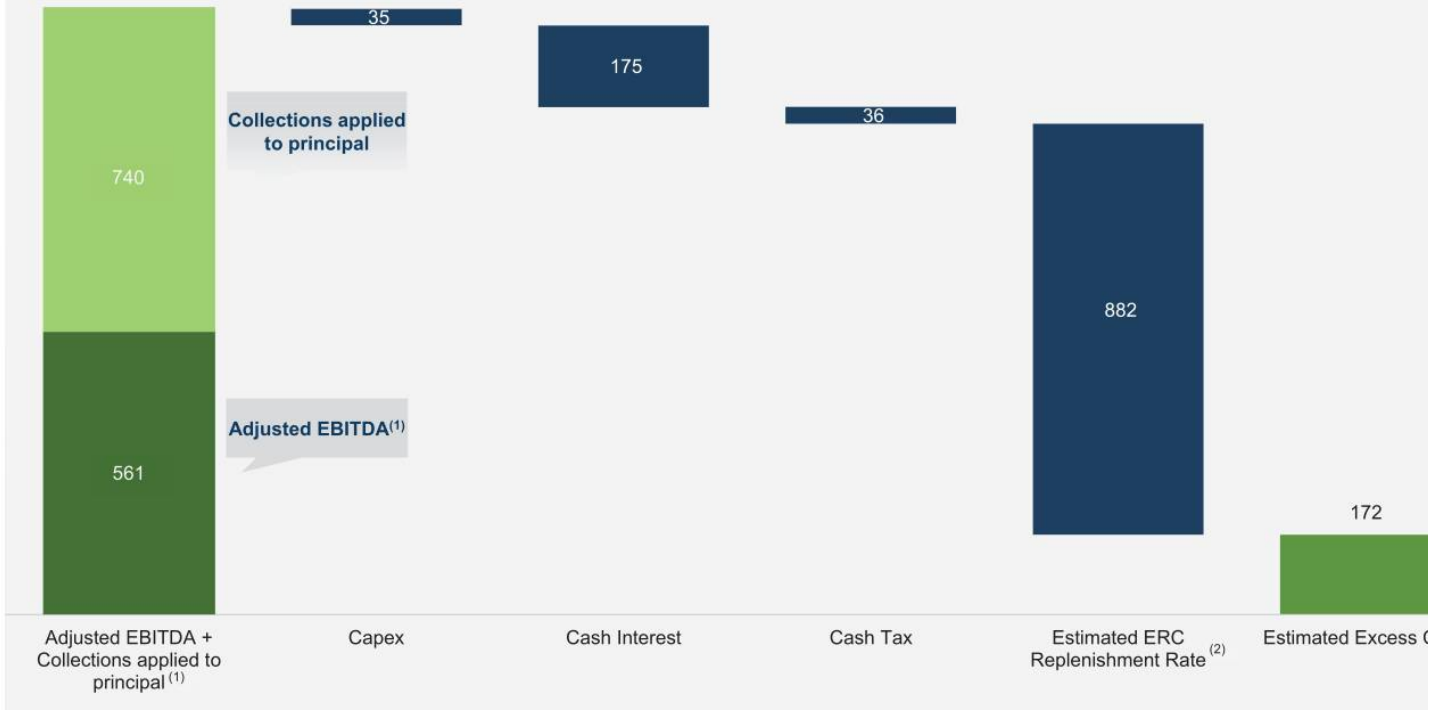


1) Based on expected cumulative collections at the time of portfolio acquisition.  
 2) Calculated as (collections to date plus ERC) / purchase price.  
 3) Cost-to-collect presented on a reported basis for portfolio purchasing and recovery.

# ... TO ENABLE STRONG CASH FLOW GENERATION

**Illustrative estimated excess cash flow generation waterfall**  
For the twelve months ended June 30, 2020

(US\$ millions)



1) See Appendix for a definition and reconciliation of Adjusted EBITDA to GAAP net income.  
 2) Estimated ERC Replenishment Rate represents management's estimate of the amount of purchases that were needed to replenish ERC in order to maintain a steady state ERC balance. The Estimated ERC Replenishment Rate is an illustrative calculation based on management's estimates and as assumptions with respect to money multiples and the amount of ERC to be replenished. The Estimated ERC Replenishment Rate may be determined or calculated differently by other companies. Actual purchases made during the period were \$857 million. See Appendix for the calculation the Estimated ERC Replenishment Rate.  
 3) Estimated Excess Cash represents management's calculated sum of the amounts and estimates set forth on this page. It is provided for illustrative purposes only and does not represent actual cash flows during any period or amount of cash available at any time.

