

SECOND AMENDMENT AND RESTATEMENT AGREEMENT

dated 21 December 2022

relating to the Facility Agreement originally dated 15 March 2018 and subsequently amended on 11 March 2019 and 26 April 2019 and subsequently amended and restated on 15 November 2021

made between, amongst others,

ELLI ACQUISITIONS LIMITED
as Company and the Obligors' Agent

ELLI FINANCE (UK) PLC (IN ADMINISTRATION)
as Original Borrower

**RICHARD DIXON FLEMING, MARK GRANVILLE FIRMIN
AND RICHARD JAMES BEARD**
as the Holdco Guarantor Administrators and the EFUK Administrators

**RICHARD DIXON FLEMING, MARK GRANVILLE FIRMIN
AND JONATHAN CHARLES MARSTON**
as the FSHCL Administrators

THE FINANCIAL INSTITUTIONS
as Original Lenders

GLOBAL LOAN AGENCY SERVICES LIMITED
as Agent

GLAS TRUST CORPORATION LIMITED
as Security Agent

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THIS AGREEMENT is dated 21 December 2022 **BETWEEN:**

- (1) **ELLI ACQUISITIONS LIMITED**, a limited liability company incorporated under the laws of Guernsey with its registered office at PO Box 286, Floor 2, Trafalgar Court, Les Banques, St Peter Port, Guernsey GY1 4LY and registered with company number 55186 (the *Company* and the *Obligors' Agent*);
- (2) **ELLI FINANCE (UK) PLC (in administration)**, a public limited company incorporated under the laws of England and Wales with its registered office at C/O Alvarez & Marsal Europe LLP, Suite 3 Regency House, 91 Western Road, Brighton BN1 2NW and registered with company number 08094161 (*EFUK* and the *Original Borrower*), acting by the EFUK Administrators (who are acting as agent of the Original Borrower and without personal liability);
- (3) **ELLI INVESTMENTS LIMITED (in administration)**, a private limited company incorporated under the laws of Guernsey with its registered office at PO Box 286, Floor 2, Trafalgar Court, Les Banques, St Peter Port, Guernsey GY1 4LY and registered with company number 55185 (the *Holdco Guarantor*) acting by the Holdco Guarantor Administrators (who are acting as agent of the Holdco Guarantor and without personal liability);
- (4) **FOUR SEASONS HEALTH CARE LIMITED (in administration)**, a private limited company incorporated under the laws of England and Wales with its registered office at C/O Alvarez & Marsal Europe LLP, Suite 3 Regency House, 91 Western Road, Brighton BN1 2NW and registered with company number 05165301 (*FSHCL*) acting by the FSHCL Administrators (who are acting as agent of FSHCL and without personal liability);
- (5) **RICHARD DIXON FLEMING, MARK GRANVILLE FIRMIN AND RICHARD JAMES BEARD** of Alvarez & Marsal Europe LLP, Park House, 16 – 18 Finsbury Circus, London EC2M 7EB (*A&M*) in their respective capacities as joint administrators of the Holdco Guarantor (in that capacity, the *Holdco Guarantor Administrators*) (acting as agent of the Holdco Guarantor and without personal liability) and of the Original Borrower (in that capacity, the *EFUK Administrators*) (acting as agent of the Original Borrower and without personal liability);
- (6) **RICHARD DIXON FLEMING, MARK GRANVILLE FIRMIN AND JONATHAN CHARLES MARSTON** of A&M in their respective capacities as joint administrators of FSHCL (the *FSHCL Administrators*) (acting as agent of FSHCL and without personal liability);
- (7) **THE FINANCIAL INSTITUTIONS** signatory hereto (the *Original Lenders*);
- (8) **GLAS TRUST CORPORATION LIMITED**, a private limited company incorporated under the laws of England and Wales, registered at 55 Ludgate Hill, Level 1, West, London, England, EC4M 7JW, and registered company number 07927175, (the *Security Agent*); and
- (9) **GLOBAL LOAN AGENCY SERVICES LIMITED**, a private limited company incorporated under the laws of England and Wales with its registered office at

55 Ludgate Hill, Level 1, West, London, England, EC4M 7JW and registered company number 08318601, (the *Agent*).

BACKGROUND:

- (A) On 30 April 2019, the Holdco Guarantor entered into administration by order of the Guernsey court and the Holdco Guarantor Administrators were appointed joint administrators of the Holdco Guarantor.
- (B) On 30 April 2019, EFUK entered into administration pursuant to Schedule B1 of the Insolvency Act 1986 and the EFUK Administrators were appointed joint administrators of EFUK.
- (C) On 12 August 2020, FSHCL entered into administration pursuant to Schedule B1 of the Insolvency Act 1986 and the FSHCL Administrators were appointed joint administrators of FSHCL.
- (D) The parties to this Agreement are parties to a facility agreement originally dated 15 March 2018 and made between Elli Acquisitions Limited as Company, Elli Finance (UK) PLC (in administration) as Original Borrower, certain financial institutions therein as Original Lenders, Wilmington Trust (London) Limited as Agent and Barclays Bank PLC as Security Agent (as amended by amendment agreements dated 11 March 2019 and 26 April 2019, and as amended and restated by an amendment and restatement agreement dated 15 November 2021) and as further amended, varied, amended and restated, supplemented or otherwise modified from time to time (the *Existing Facility Agreement*).
- (E) This Agreement is supplemental to and amends the Existing Facility Agreement.
- (F) CSC Trustees Limited became the Security Agent pursuant to the terms of the Global Assignment Deed dated 11 April 2018 between Barclays Bank PLC and CSC Trustees Limited.
- (G) GLAS Trust Corporation Limited became the Security Agent pursuant to the terms of the Global Assignment Deed dated 15 February 2019 between CSC Trustees Limited and GLAS Trust Corporation Limited.
- (H) For the purpose of furthering the Group's plans to maximise the value of its assets, whilst continuing to provide continuity of care to its residents and operational stability to the Group and its stakeholders, the Company and the Lenders have agreed to amend the Existing Facility Agreement on the terms set out herein and in the Restated Facility Agreement.
- (I) The Facility as amended will also: (i) implement covenants for operational stability and (ii) extend the maturity date of the existing balance under the Facility.
- (J) In connection with the Restated Facility Agreement, the Group has informed the Lenders that, prior to the Termination Date under and as defined in the Restated Facility Agreement (as such date may be extended pursuant to the terms thereof), the Group intends to: (i) maximise and monetise the value of its assets (in particular, its freehold/heritable properties and certain of its leasehold properties) in one or a series of transactions, which may include sale, merger and/or other strategic transactions; and

- (ii) complete the orderly wind-down of the remainder of its estate (including any remaining leasehold properties not otherwise included in the preceding paragraph (i)).
- (K) The requisite Finance Parties have consented (with the Agent and Security Agent acting on the instructions of all the other Finance Parties) by entering into this Agreement to the amendments to the Existing Facility Agreement to be effected pursuant to this Agreement in accordance with clause 39 (*Amendments and Waivers*) of the Existing Facility Agreement and, pursuant to clause 39 (*Amendments and Waivers*) of the Existing Facility Agreement, the Agent is authorised to effect, on behalf of any Finance Party, any amendment or waiver permitted by that clause.
- (L) Pursuant to clause 2.3 of the Existing Facility Agreement, the Company is entering into this Agreement on behalf of the Obligors (other than the Obligor Administration Companies) as Obligors' Agent.

IT IS AGREED as follows:

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Administration Funding Agreement means that administration funding agreement dated 30 April 2019 as amended on 27 February 2020 between, amongst others, the Original Borrower, the Holdco Guarantor, the EFUK Administrators, the Holdco Guarantor Administrators and the Original Lenders;

ARA Transaction Costs means all costs of the Lenders, the Agent and the Security Agent and their advisers relating to this Agreement and all transactions relating thereto (including, without limitation, all legal costs which shall be confirmed by invoices delivered not more than two Business Days prior to the ARA Closing Date);

Effective Date means the date of this Agreement (provided, for the avoidance of doubt, that such date occurs on or before the Longstop Date);

Existing Transaction Security Documents means each of the Transaction Security Documents listed in Part A (*Existing Transaction Security Documents*) of Schedule 3 (*Transaction Security Documents*) of the First Amendment and Restatement Agreement.

First Amendment and Restatement Agreement means the amendment and restatement agreement to the Existing Facility Agreement dated 15 November 2021;

Joint Administrators means the Holdco Guarantor Administrators, the EFUK Administrators and the FSHCL Administrators and any other insolvency officeholder from Alvarez & Marsal Europe LLP that is appointed as joint administrator of the Holdco Guarantor, the Original Borrower or FSHCL and who has acceded to the Restated Facility Agreement in that capacity, in each case as applicable;

Longstop Date means 21 December 2022;

Material Unnotified Default means any Default or Event of Default other than a Notified Default which on its own or when taken together with other Defaults or Events of Default is, or is reasonably likely to:

- (a) materially adversely impact the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents, or the rights or remedies of any Finance Party under the Finance Documents; and/or
- (b) have an adverse monetary impact (individually or in the aggregate) of £250,000 or more, whether due to any costs incurred or to be incurred or any decrease in value or otherwise on any Obligor or any of its assets, or any other assets which are the subject of Transaction Security;

Notified Default means each Default or Event of Default notified by the Company to the Agent in writing before the date of this Agreement;

Obligor Administration Companies means the Holdco Guarantor, the Original Borrower and FSHCL; and

Restated Facility Agreement means the Existing Facility Agreement as amended and restated by this Agreement.

1.2 Incorporation of defined terms

Terms defined or to be construed in a particular manner when used in the Restated Facility Agreement shall have the same meanings and be construed in the same manner when used herein.

2. Amendments

From and including the Effective Date, the Existing Facility Agreement will be amended so that it shall be read and construed for all purposes as set out in Schedule 2 (*Restated Facility Agreement*) to this Agreement.

3. Representations

- (a) Other than the Notified Defaults, to the best of the knowledge and belief of the Company after due enquiry, no event or circumstance is outstanding as at the date of this Agreement which either on its own or when taken together with any other events, circumstances or actions constitutes or is likely to constitute a Material Unnotified Default.
- (b) The Obligors' Agent, on behalf of each Obligor (other than the Obligor Administration Companies), makes the representations and warranties set out in clause 21 (*Representations*) of the Restated Facility Agreement to each Finance Party on the date of this Agreement and on the Effective Date (by reference to the facts and circumstances then existing) but as if references to "the Finance Documents" include this Agreement and, on the Effective Date, the Restated Facility Agreement.

- (c) The Company represents and warrants that its appointment as Obligors' Agent pursuant to clause 2.3 of the Existing Facility Agreement remains in full force and effect and has not been rescinded or revoked.

4. Guarantee and Security Confirmations

4.1 Continuing obligations

The provisions of the Existing Facility Agreement and the other Finance Documents (including the guarantee and indemnity of each Guarantor) shall, save as amended by this Agreement or by any document accepted by the Agent and the Lenders as a condition precedent to the Effective Date, continue in full force and effect and any reference in the Restated Facility Agreement or any other Finance Document to the Existing Facility Agreement or to any provision of the Existing Facility Agreement will, on and from the Effective Date, be construed as a reference to the Restated Facility Agreement, or that provision, as amended by this Agreement.

4.2 Guarantee confirmations

Each of the Obligor Administration Companies and the Obligors' Agent on behalf of each Obligor (other than the Obligor Administration Companies)) confirms and agrees that the guarantees and indemnities set out in clause 20 (*Guarantee, Indemnity and Security*) of the Restated Facility Agreement will extend to all of the obligations of the Obligors under the Finance Documents on and after the Effective Date, subject to the guarantee limitations set out in that clause.

4.3 Security confirmations

Each of the Obligor Administration Companies and the Obligors' Agent on behalf of each Obligor (other than the Obligor Administration Companies)) confirms and agrees that

- (a) the Transaction Security, including the Transaction Security created under the Existing Transaction Security Documents set out in Part A (*Existing Transaction Security Documents*) of Schedule 3 (*Transaction Security Documents*) of the First Amendment and Restatement Agreement that it has granted prior to the Effective Date continue in full force and effect (save in respect of any assets which were subject to an Asset Disposition which was: (i) completed following the Effective Date under and as defined in the First Amendment and Restatement Agreement; and (ii) made in accordance with the terms of the Existing Facility Agreement) and will continue to do so on and after the Effective Date, subject to any applicable limitations included in the relevant Finance Documents;
- (b) all of the Obligors' liabilities and obligations arising under the Finance Documents form part of (but do not limit) the liabilities and obligations which are secured by the Transaction Security that it has granted, subject to any applicable limitations included in the relevant Finance Documents;
- (c) the list of Existing Transaction Security Documents listed in Part A (*Existing Transaction Security Documents*) of Schedule 3 (*Transaction Security Documents*) of the First Amendment and Restatement Agreement is a full list of Transaction Security Documents which have been executed by the Obligors

in respect of Secured Obligations (as such term is defined in the Intercreditor Agreement) as at the Effective Date; and

- (d) solely with respect to the obligations under the Restated Facility Agreement, each of the Holdco Guarantor (acting through the EIL Administrators) and the Company hereby irrevocably and unconditionally confirm the covenants given by it pursuant to clause 2.1 of the Existing Transaction Security Documents (as applicable).

4.4 **Confirmation not to give rise to administration expenses**

It is agreed and acknowledged between the Obligor Administrations Companies, the Joint Administrators the Security Agent and the Agent (for and on behalf of the Finance Parties) that none of the confirmations under this clause 4 shall cause any of the existing obligations of the Obligor Administration Companies in respect of the Transaction Security Documents to become administration expenses payable in accordance with paragraph 99(4) of Schedule B1 of the Insolvency Act 1986 or section 383 of the Companies (Guernsey) Law, as amended.

5. **Costs and expenses**

Without limitation to its obligations under the Existing Facility Agreement, the Company shall, promptly on demand, pay the Agent (for itself and for the account of each Lender party hereto) and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them in connection with the negotiation, preparation, printing, execution and implementation of this Agreement and any other documents required to be executed as conditions precedent to the occurrence of the Effective Date.

6. **Joint Administrators and Obligor Administration Companies**

6.1 **No personal liability of Joint Administrators**

- (a) Each of the Joint Administrators have entered into and signed this Agreement as agents for and on behalf of the relevant Obligor Administration Company and neither they, their firm (or any other legal entity or partnership using in its name the words “Alvarez & Marsal” or “A&M”), members, partners, directors, officers, employees, agents, advisers or representatives, (together, the *Related Parties*) shall incur any personal liability whatever in respect of any of the obligations undertaken by any of the Obligor Administration Companies or in respect of any failure on the part of any of the Obligor Administration Companies to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Agreement.
- (b) The exclusion of liability set out in this clause 6.1 shall arise and continue notwithstanding the termination of the agency of the Joint Administrators and shall operate as a waiver of any and all claims (including, but not limited to, claims in tort, equity and common law as well as under the laws of contract).
- (c) The Joint Administrators are party to this Agreement in their personal capacities only for the purposes of receiving the benefit of all releases,

limitations, exclusions, undertakings and covenants in their favour and in favour of the relevant Obligor Administration Company contained in this Agreement, from which the Joint Administrators will continue to benefit notwithstanding the termination of the agency of the Joint Administrators or their discharge from office as Joint Administrators.

- (d) Notwithstanding clause 7 (*Third Party Rights*) and the provisions of the Third Parties Act, each of the Related Parties shall be entitled to rely on, enforce and enjoy the benefit of this clause 6.1 as if they were a party to this Agreement.

6.2 Administration expenses

- (a) The Agent (for and on behalf of the Finance Parties), each of the EFUK Administrators, the FSHCL Administrators and the Holdco Guarantor Administrators acknowledge and agree that the obligations of each of EFUK, FSHCL and the Holdco Guarantor (as applicable) under the Restated Facility Agreement and/or this Agreement, including their payment and repayment obligations, shall rank (to the extent permitted by law) as expenses of the administration of the Original Borrower and FSHCL (as applicable) pursuant to paragraph 99(4) of Schedule B1 of the Insolvency Act 1986 and Insolvency Rule 3.51(2) and of the Holdco Guarantor (as applicable) pursuant to section 383 of the Companies (Guernsey) Law, as amended.

- (b) The Agent (for and on behalf of the Finance Parties) acknowledges and agrees that the payment of:

- (i) the EFUK Administrators' and the FSHCL Administrators' remuneration and expenses pursuant to Paragraph 99(3) of Schedule B1 of the Insolvency Act 1986; and
- (ii) the Holdco Guarantor Administrators' remuneration and expenses pursuant to section 383 of the Companies (Guernsey) Law, as amended,

shall be payable in priority to any payment and repayment obligation of the Holdco Guarantor, EFUK or FSHCL (as applicable) under the Restated Facility Agreement and/or this Agreement, but only to the extent that such remuneration and expenses have been approved by the Lenders in accordance with clause 34 (*Joint Administrators and Obligor Administration Companies*) of the Restated Facility Agreement or pursuant to the Administration Funding Agreement prior to the Effective Date.

7. Miscellaneous

- 7.1 The provisions of clause 35 (*Notices*), clause 37 (*Partial Invalidity*), clause 38 (*Remedies and Waivers*) and clause 42.1 (*Enforcement*) of the Restated Facility Agreement shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to this Agreement are references to this Agreement.
- 7.2 The Company and the Agent designate this Agreement as a "Finance Document" for the purposes of the Existing Facility Agreement and the Restated Facility Agreement.

- 7.3 From and including the Effective Date, this Agreement and the Restated Facility Agreement shall be read and construed as one document.
- 7.4 Except as provided in this Agreement, the Finance Documents remain in full force and effect on and after the Effective Date.
- 7.5 If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.
- 7.6 This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement. Delivery of a counterpart of this Agreement by email attachment shall be an effective mode of delivery.
- 7.7 In order to continue to provide all creditors with comparable access to material information, the Lenders require that the Company undertake to post and maintain this Agreement on its public website as soon as reasonably practicable, and in any event by no later than one Business Day after its entry into this Agreement.
- 7.8 Promptly following the Effective Date, the Company shall notify any entity, other than [REDACTED], which has previously been a Lender of the occurrence of the Effective Date.

8. Third Party Rights

- 8.1 Unless expressly provided to the contrary in a Finance Document a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 (the *Third Parties Act*) or otherwise to enforce or to enjoy the benefit of any term of this Agreement.
- 8.2 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.

9. Governing law


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

10. Enforcement

- 10.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to its existence, validity or termination or to any non-contractual obligation arising out of or in connection with this Agreement) (a *Dispute*).
- 10.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

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

Schedule 1
Lenders

Name of Lender	HMRC DT Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)
	

Schedule 2

Restated Facility Agreement

[To be appended]

£24,129,314.01 CREDIT FACILITY AGREEMENT

between, amongst others

ELLI ACQUISITIONS LIMITED
as Company

ELLI FINANCE (UK) PLC (IN ADMINISTRATION
as Original Borrower

RICHARD DIXON FLEMING, MARK GRANVILLE
FIRMIN AND RICHARD JAMES BEARD
as the EIL Administrators and the EFUK Administrators

RICHARD DIXON FLEMING, MARK GRANVILLE
FIRMIN AND JONATHAN CHARLES MARSTON
as the FSHCL Administrators

THE FINANCIAL INSTITUTIONS
as Original Lenders

GLOBAL LOAN AGENCY SERVICES LIMITED
as Agent

and

GLAS TRUST CORPORATION LIMITED
as Security Agent

MILBANK LLP
London

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THIS AGREEMENT was originally made on 15 March 2018, amended on 11 March 2019 and on 26 April 2019, amended and restated on the First Amendment Effective Date pursuant to the First Amendment and Restatement Agreement and amended and restated on the Second Amendment Effective Date pursuant to the Second Amendment and Restatement Agreement between the following parties:

- (1) **ELLI ACQUISITIONS LIMITED** a limited liability company incorporated under the laws of Guernsey with its registered office at Old Bank Chambers, La Grande Rue, St Martin's, Guernsey, Channel Islands GY4 6RT and registered with company number 55186 (the "**Company**");
- (2) **ELLI FINANCE (UK) PLC (IN ADMINISTRATION)**, a public limited company incorporated under the laws of England and Wales with its registered office at C/O Alvarez & Marsal Europe LLP, Suite 3 Regency House, 91 Western Road, Brighton BN1 2NW and registered with company number 08094161 (the "**Original Borrower**"), acting by the EFUK Administrators (who are acting as agent of the Original Borrower and without personal liability);
- (3) **THE ENTITIES** listed in Part B of Schedule 1 (*Guarantors*) of the First Amendment and Restatement Agreement as the original guarantors (the "**Original Guarantors**"), in the case of each of the Holdco Guarantor, the Original Borrower and Four Seasons Health Care Limited (in administration) ("**FSHCL**"), acting by their respective Joint Administrators (who are acting as agent of the Holdco Guarantor, the Original Borrower and FSHCL respectively and without personal liability);
- (4) **RICHARD DIXON FLEMING, MARK GRANVILLE FIRMIN AND RICHARD JAMES BEARD** of Alvarez & Marsal Europe LLP, Park House, 16 – 18 Finsbury Circus, London EC2M 7EB ("**A&M**") in their respective capacities as joint administrators of the Holdco Guarantor (in that capacity, the "**EIL Administrators**") (acting as agent of the Holdco Guarantor and without personal liability) and of the Original Borrower (in that capacity, the "**EFUK Administrators**") (acting as agent of the Original Borrower and without personal liability);
- (5) **RICHARD DIXON FLEMING, MARK GRANVILLE FIRMIN AND JONATHAN CHARLES MARSTON of A&M** in their respective capacities as joint administrators of FSHCL (the "**FSHCL Administrators**") (acting as agent of FSHCL and without personal liability);
- (6) **THE FINANCIAL INSTITUTIONS** listed in Part A of Schedule 1 (*Lenders*) of the First Amendment and Restatement Agreement as lenders (the "**Original Lenders**");
- (7) **GLOBAL LOAN AGENCY SERVICES LIMITED**, a private limited company incorporated under the laws of England and Wales with its registered office at 45 Ludgate Hill, London EC4M 7JU, United Kingdom and registered company number 08318601, (the "**Agent**"); and
- (8) **GLAS TRUST CORPORATION LIMITED**, a private limited company incorporated under the laws of England and Wales, registered at 55 Ludgate Hill, Level 1, West, London, England, EC4M 7JW, (the "**Security Agent**").

IT IS AGREED as follows

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Acceleration Notice**” means a notice served by the Agent pursuant to and in accordance with Clause 25.18 (*Acceleration*).

“**Acceptable Bank**” means:

- (a) a bank or financial institution which has a rating for its short-term unsecured and non- credit enhanced debt obligations of A-1 or higher by S&P Global Ratings, F1 or higher by Fitch Ratings Limited or P-1 or higher by Moody’s Investor Services Limited or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Agent (acting reasonably).

“**Accession Document**” means a document substantially in the form set out in Schedule 7 (*Form of Accession Document*).

“**Accounting Principles**” means the generally accepted accounting principles of the United Kingdom.

“**Accounting Reference Date**” means 31 December (or such other date as may be agreed in accordance with this Agreement).

“**Additional Borrower**” means a company which becomes an Additional Borrower in accordance with Clause 28.2 (*Additional Borrowers*).

“**Additional Business Day**” means any day specified as such in the Reference Rate Terms.

“**Additional Guarantor**” means a company which becomes an Additional Guarantor in accordance with Clause 28.5 (*Additional Guarantors*).

“**Additional Obligor**” means an Additional Borrower or an Additional Guarantor.

“**Administration Funding Agreement**” means that administration funding agreement dated 30 April 2019 as amended on 27 February 2020 between, amongst others, the Original Borrower, the Holdco Guarantor, the EFUK Administrators, the EIL Administrators and the Original Lenders.

“**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 and for the purposes of Clause 26 (*Changes to the Lenders*) in relation to any Lender which is a fund, any of its Related Funds.

“**Agreed Security Principles**” means the principles set out in Schedule 13 (*Agreed Security Principles*).

“**Annual Financial Statements**” means the financial statements for a Financial Year delivered pursuant to paragraph (a)(i) of Clause 22.1 (*Financial Statements*).

“**Appointing Obligor**” has the meaning given to that term in Clause 24.29(a) (*Implementation Officer*).

“**Appointor**” has the meaning given to that term in the relevant Governance Document.

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 6 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee provided that if that other form does not contain the undertaking set out in the form set out in Schedule 6 (*Form of Assignment Agreement*) it shall not be a Creditor/Creditor Representative 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 RSM UK Audit LLP or any other firm appointed by the applicable company to act as its statutory auditors.

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

“**Available Commitment**” means a Lender’s Commitment minus the amount of its participation in any outstanding Utilisations.

“**Baseline CAS**” means any rate which is either:

- (a) specified as such in the applicable Reference Rate Terms; or
- (b) determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology specified in the applicable Reference Rate Terms.

“**Borrower**” means the Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 28.2 (*Additional Borrowers*).

“**Break Costs**” means any amount specified as such in the applicable Reference Rate Terms.

“**Budget**” means any budget delivered by the Company to the Agent in respect of that period pursuant to Clause 22.5 (*Budget*).

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, and in relation to:

- (a) any date for payment or purchase of an amount relating to a Compounded Rate Loan; or

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- (b) the determination of the first day or the last day of an Interest Period for a Compounded Rate Loan, or otherwise in relation to the determination of the length of such an Interest Period,

which is an Additional Business Day relating to that Loan or Unpaid Sum.

“Capital Expenditures” means any expenditures or obligations in respect of expenditures which, in accordance with the Accounting Principles, is treated as capital expenditures (and including the capital element of any expenditures or obligations incurred in connection with a Finance Lease).

“Care Contracts” means the contracts entered into from time to time by any member of the Restricted Group with local authorities, health authorities or the Department of Social Security (or any equivalent governmental department, organisation, regulatory or supervisory body in any jurisdiction other than England) for or in connection with the provision of residential and nursing care services by such member of the Restricted Group.

“Care Home Division” means the operational care home division of the Group for care of the elderly.

“Cash” means, at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of a member of the Restricted Group with an Acceptable Bank and to which it alone (or together with other Restricted Subsidiaries) is beneficially entitled and for so long as:

- (a) that cash is denominated in Sterling, or another currency freely convertible into Sterling;
- (b) that cash is repayable within 30 days after the relevant date of calculation;
- (c) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Restricted Group or of any other person whatsoever or on the satisfaction of any other condition;
- (d) there is no Security over that cash except for Transaction Security or any Security permitted or not restricted by this Agreement, provided that no step or other enforcement action has been taken to enforce such Security by the holders of such Security; and
- (e) the cash is freely and (except as mentioned in paragraph (b) above) immediately available to be applied in repayment or prepayment of the Facility.

“Cash Equivalent Investments” means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any

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- of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
- (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United Kingdom, any member state of the European Economic Area or any Participating Member State;
 - (iii) which matures within one year after the relevant date of calculation; and (iv) which has a credit rating of either A-1 or higher by S&P Global Ratings or F1 or higher by Fitch Ratings Limited or P-1 or higher by Moody's Investor Services Limited, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);
- (e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by S&P Global Ratings or F1 or higher by Fitch Ratings Limited or P-1 or higher by Moody's Investor Services Limited, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (iii) can be turned into cash on not more than 30 days' notice; or
- (f) any other debt security approved by the Majority Lenders, in each case, denominated in Sterling and to which any member of the Restricted Group is alone (or together with other Obligors) beneficially entitled at that time and which is not issued or guaranteed by any member of the Restricted Group or subject to any Security (other than Security arising under the Transaction Security Documents).

“**Central Bank Rate**” has the meaning given to that term in the Reference Rate Terms.

“**Central Bank Rate Adjustment**” has the meaning given to that term in the Reference Rate Terms.

“**Central Bank Rate Spread**” has the meaning given to that term in the Reference Rate Terms.

“**Change of Control**” has the meaning given to that term in Schedule 17 (*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.

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

“**Commitment**” means:

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- (a) in relation to an Original Lender, the amount set opposite its name under the heading Commitment in Part A of Schedule 1 (*Lenders*) of the First Amendment and Restatement Agreement and the amount of any other Commitment transferred to it under this Agreement; and
 - (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

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

“**Company**” means Elli Acquisitions Limited, a limited liability company incorporated under the laws of Guernsey with its registered office at Old Bank Chambers, La Grande Rue, St Martin’s, Guernsey, Channel Islands GY4 6RT and registered with company number 55186.

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 9 (*Form of Compliance Certificate*).

“**Compounded Reference Rate**” means, in relation to any RFR Banking Day during the Interest Period of a Loan, the percentage rate per annum which is the aggregate of:

- (a) the Daily Non-Cumulative Compounded RFR Rate for that RFR Banking Day; and
- (b) the applicable Baseline CAS.

“**Compounding Methodology Supplement**” means, in relation to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate, a document which:

- (a) is agreed in writing by the Company, the Agent (in its own capacity) and the Agent (acting on the instructions of the Majority Lenders);
- (b) specifies a calculation methodology for that rate; and
- (c) has been made available to the Company and each Finance Party.

“**Confidential Information**” means all information relating to the Company, any Obligor, the Group, the Finance Documents or the Facility, of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (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 or their 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 29.12 (*Confidentiality*); or

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- (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.

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 11 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Company and the relevant Lender.

“**Consolidated Accounts Companies**” means:

- (a) for so long as Rhyme (Jersey) Limited is neither a direct nor indirect Subsidiary of Mericourt Limited, Mericourt Limited and Rhyme (Jersey) Limited; and
- (b) should Rhyme (Jersey) Limited be a direct or indirect Subsidiary of Mericourt Limited, Mericourt Limited only.

“**Contribution Notice**” means a contribution notice issued by the Pensions Regulator under section 38 or section 47 of the Pensions Act 2004.

“**Cumulative Compounded RFR Rate**” means, in relation to an Interest Period for a Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in 43(x)Schedule 22 (*Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

“**Daily Non-Cumulative Compounded RFR Rate**” means, in relation to any RFR Banking Day during an Interest Period for a Compounded Rate Loan, the percentage rate per annum determined by the Agent (or by any other Finance Party which agrees to determine that rate in place of the Agent) in accordance with the methodology set out in Schedule 21 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

“**Daily Rate**” means the rate specified as such in the applicable Reference Rate Terms.

“**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 25 (*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.

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

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

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

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

“**EAL First Ranking SIA**” means the Guernsey law security interest agreement over shares in Elli Acquisitions Limited made between the Security Agent and Elli Investments Limited dated 12 July 2012.

“**EAL Second Ranking SIA**” means the second ranking Guernsey law security interest agreement over shares in Elli Acquisitions Limited made between the Security Agent and Elli Investments Limited dated 12 July 2012.

“**EBIT**” means, in respect of any Relevant Period, the consolidated operating profit of the Restricted Group before taxation (calculated in accordance with the Accounting Principles):

- (a) before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the Restricted Group (calculated on a consolidated basis) in respect of that Relevant Period;
- (b) not including any accrued interest owing to any member of the Restricted Group;
- (c) before taking into account any Exceptional Items;
- (d) after deducting the amount of any profit (or adding back the amount of any loss) of any member of the Restricted Group which is attributable to minority interests;

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- (e) after deducting the amount of any profit of any Non-Group Entity to the extent that the amount of the profit included in the financial statements of the Restricted Group exceeds the amount actually received in cash by members of the Restricted Group through distributions by any Non-Group Entities;
 - (f) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
 - (g) before taking into account any gain or loss arising from an upward or downward revaluation of any other asset at any time during such Relevant Period;
 - (h) before taking into account any Pension Items;
 - (i) before taking into account the cumulative effect of a change in Accounting Principles;
 - (j) before taking into account the charge to profit represented by the expensing of stock options; and
 - (k) after adding back any amounts received by the Restricted Group from business interruption insurance,

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Restricted Group before taxation and so that no amount shall be included or excluded more than once.

“**EBITDA**” means, in respect of any Relevant Period, EBIT for that Relevant Period after adding back any amount attributable to the amortisation, depreciation or impairment of assets of members of the Restricted Group (and taking no account of the reversal of any previous impairment charge made in that Relevant Period).

“**Elli Finance II Ltd**” means Elli Finance II Limited, a limited liability company incorporated under the laws of Guernsey and registered with company number 55184.

“**Elli Group (UK) Ltd**” means Elli Group (UK) Limited, a private limited liability company incorporated under the laws of England and Wales and registered with company number 8092763 as a wholly-owned direct Subsidiary of the Company.

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

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

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

“Environmental Law” means any applicable law or regulation which relates to:

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

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

“Equity Investor Affiliate” means an Equity Investor, each of its Affiliates, any trust of which the Equity Investor or any of its Affiliates is a trustee, any partnership of which the Equity Investor or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, the Equity Investor or any of its Affiliates.

“Equity Investors” means Terra Firma Investments (GP) 3 Limited (**“Terra Firma”**) or any successor general partner of Terra Firma Capital Partners III, L.P., funds managed by Terra Firma or any of its Affiliates, co-investors whose co-investment is managed by Terra Firma or any of its Affiliates or any co-investment vehicle managed by Terra Firma or any of its Affiliates.

“Event of Default” means any event or circumstance specified as such in 25 (*Events of Default*).

“Exceptional Items” means any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;
- (b) disposals, revaluations or impairment of non-current assets; and
- (c) disposals of assets associated with discontinued operations.

“Excluded Subsidiary” means each of the following members of the Group: Tamaris (RAM) Limited, Four Seasons (No 11) Limited, Huntercombe (KS) Limited, Four Seasons (No 9) Limited, Guthrie Court Limited, Four Seasons (Tronas) Limited, Tamaris (Scotland) Limited, Tamaris (England) Limited, Tamcare Limited, brighterkind (Blair) Limited, brighterkind (Domo) Limited, (Four Seasons (GJP) Limited) and Keslaw Limited.

“Excluded Subsidiary Maintenance Cash” means, in respect of each Excluded Subsidiary, the amount of cash and Cash Equivalents that the board of directors of that Excluded Subsidiary determines (acting in good faith) is sufficient to maintain the operation of that Excluded Subsidiary as a going concern and preserve continuity of care for the residents of any care homes operated by that Excluded Subsidiary.

“Existing Confidentiality Agreement” means the confidentiality agreement between the Holdco Guarantor, the Original Borrower and the Debtholders (as defined therein) dated 14 December 2017 which incorporates (subject to certain amendments) the terms of the confidentiality agreement originally dated 5 September 2016 (as amended from time to time) between FSHC and the Debtholders.

“Extended Loan Period” means the period on and from the Initial Maturity Date to the First Extended Maturity Date and, if applicable, on and from the First Extended Maturity Date to the Second Extended Maturity Date.

“Extending Lender” has the meaning given to that term Section 7(b).

“Facility” means the term credit facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

“Facility Office” means:

- (a) in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five 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.

“FATCA” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law, or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (a) 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 paragraphs (a) or (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 Initial Signing Date between the Company and the Agent setting out any of the fees referred to in Clause 14 (*Fees*); and
- (b) the fee letter dated 13 February 2019 and entered into between the Original Borrower, the Holdco Guarantor, GLAS Trustees Limited, GLAS Trust Corporation Limited as Security Agent and Global Loan Agency Services Limited.

“Finance Document” means this Agreement, the First Amendment and Restatement Agreement, the Second Amendment and Restatement Agreement, any Accession Document, any Compliance Certificate, any Fee Letter, any Hedging Agreement, the Intercreditor Agreement, any Resignation Letter, any Transaction Security Document, each third party security confirmation letter referred to in the First Amendment and Restatement Agreement, the Scottish Security Confirmation Deed, any Utilisation Request, any Commitment Confirmation, any Reference Rate Supplement, any Compounding Methodology Supplement and any other document designated as a Finance Document by the Agent and the Company provided that:

- (a) 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:
 - (i) the definition of “Material Adverse Effect”;
 - (ii) the definition of “Transaction Security Document”;
 - (iii) paragraph 1.2(a)(iv) of Clause 1.2 (Construction);
 - (iv) Clause 20 (Guarantee, Indemnity and Security);
 - (v) Clause 24.8 (Pari Passu Ranking);
 - (vi) Clause 28.6 (Resignation of a Guarantor);
 - (vii) Clause 21.33 (Foreign Corrupt Practices, OFAC sanctions, Use of Proceeds and Sanctions);
 - (viii) Clause 25 (*Events of Default*) (other than paragraph (b) of Clause 25.12 (Repudiation and Rescission of Agreements) and Clause 25.18 (Acceleration)); and
 - (ix) Clause 32.7 (Set-Off by Obligors); and
- (b) where the term “Finance Document” is used in, and construed for the purposes of Clause 25 (*Events of Default*), such term excludes any obligations, including payment and repayment obligations, in respect of the Senior Secured Notes that are included in any Transaction Security Document

“**Finance Lease**” means any lease or hire purchase contract which would, in accordance with the Accounting Principles (as applied in the preparation of the Original Financial Statements), be treated as a finance lease.

“**Finance Party**” means the Agent, the Security Agent, a Lender or a Hedge Counterparty 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 1.2(a)(i) of Clause 1.2 (*Construction*);
- (c) paragraphs (a) and (b) of Clause 2.2 (*Finance Parties’ Rights and Obligations*);
- (d) paragraph (c) of the definition of Material Adverse Effect;
- (e) Clause 20 (*Guarantee, Indemnity and Security*);
- (f) Clause 22 (*Information Undertakings*);
- (g) Clause 24.13(a) (*Further Assurance*); and
- (h) Clause 30 (*Conduct of Business by the Finance Parties*).

“**Financial Indebtedness**” means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirements for de recognition under the Accounting Principles);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability (but not, in any case, Trade Instruments) of an entity which is not a member of the Restricted Group which liability would fall within one of the other paragraphs of this definition;
- (h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the Termination Date;

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- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 120 days after the date of supply;
 - (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or classified as borrowings under the Accounting Principles; and
 - (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above,

provided that no indebtedness comprising intra-Intercreditor Group debit or credit balances shall be considered “Financial Indebtedness” for the purposes of Clause 25.5 (*Cross Default*).

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

“**Financial Support Direction**” means a financial support direction issued by the Pensions Regulator under section 43 of the Pensions Act 2004.

“**Financial Year**” means the annual accounting period of the Holdco Group ending on or about the Accounting Reference Date in each year.

“**First Amendment and Restatement Agreement**” means the amendment and restatement agreement to this Agreement dated 15 November 2021.

“**First Amendment and Restatement Agreement Execution Date**” means the date of execution of the First Amendment and Restatement Agreement.

“**First Amendment Effective Date**” means the “Effective Date” as defined in the First Amendment and Restatement Agreement.

“**First Extended Maturity Date**” means 31 January 2023.

“**Freehold Property**” means any freehold, long leasehold, heritable or immovable property (and shall include any equivalent type of property ownership interest under the laws of any other jurisdiction), owned by a member of the Group including (where the context so requires) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of such property.

“**FSHC**” means FSHC Group Holdings Limited, a limited liability company incorporated under the laws of Guernsey and registered with company number 55183.

“**FSHCGL**” means Four Seasons Health Care Group Limited (in administration).

“**Funding Rate**” means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 13.3 (*Cost of funds*).

“Funds Flow Statement” means:

- (a) in relation to the Initial Utilisation, the funds flow statement delivered to the Agent pursuant to Clause 4.1 (*Initial Conditions Precedent*); or
- (b) in relation to any other Utilisation, the funds flow statement delivered to the Agent with the Utilisation Request for such Utilisation,

in each case in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders).

“Governance Deed” means

- (a) in the case of the Holdco Guarantor, the governance deed relating to the Holdco Guarantor, made between the Holdco Guarantor, certain Affiliates of the Holdco Guarantor and the Appointor (as defined therein) and dated 16 November 2018 and amended by the deed of amendment dated 26 April 2019; and
- (b) in the case of the Company, the governance deed relating to the Company, made between the Company, certain Affiliates of the Company and the Appointor (as defined therein) and dated 16 November 2018 and amended by the deed of amendment dated 2 April 2019.

“Governance Documents” means all documentation entered into by the Company and certain Affiliates of the Company and various other parties in respect of the corporate governance of the Holdco Guarantor and the Company, including without limitation the Governance Deeds and the Side Deeds, and in each case any ancillary documents relating thereto.

“Group” means the Company and each of its Subsidiaries from time to time, but excluding the Tenant Administration Companies and FSHCGL.

“Group Lease” means a lease:

- (a) which is an Occupational Lease; and
- (b) which has a member of the Group as the tenant under such lease.

“Group Structure Chart” means the group structure chart delivered as a condition precedent to the First Amendment and Restatement Agreement.

“Guarantor” means each Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 28.6 (*Resignation of a Guarantor*).

“GuernseyCo Loan” means an unsecured loan made in cash by Elli Finance II Ltd to the Holdco Guarantor in a principal amount not exceeding £1,000,000 and which is subordinated pursuant to the terms of the Intercreditor Agreement or otherwise to the satisfaction of the Agent (acting on the instructions of the Majority Lenders acting reasonably).

“Hedge Counterparty” means any person which has become a Party as a Hedge Counterparty in accordance with Clause 26.8 (*Accession of Hedge Counterparties*), and

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

“**Hedging Agreement**” has the meaning provided in the Intercreditor Agreement.

“**High Yield Bond Debt**” means Financial Indebtedness arising under the High Yield Bond Debt Documents.

“**High Yield Bond Debt Documents**” means

- (a) the High Yield Notes Indenture and any associated fee letters;
- (b) the High Yield Notes;
- (c) the High Yield Notes Guarantees;
- (d) any other documents designated as such by the High Yield Notes Trustee on the one hand and the Holdco Guarantor on the other hand; and
- (e) in each case:
 - (i) the Intercreditor Agreement; and
 - (ii) the Transaction Security Documents and any other security documents in respect of the High Yield Notes (to the extent creating Security for the High Yield Bond Debt).

“**High Yield Notes**” has the meaning provided in the Intercreditor Agreement.

“**High Yield Notes Guarantees**” means the subordinated guarantees granted by certain Obligors in favour of the holders of the High Yield Notes pursuant to the High Yield Notes Indenture.

“**High Yield Notes Indenture**” means the indenture, indentures or any note purchase and guarantee agreement, credit agreements, loans or trust deeds pursuant to which any High Yield Notes (including any exchange notes issued in relation thereto) are issued, as the same may be amended or supplemented from time to time.

“**High Yield Notes Trustee**” means the trustee for (or other representative in respect of) the High Yield Notes under the High Yield Notes Indenture.

“**Holdco**” means each of the following companies:

- (a) the Holdco Guarantor;
- (b) the Company;
- (c) Elli Group (UK) Ltd; and
- (d) the Original Borrower.

“**Holdco Group**” means the Holdco Guarantor and each of its Subsidiaries from time to time (excluding the Tenant Administration Companies and FSHCGL).

“**Holdco Guarantor**” means Elli Investments Limited (in administration), a limited company incorporated under the laws of Guernsey.

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

“**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; or
- (c) 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) Disruption Event; and
 - (C) payment is made within 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; or
- (iii) its failure to pay is caused by a Borrower failing to make a corresponding and required payment to the Agent.

“**Implementation Officer**” means the Initial Implementation Officer appointed pursuant to Clause 24.29(a) (*Implementation Officer*) and any replacement or successor appointee that is satisfactory to the Majority Lenders (acting in their sole and absolute discretion).

“**Initial IO Engagement Letter**” is the IO Engagement Letter relating to the Initial Implementation Officer.

“**Initial Loan Period**” means the period on and from the First Amendment and Restatement Effective Date to the Initial Maturity Date.

“**Initial Maturity Date**” means 31 December 2022.

“**Initial Signing Date**” means the date of execution of the original 15 March 2018 iteration of this Facility.

“**Initial Utilisation**” means the first Utilisation of the Facility.

“**IO Engagement Letter**” is the engagement letter between the applicable Appointing Obligor and the Implementation Officer relating to the appointment and terms of engagement of the Implementation Officer pursuant to Clause 24.29 (*Implementation Officer*), the scope of which shall include (but not be limited to) (i) the implementation of and compliance with the Operational Stability Covenants and (ii) the appointment of the Implementation Officer to the board of directors of each Appointing Obligor (other than

any Obligor which is in administration) and the terms of which IO Engagement Letter must always be acceptable to the Majority Lenders (acting in their sole and absolute discretion).

“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.

“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 Group (which may now or in the future subsist).

“Intercreditor Agreement” means the intercreditor agreement dated 27 June 2012 (as amended from time to time), between among others, the Company, the Debtors (as defined therein), the Intra-Group Borrowers (as defined therein), the Lenders, the Agent and the Security Agent.

“Intercreditor Group” means Company and those of its Subsidiaries which are party to Intercreditor Agreement.

“Interest Payment” means the aggregate amount of interest that is, or is scheduled to become, payable under any Finance Document.

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 12 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 11.3 (*Default Interest*).

“IO Engagement Letter” has the meaning given to that term in Clause 24.29(a) (*Implementation Officer*).

“Jersey Proceeds Holding Accounts” has the meaning given to that term in paragraph 5(c) of Schedule 17 (*Restrictive Covenants*)

“Joint Venture” means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

“Joint Administrators” means the EIL Administrators, the EFUK Administrators and the FSHCL Administrators.

“Joint Administrators’ Accounts” means the bank accounts with account numbers [REDACTED] and [REDACTED] (in respect of the EIL Administrators), [REDACTED] and [REDACTED] (in respect of the EFUK Administrators) and [REDACTED] and [REDACTED] (in respect of the FSHCL Administrators) (and any addition, renewal, sub-account or replacement thereof) maintained in the name of the EIL Administrators, the EFUK Administrators and the

FSHCL Administrators (respectively) on behalf of the relevant Obligor Administration Company.

“Leasehold Property” means a property owned by a person that is not a member of the Group and which is let to a member of the Group, including (where the context so requires) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of such property.

“Legal Reservations” means:

- (a) the principle that equitable or discretionary remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim; and
- (c) the possibility that the courts may recharacterise any security purporting to be a fixed charge as a floating charge (or vice versa);
- (d) similar principles, rights and defences under the laws of any Relevant Jurisdiction for any Obligor; and
- (e) any other matters which are set out as qualifications or reservations as to matters of law of general application in any 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 26 (*Changes to the Lenders*), which in each case has not ceased to be a Lender in accordance with the terms of this Agreement.

“Limitation Acts” means the Limitation Act 1980, the Foreign Limitation Periods Act 1984, the Limitation (Northern Ireland) Order 1989, the Foreign Limitation Periods (Northern Ireland) Order 1985 and the Prescription and Limitation (Scotland) Act 1973.

“LMA” means the Loan Market Association.

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

“Lookback Period” means the number of days specified as such in the Reference Rate Terms.

“Lux Shareholder Loan” means any unsecured loan or bond made in cash at any time by:

- (a) any of Elli Finance II Ltd and the Holdco Guarantor to Luxco 1;
- (b) Luxco 1 to Luxco 2; and

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- (c) Luxco 2 to Elli Group (UK) Ltd (and to include any shareholder funding made available by way of a deeply discounted bond),

which, in each case, is subordinated pursuant to the terms of the Intercreditor Agreement (namely, pursuant to the subordination provisions applicable to “**Shareholder Liabilities**” with respect to any other Lux Shareholder Loan) or otherwise to the satisfaction of the Agent (acting on the instructions of the Majority Lenders acting reasonably) and (i) which is not prohibited under the undertakings contained in Schedule 17 (*Restrictive Covenants*) and (ii) which is subject to the Transaction Security.

“**Luxco**” means each of Luxco 1 and Luxco 2.

“**Luxco 1**” means Carmel Capital VIII S.à r.l., a private limited company (société à responsabilité limitée) incorporated under the laws of Luxembourg, having its registered office at 1-3 Boulevard de la Foire L-1528 Luxembourg and registered with the Luxembourg Trade and Companies Register under the number B 169236.

“**Luxco 2**” means Carmel Capital IX S.à r.l., a private limited company (société à responsabilité limitée) incorporated under the laws of Luxembourg, having its registered office at 1-3 Boulevard de la Foire L-1528 Luxembourg and registered with Luxembourg Trade and Companies Register under the number B 169260.

“**Majority Independent Board**” means a “Board” as defined in the applicable Governance Deed and which in each case complies with clause 2.1 of the applicable Governance Deed.

“**Mandatory Prepayment Account**” means the bank account with account number [REDACTED] (and any addition, renewal, sub-account or replacement thereof) maintained in the name of the EFUK Administrators on behalf of the Original Borrower and secured in favour of the Security Agent.

“**Majority Lenders**” means 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).

“**Margin**” means the percentage rate per annum specified as such in the Reference Rate Terms.

“**Market Disruption Rate**” means the rate (if any) specified as such in the Reference Rate Terms.

“**Material Adverse Effect**” means, in the opinion of the Majority Lenders, a material adverse effect on:

- (a) the business, operations, property, assets, condition or prospects (financial or otherwise) of the Group; or
- (b) the ability of the Obligors taken as a whole to perform their obligations under the Debt Documents (or any provision thereof); or

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- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents, or the validity or enforceability of the Debt Documents (as defined in the Intercreditor Agreement) or the rights or remedies of any Finance Party under any of the Debt Documents in a manner and to an extent materially adverse to the interests of the Finance Parties under the Finance Documents; or
- (d) any member of the Group's regulatory status, including as a result of any action that is threatened, pending or reasonably foreseeable, which has an adverse effect on:
- (i) any five or more care homes; or
 - (ii) one or more care homes representing 3 per cent. or more of the revenue or assets (in each case as determined on the basis of GAAP) of the Group based on the Group's most recent quarterly financial statements,
- in a manner and to an extent materially adverse to the interests of the Finance Parties under the Finance Documents,

provided that, notwithstanding the foregoing, the issuance, threat of issuance, or pending or reasonably foreseeable issuance of a stage 6 formal notification by the Care Quality Commission shall, in any event, constitute a Material Adverse Effect.

“Material Company” means, at any time:

- (a) an Obligor; and
- (b) a Subsidiary of the Company (other than Silver Springs Limited) which has earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) representing 5 per cent. or more of earnings before the aggregate of interest, tax, depreciation and amortisation of the Group (calculated on the same basis as EBITDA) or has gross assets (excluding intra-Group items) representing 5 per cent. or more of the gross assets of the Group, calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (b) above shall be determined by reference to the most recent Annual Financial Statements or Quarterly Financial Statements supplied under paragraph (a), (b), (c) or (d) of Clause 22.1 (*Financial Statements*) and the latest financial statements of that Subsidiary (consolidated in the case of a Subsidiary which itself has Subsidiaries and audited, to the extent prepared or required by law). However, if a Subsidiary has been acquired or disposed of since the date as at which the most recent Annual Financial Statements or (as the case may be) Quarterly Financial Statements were prepared, such financial statements shall be deemed to be adjusted in order to take into account the acquisition or disposal of that subsidiary (that adjustment being certified by the Auditors of the Consolidated Account Companies as representing an accurate reflection of the revised EBITDA and gross assets of the Holdco Group). A report by the Auditors of the Consolidated Account Companies that a Subsidiary is or is not a Material Company shall, in the absence of manifest error, be conclusive and binding on all Parties.

A list of Material Companies as at the First Amendment Effective Date is set out in Schedule 14 (*Material Companies*).

“**Month**” means, in relation to an Interest Period (or any other period for the accrual of commission or fees), a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, subject to adjustment in accordance with the rules specified as Business Day Conventions in the Reference Rate Terms.

“**Monthly Financial Information**” means the monthly financial information delivered pursuant to paragraph (d) of Clause 22.1 (*Financial Statements*).

“**New Lender**” has the meaning given to that term in Clause 26 (*Changes to the Lenders*).

“**Non-Group Entity**” means any investment or entity (which is not itself a member of the Group (including associates and Joint Ventures)) in which any member of the Group has an ownership interest.

“**Notes**” means the Senior Secured Notes and/or the High Yield Notes, as the context may require.

“**Obligor**” means a Borrower or a Guarantor.

“**Obligor Administration Companies**” means the Holdco Guarantor, the Original Borrower and FSHCL.

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

“**Occupational Lease**” means any lease or licence or other right of occupation or right to receive rent to which a Freehold Property may at any time be subject (but excluding any natural person’s right to occupy a Freehold Property arising under a Care Contract and any other right of occupation of a patient or resident).

“**OFAC**” means the Office of Foreign Assets Control of the US Department of the Treasury.

“**Officer’s Certificate**” has the meaning given to that term in Schedule 17 (*Restrictive Covenants*).

“**Operational Stability Covenants**” means the covenants set out Clause 23 (*Operational Stability Covenants*).

“**Operational Stability Covenant Budget**” means the budget described in Clause 23 (*Operational Stability Covenants*).

“**Original Borrower**” means Elli Finance (UK) plc (in administration).

“**Original Financial Statements**” means:

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- (a) in relation to each Original Borrower or Original Guarantor, means its audited consolidated financial statements for the Financial Year ended 31 December 2019; and
- (b) in relation to any other Obligor, its audited financial statements delivered to the Agent as required by Clause 28 (*Changes to the Obligors*).

“**Original Guarantor**” means the companies listed in Part B of Schedule 1 (*Guarantors*) of the First Amendment and Restatement Agreement as the original guarantors.

“**Party**” means a party to this Agreement.

“**Pension Items**” means any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme.

“**Pensions Regulator**” means the body corporate called the Pensions Regulator established under Part I of the Pensions Act 2004.

“**Perfection Requirements**” means any and all registration, filings, notices and other actions and steps required to be made in any jurisdiction in order to perfect security created by the Transaction Security Documents or in order to achieve the relevant priority for such Transaction Security.

“**Proceeds Holding Account(s)**” means the Jersey Proceeds Holding Accounts and each other bank account (and any addition, renewal, sub-account or replacement thereof) to be opened by an Obligor in accordance with paragraph 5(e) of Schedule 17 (*Restrictive Covenants*) and secured in favour of the Security Agent.