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## LIQUIDITY CHARACTERISTICS OF ENCORE'S BUSINESS

- ▶ Compared to other financial services companies, Encore has a high cash conversion rate:
  - ▶ For every \$1 of gross collections, we generate ~\$0.50 in cash before portfolio purchases (but after interest and taxes).
    - ▶ This is equivalent to ~\$80 million of cash generated per month after interest and taxes
  - ▶ In the event collections were to decline significantly, we have great flexibility to reduce portfolio purchases and operating expenses (much of which are variable and directly related to collections)
- ▶ Lower portfolio purchases don't jeopardize back book collections
  - ▶ Unlike issuers of consumer credit, our consumers don't need to be supported with further lending from us
- ▶ If we ever need to shrink the business, we can generate a large amount of cash in almost any environment



## ENCORE – A HIGHLY ATTRACTIVE CREDIT STORY



## CONCLUSION



**Combination leverages the size of Encore and Cabot to create a Global leader**



**Broad geographic footprint across the most mature markets**



**Sophisticated compliance and regulatory stakeholder management**



**Diversified asset base and cycle-tested business providing attractive free cash flow profile**



**Enhanced access to capital markets across continents**



**Prudent leverage vs. peers – guidance of 2.0x – 3.0x reflecting conservative capital management strategy**





# Appendix

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# KEY PERFORMANCE INDICATORS

Operating (all figures in USD 000s)	31-Dec-17	31-Dec-18	31-Dec-19	31-Mar-20	30-June-20	30-June-20 (1)
84m ERC	6,013,943	6,284,688	6,875,307 <sup>(2)</sup>	6,948,213 <sup>(2)</sup>	6,877,976 <sup>(2)</sup>	6,877
180m ERC	6,955,314	7,164,099	7,825,474 <sup>(2)</sup>	8,458,948 <sup>(2)</sup>	8,381,829 <sup>(2)</sup>	8,381
Purchases <sup>(1)</sup>	1,045,829	1,131,095	988,292	209,045	141,613	839
Purchase multiple (for the year)	2.0x	2.0x	2.1x	2.3x	2.4x	
Servicing as % of total revenue (for the period) <sup>(3)</sup>	8%	11%	10%	11%	6%	
Cost to collect	40%	38%	37%	37%	31%	
Performance	31-Dec-17	31-Dec-18	31-Dec-19	31-Mar-20	30-June-20	30-June-20 (1)
Total collections	1,767,644	1,967,620	2,026,928	527,279	508,215	2,033
Total revenue	1,187,038	1,362,030	1,397,681	289,081 <sup>(4)</sup>	426,033	1,418
Adjusted EBITDA & collections applied to principal	31-Dec-17	31-Dec-18	31-Dec-19	31-Mar-20	30-June-20	30-June-20 (1)
Adjusted EBITDA	406,607	461,557	505,851	62,640	236,218	560
Collections applied to principal	673,035	759,014	765,748	268,575	106,921	739
Profitability	31-Dec-17	31-Dec-18	31-Dec-19	31-Mar-20	30-June-20	30-June-20 (1)
Operating margin <sup>(6)</sup>	27%	30%	32%	16%	52%	
RoAE	14.6%	16.6%	18.2%	NM <sup>(4)</sup>	13.4%	20
Credit statistics	31-Dec-17	31-Dec-18	31-Dec-19	31-Mar-20	30-June-20	30-June-20 (1)
Gross debt / Adjusted EBITDA <sup>(5)</sup>	3.3x	2.9x	2.8x	2.7x	2.6x	
Net debt / Adjusted EBITDA <sup>(5)</sup>	3.1x	2.8x	2.7x	2.6x	2.4x	
Adjusted EBITDA <sup>(5)</sup> / Interest expense	5.3x	5.1x	5.6x	6.1x	6.8x	
LTV (Net debt as % of 84m ERC)	55%	55%	50%	47%	46%	
LTV (Net debt as % of 180m ERC)	48%	48%	44%	39%	37%	



Source:

Company information.