“**Property**” means each Freehold Property and each Leasehold Property.

“**Qualifying Lender**” has the meaning given to that term in Clause 15 (*Tax Gross Up and Indemnities*).

“**Quarter Date**” means a date which corresponds to the relevant quarter end date within the Financial Year of the Holdco Group.

“**Quarterly Financial Statements**” means the financial statements delivered pursuant to paragraph (b) of Clause 22.1 (*Financial Statements*).

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

“**Reference Rate Supplement**” means a document which:

- (a) is agreed in writing by the Company and the Agent (acting on the instructions of the Majority Lenders);
- (b) specifies the relevant terms which are expressed in this Agreement to be determined by reference to Reference Rate Terms; and
- (c) has been made available to the Company and each Finance Party.

“**Reference Rate Terms**” means the terms set out in Schedule 20 (*Reference Rate Terms*) or in any Reference Rate Supplement.

“**Refinancing Indebtedness**” has the meaning given to it in Schedule 17 (*Restrictive Covenants*).

“**Related Fund**” in relation to a fund and / or managed account (the first fund), means a fund and / or managed account which is managed or advised by the same investment manager or investment adviser as the first fund or whose board of directors is the same as the first fund or if employees of the investment manager or investment adviser or an affiliate thereof of the first fund comprise the majority of the board of directors or, if it is managed by a different investment manager or investment adviser, a fund and / or managed account whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund, or any entity directly or indirectly controlling or controlled by or under common control with such person.

“**Relevant Interbank Market**” means the market specified as such in the Reference Rate Terms.

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

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

“**Relevant Period**” means each period of twelve months, ending on or about the last day of the Financial Year and each period of 12 months, ending on or about the last day of each Financial Quarter.

“**Repeating Representations**” means each of the Representations set out in Clause 21.2 (*Status*), Clause 21.3 (*Binding Obligations*), Clause 21.4 (*Non-Conflict with other Obligations*), Clause 21.5 (*Power and Authority*), Clause 21.6 (*Validity and Admissibility in Evidence*), Clause 21.7 (*Governing Law and Enforcement*), Clause 21.11 (*No Default*), paragraphs (b) and (c) of Clause 21.13 (*Financial Statements*) (in relation to the financial statements and budget most recently delivered to the Agent pursuant to this Agreement), Clause 21.19 (*Ranking*), Clause 21.21 (*Legal and Beneficial Ownership*), Clause 21.24 (*Real Estate*) and Clause 21.25 (*Group Leases*).

“**Reporting Day**” means the day (if any) specified as such in the Reference Rate Terms.

“**Reporting Time**” means the relevant time (if any) specified as such in the Reference Rate Terms.

“**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 8 (*Form of Resignation Letter*).

“**RFR**” means the rate specified as such in the Reference Rate Terms.

“**RFR Banking Day**” means any day specified as such in the Reference Rate Terms.

“**Restricted Group**” means the Company and each Restricted Subsidiary.

“**Restricted Subsidiary**” has the meaning given to it in Schedule 17 (*Restrictive Covenants*).

“**S&P Global Ratings**” means any affiliate of S&P Global Ratings (a division of S&P Global Inc.) authorised to perform credit rating activities in the European Union pursuant to the EU Credit Rating Agencies Regulation (Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009).

“**Sanctioned Country**” means a country or territory which is, or whose government is, at any time subject to Sanctions broadly prohibiting dealings with such government, country, or territory, which countries and territories, as of the First Amendment and Restatement Agreement Execution Date, are the Crimea region, Cuba, Iran, North Korea, Sudan and Syria.

“**Sanctions**” means any economic or financial sanctions, trade embargoes or other similar restrictive measures imposed, enacted, administered or enforced from time to time by any Sanctions Authority.

“**Sanctions Authority**” means:

- (a) the United States government (including the US Department of State, the US Department of Commerce and the US Department of the Treasury (including the Office of Foreign Assets Control));
- (b) the United Kingdom government (including Her Majesty’s Treasury, the Foreign and Commonwealth Office and the Department for Business, Innovation & Skills);
- (c) the United Nations Security Council;
- (d) the European Union;
- (e) the respective governmental institutions of any of the foregoing including, without limitation, Her Majesty’s Treasury, the US Department of Treasury (including OFAC), the US Department of Commerce, the US Department of State and any other agency of the US government; or
- (f) any other equivalent sanctions authority including, in each case, any successor to any of the foregoing and/or any other governmental institution or agency of the foregoing.

“**Sanctions List**” means the Specially Designated Nationals and Blocked Persons list maintained by OFAC, the Consolidated List of Persons and Entities subject to Financial Sanctions maintained by the European Commission, the Consolidated List of Financial

Sanctions Targets maintained by Her Majesty's Treasury, or any similar list maintained by, or public announcement of a Sanctions designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time.

“Sanctions Restricted Person” means any person:

- (a) which is the subject or target of any Sanctions and listed on a Sanctions List;
- (b) owned 50 per cent. or more by or otherwise controlled by, or acting on behalf of, one or more persons referenced in paragraph (a) above;
- (c) which is a government of a Sanctioned Country;
- (d) which is an agency or instrumentality of, or an entity directly or indirectly owned or controlled by, a government of a Sanctioned Country; or
- (e) located, organised or resident in a Sanctioned Country.

“Scottish Security Confirmation Deed” means the Scots law confirmation deed delivered as a condition precedent to the First Amendment Effective Date between the relevant Obligors and the Security Agent in respect of Transaction Security Documents governed by Scots law and entered into prior to the First Amendment Effective Date.

“Second Amendment and Restatement Agreement” means the amendment and restatement agreement to this Agreement dated 21 December 2022.

“Second Amendment and Restatement Agreement Execution Date” means the date of execution of the Second Amendment and Restatement Agreement.

“Second Amendment Effective Date” means the “Effective Date” as defined in the Second Amendment and Restatement Agreement.

“Second Extended Maturity Date” means 30 September 2023.

“Secured Parties” has the meaning given to it in the Intercreditor Agreement.

“Security” means any mortgage, standard security, pledge, assignation in security, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“Senior Management” means each of the chief executive officer and the chief financial officer of the Company.

“Senior Secured Bond Debt” means Financial Indebtedness arising under the Senior Secured Bond Debt Documents.

“Senior Secured Bond Debt Documents” means:

- (a) the Senior Secured Notes Indenture and any associated fee letters;
- (b) the Senior Secured Notes;
- (c) the Senior Secured Notes Guarantees;

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- (d) any other documents designated as such by the Senior Secured Notes Trustee and the Company; and in each case:
- (i) the Intercreditor Agreement; and
 - (ii) the Transaction Security Documents and any other Security documents in respect of the Senior Secured Notes (to the extent creating Security for the Senior Secured Bond Debt).

“**Senior Secured Notes**” has the meaning provided in the Intercreditor Agreement.

“**Senior Secured Notes Guarantees**” means the guarantees granted in favour of the holders of the Senior Secured Notes pursuant to the Senior Secured Notes Indenture.

“**Senior Secured Notes Indenture**” means the indenture, indentures or any note purchase and guarantee agreement, credit agreements, loans or trust deeds pursuant to which any Senior Secured Notes are issued, as the same may be amended or supplemented from time to time.

“**Senior Secured Notes Trustee**” means the trustee or trustees for (or other representative in respect of) the Senior Secured Notes under the Senior Secured Notes Indenture.

“**Shareholder Loan**” means:

- (a) any Lux Shareholder Loan; and
- (b) any unsecured loan made in cash by the Holdco Guarantor to the Company (excluding, for the avoidance of doubt, any Senior Secured Note or High Yield Note acquired by the Holdco Guarantor), which, in the case of paragraphs (a) and (b) above, is subordinated pursuant to the terms of the Intercreditor Agreement or otherwise to the satisfaction of the Agent (acting on the instructions of the Majority Lenders acting reasonably) and (i) which is not prohibited under the undertakings contained in Schedule 17 (*Restrictive Covenants*) and (ii) which is subject to the Transaction Security.

“**Side Deed**” means

- (a) in the case of the Holdco Guarantor, the side deed from the Elli Companies (as defined therein) for the benefit of the Addressees (as defined therein) relating to the Governance Deed referred to in paragraph (a) of the definition of “Governance Deed” and dated 27 February 2020, including as further amended by the deed of amendment dated 1 October 2020; and
- (b) in the case of the Company, the side deed from the Elli Companies (as defined therein) for the benefit of the Addressees (as defined therein) relating to the Governance Deed referred to in paragraph (b) of the definition of “Governance Deed” dated 27 February 2020, including as further amended by the deed of amendment dated 1 October 2020.

“**Specified Time**” means a day or time determined in accordance with Schedule 12 (*Timetable*).

“**Sterling**” and “**£**” means the lawful currency for the time being of the United Kingdom.

“**Subject Defaults**” means:

- (a) any defaults or events of default of any member of the Holdco Group under the Senior Secured Notes Indenture which have occurred and are continuing at the First Amendment Effective Date; and
- (b) any defaults or events of default of any member of the Holdco Group under the High Yield Notes Indenture which have occurred and are continuing as at the First Amendment Effective Date.

“**Subsidiary**” means:

- (a) a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006; or
- (b) an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% of the voting capital or similar right of ownership and “**control**” for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

“**Takeout Financing**” means any new debt, equity or other securities issued by the Holdco Guarantor or any direct or indirect Subsidiary of the Holdco Guarantor (howsoever described and in whatever form) that, in each case, are to be incurred to fully or partially refinance the Facility, which has been approved in writing by the Majority Lenders in their absolute discretion.

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

“**Tenant Administration Companies**” means Acegold Limited (in administration), Cotswold Spa Retirement Hotels Limited (in administration), Dounemead Limited (in administration), Grandcross Limited (in administration), Irvine Care Limited (in administration), Meadowvale Care Limited (in administration), Ringdane Limited (in administration), Roseguard Properties Limited (in administration), Springfield House (Oaken) (2001) Limited (in administration), Tamaris (South East) Limited (in administration) and Tamhealth Limited (in administration).

“**Termination Date**” means as applicable, the First Extended Maturity Date or the Second Extended Maturity Date.

“**Third Party Chargor**” means:

- (a) Luxco 1;
- (b) Luxco 2;

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- (c) Four Seasons Health Care Group Treasury Limited; and
 - (d) any other entity that has provided Transaction Security over any or all of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents but is not a Guarantor.

“**Total Commitments**” means the aggregate of the Commitments of all the Lenders, being £24,129,314.01.

“**Trade Instruments**” means any performance bonds, or advance payment bonds or documentary letters of credit issued in respect of the obligations of any member of the Group arising in the ordinary course of trading of that member of the Group.

“**Transaction Security**” means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

“**Transaction Security Documents**” means (without double counting) (a) each of the documents listed in Schedule 18 (*Transaction Security*), (b) each Transaction Security Document set out in the First Amendment and Restatement Agreement and (c) each other document entered into by the Holdco Guarantor, any Obligor, any Third Party Chargor or any other person 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 or the Senior Secured Bond Debt Documents.

“**Transfer Certificate**” means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Company.

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

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

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

“**TreasuryCo**” means Four Seasons Healthcare Group Treasury Limited.

“**TreasuryCo Charged Account**” means the bank account with account number [REDACTED] (and any addition, renewal, sub-account or replacement thereof) maintained in the name of TreasuryCo.

“**UK**” means the United Kingdom.

“**Uncharged Account**” means the bank account to be opened on or before the day falling 10 Business Days after the First Amendment Effective Date in the name of TreasuryCo having the account number as notified to the Security Agent once such bank account has been opened (and any addition, renewal, sub-account or replacement thereof).

“**Uncharged Cash**” means cash in an amount not to exceed [REDACTED] in aggregate for so long as any amount is outstanding under the Finance Documents.

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

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

“**U.S. Person**” means a United States person within the meaning of section 7701(a)(30) of the U.S. Internal Revenue Code of 1986.

“**Utilisation**” means a Loan.

“**Utilisation Date**” means the date of a Utilisation, being the date on which the relevant Loan is to be made.

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

“**VAT**” means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

“**Waived Default**” means any Default or Event of Default waived under clause 4(a) (*Waiver*) of the First Amendment and Restatement Agreement.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the Agent, any Finance Party, any Lender, any Hedge Counterparty, any Obligor, any Third Party Chargor, any Holdco, 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 in accordance with the Finance Documents;
 - (ii) a document in agreed form is a document which is previously agreed in writing by or on behalf of the Company and the Agent or, if not so agreed, is in the form specified by the Agent;
 - (iii) assets includes present and future properties, revenues and rights of every description;
 - (iv) a Lender’s “cost of funds” in relation to its participation in a Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that

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- participation in that Loan for a period equal in length to the Interest Period of that Loan;
- (v) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (vi) guarantee (other than Clause 20 (*Guarantee, Indemnity and Security*)) has the meaning given to it in Schedule 17 (*Restrictive Covenants*);
 - (vii) 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;
 - (viii) a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (ix) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency or department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) a reference to set-off includes any right of retention, claim for compensation or right to balance accounts on insolvency;
 - (xi) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xii) a time of day is a reference to London time.
- (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) The determination of the extent to which a rate is “for a period equal in length” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
 - (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, unless it is an Event of Default listed in paragraph (f) below (each a “**Non-Remediable Event of Default**”), in which case it is “**continuing**” if it has not been waived (whether or not remedied). The Majority Lenders may waive any action (including the giving of notice pursuant thereto) taken pursuant to Clause 25.18 (*Acceleration*).
 - (f) The Non-Remediable Event of Default referred to in paragraph (e) above means any circumstance constituting an Event of Default under:
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- (i) Clause 25.1 (*Non-Payment*);
 - (ii) Clause 25.2 (*Breach of Operational Covenants*);
 - (iii) Clause 25.3 (*Other Obligations*) as a result of breach of Clause 24.26 (*Administration*);
 - (iv) Clause 25.6 (*Insolvency Proceedings*);
 - (v) Clause 25.8 (*Unlawfulness and Invalidity*);
 - (vi) Clause 25.10 (*Cessation of Business*);
 - (vii) Clause 25.11 (*Expropriation*);
 - (viii) Clause 25.12 (*Repudiation and Rescission of Agreements*); or
 - (ix) Clause 25.14 (*Governance*).
- (g) A reference in this Agreement to a page or screen of an information service displaying a rate shall include:
- (i) any replacement page of that information service which displays that rate; and
 - (ii) the appropriate page of such other information service which displays that rate from time to time in place of that information service,
- and, if such page or service ceases to be available, shall include any other page or service displaying that rate specified by the Agent after consultation with the Company.
- (h) A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.
- (i) Any Reference Rate Supplement overrides anything in:
- (i) the Reference Rate Terms; or
 - (ii) any earlier Reference Rate Supplement.
- (j) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
- (i) Schedule 22 (*Cumulative Compounded RFR Rate*) or Schedule 21 (*Daily Non-Cumulative Compounded RFR Rate*), as the case may be; or
 - (ii) any earlier Compounding Methodology Supplement.

1.3 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) or otherwise to enforce or enjoy the benefit of any term of this Agreement.

- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.4 Security Agent

- (a) In acting or otherwise exercising its right or performing its duties under the Finance Documents, the Security Agent shall act in accordance with the provisions of this Agreement and the Intercreditor Agreement and shall seek any necessary instruction or direction from the Agent or as otherwise directed under the terms of any Finance Document. In so acting, the Security Agent shall have the rights, benefits, protections, indemnities and immunities set out in this Agreement and the Intercreditor Agreement.
- (b) A Lender may elect, by notifying the Security Agent, for all documents and information to be delivered by the Security Agent to a Lender pursuant to the Finance Documents to be sent to a professional adviser of that Lender (the cost of such professional advisers shall be for the account of the Company) in order to ensure that such Lender does not receive any information relating to the Group of which that Lender should not be in receipt pursuant to any applicable law or regulation. Upon such an election, the Security Agent shall not forward to the relevant Lender any such documents or information unless and until the Security Agent has received a written revocation from the relevant Lender of such election. Prior to any such revocation, the Security Agent will be deemed to have fulfilled its obligation to forward such document of information to such Lender by delivery of the same to the professional adviser of that Lender.

1.5 No personal liability

No personal liability shall attach to any director, officer, employee or other individual signing a certificate or other document on behalf of a Party which proves to be incorrect in any way (save in the case of fraud, gross negligence, wilful default or wilful misconduct, where liability shall be determined according to applicable law).

1.6 Intercreditor Agreement

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

1.7 Acting on instructions

Where there is any reference in this Agreement or any other Finance Document to the Agent acting reasonably or properly, or doing an act or coming to a determination, opinion or belief that is reasonable or proper, or any similar or analogous reference, the Agent shall, where it has sought such instructions from the Majority Lenders, be deemed to be acting reasonably and properly or doing an act or coming to a determination, opinion or belief that is reasonable if the Agent acts in accordance with, the express instructions of

the Majority Lenders. Where there is in this Agreement or any other Finance Document a provision to the effect that the Agent is not to unreasonably withhold or delay its consent or approval, the Agent shall be deemed not to have so unreasonably withheld or delayed its consent or approval if the withholding or delay is caused by express instructions being sought from the Majority Lenders with respect to such matters and it is not unreasonable for the Majority Lenders to withhold or delay giving their consent or approval.

1.8 No prejudice to Rectification Proceedings

Nothing in, and no acts performed in connection with, this Agreement (including, without limitation, any of the following by any Finance Party: (i) accepting anything in satisfaction of any condition (including any condition precedent) and any notification of the same; (ii) regarding or determining whether any Obligor is or is not in compliance with any obligation under any Finance Document; (iii) regarding or determining whether a Default is or is not continuing; (iv) without prejudice to Clause 38 (*Remedies and Waivers*), failing to exercise any right or remedy under any Finance Document; or (u) failing to require any Obligor to comply with its obligations under Clause 24.13 (*Further Assurance*) with respect to any Transaction Security Document) shall operate as a waiver, release or discharge of, or prejudice to have any effect whatsoever upon, any of the merits of (x) the Rectification Proceedings or the merits of any contesting of, and/or defence to it, or (y) any application or claim whatsoever in, or arising out of, the Rectification Proceedings by any person.

For the purposes of this Clause:

“**Rectification Proceedings**” means the application to rectify the Companies House register of charges of Tamulst Care Limited and FSHC Properties (CH2) Limited before the English Courts (and any appeal or subsequent proceedings arising therefrom).

1.9 Obligations in respect of the Notes

Nothing in this Agreement will: (i) affect any of the existing obligations of any member of the Holdco Group in respect of the Notes (including but not limited to payment and repayment obligations); or (ii) give rise to any new obligations for any member of the Holdco Group in respect of the Notes; or (iii) in the case of the Obligor Administration Companies, cause any of the existing obligations in respect of the Notes to become administration expenses payable in accordance with paragraph 99(4) of Schedule B1 of the Insolvency Act 1986 or section 383 of the Companies (Guernsey) Law, as amended.

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a Sterling term credit facility in an aggregate amount equal to the Total Commitments.

2.2 Finance Parties' Rights and Obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents

does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor 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.

2.3 Obligors' Agent

- (a) Each Obligor (other than the Company and the Obligor Administration Companies) by its execution of this Agreement or an Accession Document irrevocably appoints the Company to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to execute on its behalf any Accession Document, to make such agreements and to effect the relevant amendments, supplements and variations (in each case, however fundamental) capable of being given, made or effected by any Obligor notwithstanding that they may increase that Obligor's obligations or otherwise affect that Obligor, and to give confirmations as to the continuation of surety obligations, without further reference to or the consent of that Obligor; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Company,

and in each case the relevant Obligor shall be bound as though that 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:

- (a) the Initial Utilisation solely towards:
 - (i) the refinancing of the facilities under the Existing Facility Agreement including paying any related breakage costs, interest, call protection fee and other fees, costs and expenses payable in connection with such refinancing;
 - (ii) payment of costs and expenses incurred by the Company or any other member of the Group in connection with the negotiation of, and entry into, this Agreement; and
 - (iii) to the extent remaining after application in accordance with paragraphs (i) and (ii) above, the general corporate and working capital purposes of the Group,

in each case in accordance with the Funds Flow Statement; and

- (b) any other Utilisation towards:
 - (i) the general corporate and working capital purposes of the Group; and
 - (ii) Capital Expenditures of the Group,
- in each case in accordance with the Funds Flow Statement,

but not towards (A) the purchase or prepayment of the Notes, any Replacement Debt or any other Term Debt (other than Term Debt under the Existing Facility Agreement), (B) the payment of any interest on the Notes, any Replacement Debt or any other Term Debt (other than Term Debt under the Existing Facility Agreement), (C) the payment of any dividend, redemption, repurchase, defeasement, retirement, repayment, premium or any other distribution in respect of share capital (D) any payment falling within paragraphs (a)(i) to (a)(iv) of Paragraph 2 (*Limitation on Restricted Payments*) of Schedule 17 (*Restrictive Covenants*) or (E) the financing or any refinancing (directly or indirectly) of any share or business acquisitions of any nature by the Company or any of its Subsidiaries.

3.2 Monitoring

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

4. [RESERVED]

5. [RESERVED]

6. [RESERVED]

7. **REPAYMENT**

- (a) Subject to paragraphs (c) and (d) below and paragraph 5(e) of Schedule 17 (*Restrictive Covenants*), the Borrower shall repay the Loans in full on the Termination Date.
- (b) If on or prior to the First Extended Maturity Date, the Company and the applicable Obligors have failed to establish the Jersey Proceeds Holding Account pursuant to paragraph 5(c) of Schedule 17 (*Restrictive Covenants*) to the Lenders' satisfaction (in the Lenders' sole and absolute discretion), the Borrower shall repay the Loans in full on the First Extended Maturity Date, unless a Lender (determined in each such Lender's sole and absolute discretion) (an "Extending Lender") elects to defer such condition, in which case the First Extended Maturity Date and the obligation to establish the Jersey Proceeds Holding Account shall be extended or deferred until such a date as such Lender determines (in such Lender's sole and absolute discretion), with the First Extended Maturity Date automatically extended to the Second Extended Maturity Date on the date on which such Lender is satisfied (in such Lender's sole and absolute discretion) with the establishment of the Jersey Proceeds Holding Accounts and so long as no Event of Default has occurred and is continuing on such date.
- (c) For the avoidance of doubt, the participations in the Loan of each Lender which is not an Extending Lender to the Second Extended Maturity Date shall remain required to be repaid on the First Extended Maturity Date, subject to paragraph (d) below.
- (d) On the First Extended Maturity Date, no Obligor shall repay the participations in the Loan of a Lender who is not an Extending Lender, whether using funds held in a Proceeds Holding Account or funds which are otherwise available to it, until the date falling fifteen (15) Business Days following the First Extended Maturity Date (or, if earlier, the date on which the relevant Lender has confirmed in writing that it is not an Extending Lender). On the Second Extended Maturity Date, the Obligors may use funds in Proceeds Holding Accounts to repay the outstanding Loans.
- (e) If amounts held in the Proceeds Holding Accounts exceed the outstanding balance of the Loans, the Borrower shall pay or procure to be paid any excess Net Available Cash to the Security Agent for application in accordance with clause 16.1 of the Intercreditor Agreement, save that no amounts shall be payable under clause 16.1(a)(iii) of the Intercreditor Agreement from such Net Available Cash. The Lenders hereby approve such application of such excess Net Available Cash, notwithstanding anything in this Agreement or the Intercreditor Agreement to the contrary.

8. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

8.1 Illegality

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

- (a) that Lender, shall promptly notify the Agent upon becoming aware of that event;
- (b) after notification under paragraph (a) above, the Agent must notify the Company promptly that:
 - (i) the Commitment of that Lender will be immediately cancelled; and
 - (ii) each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

8.2 [RESERVED]

8.3 Voluntary Prepayment

- (a) A Borrower to which a Utilisation has been made or any other Obligor may, with the consent of the Majority Lenders and subject always to the requirement for the Company to give the Agent not less than three RFR Banking Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Utilisation (but if in part, being an amount that reduces the amount of the Utilisation by a minimum amount of £1,000,000).
- (b) Any prepayment made under paragraph (a) above shall be applied in prepayment of the Utilisations rateably.
- (c) A prepayment which is applied to prepay the Utilisations under paragraph (b) above shall be applied on a pro rata basis amongst the Lenders.

8.4 Right of Cancellation and Repayment in Relation to a Single Lender

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 15.2 (*Tax Gross-Up*); or
 - (ii) any Lender claims indemnification from the Company or an Obligor under Clause 15.3 (*Tax Indemnity*) or Clause 16.1 (*Increased Costs*),

the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the

Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations.

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.

- (b) On the last day of each Interest Period which ends after the Company has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Company in that notice), 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 in favour of that Lender under the Finance Documents.

9. MANDATORY PREPAYMENT

9.1 Mandatory prepayment on Asset Dispositions

The Company shall ensure that any amount required to be prepaid under paragraph 5 (*Limitation on Sales of Assets and Subsidiary Stock*) of Schedule 17 (*Restrictive Covenants*) is applied in prepayment and cancellation of the Facility.

9.2 Takeout Financings

Upon the occurrence of a Takeout Financing the Company shall ensure that all net cash proceeds of such Takeout Financing are applied, within 5 Business Days of the Group's receipt of the same, in prepayment of the Facility in the order set out in Clause 9.4 (*Application of Mandatory Prepayments*). All such prepayments shall be made without penalty, premia, make-whole or prepayment fees (other than Break Costs).

9.3 Change of Control

- (a) Upon the occurrence of a Change of Control, the Company will promptly (and in any event within 5 Business Days) notify the Agent and each Lender, and each Lender shall have a period of 30 days after the date of receipt of such notice (such period being the "**CoC Notice Period**") to determine whether it will require its Available Commitment to be cancelled and its participation in all outstanding Utilisations, together with accrued interest and all other amounts payable under the Finance Documents to that Lender, to be immediately due and payable.
- (b) If, prior to the end of the CoC Notice Period, a Lender has served notice to the Agent requiring that its Available Commitment be cancelled and that its participation in all outstanding Utilisations, together with accrued interest and all other amounts payable under the Finance Documents to that Lender, be declared immediately due and payable, then on the date of such notice:
- (i) the Available Commitments of such Lender will be cancelled and such Lender shall have no obligation to participate in further Utilisations requested under this Agreement; and

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- (ii) all amounts payable under the Finance Documents to such Lender will become immediately due and payable and the Obligors will immediately prepay or procure the prepayment of all Utilisations provided by that Lender.

9.4 Application of Mandatory Prepayments

- (a) A prepayment of Utilisations made under Clause 9.1 (*Mandatory prepayment on Asset Dispositions*) and Clause 9.2 (*Takeout Financings*) shall be made rateably and applied, as amongst the Lenders on a pro rata basis and shall be subject to a minimum quantum of £250,000 (or its equivalent) (the “**Minimum Repayment Threshold**”).
- (b) In the event that any monies applied under Clause 9.1 (*Mandatory prepayment on Asset Dispositions*) and Clause 9.2 (*Takeout Financings*) are less than the Minimum Repayment Threshold, such monies will be applied to a specific mandatory prepayment account opened and controlled by the Security Agent until such proceeds are sufficient to meet the Minimum Repayment Threshold at which point they will be applied in prepayment of the Facility.
- (c) The Borrowers shall make the prepayments referred to in paragraph (a) above at the time required by paragraph 5 of Schedule 17 (*Restrictive Covenants*).

10. RESTRICTIONS

10.1 Notices of Cancellation or Prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 8 (*Illegality, Voluntary Prepayment and Cancellation*) shall (subject to the terms of 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.

10.2 Interest and other Amounts

Any prepayment or repayment under this Agreement shall be made together with accrued interest on the amount prepaid. No premium or penalty is payable in respect of any prepayment or cancellation under this Agreement except for Break Costs.

10.3 Reborrowing of Facility

Any part of the Facility which is prepaid or repaid may not be reborrowed.

10.4 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.

10.5 No reinstatement of Commitments

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

10.6 Agent's Receipt of Notices

If the Agent receives a notice under Clause 8 (*Illegality, Voluntary Prepayment and Cancellation*), it shall promptly forward a copy of that notice or election to either the Company or the affected Lender, as appropriate.

10.7 Effect of Repayment and Prepayment on Commitments

If all or part of a Utilisation under the Facility is repaid or prepaid, an amount of the Commitments (equal to the amount of the Utilisation which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this Clause 10.7 shall reduce the Commitments of the Lenders rateably under the Facility.

10.8 Prepayment Elections

- (a) The Agent shall notify the Lenders as soon as possible of any proposed prepayment of any Loan under Clause 9.1 (*Mandatory prepayment on Asset Dispositions*). A Lender may, if it gives the Agent not less than three Business Days' prior notice, elect to waive all or a specified part of its share of that prepayment of a Loan in accordance with this Clause 10.8 (*Prepayment Elections*).
- (b) If a Lender fails to give the Agent notice in accordance with paragraph (a) above, that Lender shall be deemed to have elected not to waive any part of its share of the relevant prepayment and the Agent shall be entitled to proceed accordingly.
- (c) Any amount of prepayments waived by Lenders in respect of the Facility will be offered to those Lenders who did not waive prepayment (pro rata between them). If no participations of non-waiving Lenders are outstanding or if there are not sufficient non-waiving Lenders willing to accept the waived amounts, each waiving Lender must accept prepayment of its waived share or that portion of its waived share still outstanding after having been offered to non-waiving Lenders of the prepayment of the Facility. This paragraph shall not apply to any prepayment in full of the Facility.
- (d) No Lender shall be obliged to accept prepayment of all or part of its share of the Facility where that prospective prepayment arises as a result of another Lender electing to waive all or part of its share of prepayment of the Facility.

11. INTEREST

11.1 Calculation of Interest

- (a) The rate of interest on each Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of the applicable:
 - (i) Margin; and
 - (ii) Compounded Reference Rate for that day.

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- (b) If any day during an Interest Period for a Loan is not an RFR Banking Day, the rate of interest on that Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.

11.2 Payment of Interest

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

11.3 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, is three 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 11.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

11.4 Notifications

- (a) The Agent shall promptly upon an Interest Payment being determinable notify:
 - (i) the relevant Borrower of that Interest Payment;
 - (ii) each relevant Lender of the proportion of that Interest Payment which relates to that Lender's participation in the relevant Loan; and
 - (iii) the relevant Lenders and the relevant Borrower of:
 - (A) each applicable rate of interest relating to the determination of that Interest Payment; and
 - (B) to the extent it is then determinable, the Market Disruption Rate (if any) relating to the relevant Loan.

This paragraph (a) shall not apply to any Interest Payment determined pursuant to Clause 13.3 (*Cost of funds*).

- (b) The Agent shall promptly notify the relevant Borrower of each Funding Rate relating to a Loan.
- (c) The Agent shall promptly notify the relevant Lenders and the relevant Borrower of the determination of a rate of interest relating to a Loan to which Clause 13.3 (*Cost of funds*) applies.
- (d) This Clause 11.4 shall not require the Agent to make any notification to any Party on a day which is not a Business Day.

12. INTEREST PERIODS

12.1 Interest Periods and Terms

- (a) Any Utilisation shall have an Interest Period of three Months provided that any Utilisation other than the Initial Utilisation may have a shorter initial Interest Period as the Company and the Agent (acting on the instructions of all Lenders) may agree in so far as necessary in order to align such Interest Period with that of the Initial Utilisation.
- (b) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (c) No Interest Period shall be longer than six Months.

12.2 Non-Business Days

Any rules specified as “Business Day Conventions” in the Reference Rate Terms shall apply to each Interest Period.

12.3 Consolidation of Loans

If two or more Interest Periods:

- (a) relate to Loans made to the same Borrower; and
- (b) end of the same date,

those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

13. CHANGES TO THE CALCULATION OF INTEREST

13.1 Interest calculation if no RFR or Central Bank Rate

If:

- (a) there is no applicable RFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for an RFR Banking Day during an Interest Period for a Loan; and
- (b) “Cost of funds will apply as a fallback” is specified in the Reference Rate Terms, then Clause 13.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

13.2 Market Disruption

If:

- (a) a Market Disruption Rate is specified in the Reference Rate Terms; and
- (b) before the Reporting Time the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 35 per cent. of that Loan) that its cost of funds relating to its participation in that Loan would be in excess of that Market Disruption Rate,

then Clause 13.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

13.3 Cost of funds

- (a) If this Clause 13.3 applies to a Loan for an Interest Period, Clause 11.1 (*Calculation of Interest*) shall not apply to that Loan for that Interest Period and the rate of interest on each Lender's share of that Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the applicable Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event by the Reporting Time, to be that which expresses as a percentage rate per annum its cost of funds relating to its participation in that Loan.
- (b) If this Clause 13.3 applies and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty 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 Company, be binding on all Parties.
- (d) If this Clause 13.3 applies pursuant to Clause 13.2 (*Market Disruption*) and:
 - (i) a Lender's Funding Rate is less than the Market Disruption Rate; or
 - (ii) a Lender does not notify a rate to the Agent by the Reporting Time,that Lender's cost of funds relating to its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be the Market Disruption Rate.
- (e) Subject to paragraph (d) above if this Clause 13.3 applies but any Lender does not notify a rate to the Agent by the Reporting Time the rate of interest shall be calculated on the basis of the rates notified by the remaining Lenders.
- (f) If this Clause 13.3 applies the Agent shall, as soon as is practicable, notify the Company.

13.4 Break Costs

- (a) If an amount is specified as Break Costs in the Reference Rate Terms, each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs (if any) attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day prior to the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Finance Party shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in respect of which they become, or may become payable.

14. FEES

14.1 Agency fee and Security Agent Fees

The Company shall pay to the Agent and the Security Agent (for their own accounts) fees in the amount and at the times agreed in the relevant Fee Letter.

15. TAX GROSS UP AND INDEMNITIES

15.1 Definitions

(a) In this Agreement:

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

- (i) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender’s name in Part A of Schedule 1 (*Lenders*) of the First Amendment and Restatement Agreement, and
 - (A) where the Borrower is an Original Borrower, was filed with HM Revenue & Customs within 30 days of the Initial Signing Date; or
 - (B) where the Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower; or
- (ii) where it relates to a Treaty Lender that is not an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the documentation which it executes on becoming a party as Lender; and
 - (A) where the Borrower is a Borrower as at the relevant Transfer Date, is filed with HM Revenue & Customs within 30 days of that Transfer Date; or
 - (B) where the Borrower is not a Borrower as at the date on which that Treaty Lender becomes a party as Lender, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower.

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

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

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

“**Qualifying Lender**” means a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

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- (i) a Lender:
 - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
 - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance;
 - (ii) a Lender which is:
 - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (B) a partnership each member of which is:
 - (1) a company so resident in the United Kingdom; or
 - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
 - (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

(iii) a Treaty Lender.

“**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:

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

- (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

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

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

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 15.2 (*Tax Gross-Up*) or a payment under Clause 15.3 (*Tax Indemnity*).

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

- (i) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (ii) 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
- (iii) meets any other conditions in the relevant Treaty for full exemption from tax imposed by the United Kingdom on interest which relate solely to the Lender (assuming, except where the Treaty Lender has failed to comply with any of its obligations under Clause 15.2(h) (*Tax Gross-Up*) that any applicable procedural formalities under the relevant Treaty have been met).

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

“**UK Non-Bank Lender**” means a Lender which becomes a Party after the day on which this Agreement is entered into and which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party.

- (b) Unless a contrary indication appears, in this Clause 15 a reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

15.2 Tax Gross-Up

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

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- (b) The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. If the Agent receives such notification from a Lender it shall reasonably promptly notify the Company and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor or the Agent, the amount of the payment due from the relevant Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
- (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender (and, for these purposes, if such Qualifying Lender were a Treaty Lender, it is assumed that the payment would have been one specified in a direction given by HM Revenue & Customs under Regulation 2 of the *Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI1970/488)*) but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
 - (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (ii) of the definition of “**Qualifying Lender**” and:
 - (A) an officer of HM Revenue & Customs has given (and not revoked) a direction (a “**Direction**”) under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
 - (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (ii) of the definition of “**Qualifying Lender**” and:
 - (A) the relevant Lender has not given a Tax Confirmation to the Company; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an “**excepted payment**” for the purpose of section 930 of the ITA.
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- (e) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction for or on account of Tax imposed by the United Kingdom if, on the date on which the payment falls due, the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations, if any, under paragraph (h) and (k) below.
- (f) 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.
- (g) 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.
- (h) Subject to paragraph (j) below, a Treaty Lender and each Obligor must co-operate by using its reasonable endeavours to complete any procedural formalities necessary for that Obligor to obtain and maintain authorisation to make payments to which that Treaty Lender is entitled without a Tax Deduction.
- (i) A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation.
- (j)
- (i) A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part A of Schedule 1 (*Lenders*) of the First Amendment and Restatement Agreement; and
- (ii) a Treaty Lender which is not an Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party as a Lender,
- and, having done so, that Lender shall be under no obligation pursuant to paragraph (h) above.
- (k) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (j) above and:
- (i) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or
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- (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 HM Revenue & Customs;
 - (B) HM Revenue & Customs 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) HM Revenue & Customs gave but subsequently withdrew authority for that Borrower to make payments to that Lender without a Tax Deduction or such authority has otherwise terminated or expired or is due to terminate or expire within the next three months,

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.

- (l) If a Lender has not included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with paragraph (j) above, no Obligor shall file any 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.
- (m) 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.

15.3 Tax Indemnity

- (a) The Company shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (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

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- (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 15.2 (*Tax Gross-Up*);
 - (B) would have been compensated for by an increased payment under Clause 15.2 (*Tax Gross-Up*) but was not so compensated for solely because one of the exclusions in paragraphs (d) or (e) of Clause 15.2 (*Tax Gross-Up*) applied; or
 - (C) relates to a FATCA Deduction required to be made by any party.
 - (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.
 - (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 15.3, notify the Agent.

15.4 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 or that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained, utilised and retained 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.

15.5 Stamp Taxes

The Company shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes (for the purposes of this Clause 15.5) payable in respect of any Finance Document, save for any Stamp Taxes payable in respect of an assignment or transfer pursuant to Clause 26 (*Changes to the Lenders*).

15.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is or becomes chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply)

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- an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration).
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 15.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated as making the supply or (as appropriate) receiving the supply under the applicable VAT grouping rules (as provided for in Article 11 of Council Directive 2006/112/EC (as amended) or as implemented by relevant legislation in any relevant jurisdiction having implemented such Council Directive 2006/112/EC, or any corresponding legislation in any other relevant jurisdiction) so that a reference to a Party shall be construed as a reference to that Party or the relevant group of which that Party is a member for VAT purposes at the relevant time or the relevant representative member of that group at the relevant time as the case may be.
- (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 number
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and such other information as is reasonably requested in connection with the Finance Party's reporting requirements in relation to such supply.

15.7 FATCA Information

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

15.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a

FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Agent and the Agent shall notify the other Finance Parties.

15.9 Lender Status Confirmation

- (a) Each Lender which becomes a Party to this Agreement after the Initial Signing Date shall indicate in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:
 - (i) a Qualifying Lender (other than a Treaty Lender);
 - (ii) a Treaty Lender; or
 - (iii) not a Qualifying Lender.
- (b) If such a Lender fails to indicate its status in accordance with this Clause 15.9 then such Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, a Transfer Certificate, Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 15.9].

16. INCREASED COSTS

16.1 Increased Costs

- (a) Subject to Clause 16.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in law (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation made after the Initial Signing Date.
- (b) In this Agreement, “**Increased Costs**” means:
 - (i) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
 - (ii) an additional or increased cost; or (iii) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that

Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

16.2 Increased Cost Claims

- (a) A Finance Party intending to make a claim pursuant to Clause 16.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Company.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

16.3 Exceptions

- (a) Clause 16.1 (*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 15.3 (*Tax Indemnity*) (or would have been compensated for under Clause 15.3 (*Tax Indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 15.3 (*Tax Indemnity*) applied);
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation or of any Finance Document; or
 - (v) 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 Initial Signing Date (or, if later, the date it became a Party to this Agreement) (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) (provided that if such Increased Costs attributable to Basel II are incurred as a result of the implementation or application of, or compliance with, the Basel III Standards, this paragraph (v) shall not apply to the extent that such implementation, application or compliance differs from that which has been implemented or required already as at the Initial Signing Date by Basel II as determined without reference to the Basel III Standards).

For the avoidance of doubt, a Finance Party which is not bound to comply with Basel II either at the Initial Signing Date (or, if later, the date it became a Party to this Agreement) or as at the date of a claim under this Clause 16 shall be entitled to make a claim for all Increased Costs incurred by it as a result of the implementation or application of, or compliance with, the Basel III Standards (to the extent that such Finance Party is bound to comply with the Basel III Standards) without reference to paragraph (u) above.

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- (b) In this Clause 16.3:
- (i) reference to a “**Tax Deduction**” has the same meaning given to the term in Clause 15.1 (*Definitions*); and
 - (ii) “**Basel III Standards**” means:
 - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “*Basel III: A global regulatory framework for more resilient banks and banking systems*”, “*Basel III: International framework for liquidity risk measurement, standards and monitoring*” and “*Guidance for national authorities operating the countercyclical capital buffer*” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
 - (B) the rules for global systemically important banks contained in “*Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text*” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
 - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

17. OTHER INDEMNITIES

17.1 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 Business Days of demand, indemnify 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.

17.2 Other Indemnities

- (a) The Company shall (or shall procure, subject to paragraph (b) below, that the relevant Obligor, will), within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:
 - (i) the occurrence of any Event of Default;
 - (ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 31 (*Sharing among the Finance Parties*);
 - (iii) 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); or
 - (iv) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.
- (b) Each Obligor Administration Company shall only be required to make the indemnification described under paragraph (a) above to the extent the relevant cost, loss or liability was incurred as a result of such Obligor Administration Company's breach of obligations under the Finance Documents.

17.3 Indemnity to the Agent

The Company shall promptly and, in any event, within seven Business Days, indemnify the Agent against:

- (a) any cost, loss or liability (including legal counsel's fees and VAT thereon) incurred by the Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorized; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (other 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 32.11 (*Disruption to Payment Systems Etc.*) notwithstanding the Agent's 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.

17.4 Indemnity

- (a) Subject to paragraph (c) below, each Obligor shall within ten Business Days of demand indemnify each Indemnified Person (as defined below) against any claim, cost, expense, damage, loss or liability (including, without limitation, legal fees and any VAT thereon) (“**Loss**”) in each case incurred by or awarded against that Indemnified Person, arising out of or in connection with any actual or potential action, claim, suit, investigation or proceeding pending or threatened (including, without limitation, any action, claim, investigation or proceeding to preserve or enforce rights) in relation to the Finance Documents, the use of the proceeds of the Facility and any breach by any member of the Group of the terms of the Finance Documents.
- (b) No Obligor will be liable under paragraph (a) above for any Loss (including, without limitation, legal fees) incurred or awarded against an Indemnified Person directly resulting from a breach by that Indemnified Person of any material term of the Finance Documents.
- (c) Each Obligor Administration Company shall only be liable under paragraph (a) above for any Loss (including, without limitation, legal fees) incurred or awarded against an Indemnified Person to the extent such Loss results from a breach by such Obligor Administration Company of its obligations under the Finance Documents.
- (d) Each Obligor agrees that no Indemnified Person shall have any liability (whether directly or indirectly in contract, tort or otherwise) to a member of the Group or any of its Affiliates for or in connection with anything referred to in paragraph (a) above, except for any such cost, expense, loss or liability incurred by a member of the Group that results directly from any breach by the Indemnified Person of a material provision of the Finance Documents or which results directly from the gross negligence, wilful default or wilful misconduct of that Indemnified Person.
- (e) For the purposes of this Clause 17.4, “**Indemnified Person**” means each Finance Party, each Affiliate of a Finance Party and each of their respective directors, officers, partners, members, shareholders, employees and agents.
- (f) None of the provisions of this Clause 17.4 shall be with prejudice to the indemnity given and extended to the Agent by the Company pursuant to Clause 17.3 (*Indemnity to the Agent*).

18. MITIGATION BY THE LENDERS

18.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality*), Clause 15 (*Tax Gross Up and Indemnities*) or Clause 16 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

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- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

18.2 Limitation of Liability

- (a) The Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 18.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 18.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

19. COSTS AND EXPENSES

19.1 Transaction Expenses

The Company shall (subject to any arrangements agreed prior to the Initial Signing Date) promptly on demand pay the Agent (subject to Clause 29.16 (*Reliance and engagement letters*)), the Security Agent and the Lenders the amount of all costs and expenses (including legal counsel's fees) reasonably incurred by any of them (and, in the case of the Security Agent by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security (including the First Amendment and Restatement Agreement); and
- (b) any other Finance Documents executed after the Initial Signing Date.

19.2 Amendment Costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 32.10 (*Change of Currency*), the Company shall, within seven Business Days of demand, reimburse each of the Agent (subject to Clause 29.16 (*Reliance and engagement letters*))) and the Security Agent for the amount of all costs and expenses (including legal counsel's fees) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security Agent by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

19.3 Enforcement and Preservation Costs

The Company shall, within three Business Days of demand, pay to each other Secured Party the amount of all costs and expenses (including legal counsel's 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.

19.4 No double counting of Security Agent's costs

There shall be no double counting in respect of the same matter or circumstance as between any obligation to reimburse or pay fees to the Security Agent under this Agreement and any similar or equivalent provision in the Intercreditor Agreement.

20. GUARANTEE, INDEMNITY AND SECURITY

20.1 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 under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (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 20 if the amount claimed had been recoverable on the basis of a guarantee.

provided however that the liability of FSHC Properties (Holdings) Limited as Guarantor shall be limited to such amount as will not cause circumstances prejudicial to that Guarantor to exist as described in section 53(2) of the Companies Act, Chapter 308 of the Laws of Barbados.

20.2 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.

20.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 20, will continue or be reinstated as if the discharge, release or arrangement had not occurred.

20.4 Waiver of Defences

Subject to Clause 34.3 (*Administration expenses*), the obligations of each Guarantor under this Clause 20, will not be affected by an act, omission, matter or thing which, but for this Clause 20, would reduce, release or prejudice any of its obligations under this Clause 20 (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 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 or 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.

20.5 Guarantor Intent

Without prejudice to the generality of Clause 20.4 (*Waiver of Defences*), each Guarantor (excluding the Obligor Administration Companies) expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

20.6 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 20. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

20.7 Appropriations

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and 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 20.

20.8 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 20:

- (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 20 (*Guarantee, Indemnity and Security*);
- (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 32 (*Payment Mechanics*).

20.9 Release of Guarantors' Right of Contribution

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

- (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.

20.10 Guarantors' Right of Contribution and Indemnity

Each Obligor acknowledges and agrees that any liability of any of the Obligor Administration Companies to make a contribution (including by way of subrogation) to any other Guarantor or (in respect of any liability of the Original Borrower only) to make a payment in respect of an indemnity claim (including by way of subrogation) shall not rank as expenses of the administration of the Original Borrower or FSHCL (as applicable) pursuant to paragraph 99(4) of Schedule B1 of the Insolvency Act 1986 and Insolvency Rule 3.51(2) or of the Holdco Guarantor (as applicable) pursuant to section 383 of the Companies (Guernsey) Law, as amended.

20.11 Additional Security

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

20.12 Guarantee Limitations

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

20.13 Droit waivers

Each Guarantor irrevocably waives and abandons any and all rights under the laws of Jersey and Guernsey:

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- (a) whether by virtue of the droit de division or otherwise, to require that any liability under the Finance Documents be divided or apportioned with any other person or reduced in any manner whatsoever; and
 - (b) whether by virtue of the droit de discussion or otherwise, to require that recourse be had to the assets of any other person before any claim is enforced against any Guarantor under the Finance Documents.

20.14 Security

- (a) Subject to paragraphs (b) and (c) below, on the First Amendment Effective Date, each Obligor confirms that:
 - (i) any and all Security created by it under the Transaction Security Documents extends to the obligations and liabilities of the Obligors under the Finance Documents (including this Agreement) subject to any limitations set out in the Transaction Security Documents;
 - (ii) the obligations and liabilities of the Obligors arising under this Agreement are included in the Secured Obligations (as defined in the Transaction Security Documents) (including the undertaking given by the Obligors under the Transaction Security Documents to pay and discharge the Secured Obligations) subject to any limitations set out in the Transaction Security Documents;
 - (iii) the Security created under the Transaction Security Documents continues in full force and effect on the terms of the respective Transaction Security Documents;
 - (iv) the obligations and liabilities of the Obligors arising under this Agreement constitute a “Credit Facility” for the purposes of the Intercreditor Agreement. The Obligors acknowledge that the terms of the Senior Secured Bond Debt Documents and the High Yield Bond Debt Documents have been amended to allow for amounts due under this Facility to rank as “Super Senior Liabilities” under and as defined in the Intercreditor Agreement. Notwithstanding such amendments, the Obligors acknowledge that:
 - (A) amounts due under this Facility would, but for the aforementioned amendments, have been permitted to share in the Transaction Security as “Pari Passu Liabilities” under and as defined in the Intercreditor Agreement; and
 - (B) the amendments to the Senior Secured Bond Debt Documents and the High Yield Bond Debt Documents to permit amounts due under this Facility to rank as “Super Senior Liabilities” do not constitute an increase in, or amendment to, the Secured Obligations as contemplated by each Obligor on execution of the Transaction Security Documents.
- (b) The Holdco Guarantor as Obligor pursuant to each of the EAL First Ranking SIA and the EAL Second Ranking SIA hereby irrevocably and unconditionally confirms

the covenants given by it pursuant to clause 2.1 of each of the EAL First Ranking SIA and the EAL Second Ranking SIA.

- (c) Each of the parties to the EAL First Ranking SIA agrees that the final paragraph of clause 2.1 of such EAL First Ranking SIA shall be hereby amended by the deletion of “such assignment or” and by the further deletion of “and/or for the purpose of creating a security interest in accordance with Section 1(6) of the 1993 Law”.
- (d) Each of the parties to the EAL First Ranking SIA and the EAL Second Ranking SIA agrees that the EAL First Ranking SIA and the EAL Second Ranking SIA, respectively, shall be hereby amended by the deletion of their clauses 2.3 and the replacement of their clauses 2.3 in their entirety by new clauses 2.3 as follows:
“2.3 Each of the security interests created by clause 2.1 shall exist concurrently.”
- (e) Each Obligor confirms for the avoidance of doubt that the amendments set out in paragraphs (c) and (d) above do not affect the continuation in full force and effect of the Security created under the Transaction Security Documents.
- (f) It is agreed, for the purposes of the existing Transaction Security Documents governed by the Security Interests (Jersey) Law 2012, that references in such Transaction Security Documents to the Powers of Attorney Law shall be construed as references to the Powers Of Attorney (Jersey) Law 1995.

20.15 Confirmations not to give rise to administration expenses

It is agreed and acknowledged between the Obligor Administration Companies, the Joint Administrators, the Security Agent and the Agent (for and on behalf of the Finance Parties) that none of the confirmations provided under this Clause 20.14 in respect of any obligations and liabilities secured by the Transaction Security shall give rise to an administration expense payable in accordance with paragraph 99(4) of Schedule B1 of the Insolvency Act 1986 or section 383 of the Companies (Guernsey) Law, as amended, except in respect to obligations under this Agreement to which Clause 34.2 (*Administration expenses*) apply.

21. REPRESENTATIONS

21.1 General

- (a) Each Obligor (other than the Obligor Administration Companies) makes the representations and warranties set out in this Clause 21 to each Finance Party.
- (b) Save where otherwise provided, the representations and warranties set out in this Clause 21 are made by each Obligor in respect of itself and (where specified) its Restricted Subsidiaries to each Finance Party.

21.2 Status

- (a) It and each of its Restricted Subsidiaries is a limited liability entity duly incorporated and validly existing under the laws of their respective jurisdictions of incorporation.

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- (b) It and each of its Restricted Subsidiaries has the power to own its material assets and carry on its business as it is being conducted in all material respects.

21.3 Binding Obligations

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

21.4 Non-Conflict with other Obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it to an extent which has or would be reasonably likely to have a Material Adverse Effect;
- (b) the constitutional documents of any Restricted Subsidiary; or
- (c) any agreement or instrument binding upon it or any Restricted Subsidiary or any of its or any Restricted Subsidiary's assets or constitute a default or termination event (however described) under any such agreement or instrument, in each case to such an extent or in such a manner which gives rise to or would be reasonably likely to give rise to a Material Adverse Effect.

21.5 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 Finance Documents to which it is or will be a party and the transactions contemplated by those Finance 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 Finance Documents to which it is a party.

21.6 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 Finance Documents to which it is a party; and
 - (ii) (subject to the Legal Reservations and the Perfection Requirements) to make the Finance 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 except any Authorisation referred to in Clause 21.9 (*No Filing or*

Stamp Taxes), which Authorisations will be promptly obtained or effected within any applicable time after the Initial Signing Date as under the Agreed Security Principles.

- (b) All Authorisations (including any applicable health and social care regulations) necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

21.7 Governing Law and Enforcement

- (a) Subject to the Legal Reservations, the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.
- (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 Relevant Jurisdictions.

21.8 Insolvency

Other than in respect of the Obligor Administration Companies, no:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 25.6 (*Insolvency Proceedings*) (other than pursuant to the Subject Defaults); or
- (b) creditors' process described in Clause 25.7 (*Creditors' Process*),

has been taken or, to the knowledge of any Obligor, threatened in relation to it or any of its Restricted Subsidiaries (other than any non-Obligors to the extent such action, process or threat is in relation to unpaid rent owed by, or to dilapidation claims against, such non-Obligors).