1)

Net of put backs and co-investment purchases.

2)

Includes \$92.4m, \$86.2m and \$79.8m of real estate-owned assets in Q4 2019, Q1 2020 and Q2 2020, respectively. Prior years of reported ERC figures did not include real estate-owned assets.

3)

Represents servicing revenue and other revenues.

4)

Q1 2020 includes a non-cash charge of \$109m related to anticipated collection delays due to the COVID-19 pandemic.

5)

Adjusted EBITDA includes collections applied to principal balance.

6)

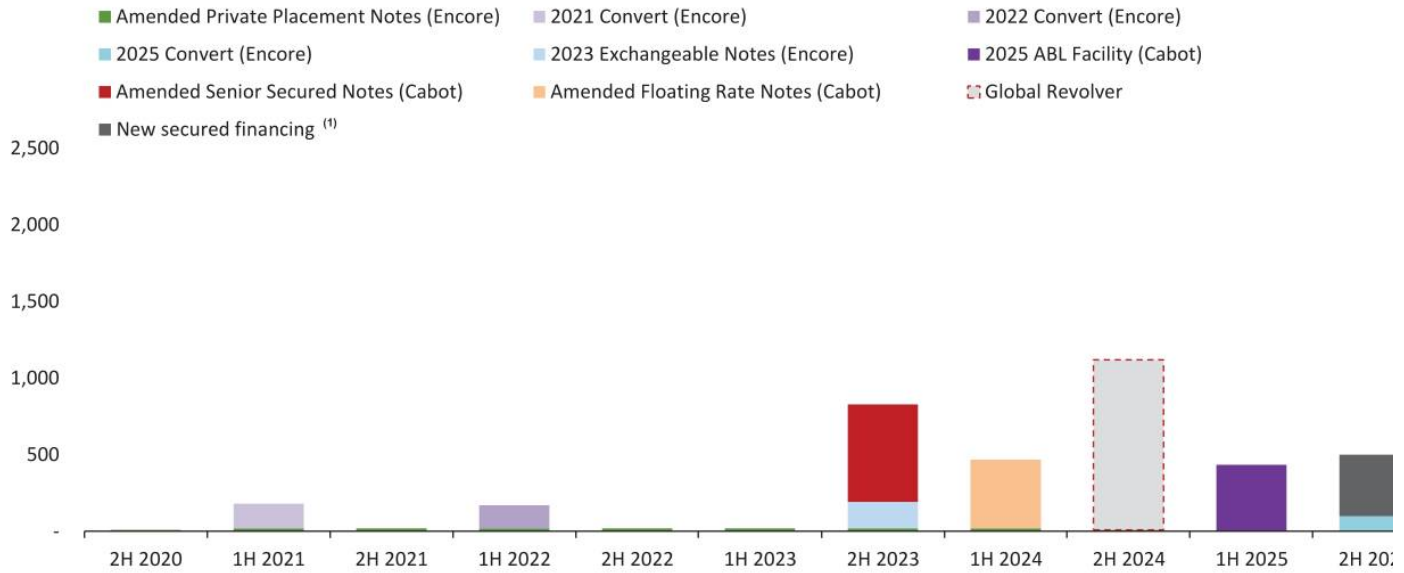
Calculated as operating income divided by total revenue.

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# LIMITED NEAR TERM DEBT MATURITIES

## Disciplined construction of capital stack with well spread debt maturities post-transaction



Source: Company information.  
 1) Assumes that the Stretch Facility is fully refinanced with debt which is pari passu to the existing Cabot SSNs.