21.9 No Filing or Stamp Taxes

Under the laws of its Relevant Jurisdiction(s) 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 (excluding for this purpose any document relating to the assignment or transfer of rights under this Agreement by a Finance Party) except any filing, recording or enrolling or any tax or fee payable in relation to the Transaction Security, which is necessary to perfect the same and which (subject to the Agreed Security Principles) will be made within all applicable time periods under the relevant laws and paid promptly after the date of the relevant Finance Document (other than in relation to any Transaction Security Document governed by Jersey law where such registration shall be made and such fees paid prior to the date of such Transaction Security Document).

21.10 Deduction of Tax

The Borrower is not required to make any Tax Deduction as defined in Clause 15.1 (*Definitions*) from any payment it may make under any Finance Document to:

- (a) a Qualifying Lender:
 - (i) falling within paragraph (i) of the definition of “**Qualifying Lender**”; or
 - (ii) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (ii) of the definition of “**Qualifying Lender**”,
- (b) a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

21.11 No Default

- (a) No Material Unnotified Default (as defined under the First Amendment and Restatement Agreement) is continuing or is reasonably likely to result from the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- (b) Other than the Subject Defaults, to the best of the knowledge and belief of the Company after due enquiry, no event or circumstance is outstanding as at the First Amendment and Restatement Effective Date 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 an event of default under the Senior Secured Notes Indenture or the High Yield Notes Indenture which has or is reasonably likely to have a Material Adverse Effect.
- (c) Other than the Subject Defaults and in connection with the non-payment of rent by Tamscot Care Limited, Tamaris (RAM) Limited, Four Seasons (No 11) Limited, Huntercombe (Granby One) Limited, Four Seasons (No 9) Limited and Huntercombe (KS) Limited in respect of certain Leasehold Properties, to the best of the knowledge and belief of the Company after due enquiry, no other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its 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.

21.12 No Misleading Information

Save as disclosed in writing to the Agent and approved in writing by the Majority Lenders as an exception to this representation prior to the First Amendment and Restatement Agreement Execution Date:

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- (a) all material information provided to a Finance Party by or on behalf of the Company or the Original Borrower in writing on or before the First Amendment and Restatement Agreement Execution Date and not superseded before that date is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the First Amendment and Restatement Agreement Execution Date have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied; and
 - (b) all other material written information provided by any member of the Group (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect as at such date.

21.13 Financial Statements

- (a) The Original Financial Statements of each Obligor (other than the Obligor Administration Companies) were prepared in accordance with the Accounting Principles consistently applied and give a true and fair view of its financial condition and results of operations during the relevant Financial Year.
- (b) The Company's most recent financial statements delivered pursuant to Clause 21.13 (*Financial Statements*):
 - (i) save as notified or delivered to the Agent pursuant to paragraph (ii) of Clause 22.3 (*Requirements as to Financial Statements*), have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
 - (ii) give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (c) The budgets supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were considered to be reasonable as at the date they were prepared and supplied (it being acknowledged by the Finance Parties that financial projections or forecasts are subject to uncertainties and contingencies and no representation or warranty is given that such financial projections or forecasts will be realised).

21.14 No Proceedings Pending or Threatened

Save as disclosed to the Agent in writing prior to the First Amendment and Restatement Agreement Execution Date, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which would be reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due enquiry)) been started or threatened in writing against it or any of its Restricted Subsidiaries.

21.15 No Breach of Laws

- (a) It has not (and none of its Restricted Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect; and
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due enquiry), threatened in writing against any Restricted Subsidiary which have or are reasonably likely to have a Material Adverse Effect.

21.16 Environmental Laws

- (a) The Company and each Restricted Subsidiary is in compliance with Clause 24.3 (*Environmental Compliance*) and to the best of its knowledge and belief (having made due enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due enquiry)) is threatened in writing against the Company and any Restricted Subsidiary where that claim has or is reasonably likely, if determined against that Restricted Subsidiary, to have a Material Adverse Effect.

21.17 Taxation

- (a) It is not (and none of its Restricted Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Restricted Subsidiaries is) overdue in the payment of any material amount in respect of Tax (other than (A) pursuant to any grace, deferral or extension periods or (B) where (i) such payment is being contested in good faith by appropriate proceedings; (ii) adequate reserves established in accordance with generally accepted accounting principles (or, in the case of the Company, the Accounting Principles) for those Taxes and the costs required to contest them are being maintained; and (iii) such payment may be lawfully withheld) in an amount which has or is reasonably likely to have a Material Adverse Effect.
- (b) No claims or investigations are (to the best of its knowledge and belief (having made due enquiry)) being, or are reasonably likely to be, made, conducted or asserted against it (or any of its Restricted Subsidiaries) with respect to Taxes which have or if adversely determined are reasonably likely to have a Material Adverse Effect.
- (c) It is resident for Tax purposes only in the jurisdiction of its incorporation or the United Kingdom.

21.18 Security and Financial Indebtedness

- (a) No Security exists over all or any of the present or future assets of the Company or any Restricted Subsidiary other than as permitted by this Agreement.

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- (b) Neither the Company nor any Restricted Subsidiary has any Financial Indebtedness outstanding other than as permitted by this Agreement.

21.19 Ranking

- (a) Subject to the Legal Reservations and the Perfection Requirements, the Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking Security or *pari passu* ranking Security, except as otherwise permitted pursuant to Paragraph 3 (*Limitation on Liens*) of Schedule 17 (*Restrictive Covenants*).
- (b) 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.

21.20 Good Title to Assets

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

21.21 Legal and Beneficial Ownership

It and each of its Restricted Subsidiaries is the legal and beneficial owner of:

- (a) any material assets; and
- (b) any shares in a Restricted Subsidiary.

21.22 Shares

The shares of the Company and any Restricted Subsidiary which are subject to the Transaction Security are not subject to any option to purchase or similar rights and no member of the Group (other than Four Seasons Health Care Holdings Limited, FSHC (UK) Limited, FSHC Properties (Manor) Limited and Principal Healthcare Limited) has unpaid share capital in excess of £1,000. 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.

21.23 Intellectual Property

- (a) The Intellectual Property required in order to conduct the business of the Group:
- (i) is beneficially owned by or licensed to members of the Group free from any licences to third parties which are materially prejudicial to the use of that Intellectual Property in the business and will not be adversely affected by the transactions contemplated by the Finance Documents in each case to an extent which has or would be reasonably likely to have a Material Adverse Effect; and

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- (ii) has not lapsed or been cancelled in any respect which has or would be reasonably likely to have a Material Adverse Effect and all formal or procedural actions (including payment of fees and any registrations) have been taken to maintain such Intellectual Property; and
 - (b) the business of the Group does not infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect.

21.24 Real Estate

Each Property is free from any contractual, legal or regulatory impediment that would prevent such Property being used by the relevant member of the Restricted Group for the purpose(s) for which it was acquired, save to the extent that any impediment(s) affecting the Properties (individually or cumulatively) do not have or are not reasonably likely to have a Material Adverse Effect.

21.25 Group Leases

Each Group Lease is in full force and effect, save to the extent that a Material Adverse Effect has not occurred or is not reasonably likely to occur as a result of any such Group Leases (individually or cumulatively) not being in full force and effect and no default or event of default (howsoever described) has occurred thereunder which is, or is reasonably likely to have, a Material Adverse Effect.

21.26 Care Contracts

- (a) Subject to the Legal Reservations, the Care Contracts to which members of the Restricted Group are party constitute legal, valid and binding obligations of the relevant members of the Restricted Group and are enforceable in accordance with their terms, save to the extent that a Material Adverse Effect has not occurred or is not reasonably likely to occur as a result of any such Care Contracts (individually or cumulatively) not being legal, valid, binding and enforceable.
- (b) None of the Care Contracts to which any member of the Restricted Group is a party contains any provision which would be breached by the granting of the security pursuant to the Transaction Security Documents, save to the extent that such breach would not cause a Material Adverse Effect.

21.27 Group Structure Chart, Obligors and Transaction Security

- (a) The Group Structure Chart delivered to the Agent pursuant to the First Amendment and Restatement Agreement is true, complete and accurate in all material respects and shows the following information:
 - (i) each Restricted Subsidiary, including current name and company registration number and its jurisdiction of incorporation and/or establishment; and
 - (ii) all minority interests in any Restricted Subsidiary.

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- (b) Each Obligor has granted security over all or substantially all of its assets other than those assets of Silver Springs Ltd which are not the subject of Transaction Security before the First Amendment and Restatement Effective Date.
 - (c) Schedule 14 (*Material Companies*) sets out a definitive list of each Material Company and there are no other Material Companies (other than as so disclosed).
 - (d) The Transaction Security listed in the First Amendment and Restatement Agreement is the definitive list of Transaction Security and there is no other Transaction Security (other than as so disclosed).

21.28 Pensions

- (a) Neither it nor any of its Restricted Subsidiaries is or has:
 - (i) at any time in the last two years; or
 - (ii) at any time during the period commencing six years prior to the date on which this representation is made and ending on the date falling two years prior to the date on which this representation is made, in circumstances where such status has or would be reasonably likely to have a Material Adverse Effect, been an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993).
- (b) So far as the relevant Obligor is aware, neither it nor any of its Subsidiaries is “**connected**” with or an “**associate**” of (as those terms are used in sections 38 or 43 of the Pensions Act 2004) an employer of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) in circumstances that are reasonably likely to give rise to a Material Adverse Effect.
- (c) It and its Subsidiaries comply with all applicable law and regulation in respect of the pension schemes operated by or maintained for the benefit of it or any of its Subsidiaries and/or any of their respective employees where failure to do so would have, or could reasonably be expected to have, a Material Adverse Effect.
- (d) The Pensions Regulator has not issued a Financial Support Direction or a Contribution Notice to any member of the Restricted Group and so far as it is aware there are no circumstances which are reasonably likely to lead to the issue of either.

21.29 Accounting Reference Date

The Accounting Reference Date of the Company is 31 December.

21.30 Documents

The documents delivered to the Agent by or on behalf of any Obligor pursuant to the First Amendment and Restatement Agreement are genuine (or, in the case of copy documents, are true, complete and accurate copies of originals which are genuine), are up-to-date and in full force and effect (or if a copy, the original is up-to-date and in full force and effect)

and (subject to paragraph (a) of Clause 39.2 (*Required Consents*) and, to the extent not prohibited by this Agreement) have not been amended.

21.31 Holding Company

Except as may arise under the Finance Documents or as permitted pursuant to Clause 24.11 (*Holding Company Restriction*), neither the Company nor any Holdco has traded or incurred any material liabilities or commitments (actual or contingent, present or future).

21.32 Centre of Main Interests and Establishments

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the Regulation), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation or the United Kingdom and it has no “**establishment**” (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

21.33 Foreign Corrupt Practices, OFAC sanctions, Use of Proceeds and Sanctions

- (a) Each Obligor represents that neither it nor any of its Subsidiaries or, to its knowledge, any of its directors, officers, employees, agents, affiliates or representatives is an individual or entity (Person) currently the subject of any sanctions administered or enforced by OFAC, the United Nations Security Council (UNSC), the European Union, Her Majesty’s Treasury (HMT), or other relevant sanctions authority (collectively, Sanctions), nor is any Obligor or any of its Subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions.
- (b) Each Obligor represents that it has not, directly or indirectly, used the proceeds of the transaction, or lent, contributed or otherwise made available such proceeds to any Subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person, or in Burma/Myanmar, Cuba, Iran, Libya, North Korea, Sudan or in any other country or territory, that, at the time of such funding, was the subject of Sanctions, or in any other manner that resulted in a violation by any Person (including any Person participating in the transaction, whether as underwriter, adviser, investor or otherwise) of Sanctions.
- (c) Furthermore, each Obligor represents that it is in compliance with Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007.

21.34 Investments

The Company represents that all Investments in existence on, or made pursuant to legally binding commitments in existence on, the First Amendment and Restatement Agreement Execution Date, which are permitted to be made pursuant to paragraph (i) of the definition of “Permitted Investments” in Schedule 17 (*Restrictive Covenants*) are those set out in 43(x)Schedule 23 (*Permitted Investments*).

21.35 Times When Representations Made

- (a) All the representations and warranties in this Clause 21 other than those in Clause 21.11 (*No Default*) are made by each Obligor on the First Amendment and Restatement Agreement Execution Date and on the First Amendment Effective Date. The representations and warranties in Clause 21.11 (*No Default*) are made by each Obligor on the First Amendment Effective Date.
- (b) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period (except that (i) the representations and warranties in paragraphs (b) and (c) of Clause 21.13 (*Financial Statements*) are also deemed to be made on the date on which each set of financial statements and budgets referred to therein are delivered to the Agent and (ii) those contained in paragraphs (a) to (c) of Clause 21.13 (*Financial Statements*) will cease to be so made once subsequent financial statements have been delivered under this Agreement).
- (c) All Repeating Representations are deemed to be made by each Additional Obligor on the day on which it becomes an Additional Obligor.
- (d) Each representation or warranty deemed to be made after the First Amendment and Restatement Agreement Execution Date 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.

22. INFORMATION UNDERTAKINGS

The undertakings in this Clause 22 remain in force from the Initial Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

22.1 Financial Statements

- (a) The Consolidated Accounts Companies shall supply to the Agent (if so requested by the Agent, in sufficient copies for all the Lenders) the following financial information:
 - (i) as soon as they are available, but in any event within 330 days after the end of the Financial Year ending on 31 December 2020 and within 180 days for each other Financial Year, annual reports containing, to the extent applicable, the following information: (a) audited consolidated balance sheets of the Consolidated Accounts Companies as of the end of the two most recent Financial Years and audited consolidated financial statements and statements of cash flow of the Consolidated Accounts Companies for the three most recent Financial Years, including complete footnotes to such financial statements and the report of the independent auditors on the financial statements; (b) unaudited pro forma income statement information and balance sheet information of the Consolidated Accounts Companies (which, for the avoidance of doubt, shall not include the provision of a full income

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- statement or balance sheet to the extent not reasonably available), together with explanatory footnotes, for any material acquisitions, dispositions or recapitalizations that have occurred since the beginning of the most recently completed Financial Year; (c) an operating and financial review of the audited financial statements, including a discussion of the results of operations, financial condition, and liquidity and capital resources of the Consolidated Accounts Companies, and a discussion of material commitments and contingencies and critical accounting policies, in a scope that is comparable in all material respects to information previously provided in accordance with this Clause 22.1; (d) description of the business, management and shareholders of the Consolidated Accounts Companies, all material affiliate transactions and a description of all material contractual arrangements, including material debt instruments; and (e) a description of material risk factors and material recent developments; and
- (ii) if requested and available, within 150 days after the end of each of its Financial Years, the audited financial statements (consolidated if appropriate) of each other Obligor for that Financial Year to the extent such audited financial statements have been prepared or are required by law to be prepared.
- (b) Within 60 days following the end of the first three fiscal Financial Quarters in each Financial Year of the Consolidated Accounts Companies beginning with the Financial Quarter ending 30 September 2021, as the case may be, all quarterly reports of the Consolidated Accounts Companies containing the following information: (a) an unaudited condensed consolidated balance sheet as of the end of such Financial Quarter and unaudited condensed statements of income and cash flow for the most recently completed Financial Quarter year-to-date period ending on the unaudited condensed balance sheet date, and the comparable prior year periods, together with condensed footnote disclosure; (b) unaudited pro forma income statement information and balance sheet information of the Consolidated Accounts Companies (which, for the avoidance of doubt, shall not include the provision of a full income statement or balance sheet to the extent not reasonably available), together with explanatory footnotes, for any material acquisitions, dispositions or recapitalizations that have occurred since the beginning of the relevant Financial Quarter; (c) an operating and financial review of the unaudited financial statements, including a discussion of the results of operations, financial condition, EBITDA, EBITDAR, LTM EBITDA and material changes in liquidity and capital resources of the Consolidated Accounts Companies, and a discussion of material changes not in the ordinary course of business in commitments and contingencies since the most recent report; and (d) material recent developments.
- (c) Promptly after the occurrence of any material acquisition, disposition or restructuring or any senior executive officer changes at the Consolidated Accounts Companies or change in auditors of the Company or any other material event that the Consolidated Accounts Companies or any of its Restricted Subsidiaries announces publicly, a report containing a description of such event.
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- (d) As soon as they are available, but in any event within 30 days after the end of each month, the monthly financial information of the Group (containing at least the information set out in the tables in Schedule 19 (*Monthly Financial Information*)) on a consolidated basis for that month (to include cumulative management accounts for the Financial Year to date).

22.2 Provision and Contents of Compliance Certificate

- (a) The Consolidated Accounts Companies shall supply a Compliance Certificate to the Agent with each set of audited consolidated Annual Financial Statements and each set of Quarterly Financial Statements.
- (b) The Compliance Certificate shall, amongst other things, (i) (only in respect of a Compliance Certificate supplied by the Consolidated Accounts Companies in relation to the Annual Financial Statements delivered to the Agent pursuant to this Agreement) indicate which of the Subsidiaries of the Holdco Guarantor are Material Companies and confirm compliance with Clause 24.12 (*Guarantors*) and (ii) indicate any change to Senior Management since delivery of the previous Compliance Certificate.
- (c) Each Compliance Certificate shall be signed by two directors of the relevant Consolidated Accounts Company and the chief financial officer and, if required to be delivered with the consolidated Annual Financial Statements, shall (provided that (i) it is the general and/or market practice for the Auditors to do so and (ii) subject to paragraph (d) below, the Agent and the relevant Consolidated Accounts Company's Auditors enter into an engagement letter in respect of the same, on market standard terms or such other terms as may be agreed) be reported on by the relevant Consolidated Accounts Company's Auditors in the form agreed by the Auditors, the relevant Consolidated Accounts Company and the Majority Lenders.
- (d) The relevant Consolidated Accounts Company shall use commercially reasonable endeavours to procure that the Company's Auditors enter into the engagement letter referred to in paragraph (c) above with the Agent.
- (e) Computations in each Compliance Certificate shall be made in accordance with the Accounting Principles.

22.3 Requirements as to Financial Statements

- (a) The relevant Consolidated Accounts Company 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 relevant Consolidated Accounts Company shall procure that each set of Annual Financial Statements shall be audited by the Auditors.
- (b) Each set of financial statements delivered pursuant to Clause 22.1 (*Financial Statements*):
- (i) shall be certified by a director of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial

Year), or fairly representing (in the case of Quarterly Financial Statements), its financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall (to the extent required under paragraph (c) of Clause 22.2 (*Provision and Contents of Compliance Certificate*)), on customary terms at such time be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements;

- (ii) in the case of consolidated financial statements of the Consolidated Accounts Companies, shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of financial statements, the relevant Consolidated Accounts Company notifies the Agent that there has been a change in the Accounting Principles or the accounting practices, in which case (i) the relevant Consolidated Accounts Company shall supply to the Agent a full description of the change signed by a Senior Management person and (ii) the relevant Consolidated Accounts Company and the Agent shall promptly negotiate in good faith for not less than 30 days with a view to agreeing (w) any amendments to any other relevant term of the Finance Documents which would provide the Lenders with equivalent protection to that given at the First Amendment and Restatement Agreement Execution Date and (x) any other amendments to this Agreement which are necessary to ensure that the adoption by the Holdco Group (excluding the Obligor Administration Companies) of such different accounting basis does not result in any material alteration in the commercial effect of the obligations of any Obligor under the Finance Documents, provided that in the absence of any such agreement the Holdco Group's Auditors (or, if appropriate, the Auditors of the relevant Obligor) shall promptly deliver to the Agent:
 - (A) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Original Financial Statements were prepared; and
 - (B) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine compliance with Clause 24.12 (*Guarantors*) for the Relevant Period (including, but not limited to, a reconciliation statement) and to make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.

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.

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- (c) If the Agent (acting on the instructions of the Majority Lenders) has reasonable grounds to believe that any financial information supplied to it under this Clause 22 (*Information Undertakings*) is incorrect or incomplete in any material respect or there has been a change to the Accounting Principles and it wishes to discuss the financial position of any member of the Holdco Group or (as appropriate) the change to the Accounting Principles with the Auditors, the Agent may notify the Company, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Company (at the expense of the Company):
- (i) must ensure that the Auditors are authorised:
 - (A) to discuss the financial position of each member of the Holdco Group with the Agent on request from the Agent; and
 - (B) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request; and
 - (ii) shall supply to the Agent a report issued by its Auditors confirming that the aggregate gross assets of the Guarantors (in each case calculated on an unconsolidated basis and excluding intra- Group items and investments in Subsidiaries of any member of the Group) is not less than 80 per cent. consolidated gross assets of the Group.
- (d) Notwithstanding any other term of this Agreement, no breach of the Finance Documents, misrepresentation, Default or Event of Default shall occur, or be deemed to occur, as a result of any restriction on the identity of the Auditors of the Company or any other person contained in this Agreement being prohibited, unlawful, ineffective, invalid or unenforceable pursuant to the Audit Laws.

22.4 Quarterly Financial Report

The Company shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests) copies of the Quarterly Financial Statements and accompanying information dispatched by any member of the Holdco Group to the Senior Secured Notes Trustee in respect of the Senior Secured Notes and to the High Yield Notes Trustee in respect of the High Yield Notes at the same time as they are dispatched and in the same form.

22.5 Budget

- (a) The Consolidated Accounts Companies shall supply to the Agent in sufficient copies for all the Lenders, as soon as the same becomes available but in any event within 20 days before the start of each of its Financial Years, an annual Budget for that Financial Year.
- (b) The Consolidated Accounts Companies shall ensure that each Budget supplied pursuant to paragraph (a):
 - (i) includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Holdco Group;

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- (ii) is prepared in accordance with the Accounting Principles (as applied in the preparation of the Holdco Group's management accounts) and the accounting practices and financial reference periods applied to financial statements under Clause 22.1 (*Financial Statements*); and
 - (iii) has been approved by the board of directors of each Consolidated Accounts Company.
- (c) If the Consolidated Accounts Companies update or changes the Budget, the Consolidated Accounts Companies shall promptly deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

22.6 Presentations

- (a) Once in every Financial Year, at least two directors of the Consolidated Accounts Companies and the chief financial officer must give a presentation to the Finance Parties about the on-going business and financial performance of the Holdco Group by way of:
 - (i) a telephone conference call; or
 - (ii) if requested by the Agent if the Agent reasonably believes that a presentation by way of meeting as opposed to a telephone conference call may be beneficial to the Finance Parties, a presentation by physical meeting.
- (b) Upon request by the Agent, if the Agent considers (acting in good faith and on reasonable grounds) that an Event of Default is continuing at least two directors of the Consolidated Accounts Companies and the chief financial officer shall give a presentation by telephone conference call or physical meeting (as requested by the Agent) about the on-going business and financial performance of the Holdco Group.
- (c) The Holdco Guarantor and/or the Company will invite the Agent and the Lenders to the quarterly and all other public calls held for holders of any of the Senior Secured Notes and/or the High Yield Notes (by not less than five Business Days' prior written notice) provided that no Lender or the Agent may speak during such calls other than to register their attendance.
- (d) Upon request of the Agent, the Company will provide written confirmation of the Excluded Subsidiary Maintenance Cash applicable to any Excluded Subsidiary specified by the Agent.

22.7 Year-End

No member of the Holdco Group shall change its Accounting Reference Date.

22.8 [RESERVED]

22.9 Information: Miscellaneous

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

- (a) at the same time as they are dispatched, copies of all documents dispatched:
 - (i) by the Company to its shareholders generally (or any class of them), in each case which are required by law to be dispatched to shareholders or such class collectively; and
 - (ii) by the Company or any other Obligor to its other creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any material litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, provided that no member of the Group shall be obliged to provide any details under this paragraph (b) if to do so would breach any applicable law or regulation or to the extent that such details would include privileged information or advice;
- (c) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and
- (d) promptly on request, such further information regarding the financial condition, assets and operations of the Holdco Group and/or any member of the Holdco Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to Senior Management, any changes to the Accounting Principles and an up to date copy of its shareholders' register (or equivalent in its jurisdiction of incorporation)) and/or any Third Party Chargor as any Finance Party through the Agent may reasonably request, provided that no member of the Group shall be obliged to provide information under this paragraph (d) if (i) to do so would breach any applicable law or regulation or (ii) the information requested relates to a Luxco and is not available to the Group.

22.10 Notification of Default

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor)).
- (b) Promptly upon a request by the Agent, the Company shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

22.11 “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 First Amendment and Restatement Agreement Execution Date;
 - (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor) or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the First Amendment and Restatement Agreement Execution Date; 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 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 Company shall, by not less than 5 Business Days’ prior written notice to the Agent (or such shorter period as the Agent may agree), notify the Agent (which shall promptly notify the Lenders) of its intention to request that:
 - (i) each of the entities listed in Part B of Schedule 1 (*Guarantors*) of the First Amendment and Restatement Agreement become an Original Guarantor pursuant to Clause 28.4 (*Original Guarantors*); and
 - (ii) one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 28 (*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 Company shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

22.12 Information Distribution

- (a) Each Obligor acknowledges and agrees that all materials and/or information provided by or on behalf of any member of the Holdco Group, any Obligor, any Restricted Subsidiary under or, in connection with, the Finance Documents (collectively, the “**Borrower Materials**”) shall be supplied to the Agent and not to any Lender directly.
- (b) The Company acknowledges that the Agent will make available to the Lenders the Borrower Materials by distributing the Borrower Materials electronically or by post.

23. OPERATIONAL STABILITY COVENANTS

23.1 Operational Stability Covenant Definitions

In this Clause 23:

“**Capital Expenditure**” means any expenditures or obligations in respect of expenditures which, in accordance with the Accounting Principles, are treated as capital expenditures (and including the capital element of any expenditures or obligations incurred in connection with a Finance Lease).

“**Central Costs**” means costs, expenses, contributions or payments (howsoever described and whether cash or non-cash) relating to or payable in connection with any corporate overhead function applicable to the Group.

“**Contingent Liabilities Expenses**” means costs, expenses, contributions or payments (howsoever described and whether cash or non-cash) relating to or payable in connection with any contingent liability of the Group.

“**D&O Insurance Costs**” means costs, expenses, contributions or payments (howsoever described and whether cash or non-cash) relating to or payable in connection with any directors and” officers insurance (howsoever described) applicable to the Group.

“**Litigation and Insurance Accrual Expenses**” means specific budgeted costs, expenses, contributions or payments (howsoever described and whether cash or non-cash) relating to or payable in connection with certain litigation or legal suit insurance (or similar) applicable to the Group.

“Liquidation/Wind-Down Expenses” means costs, expenses, contributions or payments (howsoever described and whether cash or non-cash) relating to or payable in connection with any liquidation and/or wind-down expenses incurred by the Group in a manner permitted under this Agreement.

“MIP and Annual Bonuses Expenses” means costs, expenses, contributions, payments and/or benefits (howsoever described and whether cash or non-cash) relating to or payable in connection with (w) any management incentive scheme or employee benefit scheme (however described and/or constituted) applicable to the Group and (x) annual incentives and/or bonus schemes (however described and/or constituted) applicable to the senior employees of the Group.