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# ESTIMATED ERC REPLENISHMENT RATE CALCULATION

## ERC Replenishment Rate Calculation For the twelve-month period ending June 30, 2020

12 month ERC at June 30, 2020	1,852	a
12 month ERC at June 30, 2019	1,853	b
<b>Average 12 month ERC<sup>1</sup></b>	<b>1,852</b>	<b>(a+b)/2=c</b>
Estimated initial money multiple <sup>2</sup>	2.1x	d
<b>Estimated 12M ERC Replenishment Rate<sup>3</sup></b>	<b>882</b>	<b>c/d</b>

**In line with:**

- **Average initial money multiple over the past ten years**
- **2019 initial money multiple**

## Footnotes and definitions

- 1) Average 12-month ERC represents management's estimate of amount of ERC that would need to be replenished in order to maintain a steady state ERC balance. Utilizing the Average 12-month ERC to estimate the ERC Replenishment Rate may result in understating the ERC Replenishment Rate as the method assumes that all purchases are made at period end. Management utilizes Average 12-month ERC to estimate the ERC Replenishment Rate to enable comparability amongst competitors, many of whom utilize this same method.
- 2) Money multiples represent total expected gross cash collected divided by portfolio acquisition price. Initial money multiple represents the money multiple reported at the end of the year of acquisition.
- 3) Estimated ERC Replenishment Rate represents management's estimate of the amount of purchases that were needed to replenish ERC in order to maintain a steady state ERC balance. The Estimated ERC Replenishment Rate is an illustrative calculation based on management's estimates and assumptions with respect to money multiples and the amount of ERC to be replenished. The Estimated ERC Replenishment Rate may be determined or calculated differently by other companies. Actual purchases during the period were \$857 million.

Source: Company information.



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# RECONCILIATION OF ADJUSTED EBITDA

## Reconciliation of Adjusted EBITDA to GAAP Net Income (Unaudited, In \$ Thousands) Six Months Ended

	2017	2018	2019	1H2019	1H2020
GAAP net income (loss), as reported	\$ 78,978	\$ 109,736	\$ 168,909	\$ 86,264	\$ 120,000
(Income) loss from discontinued operations, net of tax	199	-	-	-	-
Interest expense	204,161	240,048	226,760	118,880	104,000
Interest income	(3,635)	(3,345)	(3,693)	(2,260)	(1,000)
Provision (Benefit) for income taxes	52,049	46,752	32,333	15,426	40,000
Depreciation and amortization	39,977	41,228	41,029	19,736	20,000
Stock-based compensation expense	10,399	12,980	12,557	5,407	9,000
Acquisition, integration and restructuring related expenses <sup>1</sup>	11,962	7,523	7,049	2,526	4,000
Gain on fair value adjustments of contingent considerations <sup>2</sup>	(2,822)	(5,664)	(2,300)	(2,199)	-
Expenses related to Cabot IPO <sup>3</sup>	15,339	2,984	-	-	-
Loss on derivatives in connection with Cabot Transaction <sup>4</sup>	-	9,315	-	-	-
Loss on Baycorp Transaction <sup>5</sup>	-	-	12,489	-	-
Goodwill impairment <sup>5</sup>	-	-	10,718	-	-
<b>Adjusted EBITDA</b>	<b>\$ 406,607</b>	<b>\$ 461,557</b>	<b>\$ 505,851</b>	<b>\$ 243,780</b>	<b>\$ 298,000</b>
Collections applied to principal balance <sup>6</sup>	673,035	759,014	765,748	401,651	375,000

1) Amount represents acquisition, integration and restructuring related expenses, which includes approximately \$1.3 million of transaction costs incurred associated with the Baycorp Transaction during the year ended December 31, 2019. We adjust for this amount because we believe these expenses are not indicative of ongoing operations; therefore, adjusting for these expenses enhances comparability to prior periods, anticipated future periods, and our competitors' results.

2) Amount represents the net gain recognized as a result of fair value adjustments to contingent considerations that were established for our acquisitions of debt solution service providers in Europe. We have adjusted for this amount because we do not believe this is indicative of ongoing operations; therefore, adjusting for this amount enhances comparability to prior periods, anticipated future periods, and our competitors' results.

3) Amount represents expenses related to the proposed and later withdrawn initial public offering by CCM. We adjust for this amount because we believe these expenses are not indicative of ongoing operations; therefore, adjusting for these expenses enhances comparability to prior periods, anticipated future periods, and our competitors' results.

4) Amount represents the loss recognized on the forward contract we entered into in anticipation of the completion of the Cabot Transaction. We adjust for this amount because we believe the loss is not indicative of ongoing operations; therefore, adjusting for this loss enhances comparability to prior periods, anticipated future periods, and our competitors' results.