“Net Working Capital Unwind Expenses” means costs, expenses, contributions or payments (howsoever described and whether cash or non-cash) payable in connection with the winding-down of a member of the Group or a Subsidiary thereof.

“Operating Cash Flow” means the EBITDA of the Group before taking into account any Central Costs, exceptional costs, cash taxes, cash interest and changes in net working capital.

“Operational Stability Covenant End Date” means the First Extended Maturity Date or the Second Extended Maturity Date, as applicable.

“Operational Stability Covenant Compliance Certificate” means a compliance certificate substantially in the form set out in Part A of Schedule 10 (*Form of Operational Stability Covenant Compliance Certificate*).

“Operational Stability Covenant Report” means a compliance certificate substantially in the form set out in Part B of Schedule 10 (*Form of Operational Stability Covenant Compliance Certificate*).

“Operational Stability Covenants” means each of the Maximum Expenditure (General Usage) Covenants, Maximum Expenditure (Capex and Central Costs) Covenants, the Minimum Operating Cash Flow Covenant and the Compliance with Budget Covenant.

“Other Operating Costs” means expenditures relating to the operation of the Group’s business which are not Recurring Operating Costs.

“Professional Fees and Other Exceptional Costs” means costs, expenses, contributions or payments (howsoever described and whether cash or non-cash) payable to any advisors to and/or professionals (including but limited to accountants, architects, bankers, consultants, financial advisers, lawyers and valuers) engaged by the Group and/or the Lenders in connection with any transaction permitted by this Agreement.

“Rebranding Costs” means costs, expenses, contributions or payments (howsoever described and whether cash or non-cash) relating to or payable in connection with any business rebranding, business renaming or material change in marketing and/or intellectual property strategy (howsoever described).

“**Recurring Operating Costs**” means expenditures relating to the operation of the Group’s business which are (i) incurred in the ordinary course of business with unaffiliated third parties, in a manner consistent with past practice or made pursuant to contractual agreements which are in effect as at the First Amendment and Restatement Effective Date and (ii) not capitalized pursuant to the Group’s past accounting practices or GAAP.

“**Severance Costs**” means costs, expenses, contributions, payments or benefits (howsoever described and whether cash or non-cash) relating to or payable in connection with any employee retirement, redundancy, termination and/or severance (however described).

“**Test Date**” means, the test date for each Operational Stability Covenant as more particularly described in paragraph (f) of Clause 23.6.

Notwithstanding anything in this Agreement to the contrary, the covenants in this Clause 23 shall only apply during the period between 1 July 2023 and 30 September 2023 if the Extended Loan Period has been extended to the Second Extended Maturity Date.

23.2 Maximum Expenditure (General Usage) Covenants

- (a) During the period commencing 1 April 2021 through to the Operational Stability Covenant End Date the Company shall (and the Company shall ensure that each Restricted Subsidiary will) ensure that in respect of each expense category identified in the column labelled “Expense Category” of the below table, all cash, Cash Equivalents and non-cash proceeds applied towards that expense category (aggregated throughout the entire period) shall not exceed the monetary limit applied to that expense category in the applicable column of the table.

Covenant No.	Expense Category	Maximum Use of Cash from 1 April 2021 through 31 December 2022	Maximum Use of Cash from 1 January 2023 through 30 June 2023	Maximum Use of Cash from 1 July 2023 through 30 September 2023
1	Net Working Capital Unwind Expenses	£18.7 million	£0.00	£12.2 million
2	MIP and Annual Bonuses Expenses and Severance Costs	£6.0 million	£1.3 million	£3.2 million
3	Rebranding Costs	£1.5 million	£0.00	£0.00
4	Litigation and Insurance Accruals Expenses	£1.2 million	£0.4 million	£0.1 million
5	D&O Insurance Cost	£1.0 million	£0.00	£1.5 million

6	Liquidation/Wind-Down Expenses	£1.0 million	£0.00	£0.2 million
7	Contingent Liabilities Expenses	£0.00	£0.00	£0.00
8	Professional Fees and Other Exceptional Costs	£21.7 million	£9.0 million	£1.9 million

23.3 Maximum Expenditure (Capex and Central Costs) Covenants

- (a) During the period commencing 1 April 2021 through 31 December 2021 the Company shall (and the Company shall ensure that each Restricted Subsidiary will) ensure that all cash, Cash Equivalents and non-cash proceeds (aggregated throughout the entire period) applied towards:
- (i) Capital Expenditure shall not exceed £10.3 million; and
 - (ii) Central Costs shall not exceed £22.6 million.
- (b) During the period commencing 1 January 2022 through 31 December 2022, the Company shall (and the Company shall ensure that each Restricted Subsidiary will) ensure that all cash, Cash Equivalents and non-cash proceeds (aggregated throughout the entire period) applied towards:
- (i) Capital Expenditure shall not exceed £10.4 million; and
 - (ii) Central Costs shall not exceed £27.9 million.
- (c) During the period commencing 1 January 2023 through 30 June 2023, the Company shall (and the Company shall ensure that each Restricted Subsidiary will) ensure that any cash, Cash Equivalents or non-cash proceeds (aggregated throughout the entire period) applied towards:
- (i) Capital Expenditure, shall not exceed £3.8 million; and
 - (ii) Central Costs, shall not exceed £11.8 million.
- (d) During the period commencing 1 July 2023 through 30 September 2023, the Company shall (and the Company shall ensure that each Restricted Subsidiary will) ensure that any cash, Cash Equivalents or non-cash proceeds (aggregated throughout the entire period) applied towards:
- (i) Capital Expenditure, shall not exceed £0.2 million; and
 - (ii) Central Costs, shall not exceed £2.9 million.

23.4 Minimum Operating Cash Flow Covenant

During the period commencing 1 April 2021 through 31 December 2022 the Company shall (and the Company shall ensure that each Restricted Subsidiary will) ensure that Operating Cash Flow is not less than £65 million. During the period commencing 1 January 2023 through 30 June 2023 the Company shall (and the Company shall ensure

that each Restricted Subsidiary will) ensure that Operating Cash Flow is not less than £16.7 million. During the period commencing 1 July 2023 through 30 September 2023 the Company shall (and the Company shall ensure that each Restricted Subsidiary will) ensure that Operating Cash Flow is not less than £3.4 million.

23.5 Compliance with Budget Covenant

The Company shall ensure that on each respective Test Date:

- (a) each reported Maximum Expenditure (General Usage) Covenant and Maximum Expenditure (Capex and Central Costs) Covenant (as confirmed in the relevant Operational Stability Covenant Compliance Certificate) is: (w) equal to or less than:
 - (i) 110 per cent. of the Monthly Budget Metric for Severance Costs, Rebranding Costs, D&O Insurance Costs and Professional Fees and Other Exceptional Costs;
 - (ii) 105 per cent. of the Monthly Budget Metric for Net Working Capital Unwind Expenses, Capital Expenditure and Central Costs; and
 - (iii) 100 per cent. of the Monthly Budget Metric for MIP and Annual Bonuses Expenses, Litigation and Insurance Accrual Expenses, Liquidation/Wind-Down Expenses and Contingent Liabilities,

in each case, as applicable in relation to each of the maximum expenditure covenants set out in clauses 23.2 and 23.3 above) as defined in clause 23.7 below and (x) equal to or less than 100% of the Quarterly Budgeted Metric as defined in clause 23.7 below applicable to that covenant; and
- (b) each reported Minimum Operating Cash Flow Covenant (as confirmed in the relevant Operational Stability Covenant Compliance Certificate) is (w) equal to or greater than 90 percent of the Monthly Budget Metric and (x) equal to or greater than 100% of the Quarterly Budgeted Metric applicable to that covenant.

23.6 Calculations and testing

- (a) All Operational Stability Covenant calculations (the “**Operational Stability Covenant Calculations**”) shall be prepared by the Original Borrower, applying best practices as confirmed by the Agent (at the direction of the Lenders in their sole discretion) and shall be certified to the Agent (acting on behalf of the Lenders) in an Operational Stability Covenant Compliance Certificate which shall be accompanied by an Operational Stability Covenant Report, and each such Operational Stability Covenant Compliance Certificate and Operational Stability Covenant Report shall be certified and executed by each of the CEO and CFO of each Obligor and the administrators on behalf of EFUK.
- (b) All reports and covenant compliance thresholds relating to the Operational Stability Covenants will be accounted for and reported on a cash basis except for:
 - (i) Professional Fees and Other Exceptional Costs, which will be accounted for on an accrual basis in accordance with the Accounting Principles; and

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- (ii) Capital Expenditure, Central Costs and Operating Cash Flow, which will be accounted for on a monthly accrual basis and quarterly cash basis.
 - (c) No item shall be taken into account more than once in any calculation.
 - (d) There shall be no ability to re-classify any expenses allocated to an identified expense item and there shall be no ability to partially allocate expenses across categories.
 - (e) The Maximum Expenditure (General Usage) Covenants, the Maximum Expenditure (Capex and Central Costs) Covenants and the Minimum Operating Cash Flow Covenant will first test on 30 November 2021 in respect of the period from 1 April 2021 through 30 November 2021 (the “**Initial Test Period**”) and thereafter, on the last day of each Month until the Termination Date.
 - (f) Each Operational Stability Covenant Compliance Certificate shall (w) be delivered to the Agent (acting on behalf of the Lenders) within forty-five (45) calendar days of the relevant Test Date (as applicable, each an “**Operational Stability Covenant Compliance Certificate Delivery Cut Off Date**”) and (y) report both (i) aggregate expenditures / cash flow (as applicable) as at the Test Date and (ii) the relevant Monthly Budget Metric and Quarterly Budgeted Metric applicable to that Test Date.
 - (g) Following the completion of any Asset Dispositions approved by the Majority Lenders, the Operational Stability Covenant levels applicable for any period following such Asset Disposition may be adjusted in a manner mutually agreed between the Majority Lenders and the Company at the time.

23.7 Operational Stability Covenant Budget

For purposes of the Compliance with Budget Covenant, a budget in respect of each Operational Stability Covenant that is mutually agreeable to the Lenders, the Original Borrower shall be delivered as a condition precedent to the First Amendment and Restatement Agreement. For each respective Operational Stability Covenant, the budget shall set forth budgeted category expenses for each Month (each a “**Monthly Budget Metric**”) and budgeted category expenses for each fiscal quarter (each a “**Quarterly Budgeted Metric**”) during the Initial Test Period and each fiscal month and/or fiscal quarter thereafter (as applicable), through until the December 2022 fiscal month (the “**Operational Stability Covenant Budget**”). The Borrower shall deliver to the Agent a budget in respect of each Operational Stability Covenant, in the same form as the Operational Stability Covenant Budget, from the January 2023 fiscal month through the September 2023 fiscal month (the “**Extended Operational Stability Covenant Budget**”).

23.8 Cash Management Expenditure and Procurement Committee

- (a) In furtherance of the parameters for calculating, reporting and complying with the Operational Stability Covenants and as a condition precedent to the First Amendment and Restatement Agreement, the Group shall establish a Cash

Management Expenditure and Procurement Committee which shall include a senior representative of the EFUK Administrators acceptable to the Lenders, and such other members mutually agreed by the Company, the Original Borrower and the Lenders.

- (b) In furtherance of the provision of continuity of care to care home residents and the operational needs of the Group any expenditure item (or series of expenditure items of the same type) relating to:
- (i) Recurring Operating Costs that is equal to or greater than £250,000; or
 - (ii) Other Operating Costs that is equal to or greater than £50,000

shall require the express written approval of the Cash Management Expenditure and Procurement Committee, including the approval of the senior representative of the EFUK Administrators.

23.9 Value for money undertaking

The Company shall (and the Company shall ensure that each Restricted Subsidiary will) ensure that it will use all reasonable endeavours to obtain value for money in respect of all expenditures relating to an Operational Stability Covenant.

23.10 Operational Stability Covenant Reporting Obligations

In addition to and without limiting the Group's general reporting and information delivery obligations set out in Clause 22 (*Information Undertakings*) the Company shall (and the Company shall ensure that each Restricted Subsidiary will) keep the Agent informed as to (either promptly upon becoming aware of them or on in response to any request for information from the Agent) and, if necessary, provide reasonable supporting evidence and documentation detailing:

- (a) any material developments in relation to any sales process, leasehold restructuring, negotiations with landlords, home closures, asset sales, communications with its regulators and any pending litigation, arbitration or administrative proceedings affecting any member of the Group or its Affiliates;
- (b) any recoveries from third parties in excess of £50,000 (other than in the resolution of accounts of any residents in the ordinary course of business);
- (c) details of any material communications from, or action taken outside of the normal course or business (including, but not limited to, special measures, embargoes or other limitations or requirements imposed on any care home), in respect of any member of the Group by, the National Health Service, Care Quality Commission, Care Inspectorate, The Regulation and Quality Improvement Authority, The Association of Directors of Adult Services and any other regulator or authority having oversight of the Group's activities and any local authorities; and
- (d) such other matters the senior management of the Company believes are relevant for the creditors of the Group.

Nothing in this Clause 23.10 shall require the Group to supply to the Agent or to publish any documentation or information which would result in the Group breaching any confidentiality or any legal or regulatory obligation; or in the reasonable commercial judgment of the Company or the relevant disclosing Group member, result in the disclosure of information that is commercially sensitive or potentially harmful to the Group's trading position, unless the recipients of such information are subject to appropriate confidentiality restrictions.

23.11 Notification of Default

- (a) Without limiting each Obligor's general default notification obligations set out elsewhere in this Agreement including Clause 25.2 (*Breach of Operational Covenants*), each Obligor further undertakes that in the event that any Obligor becomes aware of any anticipatory or prospective breach (howsoever described) of any of the provisions set out in this Clause 23 (including but not limited to any breach of any Operational Stability Covenant) (each a "**Prospective Operational Stability Covenant Default**"), that Obligor (or the Company on its behalf) shall promptly notify the Agent of any such Prospective Operational Stability Covenant Default by delivering to the Agent a certificate signed by two of its directors or senior officers on its behalf setting out, in sufficient detail, information regarding the relevant Prospective Operational Stability Covenant Default (and the steps, if any, being taken to remedy it) (each a "**Prospective Operational Stability Covenant Default Breach Notice**").
- (b) A Prospective Operational Stability Covenant Default Breach Notice must be delivered as soon as practicably possible and in any event within one Business Day of the relevant Obligor becoming aware of the relevant Prospective Operational Stability Covenant Default (the "**Prospective Operational Stability Covenant Default Breach Notice Cut Off Date**").

24. GENERAL UNDERTAKINGS

The undertakings in this Clause 24 remain in force from the Initial Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. For the purposes of this Clause 24, references to 'Obligor' shall not include the Obligor Administration Companies.

24.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) if so requested by any Lender (through the Agent), supply certified copies to the Agent of, any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
 - (i) enable it to perform its obligations under the Finance Documents to which it is a party; and

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- (ii) ensure (subject to the Legal Reservations and Perfection Requirements) the legality, validity, enforceability or admissibility in evidence of any Finance Document to which it is a party; and (iii) carry (and the Company shall ensure each Restricted Subsidiary shall carry) on its business where failure to do is reasonably likely to have a Material Adverse Effect.

24.2 Compliance with Laws

Each Obligor shall (and the Company shall ensure that each of its Restricted Subsidiaries will) comply in all respects with all laws and regulations (including any applicable health and social care regulations) to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

24.3 Environmental Compliance

Each Obligor shall (and the Company shall ensure that each of its Restricted Subsidiaries shall):

- (a) comply with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

24.4 Environmental Claims

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

- (a) any Environmental Claim against the Company or any Restricted Subsidiary which is current, pending or threatened in writing; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against the Company or any Restricted Subsidiary,

where the claim is reasonably likely to be determined against the Company or that Restricted Subsidiary, and if determined against it, has or is reasonably likely to have a Material Adverse Effect.

24.5 Taxation

- (a) Each Obligor shall (and the Company shall ensure that each of its Restricted Subsidiaries will) pay and discharge all material Taxes imposed upon it or its assets within the time period allowed (including any grace, deferral or extension periods) without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith by appropriate proceedings;

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- (ii) adequate reserves established in accordance with generally accepted accounting principles (or in the case of the Company and any Obligor or Restricted Subsidiary incorporated in the United Kingdom, the Accounting Principles) are being maintained for those Taxes and the estimated costs required to contest them which have been disclosed in its latest financial statements delivered (or will be disclosed in the next financial statements to be delivered) to the Agent under Clause 22.1 (*Financial Statements*); and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No Obligor shall (and the Company shall ensure that none of its Restricted Subsidiaries will) change its residence for Tax purposes except to the extent that such change could not reasonably be expected to be material and adverse to the rights and interests of the Finance Parties under the Finance Documents.

24.6 Change of Business

The Company shall procure that no substantial change is made to the general nature of the business of the Group taken as a whole from that carried on by the Group at the First Amendment Effective Date.

24.7 Preservation of Assets

Each Obligor shall (and the Company shall ensure that each Restricted Subsidiary 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 a failure to do so would have or would reasonably be expected to have a Material Adverse Effect.

24.8 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.

24.9 Insurance

- (a) Subject (in the case of directors' and officers' insurance only) to market availability, each Obligor shall (and the Company shall ensure that each Restricted Subsidiary will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

24.10 Intellectual Property

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

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- (a) do all such things as are necessary to maintain, protect and safeguard (including making all registrations and paying all necessary fees and taxes) the validity of the material Intellectual Property necessary for the business of the Group;
 - (b) not use or permit the material Intellectual Property necessary for the business of the Group to be used in a way or take any step or omit to take any step in respect of such Intellectual Property which may materially and adversely affect the right of any Restricted Subsidiary to use such property;
 - (c) not discontinue the use of any material Intellectual Property necessary for the business of the Group; and
 - (d) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property necessary for the business of the Group,

where failure to do so, in the case of paragraph (d) above, or, in the case of paragraphs (b) and (c) above, such use, permission to use or omission, is reasonably likely to have or has a Material Adverse Effect.

- (e) Failure to comply with any part of paragraph (a) above shall not be a breach of this Clause 24.10 to the extent that any dealing with Intellectual Property which would otherwise be a breach of paragraph (a) is permitted in accordance with the undertaking in Schedule 17 (*Restrictive Covenants*).

24.11 Holding Company Restriction

- (a) The Company must not carry on any business, own any assets or incur any liabilities other than:
 - (i) ownership of shares in its Subsidiaries, intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments but only if those shares, credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security;
 - (ii) the provision of administrative services (excluding legal services, but including the on-lending of monies to Restricted Subsidiaries in the manner described in paragraph (i) above) and management services to its Subsidiaries of a type customarily provided by a holding company to its Subsidiaries and the ownership of assets necessary to provide such services;
 - (iii) the entry into and performance of its obligations (and incurrence of liabilities) under the Finance Documents to which it is a party;
 - (iv) the granting of Transaction Security to the Finance Parties in accordance with the terms of the Finance Documents;
 - (v) professional fees and administration costs in the ordinary course of business as a holding company;
 - (vi) directly related or reasonably incidental to the establishment and/or maintenance of its or its Subsidiaries' corporate existence;

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- (vii) the entry into and performance of its obligations under the Senior Secured Bond Documents and the High Yield Bond Debt Documents;
 - (viii) any liabilities under any purchase agreement, escrow agreement and/or any other document entered into in connection with the issuance of the Senior Secured Notes or High Yield Notes;
 - (ix) the entry into and performance of its obligations under the Governance Documents; or
 - (x) any other activities which are not specifically listed above (i) which are ancillary to or related to those listed above and which are customary for a holding company to undertake and (ii) which are de minimis in nature.
- (b) Each Holdco must not carry on any business, own any assets, incur any liabilities or grant any Security other than:
- (i) ownership of shares in its Subsidiaries, intra-Group debit balances, intra-Group credit balances and other credit balances in bank accounts, cash and Cash Equivalent Investments but only if those shares, credit balances, cash and Cash Equivalent Investments are subject to the Transaction Security;
 - (ii) the provision of administrative services (excluding legal services, but including the on-lending of monies to members of the Intercreditor Group in the manner described in paragraph (i) above) and management services to its Subsidiaries of a type customarily provided by a holding company to its Subsidiaries and the ownership of assets necessary to provide such services;
 - (iii) the entry into and performance of its obligations (and incurrance of liabilities) under the Finance Documents and the Lux Shareholder Loans to which it is a party;
 - (iv) the granting of Transaction Security to the Finance Parties in accordance with the terms of the Finance Documents;
 - (v) professional fees and administration costs in the ordinary course of business as a holding company;
 - (vi) in respect of the Holdco Guarantor and the Original Borrower only, professional fees and costs in connection with the ongoing administration processes and any subsequent liquidation of those companies;
 - (vii) directly related or reasonably incidental to the establishment and/or maintenance of its or its Subsidiaries' corporate existence;
 - (viii) in the case of the Holdco Guarantor, their entry into and performance of their obligations under the GuernseyCo Loan;
 - (ix) in the case of the Original Borrower only, loans to FSHCL and FSHCGL to the extent required to fund the professional fees and costs in connection with

the ongoing administration processes and any subsequent liquidation of those companies;

- (x) in the case of the Holdco Guarantor only:
 - (A) the entry into and performance of its obligations under the High Yield Bond Debt Documents;
 - (B) any liabilities under any purchase agreement, escrow agreement and/or any other document entered into in connection with the issuance of the High Yield Notes; and
 - (C) the issuance of any Additional High Yield Debt (as defined in the Intercreditor Agreement);
- (xi) [RESERVED];
- (xii) in the case of the Original Borrower only:
 - (A) the entry into and performance of its obligations (and incurrence of liabilities) under the Finance Documents to which it is a party;
 - (B) the entry into and performance of its obligations under the Senior Secured Bond Debt Documents;
 - (C) any liabilities under any purchase agreement, escrow agreement and/or any other document entered into in connection with the issuance of the Senior Secured Notes; and
 - (D) the issuance of any Pari Passu Debt (as defined in the Intercreditor Agreement); or
- (xiii) any other activities which are not specifically listed above (i) which are ancillary to or related to those listed above and which are customary for a holding company to undertake or (ii) which are de minimis in nature.

24.12 Guarantors

- (a) Subject to the Agreed Security Principles, the Company shall ensure that the Company and all Material Companies which are Restricted Subsidiaries, all Holding Companies of Material Companies (other than any Holding Company of the Holdco Guarantor) and any Restricted Subsidiary that is or becomes a guarantor in respect of the Notes, are Guarantors (in the case of any Restricted Subsidiary that is or becomes a guarantor in respect of the Notes, before or simultaneously to becoming a guarantor in respect of the Notes).
- (b) Subject to the Agreed Security Principles, any Restricted Subsidiary that becomes a Material Company and any Material Company acquired in accordance with this Agreement after the Initial Signing Date shall become a Guarantor and grant such Security as the Agent may require (acting reasonably) (other than Excluded Subsidiaries to the extent that they are unable to do so solely as a result of being an Excluded Subsidiary) and shall accede to the Intercreditor Agreement as soon as

practicable and in any event within five Business Days of delivery of any Annual Financial Statements or (as the case may be) any Quarterly Financial Statements under Clause 22.1 (*Financial Statements*) showing that it is a Material Company or Holding Company of a Material Company or within five Business Days of its acquisition (if earlier) other than the initial acquisition at the Initial Signing Date.

- (c) The Company shall ensure that each member of the Group which is required to become a Guarantor pursuant to paragraph (a) or (b) above shall become an Additional Guarantor pursuant to Clause 28.5 (*Additional Guarantors*). For the avoidance of doubt, the Company shall ensure that all entities that are required by the provisions of this Agreement to accede as Guarantors (excluding Excluded Subsidiaries to the extent that they are unable to do so solely as a result of being Excluded Subsidiaries) accede as Guarantors in accordance with the terms hereof.
- (d) No entity that is an Excluded Subsidiary shall (to the extent that it is unable to do so as a result of being an Excluded Subsidiary) be required to accede as a Guarantor or grant any Transaction Security. To the extent any entity ceases to be an Excluded Subsidiary (or is otherwise able to become a Guarantor or deliver Transaction Security) at any time, such entity shall, subject to the Agreed Security Principles, promptly, and in any event within 5 Business Days of the date on which it ceased to be an Excluded Subsidiary, become a Guarantor and/or provide Transaction Security.

24.13 Further Assurance

- (a) Subject to the Agreed Security Principles, each Obligor shall (and the Company shall procure that each Third Party Chargor (other than the Luxcos) and each Restricted Subsidiary (other than the Obligor Administration Companies) will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, assignments, standard securities, dispositions, pledges, 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 respective 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 or a Third Party Chargor (other than the Luxcos) located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

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- (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
 - (b) Subject to the Agreed Security Principles, each Obligor shall (and the Company shall procure that each Restricted Subsidiary (other than the Obligor Administration Companies) 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) The Company shall procure that there shall be delivered to the Agent with each Transaction Security Document required to be given under this Agreement all of the documents and other evidence listed in Part C of Schedule 2 (*Conditions Precedent*) to the extent required under the relevant local laws, each in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders, acting reasonably).

24.14 Pensions

- (a) The Company shall ensure that no Restricted Subsidiary is an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or is (in so far as would reasonably be expected to have a Material Adverse Effect, so far as the Company is aware) “connected” with or an “associate” of (as those terms are used in sections 38 or 43 of the Pensions Act 2004) such an employer.
- (b) Each Obligor shall immediately notify the Agent of any investigation or proposed investigation by the Pensions Regulator which may lead to the issue of a Financial Support Direction or a Contribution Notice to any member of the Group.
- (c) Each Obligor shall immediately notify the Agent if it or any member of the Group receives a Financial Support Direction or a Contribution Notice from the Pensions Regulator.

24.15 Treasury Transactions

No Obligor shall (and the Company will procure that none of its Restricted Subsidiaries will) enter into any Treasury Transaction, other than:

- (a) the hedging transactions documented by the Hedging Agreements; and
- (b) for the purpose of hedging interest rate and/or foreign exchange risks in the ordinary course of business and for non-speculative purposes.

24.16 Change in Auditors

No Obligor shall appoint any Auditors other than the Auditors.

24.17 Notes Repurchase

No member of the Group may prepay, purchase, defease, redeem, acquire or retire any Senior Secured Notes or High Yield Notes.

24.18 Freehold Property

- (a) Each Obligor shall (and the Company shall ensure that each member of the Restricted Group which owns a Freehold Property will) (at the expense of that member of the Restricted Group) grant the Security Agent or its lawyers, on reasonable notice, reasonable assistance to enable the Security Agent or its lawyers (at the expense of that member of the Restricted Group) to:
- (i) carry out investigations of title to a Freehold Property; and
 - (ii) make such enquiries in relation to any part of a Freehold Property as a prudent mortgagee might carry out.
- (b) Subject to the Agreed Security Principles, the Company shall ensure that Transaction Security in the form of legal mortgages that have been granted by the relevant members of the Holdco Group over the Freehold Properties of the Holdco Group is not less than 80 per cent. of the aggregate value of all Freehold Properties owned by the Group at any time.

24.19 Care Contracts

The Company shall promptly notify the Agent of any material amendments made to the Care Contracts that would have a Material Adverse Effect.

24.20 Centre of Main Interests

No Obligor shall (and each Obligor will procure that none of its Subsidiaries will and the Company shall procure that no Third Party Chargor (other than the Luxcos) will) do anything to change the location of its centre of main interests, for the purposes of Council Regulation (EU) No 2015/848 of 20th May 2015 on Insolvency Proceedings (Recast).

24.21 Further Undertakings

Each Obligor shall (and the Company shall ensure that each Restricted Subsidiary will) comply with the provisions set out in Schedule 17 (*Restrictive Covenants*).

24.22 Sanctions

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will):
- (i) directly or indirectly use any of the proceeds of the Loans to lend, contribute or otherwise make available such proceeds to any person (whether or not related to any member of the Group):
 - (A) to fund, finance or facilitate any business or transaction of or with or invest in any Sanctions Restricted Person or in any country that is, at the time of such funding, a Sanctioned Country, or otherwise in

violation of applicable Sanctions as are in effect from time to time;
and/or

- (B) in any other manner that would result in the violation of any applicable Sanctions by any person (including, without limitation, any Finance Party and/or any Obligor);
 - (ii) engage in any transaction, activity or conduct (i) that would violate applicable Sanctions; (ii) that would cause the Lenders to be in breach of any Sanctions; or (iii) that could reasonably be expected to result in its or any other member of the Group's or the Lenders being designated as a Sanctions Restricted Person; or
 - (iii) make any payment under the Finance Documents with funds or assets obtained directly from transactions with, or that are the property of, or are beneficially owned directly or indirectly by, any Sanctions Restricted Person or any person located in or operating from a Sanctioned Country, or obtained in any other manner that would result in a violation of applicable Sanctions.
- (b) Each Obligor shall (and the Company shall ensure that each member of the Group will) implement and maintain (in the Company's reasonable view) policies and procedures to:
- (i) prevent any action being taken which would be contrary to paragraph (a) above; and
 - (ii) ensure compliance with applicable Sanctions.

24.23 Anti-Corruption Law

The Company will maintain in effect and enforce appropriate (in the Company's reasonable view) policies and procedures designed to ensure compliance by the Company, its Subsidiaries and their respective directors, officers, employees and agents with all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

24.24 Valuations

- (a) The Company must deliver to the Agent, on a non-reliance basis, a copy of any valuation of any Property it obtains, within 10 Business Days of receiving it.
- (b) The Agent is entitled to request a full independent valuation of any Property, and the Company shall use commercially reasonable endeavours to obtain reliance for the Lenders in respect of such valuation, at any time whilst an Event of Default has occurred and is continuing and provided that a valuation in respect of such Property has not been prepared and delivered to the Agent in the last twelve months prior to such request. The Group shall provide to the Agent (for the purpose of any such valuation) such information as requested by the Agent or the valuer appointed to carry out any such valuation in consultation with the Company, and the costs of any such valuation will be borne by the Company.

24.25 People with significant control

Each member of the Group must:

- (a) comply on time with any notice it receives under Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are subject to any Security Interest created under any Security Document; and
- (b) if, pursuant to that notice a change is required to the “PSC register” (within the meaning of section 790C(10) of the Companies Act 2006) of that company, promptly provide the Security Agent with a copy of that notice.

24.26 Administration

If the directors of any Holdco or any other member of the Holdco Group seek the appointment of an administrator, liquidator, receiver or any other insolvency office holder in respect of a company incorporated in England and Wales, such person shall be an insolvency officeholder of Alvarez & Marsal Europe LLP (each an “**IP**”). Notwithstanding the above, to the extent a person that is not a party to this Agreement seeks to appoint administrators in respect of a Holdco or other member of the Holdco Group (other than in respect of any member of the Holdco Group: (a) over which the Secured Parties are not the beneficiaries of a qualifying floating charge for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986; or (b) which is not incorporated in England and Wales) the relevant Holdco or member of the Holdco Group shall, exercise all of its corporate powers to ensure that an IP is appointed.

24.27 Co-operation

Each Obligor shall (and the Company shall ensure that each Restricted Subsidiary will) do all things that the Agent (acting on the instructions of the Majority Lenders) may request to give effect to the dismissal and/or resignation and appointment of any trustee, co-trustee, security agent and/or Creditor Representative (as defined in the Intercreditor Agreement), custodian or nominee, in each case in accordance with the Debt Documents (as defined in the Intercreditor Agreement).

24.28 Bank Accounts

- (a) Each Obligor shall:
 - (i) grant and maintain security in favour of the Security Agent (on terms in form and substance acceptable to the Security Agent) over each of its bank accounts other than the Joint Administrators’ Accounts and the bank accounts of Silver Springs Ltd which are not the subject of Transaction Security as at the First Amendment and Restatement Effective Date);
 - (ii) ensure that each Restricted Subsidiary sweeps cash from all bank accounts held by that Restricted Subsidiary (other than the Joint Administrators’ Accounts and the Uncharged Account) to the TreasuryCo Charged Account in a manner consistent with the Group’s ordinary course of business as demonstrated before the First Amendment and Restatement Agreement

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- Effective Date, provided that no Restricted Subsidiary which is not an Obligor shall be required to sweep cash to the TreasuryCo Charged Account if doing so would be a breach of the duties of the directors of that Restricted Subsidiary or it is otherwise legally prohibited from doing so and in the case of an Excluded Subsidiary only, there shall be no requirement to transfer Excluded Subsidiary Maintenance Cash relating to that Excluded Subsidiary;
- (iii) ensure that TreasuryCo shall have no bank accounts other than the TreasuryCo Charged Account and the Uncharged Account;
 - (iv) ensure that all cash held by TreasuryCo other than the Uncharged Cash is held in the TreasuryCo Charged Account; and
 - (v) ensure that no cash is transferred to or used by or for any of the Company or any Subsidiary of the Company which is in administration or liquidation from any bank account which is the subject of Transaction Security other than to the extent such transfer is made (i) in accordance with the Administration Funding Agreement or (ii) to the Mandatory Prepayment Account or to facilitate payments into the Mandatory Prepayment Account or (iii) to a Proceeds Holding Account or to facilitate payments into a Proceeds Holding Account.
- (b) Each Obligor acknowledges on its own behalf that each of the Mandatory Prepayment Account and each Proceeds Holding Account is hereby designated a “Blocked Account” for the purpose of the debenture between Elli Acquisitions Limited, Elli Group (UK) Limited, the Original Borrower and Barclays Bank PLC dated 12 July 2012 and the supplemental debenture relating thereto dated on or about the date of the First Amendment and Restatement Agreement.
 - (c) The Company shall ensure that TreasuryCo shall grant and maintain security in favour of the Security Agent (on terms in form and substance acceptable to the Security Agent) over the TreasuryCo Charged Account.

24.29 Implementation Officer

- (a) The Company shall ensure that each Obligor set forth at Schedule 24, if any, as such schedule may be amended by written notice from the Majority Lenders from time to time, (an “**Appointing Obligor**”) shall, by 30 November 2021, appoint an implementation officer (the “**Initial Implementation Officer**”) pursuant to the terms of the Initial IO Engagement Letter.
 - (b) In the event of an Implementation Officer’s voluntary resignation, death or disability, the Company shall ensure that each Appointing Obligor shall, by the date falling no greater than thirty (30) days after such voluntary resignation, death or disability, (i) appoint a replacement Implementation Officer and (ii) enter into an IO Engagement Letter with such replacement Implementation Officer
 - (c) Each Appointing Obligor shall permit the Implementation Officer, without limitation:
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- (i) to perform his/her duties as set out in the IO Engagement Letter; and
 - (ii) to perform such other additional duties as the board of the Company and the boards of the other applicable Obligors may reasonably require.
- (d) To the extent any provisions of this Agreement including this Clause 24.29 and Clause 25.14 are inconsistent with the provisions of the Governance Deed, the provisions of Clause 24.29 and Clause 25.14 shall control and shall supersede any provision under any Governance Deed including without limitation in relation to the appointment and duties of an Implementation Officer (as defined thereunder).

25. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause (a) is an Event of Default (save for Clause 25.18 (*Acceleration*)).

25.1 Non-Payment

An Obligor or any Third Party Chargor (other than the Luxcos unless following a demand by the Agent) 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) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

25.2 Breach of Operational Covenants

An Obligor does not comply with any part of Clause 23 (*Operational Stability Covenants*) including, but not limited to:

- (a) any provisions regarding an Operational Stability Covenant;
 - (b) any provisions relating to the reporting of the Operational Stability Covenants;
 - (c) any provisions relating to the form and delivery of the Operational Stability Covenant Compliance Certificate, including any failure to deliver any Operational Stability Covenant Compliance Certificate prior to the applicable Operational Stability Covenant Compliance Certificate Cut Off Date;
 - (d) any provisions relating to the establishment and operation of the Cash Management Expenditure and Procurement Committee;
 - (e) the failure to notify the Agent of any Prospective Operational Stability Covenant Default (including, for these purposes, the failure to deliver any Prospective Operational Stability Covenant Default Breach Notice by the Prospective Operational Stability Covenant Default Breach Notice Cut Off Date; and
 - (f) breach of Clause 23.9 (*Value for money undertaking*) and/or the Operational Stability Covenant Reporting Obligations contained therein.
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In addition to being an Event of Default capable of acceleration in accordance with Clause 25.18 (*Acceleration*), any breach of this Clause 23 (*Operational Stability Covenants*) shall:

- (i) result in all accounts subject to any Transaction Security becoming blocked (and where applicable automatically designated as “Blocked Accounts” as defined under the relevant Transaction Security Documents) for use for the Holdco Group and subject to the express direction of the Agent and the Security Agent (acting on the instructions of the Majority Lenders in their sole discretion) (a “**Cash Dominion Event**”). For the avoidance of doubt, post the occurrence of a Cash Dominion Event, the Majority Lenders may elect to apply all monies standing to the credit of accounts subject to Transaction Security in permanent repayment of the Facilities without limitation or restriction and in their sole and absolute discretion; and
- (ii) afford to the Lenders, the Agent and/or the Security Agent (including, in each case, their respective advisors and legal counsel) the right to request from the Restricted Group (at the cost of the Restricted Group) any information required by the Lenders (in their sole and absolute discretion and on the timeframes so stipulated by the Lenders) to assess the Group’s financial performance, governance, operations or anything else relevant to the Lenders position as secured creditors (including the Transaction Security and/or guarantee) (the “**Operational Covenant Breach Information**”). The **Operational Covenant Breach Information** may include, without limitation, commissioned third party due diligence reports, valuations, legal reviews, field exams, management calls or meetings, appraisals, reports, the costs of which (including the costs of reviewing and interpreting the same) will be at the sole account of the Obligors.

25.3 Other Obligations

- (a) Any Holdco, Obligor or Third Party Chargor (other than the Luxcos) does not comply with any provision of the Finance Documents to which it is a party, other than those referred to in Clause 25.1 (*Non-Payment*).
- (b) The Company or any Obligor does not comply with any part of paragraph (b) of Clause 24.24 (*Valuations*), Clause 24.26 (*Administration*), Clause 24.27 (*Co-operation*).
- (c) No Event of Default under paragraph (a) above will occur if the failure to comply is:
 - (i) as a result of any inaccuracy in any representation made and repeated under any Finance Documents in respect to facts and circumstances existing, prior to the First Amendment and Restatement Agreement Execution Date and which is a Waived Default; or
 - (ii) capable of remedy and is remedied within 10 Business Days (or, in the case of a breach of Clause 24.20 (*Centre of Main Interests*), within 3 Business

Days) of the earlier of (x) the Agent giving notice to the Company, the relevant Obligor or the Third Party Chargor (other than the Luxcos) and (y) any Obligor becoming aware of the failure to comply.

25.4 Misrepresentation

- (a) Any representation or statement made or deemed to be made by any Holdco, any Obligor or any Third Party Chargor (other than the Luxcos) in the Finance Documents to which it is a party or any other document delivered by or on behalf of any Holdco, any Obligor or any Third Party Chargor (other than the Luxcos) under or in connection with any Finance Document to which it is a party is or proves to have been incorrect or misleading when made or deemed to be made unless the circumstances giving rise to the misrepresentation or breach of warranty are capable of remedy and are remedied within 30 days of the earlier of:
 - (i) the Agent giving notice to the relevant Holdco, Obligor or Third Party Chargor (other than the Luxcos); and
 - (ii) any Obligor becoming aware of the misrepresentation.
- (b) No Event of Default under paragraph (a) above will occur in respect of any inaccuracy in any representation made and repeated under any Finance Documents in respect to facts and circumstances existing, prior to the First Amendment and Restatement Agreement Execution Date and which is a Waived Default.

25.5 Cross Default

- (a) Any Financial Indebtedness of the Holdco Guarantor, the Company or any Restricted Subsidiary is not paid when due nor within any grace period originally applicable to such payment.
- (b) Any Financial Indebtedness of the Holdco Guarantor, the Company or any Restricted Subsidiary 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 the Holdco Guarantor, the Company or any Restricted Subsidiary is cancelled or suspended by a creditor of the Holdco Guarantor, the Company or any Restricted Subsidiary as a result of an event of default (however described).
- (d) Any creditor or note trustee or other representative of the Holdco Guarantor, the Company or any Restricted Subsidiary (other than where the creditor is a Restricted Subsidiary) becomes entitled to declare any Financial Indebtedness of the Holdco Guarantor, the Company or any Restricted Subsidiary 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 paragraphs (a) to (d) of this Clause 25.5 as a result of:
 - (i) the Subject Defaults, unless the requisite majority of holders of the Senior Secured Notes and/or the High Yield Notes exercise any remedies and/or

taken any action and/or instituted proceedings (however described and including the making of any demand) in relation to such Subject Default after the First Amendment Effective Date;

- (ii) [RESERVED]; or
- (iii) the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £500,000 (or its equivalent in any other currency or currencies).

25.6 Insolvency Proceedings

- (a) Other than in respect of the Obligor Administration Companies, any corporate action or legal proceedings is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of, the Company, any Restricted Subsidiary or any Third Party Chargor (other than the Luxcos);
 - (ii) a composition, compromise, assignment or arrangement with any classes of creditors of the Company, any Restricted Subsidiary or any Third Party Chargor (other than the Luxcos);
 - (iii) the appointment of a provisional or other liquidator, receiver, administrative receiver, administrator, compulsory manager, the Viscount of the Royal Court of Jersey or other similar officer in respect of the Company, any Restricted Subsidiary or any Third Party Chargor (other than the Luxcos) or any of their assets;
 - (iv) enforcement of any Security over any assets of the Company, any Restricted Subsidiary or any Third Party Chargor with an aggregate value of £500,000 (or its equivalent in other currencies);
 - (v) saisie proceedings in Guernsey in respect of any realty of the Company, any Restricted Subsidiary or any Third Party Chargor (other than the Luxcos);
 - (vi) the commencement of proceedings towards the making of a declaration (or the making of a declaration) that the affairs of the Company, any Restricted Subsidiary or any Third Party Chargor (other than the Luxcos) are “en desastre”;
 - (vii) the making of an application for a preliminary vesting order in saisie proceedings in Guernsey in respect of the Company, any Restricted Subsidiary or any Third Party Chargor (other than the Luxcos) (or the making of such a preliminary orders); or
 - (viii) the bankruptcy (within the meaning of Article 8 of the Interpretation (Jersey) Law 1954) of the Company, any Restricted Subsidiary or any Third Party Chargor (other than the Luxcos), or any analogous procedure, step, corporate action or legal proceeding is taken in any jurisdiction.

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- (b) Paragraph (a) shall not apply to:
- (i) any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement; or
 - (ii) any step or procedure undertaken in accordance with the undertakings in Schedule 17 (*Restrictive Covenants*).
- (c) For the purposes of the reference to the “suspension of payments” in paragraph (a)(i) above, neither non-payment of rent in respect of any of the Leasehold Properties nor the Subject Defaults or Waived Default will be deemed to amount to a “suspension of payments” provided that the exception contained in this paragraph (c) in respect of the Subject Defaults or Waived Defaults will not apply on and from the date following the First Amendment Effective Date on which the requisite majority of holders of the Senior Secured Notes and/or the High Yield Notes exercise any remedies and/or taken any action and/or instituted proceedings (however described and including the making of any demand) in relation to any Subject Default or Waived Default.

25.7 Creditors’ Process

Any (i) expropriation, attachment, sequestration, distress or execution; (ii) in respect of Scotland, diligence; or (iii) any analogous process in any jurisdiction affects any asset or assets of the Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor having an aggregate value of £500,000 (or its equivalent in other currencies) and is not discharged within 21 days.

25.8 Unlawfulness and Invalidity

- (a) It is or becomes unlawful for the Holdco Guarantor, an Obligor or any other member of the Group, any Third Party Chargor or any lender under any Shareholder Loan that is a party to the Intercreditor Agreement to perform any of its obligations under the Finance Documents, or (subject to the Legal Reservations) 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, or it is or becomes unlawful for any party to any Governance Document to perform its obligations under that Governance Document.
- (b) Any obligation or obligations of the Holdco Guarantor, any Obligor under any Finance Documents or any other member of the Group, any Third Party Chargor or any lender under any Shareholder Loan under the Intercreditor Agreement are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents, or any obligation or obligations of any party to any Governance Document are not (subject to the Legal Reservations) or cease to be legal, valid and binding or enforceable.

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- (c) Subject to the Legal Reservations, any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.
 - (d) No Event of Default shall arise under this Clause 25.8 as a result of anything that occurs as an operation of law as a result of the Obligor Administration Companies being in an administration process.

25.9 Intercreditor Agreement

- (a) Any party to the Intercreditor Agreement (other than a Finance Party or any Tenant Administration Companies) fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement; or
- (b) a representation or warranty given by that party in the Intercreditor Agreement is incorrect in any material respect,

and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within 10 Business Days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

25.10 Cessation of Business

The Group taken as a whole suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of the Care Home Division, except as a result of a transaction permitted under Schedule 17 (*Restrictive Covenants*).

25.11 Expropriation

- (a) The authority or ability of any Restricted Subsidiary to conduct its business is limited in any material respect 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 (each an Expropriation) in relation to that Restricted Subsidiary or any of its assets.
- (b) No Event of Default will occur under paragraph (a) above unless:
 - (i) the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of the Restricted Subsidiary or Restricted Subsidiaries affected by such Expropriation (individually or in aggregate) represent(s) more than £100,000; or
 - (ii) the assets of the Restricted Subsidiary or Restricted Subsidiaries affected by such Expropriation (individually or in aggregate) exceed £500,000.

25.12 Repudiation and Rescission of Agreements

- (a) An Obligor, any Third Party Chargor (other than the Luxcos) or any other party (other than a Finance Party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences

an intention to rescind or repudiate a Finance Document or any Transaction Security.

- (b) Any party to the Senior Secured Bond Debt Documents or High Yield Bond Debt Documents rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is reasonably likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.
- (c) Any party to the Governance Documents (other than the Appointor) rescinds or repudiates or purports to rescind or repudiate a Governance Document (or any provisions thereof).

25.13 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against the Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor (other than the Luxcos) or its assets which is reasonably likely to be adversely determined and has or is reasonably likely to have a Material Adverse Effect.

25.14 Governance

- (a) If at any time the board of either the Holdco Guarantor or the Company ceases to be a Majority Independent Board, provided that, no Event of Default shall occur under this clause as a result of there being fewer than five directors on the Board (as defined in the relevant Governance Deed) and provided that the party and/or parties entitled to appoint the relevant replacement director or directors is/are working diligently to effect such appointment in accordance with the relevant Governance Deed.
- (b) The Initial Implementation Officer appointed pursuant to Clause 24.29(a) is not acceptable to the Majority Lenders (acting in their sole and absolute discretion) at the time of his/her appointment and/or is not appointed pursuant to the Initial IO Engagement Letter at every Appointing Obligor in accordance with Clause 24.29(a).
- (c) If the Implementation Officer ceases to remain appointed at each and every Appointing Obligor other than:
 - (i) as a result of such Implementation Officer's resignation, death or disability and a replacement Implementation Officer is not appointed in accordance with the provisions of Clause 24.29(b) (*Implementation Officer*); or
 - (ii) following receipt of a Suspension and Replacement Notice and a replacement Implementation Officer is not appointed in accordance with the provisions of Clause 25.14(d).

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- (d) If, following receipt of a written notice from the Majority Lenders to replace an incumbent Implementation Officer (a “**Suspension and Replacement Notice**”), the Company and the Appointing Obligor(s) fail to:
- (i) within thirty (30) days of the delivery of the Suspension and Replacement Notice provide the Agent with a list of three (3) replacement Implementation Officer candidates (“**Initial Shortlist**”);
 - (ii) within ten (10) days of receipt of written notice from the Majority Lenders notifying the Company of an acceptable candidate from the Initial Shortlist, appoint such candidate as an Implementation Officer pursuant to an IO Engagement Letter;
 - (iii) within ten (10) days of receipt of written notice from the Majority Lenders notifying the Company that no candidate from the Initial Shortlist is acceptable, provide the Agent with a list of three (3) further additional replacement Implementation Officer candidates (and the process set out in Clause 25.14(d)(ii) and (iii) is not repeated until an Implementation Officer is duly appointed pursuant to an IO Engagement Letter).
- (e) If at any time the articles of incorporation of the Company are amended other than in accordance with the terms of the applicable Governance Document.
- (f) If at any time any Governance Document is terminated by the Appointor, except where such termination occurs in circumstances where there has not been a breach of such Governance Document.
- (g) Any party to a Governance Document (other than the Appointor) fails to comply with the material provisions of, or does not perform its material obligations under, that Governance Document.
- (h) A representation or warranty given by any party in a Governance Document (other than the Appointor) is incorrect in any material respect.
- (i) No Event of Default shall occur under any of paragraphs (a), (e), (f) or (g) above to the extent that the event which otherwise would give rise to such an Event of Default relates to the circumstances as at the First Amendment Effective Date of any Restricted Subsidiary which is a party to any Governance Documents or the Holdco Guarantor.

25.15 Material Adverse Change

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

25.16 Repayment of Senior Secured Notes and/or High Yield Notes

The repurchase, redemption or repayment (whether at maturity, by repurchase, redemption, satisfaction and discharge, defeasance or otherwise) of all or any portion of the outstanding principal amount of the Senior Secured Notes or the High Yield Notes (unless the outstanding principal amount of the Loan, and all accrued and unpaid interest

thereon and other amounts payable under the Finance Documents, are simultaneously repaid and satisfied in full).

25.17 Confidentiality Agreement

Any breach by any member of the Group or Holdco Guarantor of any term of, or the refusal by any member of the Group or Holdco Guarantor to agree to extend, the confidentiality agreement between, the Borrower, the Holdco Guarantor and H/2 Credit Manager LLC for and on behalf of certain investment funds managed by it or its affiliates dated 5 September 2016 (as amended from time to time) (the “**Confidentiality Agreement**”), or default by any member of the Group or Holdco Guarantor thereunder.

25.18 Acceleration

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

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

26. CHANGES TO THE LENDERS

26.1 Assignments and Transfers by the Lenders

Subject to this Clause 26 and Clause 27 (*Debt Purchase Transactions*), a Lender (the “**Existing Lender**”) may:

- (a) assign any of its rights (including that Existing Lender’s participation in any Loan);
- (b) transfer by novation any of its rights and obligations; or
- (c) enter into a sub-participation arrangement in respect of its rights,

under any Finance Document to any person (the “**New Lender**”) without any consent or consultation with any member of the Holdco Group.

26.2 Conditions of Assignment or Transfer

- (a) An assignment, transfer or sub-participation arrangement (but excluding any assignment, transfer or sub-participation to (i) an Affiliate of any Lender or (ii) a Related Fund of any Lender) of an Existing Lender’s participation must be in a minimum amount (when aggregated with all simultaneous transfers, assignments

and voting sub-participations by Affiliates and Related Funds) of £500,000 and integral multiples of £100,000 in excess thereof, or where such Lender is transferring all of its Commitments, the amount of its Commitments.

- (b) Any assignment or transfer by an Existing Lender of its participation in a Utilisation to a New Lender shall only be effective if the Existing Lender simultaneously transfers or assigns to the New Lender a pro rata proportion of such Existing Lender's Available Commitment.
- (c) 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 such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (d) 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 26.5 (*Procedure for Transfer*) is complied with.
- (e) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 16 (*Increased Costs*) or Clause 15 (*Tax Gross Up and Indemnities*),then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (e) shall not apply in relation to Clause 15.2 (*Tax Gross-Up*), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (j) of Clause 15.2 (*Tax Gross-Up*) if the Obligor making the payment has not made a Borrower DTTP Filing in respect of that Treaty Lender.
- (f) [RESERVED]

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- (g) 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.

26.3 Assignment or Transfer Fee

Unless the Agent otherwise agrees, the New Lender shall, on the date upon which an assignment or transfer takes effect (unless such assignment or transfer is to (i) an Affiliate of any Lender or (ii) a Related Fund of any Lender), pay to the Agent (for its own account) a fee of £3,500.

26.4 Limitation of Responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor or any other member of the Group of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 26.4; or
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- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

26.5 Procedure for Transfer

- (a) Subject to the conditions set out in Clause 26.2 (*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 26.11 (*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 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 Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Security Agent 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.

26.6 Procedure for Assignment

- (a) Subject to the conditions set out in Clause 26.2 (*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 26.11 (*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 26.6 to assign their rights under the Finance Documents (but not without the consent of the relevant Obligor or unless in accordance with Clause 26.5 (*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 26.2 (*Conditions of Assignment or Transfer*).

26.7 Copy of Transfer Certificate or Assignment Agreement to Company

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

26.8 Accession of Hedge Counterparties

Any person which becomes a party to the Intercreditor Agreement as a Hedge Counterparty shall, at the same time, become a Party to this Agreement as a Hedge Counterparty in accordance with clause 20.15 (*Creditor/Creditor Representative Accession Undertaking*) of the Intercreditor Agreement.

26.9 Security over Lenders' Rights

In addition to the other rights provided to Lenders under this Clause 26.9, 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), including, without limitation, via repurchase and/or reverse repurchase arrangements, 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.

26.10 Preservation of security

In the event of a transfer, assignment, novation or amendment of the rights and/or the obligations under this Agreement and any other Finance Documents, all security interests, guarantees and privileges created under or in connection with the Finance Documents shall automatically and without any formality be preserved for the benefit of the Security Agent, the New Lender and the other Finance Parties for the purpose of the provisions of article 1278 of the Luxembourg Civil Code or any other purposes.

26.11 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 26.5 (*Procedure for Transfer*) or any assignment pursuant to Clause 26.6 (*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; 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:

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- (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 26.10 have been payable to it on that date, but after deduction of the Accrued Amounts.