5) The Baycorp Transaction resulted in a goodwill impairment charge of \$10.7 million and a loss on sale of \$12.5 million during the year ended December 31, 2019. We believe the goodwill impairment charge and the loss on sale are not indicative of ongoing operations; therefore adjusting for these expenses enhances comparability to prior periods, anticipated future periods, and our competitors' results.

6) For periods subsequent to January 1, 2020, Collections applied to principal balance represents (a) gross collections from receivable portfolios less the sum of (b) revenue from receivable portfolios and (c) changes in expected recoveries. For periods prior to January 1, 2020, collections applied to principal balance represents (a) gross collections from receivable portfolios less (b) revenue from receivable portfolios and (c) allowance charges or allowance reversals on receivable portfolios.

Source: Company information.



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## RECONCILIATION OF NET DEBT

### Reconciliation of Net Debt (Unaudited, In \$ Thousands)

	31-Dec-19	30-Jun-20
GAAP debt	3,513,197	3,353,730
Add back: Debt issuance costs and debt discounts	73,237	63,017
Less: Cash and cash equivalents	(192,335)	(293,800)
Add back: Client cash <sup>1</sup>	24,964	21,097
<b>Net debt</b>	<b>3,419,063</b>	<b>3,144,044</b>
	31-Dec-19	30-Jun-20
Encore revolving credit facility	492,000	528,000
Encore term loan facility	171,677	164,033
Encore senior secured notes	308,750	276,250
Encore convertible notes and exchangeable notes	672,855	672,855
Less: Debt discount	(30,308)	(24,169)
Cabot senior secured notes	1,129,039	1,085,279
Less: Debt discount	(1,604)	(1,347)
Cabot senior revolving credit facility	285,749	203,349
Cabot securitisation senior facilities	464,092	433,976
Other credit facilities	–	–
Other	54,151	43,984
Finance lease liabilities	8,121	9,021
<b>Gross debt</b>	<b>3,554,522</b>	<b>3,391,231</b>
Less: Debt issuance costs, net of amortization	(41,325)	(37,501)
<b>GAAP debt</b>	<b>3,513,197</b>	<b>3,353,730</b>

1) Client Cash is cash that was collected on behalf of, and remains payable to, third party clients.

Source: Company information.



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# CABOT CURRENT CAPITALISATION TABLE

## Capitalisation table

In GBP million	Current 30-Jun-20			
	(£m)	x EBITDA <sup>(1)</sup>	LTV <sup>(2)</sup>	Mat
LTM Adjusted EBITDA	342			
84-month Estimated Remaining Collections	2,256			
£375m super senior RCF	164	0.5x	7%	2
<b>Total gross super senior secured debt</b>	<b>164</b>	<b>0.5x</b>	<b>7%</b>	
<b>Total net super senior secured debt</b>	<b>120</b>	<b>0.4x</b>	<b>5%</b>	
Senior Secured Notes	513	1.5x	23%	2
Senior Secured FRN	362	1.1x	16%	2
ABL	350	1.0x	16%	2
Other debt	6	0.0x	0%	
<b>Total gross secured debt</b>	<b>1,395</b>	<b>4.0x</b>	<b>62%</b>	
<b>Total net secured debt</b>	<b>1,351</b>	<b>3.9x</b>	<b>60%</b>	
Cash available	(44)	(0.1x)	(2%)	



Note: Based on IFRS and therefore not comparable to Encore's financial presented throughout this presentation.  
 1) Based on LTM Adjusted EBITDA including collections applied to principal balance.  
 2) Based on 84-month Estimated Remaining Collections.

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### Encore Capital Group Announces New Global Funding Structure

**SAN DIEGO, September 1, 2020** -- Encore Capital Group, Inc. (NASDAQ: ECPG), an international specialty finance company, today announced that it has taken important steps toward its goal of operational simplification and funding optimization.

Currently, Encore's two primary operating units, Midland Credit Management ("**MCM**") in the U.S. and Cabot Credit Management ("**Cabot**") in the U.K., have legally separate funding structures. On September 1, 2020, Encore initiated a process to combine the two balance sheets into a unified funding structure. In this configuration, Encore would become the parent of a restricted group consisting of all subsidiaries of Encore against which all covenant performance would be measured. Key transactions to implement the new structure include the following (collectively, the "**New Financing Transactions**"):

- An amended multi-currency revolving credit facility that supports the operations of both MCM and Cabot, with an increased total commitment of \$1,050 million, an extension of maturity to 2024 and with Encore and all its material subsidiaries (including Cabot) as guarantors;
- a new stretch facility with a committed amount of up to \$300 million; and
- an amendment to the terms of the existing Cabot senior secured notes to, among other things, add Encore and its material subsidiaries as guarantors and have Encore become the parent of the restricted group.

The effectiveness of the New Financing Transactions is dependent upon satisfaction of certain conditions, including receipt of consents from at least a majority of the holders of Cabot's £513 million 7.5% Senior Secured Notes due 2023 and €400 million Senior Secured Floating Rate Notes due 2024, pursuant to a consent solicitation commenced on September 1, 2020 (the "**Consent Solicitation**").

Assuming the conditions to the effectiveness of the New Financing Transactions are satisfied, Encore intends to repay and terminate its current domestic revolving credit facility and term loan facility and repay a portion of its outstanding senior secured notes.

Through the New Financing Transactions and the Consent Solicitation, Encore is seeking to achieve a unified financing strategy to combine Cabot's balance sheet with that of the wider Encore group, which the Company believes will fully leverage the combined size of Encore and Cabot, maximize financial flexibility by utilizing a global borrowing base, enhance access to capital markets and result in a strengthened credit profile for both existing and prospective Encore group lenders and investors.

The resulting global balance sheet strength and funding diversity will position Encore to take advantage of attractive opportunities arising from an anticipated change in the credit cycle.

Encore provided an update on cash collections on a year-to-date basis through July 2020, with Encore global cash collections at 100% of the ERC forecast for the period based on the reported December 31, 2019 ERC forecast. Within this total, U.S. performance was at 107%, U.K. performance was at 94%, and other geographies' performance was at 67%, each compared to the ERC forecast for the period based on the reported December 31, 2019 ERC forecast. Additionally, Encore reported that collection figures for the month of August are trending in line with year-to-date July figures.

Upon successful completion of the New Financing Transactions, Encore expects to record related charges in the third quarter of 2020 totaling approximately \$18 million after tax.



Encore continually evaluates different financing alternatives and may decide to enter into new secured credit facilities, increase the commitments available under the existing facilities or access the debt capital markets (including offering senior secured notes) to replace commitments or refinance drawings under the stretch facility agreement.

**About Encore Capital Group, Inc.**

Encore Capital Group is an international specialty finance company that provides debt recovery solutions and other related services across a broad range of financial assets. Through its subsidiaries around the globe, Encore purchases or services portfolios of receivables from major banks, credit unions and utility providers.

Headquartered in San Diego, Encore is a publicly traded NASDAQ Global Select company (ticker symbol: ECPG) and a component stock of the Russell 2000, the S&P Small Cap 600 and the Wilshire 4500. More information about Encore can be found at [www.encorecapital.com](http://www.encorecapital.com). More information about the Company's Midland Credit Management subsidiary can be found at [www.midlandcreditonline.com](http://www.midlandcreditonline.com). More information about the Company's Cabot Credit Management subsidiary can be found at [www.cabotcm.com](http://www.cabotcm.com). Information found on the Company's, MCM's, or Cabot's websites is not incorporated by reference.

**Forward Looking Statements**

*The statements in this press release that are not historical facts, including, most importantly, those statements preceded by, or that include, the words "will," "may," "believe," "projects," "expects," "anticipates" or the negation thereof, or similar expressions, constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 (the "Reform Act"). These statements may include, but are not limited to, statements regarding our future operating results, performance, business plans or prospects. For all "forward-looking statements," the Company claims the protection of the safe harbor for forward-looking statements contained in the Reform Act. Such forward-looking statements involve risks, uncertainties and other factors which may cause actual results, performance or achievements of the Company and its subsidiaries to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. These risks, uncertainties and other factors are discussed in the reports filed by the Company with the Securities and Exchange Commission, including the most recent reports on Forms 10-K and 10-Q, as they may be amended from time to time. The Company disclaims any intent or obligation to update these forward-looking statements.*

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