27. DEBT PURCHASE TRANSACTIONS

- (a) The Company shall not, and shall procure that each other member of the Group shall not enter into any Debt Purchase Transaction 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) No Lender may assign, transfer or enter into any sub-participation arrangement in respect of its rights and obligations under the Finance Documents with any member of the Group, Equity Investor or Equity Investor Affiliate.

28. CHANGES TO THE OBLIGORS

28.1 Assignment and Transfers by Obligors

No Obligor nor any member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

28.2 Additional Borrowers

- (a) Subject to compliance with the provisions of paragraph (c) of Clause 22.11 (“*Know Your Customer*” Checks), the Company may request that any of its wholly owned Restricted Subsidiaries becomes a Borrower under the Facility. That Restricted Subsidiary shall become a Borrower under the Facility if:
 - (i) the Majority Lenders approve the addition of that Restricted Subsidiary;
 - (ii) the Company and that Restricted Subsidiary deliver to the Agent a duly completed and executed Accession Document;
 - (iii) the Restricted Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;
 - (iv) the Company confirms that no Default is continuing or would occur as a result of that Restricted Subsidiary becoming an Additional Borrower; and
 - (v) the Agent has received all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders).
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it (acting on the

instructions of the Majority Lenders)) all the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*).

- (c) Upon becoming an Additional Borrower that Restricted Subsidiary shall make any filings (and provide copies of such filings) as required by Clause 15 (*Tax Gross Up and Indemnities*).

28.3 Resignation of a Borrower

- (a) In this Clause 28.3, Clause 28.6 (*Resignation of a Guarantor*) and Clause 28.7 (*Resignation*), Third Party Disposal means the disposal of an Obligor (other than the Company, Elli Group (UK) Ltd or the Original Borrower) to a person which is not a member of the Group where that disposal is made with the approval of the Majority Lenders (and the Company has confirmed this is the case).
- (b) If a Borrower is the subject of a Third Party Disposal, the Company may (provided it has obtained the consent of the Majority Lenders) request that such Borrower (other than itself) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- (c) The Agent shall accept a Resignation Letter and notify the Company and the other Finance Parties of its acceptance if:
- (i) the Company 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;
 - (iii) where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with Clause 28.6 (*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 Company has confirmed this is the case); and
 - (iv) the Company has confirmed that any relevant proceeds from such Third Party Disposal will be applied in accordance with Clause 9.1 (*Mandatory prepayment on Asset Dispositions*).
- (d) Upon notification by the Agent to the Company of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect.
- (e) The Agent may, at the cost and expense of the Company, require a legal opinion from counsel to the Agent confirming the matters set out in 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 (acting reasonably).

28.4 Original Guarantors

- (a) A member of the Group shall become a Guarantor if:
 - (i) the Company and the proposed Guarantor deliver to the Agent a duly completed and executed Accession Document; and
 - (ii) the Agent has received all of the documents and other evidence listed in Part C of Schedule 2 (*Conditions Precedent*) in relation to that Guarantor, each in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders).
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it (acting on the instructions of the Majority Lenders)) all the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*).

28.5 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (a) and (d) of Clause 22.11 (*“Know Your Customer” Checks*), the Company may request that any of its wholly owned Subsidiaries become a Guarantor.
- (b) Subject in each case to the Agreed Security Principles, the Company shall ensure that any member of the Group which is required to become an Additional Guarantor hereunder shall accede as an Additional Guarantor within any relevant time period specified in this Agreement for such accessions or (if none is specified) as soon as reasonably practicable and in any event within twenty Business Days of such entity being required to accede as an Additional Guarantor.
- (c) A member of the Group shall become an Additional Guarantor if:
 - (i) the Company and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Document; and
 - (ii) the Agent has received all of the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders).
- (d) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it (acting on the instructions of the Majority Lenders)) all the documents and other evidence listed in Part B of Schedule 2 (*Conditions Precedent*).

28.6 Resignation of a Guarantor

- (a) The Company may request that a Guarantor (other than the Holdco Guarantor, the Company, Elli Group (UK) Ltd and the Original Borrower) 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 28.3 (*Resignation of a Borrower*)) and the Company has confirmed this is the case; and
 - (ii) subject to the Intercreditor Agreement, the Majority Lenders have consented to the resignation of that Guarantor.
- (b) Subject to the Intercreditor Agreement, the Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
 - (i) the Company has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (ii) no payment is due from the Guarantor under Clause 20 (*Guarantee, Indemnity and Security*);
 - (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 28.3 (*Appointment of the Agent*);
 - (iv) the Company has confirmed that any relevant proceeds from such Third Party Disposal will be applied in accordance with Clause 9.1 (*Mandatory prepayment on Asset Dispositions*).
- (c) The resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal 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.
- (d) Each Party acknowledges and agrees that upon a resignation of a Guarantor pursuant to this Clause, the obligations of each other Obligor under the Finance Documents and the Transaction Security will be preserved for benefit of the Finance Parties.

28.7 Resignation

If a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:

- (a) the resignation of that Borrower or Guarantor shall not become effective until the date of that disposal; and
- (b) if the disposal of that Borrower or Guarantor is not made, the Resignation Letter of that Borrower or Guarantor shall have no effect and the obligations of the Borrower or Guarantor shall continue in full force and effect.

29. ROLE OF THE AGENT AND OTHERS

29.1 Appointment of the Agent

- (a) Each of the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Lenders 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.

29.2 Duties of the Agent

- (a) Subject to paragraphs (b) and (c) below, the Agent shall promptly forward to a Party the original or a copy of any document or any information which is delivered to the Agent for that Party by any other Party.
- (b) A Lender may elect, by notifying the Agent, for all such documents and information to be sent to a professional adviser of that Lender (the cost of such professional advisers shall be for the account of the Company) in order to ensure that such Lender does not receive any information relating to the Group of which that Lender should not be in receipt pursuant to any applicable law or regulation. Upon such an election, the Agent shall not forward to the relevant Lender any such documents or information unless and until the Agent has received a written revocation from the relevant Lender of such election. Prior to any such revocation, the Agent will be deemed to have fulfilled its obligation to forward such document of information to such Lender by delivery of the same to the professional adviser of that Lender.
- (c) Without prejudice to Clause 26.7 (*Copy of Transfer Certificate or Assignment Agreement to Company*), paragraph (a) above shall not apply to any Transfer Certificate or any Assignment Agreement.
- (d) 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.
- (e) If the Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) 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 or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall provide to the Company within five Business Days following a request by the Company (but no more frequently than once per Month or as soon as reasonably practicable upon the Agent becoming an Impaired Agent), 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. Each Lender is deemed to consent to the disclosure of such information by the Agent to the Company.

- (h) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

29.3 No Fiduciary Duties

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

29.4 Business with the Group

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

29.5 Rights and Discretions

- (a) The Agent may rely on:
 - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received written 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 25.1 (*Non-Payment*));
 - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders or any other Finance Party has not been exercised; and
 - (iii) any notice or request made by the Company (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.

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- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
 - (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.
 - (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
 - (f) The Agent may act in relation to the Finance Documents through its officers, employees, delegates 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 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 loss was directly caused by the Agent's gross negligence or wilful misconduct.
 - (g) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
 - (h) Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not 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) The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purpose of Clause 13.2 (*Market Disruption*).
 - (j) 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 and/or prefunding for, such risk or liability is not reasonably assured to it.

29.6 Majority Lenders' Instructions

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and in all other cases, the Majority Lenders (or, if so instructed by the Majority Lenders or all Lenders, refrain from

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- exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with the express instruction of the relevant Lenders (or, if this Agreement stipulates the matter is a decision for any other Finance Party or group of Finance Parties, from that Finance Party or group of Finance Parties).
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties other than the Security Agent.
 - (c) The Agent may refrain from acting in accordance with the instructions of any Party (including, without limitation, bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received such indemnification and/or security as it may in its sole discretion require (whether by way of payment in advance or otherwise) for any costs, losses and/or liabilities whatsoever (together with any associated VAT or similar tax) which it may incur in so acting.
 - (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
 - (e) 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 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.

29.7 Responsibility for Documentation

The Agent:

- (a) is not responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, an Obligor or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
 - (b) is not 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 not 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.
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- (d) The Agent shall not be bound to enquire:
 - (i) whether or not any Default has occurred;
 - (ii) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
 - (iii) whether any other event specified in any Finance Document has occurred.

29.8 Exclusion of Liability

- (a) Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of Clause 32.11 (*Disruption to Payment Systems Etc.*)), the Agent shall not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for any action taken (or not taking any action, other than in respect of any action was duly instructed pursuant to the terms of the Finance Documents) by it under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct, or any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (i) any act, event or circumstance not reasonably within its control; or
 - (ii) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent, in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Act.
- (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 to carry out any know your customer or other checks in relation to any person on behalf of any Finance Party and each Finance Party confirms to the Agent 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.

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

29.9 Lenders' Indemnity to the Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within seven 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 32.11 (*Disruption to Payment Systems Etc.*), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) The Company shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.

29.10 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Company.
- (b) Alternatively the Agent may resign by giving 30 days' notice to the Lenders and the Company, in which case the Majority Lenders 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 of receipt by the Majority Lenders of notice of resignation from the retiring Agent, the retiring Agent may appoint a successor Agent.

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- (d) The retiring Agent shall make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Company shall, within seven Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
 - (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
 - (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 29, Clause 17 (*Other Indemnities*) and Clause 19 (*Costs and Expenses*). 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 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 15.7 (*FATCA Information*) and the Borrower 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 15.7 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or (iii) the Agent notifies the Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

29.11 Replacement of the Agent

- (a) The Majority Lenders may, by giving 10 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 (acting through an office in the United Kingdom).
- (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 29.11 (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.

29.12 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, the Agent is not 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.

29.13 Relationship with the Lenders

- (a) Subject to Clause 26.11 (*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 Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) [RESERVED].
- (c) Each Lender shall supply the Agent with any information that the Security Agent may reasonably specify (through the Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Lender

shall deal with the Security Agent exclusively through the Agent and shall not deal directly with the Security Agent.

- (d) 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 dispatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 35.6 (*Electronic Communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 35.2 (*Addresses*) and paragraph (a) of Clause 35.6 (*Electronic Communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

29.14 Credit Appraisal by the Lenders

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

- (a) the financial condition, status and nature of each 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 the Group Structure Chart and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by 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.

29.15 Agent's Management Time

Any amount payable to the Agent under Clause 17.3 (*Indemnity to the Agent*), Clause 19 (*Costs and Expenses*) and Clause 29.9 (*Lenders' Indemnity to the Agent*) shall include (subject to the provisions of the Agency Fee Letter) the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 14 (*Fees*).

29.16 Reliance and engagement letters

Each Finance Party and Secured Party confirms that 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 Agent) the terms of any reliance letter or engagement letters any reports or letters provided by accountants, auditors or providers of due diligence in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

29.17 Deduction from Amounts Payable by the Agent

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

30. 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.

31. SHARING AMONG THE FINANCE PARTIES

31.1 Payments to Finance Parties

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from an Obligor other than in accordance with Clause 32 (*Payment Mechanics*) (a Recovered Amount) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;

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- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 32 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
 - (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 32.6 (*Partial Payments*).

31.2 Redistribution of Payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the Sharing Finance Parties) in accordance with Clause 32.6 (*Partial Payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

31.3 Recovering Finance Party’s Rights

On a distribution by the Agent under Clause 31.2 (*Redistribution of Payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

31.4 Reversal of Redistribution

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

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

31.5 Exceptions

- (a) This Clause 31.5 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party, is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

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- (i) it notified the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

32. PAYMENT MECHANICS

32.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date (or, in respect of a payment to be made by a Lender, on such earlier date as agreed between the Agent and the relevant Lender) 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) In the event that a Lender has made a payment to the Agent in advance of and for the purpose of funding a Utilisation and such Utilisation does not occur on the date specified in the relevant Utilisation Request, the Agent shall promptly, and in any event within one Business Day refund the full amount of such payment to the relevant Lender.
- (c) Payment shall be made to such account in the principal financial centre of the country of that currency.

32.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 32.3 (*Distributions to an Obligor*) and Clause 32.4 (*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 Business Days' notice with a bank in the principal financial centre of the country of that currency.

32.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 33 (*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.

32.4 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 (i) 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 and (ii) the person by whom that sum should have been made available or, if that person fails to do so the person to whom that sum was made available, shall on request pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving it.

32.5 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 32.1 (*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 32.5 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 29.11 (*Replacement of the Agent*), each Party which has made a payment to a trust account in accordance with this Clause 32.5 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 32.2 (*Distributions by the Agent*).

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

32.7 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.

32.8 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.

32.9 Currency of Account

- (a) Subject to paragraphs (b) and (c) below, Sterling is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Sterling shall be paid in that other currency.

32.10 Change of Currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated

into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Company); and

- (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

32.11 Disruption to Payment Systems Etc.

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

- (a) the Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) 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 (d) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 39 (*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 32.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (b) above.

33. SET-OFF

Following an Event of Default, 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.

34. JOINT ADMINISTRATORS AND OBLIGOR ADMINISTRATION COMPANIES

34.1 No personal liability of Joint Administrators

- (a) Each of the Joint Administrators have entered into and signed this Agreement as agents for and on behalf of the relevant Obligor Administration Company and neither they, their firm (or any other legal entity or partnership using in its name the words “Alvarez & Marsal” or “A&M”), members, partners, directors, officers, employees, agents, advisers or representatives, (together, the “**Related Parties**”) shall incur any personal liability whatever in respect of any of the obligations undertaken by any of the Obligor Administration Companies or in respect of any failure on the part of any of the Obligor Administration Companies to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Agreement.
- (b) The exclusion of liability set out in this Clause 34.1 shall arise and continue notwithstanding the termination of the agency of the Joint Administrators and shall operate as a waiver of any and all claims (including, but not limited to, claims in tort, equity and common law as well as under the laws of contract).
- (c) The Joint Administrators are party to this Agreement in their personal capacities only for the purposes of receiving the benefit of all releases, limitations, exclusions, undertakings and covenants in their favour and in favour of the relevant Obligor Administration Company contained in this Agreement, from which the Joint Administrators will continue to benefit notwithstanding the termination of the agency of the Joint Administrators or their discharge from office as Joint Administrators.
- (d) Notwithstanding Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Act, each of the Related Parties shall be entitled to rely on, enforce and enjoy the benefit of this Clause 34.1 as if they were a party to this Agreement.

34.2 Administration expenses

- (a) The Agent (for and on behalf of the Finance Parties), each of the EFUK Administrators, the FSHCL Administrators and the EIL Administrators acknowledge and agree that the obligations of each of the Holdco Guarantor, the Original Borrower and FSHCL (as applicable) under this Agreement, including

their payment and repayment obligations, shall rank (to the extent permitted by law) as expenses of the administration of the Original Borrower and FSHCL (as applicable) pursuant to paragraph 99(4) of Schedule B1 of the Insolvency Act 1986 and Insolvency Rule 3.51(2) and of the Holdco Guarantor (as applicable) pursuant to section 383 of the Companies (Guernsey) Law, as amended.

- (b) The Agent (for and on behalf of the Finance Parties) acknowledges and agrees that the payment of:
- (i) the EFUK Administrators' and the FSHCL Administrators' remuneration and expenses pursuant to Paragraph 99(3) of Schedule B1 of the Insolvency Act 1986; and
 - (ii) the EIL Administrators' remuneration and expenses pursuant to section 383 of the Companies (Guernsey) Law, as amended,

shall be payable in priority to any obligation of the Holdco Guarantor, the Original Borrower or FSHCL (as applicable) under this Agreement, including their payment and repayment obligations, but only to the extent that such remuneration and expenses incurred and paid during the period from 1 April 2021 to the Operational Stability Covenant End Date do not exceed the monetary limit applied to Professional Fees and Other Exceptional Costs expense category in the right hand column of the table at Clause 23.2 (*Maximum Expenditure (General Usage Covenants)*) and are paid in compliance with the Operational Stability Covenants and paid pursuant to the Administration Funding Agreement.

35. NOTICES

35.1 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.

35.2 Addresses

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

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of each 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 Business Days' notice.

35.3 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 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,and, if a particular department or officer is specified as part of its address details provided under Clause 35.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent, or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause 35.3 will be deemed to have been made or delivered to each of the Obligors.

35.4 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 35.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

35.5 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.

35.6 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 or 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;

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- (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 or the Security Agent and a Lender, 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 the Security Agent shall specify for this purpose.
 - (c) Each Party accepts that facsimile, email and other electronic communications are not secure. Subject to the obligations contained in Clause 40.1 (*Confidential Information*), the Security Agent shall not incur any liability for receiving instructions from, or transmitting data to, any other Party via such a non-secure method (except to the extent that the liability or loss arises from the Security Agent's, gross negligence, fraud or wilful misconduct).

35.7 Use of Websites

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

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

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Agent.
- (c) The Company shall promptly upon becoming aware of its occurrence notify the Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;

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- (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

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

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

35.8 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.

36. CALCULATIONS AND CERTIFICATES

36.1 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.

36.2 Certificates and Determinations

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

36.3 Day Count Convention and interest calculation

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and the amount of any such interest, commission or fee is calculated:
 - (i) 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; and
 - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any accrued interest, commission or fee which is, or becomes, payable by an Obligor under a Finance Document shall be rounded to 2 decimal places.

37. 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.

38. 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.

39. AMENDMENTS AND WAIVERS

39.1 Intercreditor Agreement

This Clause 38 is subject to the terms of the Intercreditor Agreement.

39.2 Required Consents

- (a) Subject to Clause 39.3 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders, the Company and, to the extent applicable, the Obligor Administration Companies 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 39.
- (c) Each Obligor (excluding the Obligor Administration Companies) agrees to any such amendment or waiver permitted by this Clause 39 which is agreed to by the

Company. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of all of the Guarantors.

39.3 Exceptions

- (a) An amendment or waiver that has the effect of changing or which relates to any provision which expressly requires the consent of all the Lenders shall not be made without the prior consent of all the Lenders.
- (b) An amendment or waiver which relates to the rights or obligations of the Agent, the Security Agent or any Hedge Counterparty (each in their capacity as such) may not be effected without the consent of the Agent, the Security Agent or, as the case may be, that Hedge Counterparty.
- (c) The Finance Parties shall (and hereby irrevocably instruct the Agent and the Security Agent (as the case may be) to) enter into any documentation necessary to implement an amendment or waiver referred to in paragraph (a) above once that amendment or waiver has been approved by the requisite majority of Lenders.
- (d) The Agent may agree, on behalf of any Finance Party, any amendment to correct manifest or typographical or drafting errors which do not prejudice the rights of such Finance Party, provided the Agent has notified such Finance Party at least 5 Business Days in advance of agreeing such amendment.

39.4 Changes to reference rates

- (a) Subject to Clause 39.3 (*Exceptions*), if an RFR Replacement Event has occurred, any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Reference Rate in place of the RFR; and
 - (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Reference Rate;
 - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Reference Rate;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and

if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders and the Obligors).

(b) An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on a Loan under this Agreement to any recommendation of a Relevant Nominating Body which:

- (i) relates to the use of a risk-free reference rate on a compounded basis in the international or any relevant domestic syndicated loan markets; and
- (ii) is issued on or after the First Amendment and Restatement Effective Date,

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders following consultation with the Company).

(c) In this Clause 39.4:

“RFR Replacement Event” means:

- (i) the methodology, formula or other means of determining the RFR has, in the opinion of the Majority Lenders following consultation with the Company, materially changed;

(ii)

(A)

- (1) the administrator of the RFR or its supervisor publicly announces that such administrator is insolvent; or
- (2) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the RFR is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide the RFR;

- (B) the administrator of the RFR publicly announces that it has ceased or will cease to provide the RFR permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the RFR;
- (C) the supervisor of the administrator of the RFR publicly announces that the RFR has been or will be permanently or indefinitely discontinued; or

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- (D) the administrator of the RFR or its supervisor announces that the RFR may no longer be used; or
 - (iii) the administrator of the RFR determines that the RFR should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (A) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders acting reasonably) temporary; or
 - (B) the RFR is calculated in accordance with any such policy or arrangement for a period no less than the period specified as the “RFR Contingency Period” in the Reference Rate Terms; or
 - (C) in the opinion of the Majority Lenders acting reasonably, the RFR is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

“**Relevant Nominating Body**” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“**Replacement Reference Rate**” means a reference rate which is:

- (i) formally designated, nominated or recommended as the replacement for the RFR by:
 - (A) the administrator of the RFR (provided that the market or economic reality that such reference rate measures is the same as that measured by the RFR); or
 - (B) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Reference Rate” will be the replacement under paragraph (B) above;

in the opinion of the Majority Lenders and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the RFR; or

in the opinion of the Majority Lenders acting reasonably, an appropriate successor to the RFR.

40. CONFIDENTIALITY

40.1 Confidential Information

- (a) Subject to paragraph (b) below, each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent

permitted by Clause 40.2 (*Disclosure of Confidential Information*) and Clause 40.3 (*Disclosure to Numbering Service Providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

- (b) This Clause 40 shall not apply to any Finance Party which is an Original Lender or an Affiliate or Related Fund of an Original Lender and which, in each case, is party to (or whose investment manager is party to), or has acceded to, the Existing Confidentiality Agreement, or entered into an agreement with the Holdco Guarantor and/or the Company on substantially the same terms as the Existing Confidentiality Agreement (an “**Additional Confidentiality Agreement**”) (each, an “**Excluded Finance Party**”), and each such Excluded Finance Party shall instead be bound by the obligations set out in the Existing Confidentiality Agreement or the relevant Additional Confidentiality Agreement (as applicable).

40.2 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 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 (d) of Clause 29.13 (*Relationship with the Lenders*));

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- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 26.9 (*Security over Lenders' Rights*);
 - (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (viii) who is a Party; or
 - (ix) with the consent of the Company;

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

- (A) in relation to paragraphs 40.2(b)(i), 40.2(b)(ii) and 40.2(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; and
 - (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 Company and the relevant Finance Party; and

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

40.3 Disclosure to Numbering Service Providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
- (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) Initial Signing Date, First Amendment and Restatement Agreement Execution Date, First Amendment Effective Date, Second Amendment and Restatement Agreement Execution Date and Second Amendment Effective Date (as applicable);
 - (v) the name of the Agent;
 - (vi) date of each amendment and restatement of this Agreement;
 - (vii) amount of Total Commitments;
 - (viii) currency of the Facility;
 - (ix) type of Facility;
 - (x) ranking of Facility;
 - (xi) Termination Date for Facility;
 - (xii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above;
 - (xiii) such other information agreed between such Finance Party and the Company; and

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- (xiv) to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
 - (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligor 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) The Company represents that none of the information set out in paragraphs (i) to (xiv) (other than (xii)) of paragraph (a) above is, nor will at any time be, unpublished price sensitive information.
 - (d) The Agent shall notify the Company and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligor; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligor by such numbering service provider.

40.4 Entire Agreement

This Clause 40 (*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.

40.5 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.

40.6 Notification of Disclosure

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

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

40.7 Continuing Obligations

The obligations in this Clause 40 (*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.

41. COUNTERPARTS

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

42. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law provided that: (A) Clause 20.14(a)(iv) and Clause 20.14(b) to (e), which shall be governed by, and construed in accordance with, Guernsey law; (B) save for Clauses 20.14(a)(i) to (iv) and 20.14(f) which shall be governed by Jersey law solely in relation to any Security under the Transaction Security Documents that are governed by Jersey law; and (C) Schedule 17 (*Restrictive Covenants*) shall be interpreted in accordance with the law of the State of New York without prejudice to the fact that this Agreement is governed by English law (other than as specified herein) and that such Schedule 17 (*Restrictive Covenants*) shall also be enforced in accordance with English law.

42.1 ENFORCEMENT

42.2 Jurisdiction of English Courts

- (a) Unless specifically provided for in another Finance Document in relation to that Finance Document, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 42 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.

42.3 Service of Process

- (a) Without prejudice to any other mode of service allowed or required under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):
 - (i) irrevocably appoints the Original Borrower as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and the Original Borrower 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 agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of all the Obligors) must immediately (and in any event within five 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 42 and Clause 42 (*Governing Law*).

43. SURVIVAL

Clauses 15.3 (*Tax Indemnity*), 17 (*Other Indemnities*), 19 (*Costs and Expenses*) and 21 (*Representations*) shall survive and continue after any termination of the obligations of the Finance Parties under this Agreement.

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

Schedule 1
The Original Parties

Part A
The Original Lenders

[RESERVED]

Part B
Original Borrower

[RESERVED]

Part C
Original Guarantors

[RESERVED]

Schedule 2
Conditions Precedent

Part A
Initial Conditions Precedent

[RESERVED]

Part B
Conditions Precedent to First Utilisation

[RESERVED]

Part C
Conditions Precedent Required to be Delivered by an Additional Obligor

1. An Accession Document executed by the Additional Obligor and the Company.
2. A copy of the constitutional documents of the Additional Obligor.
3. If required by law or requested by a legal adviser to the Agent (acting reasonably), a copy of a resolution of the board of directors (or a duly appointed and empowered committee of its board of directors) of the Additional Obligor:
 - (a) approving the terms of, and the transactions contemplated by, the Accession Document and the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Accession Document and any other Finance Document to which it is party;
 - (b) authorising a specified person or persons to execute the Accession Document and other Finance Documents on its behalf;
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (d) authorising the Company 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 law or requested by a legal adviser (acting reasonably) to the Agent, in the case of an Additional Obligor where such resolution is able to be obtained under the law of the place of incorporation of such Additional Obligor, a copy of a resolution signed by all of the holders of the issued or allotted shares in such Additional Obligor, approving the terms of, the transactions contemplated by, and the execution, delivery and performance of the Accession Document and the other Finance Documents to which it will be party.
7. If required by law, a copy of a resolution of the board of directors of each corporate shareholder of each Obligor approving the terms of the resolution referred to in paragraph 6 above
8. A certificate of the Additional Obligor (signed by a director or a duly authorised representative) 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, subject to any limitations set out in this Agreement or the relevant Accession Document.

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9. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part B 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 Document.
 10. If available, the latest audited financial statements of the Additional Obligor.
 11. Evidence satisfactory to the Agent that each Finance Party has carried out and is satisfied with the results of all “know your client”, anti-money laundering and other similar checks required in respect of the Additional Obligor by the Finance Parties.
 12. 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 Document; or
 - (b) if the Additional Obligor is incorporated in or has its “centre of main interest” or “establishment” (as referred to in Clause 21.32 (*Centre of Main Interests and Establishments*)) 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 the Agent in the jurisdiction of its incorporation, “centre of main interest” or “establishment” (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the **Applicable Jurisdiction**) as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Document.
 13. Any security documents which, subject to the Agreed Security Principles, are required by the Agent to be executed by the proposed Additional Obligor and/or, in respect of any share charge, its Holding Company.
 14. Any notices or documents required to be given or executed under the terms of any Transaction Security Document the Additional Obligor enters into.
 15. All share certificates, stock transfer forms and other documents of title required to be provided under the security documents referred to in paragraph 13 above or otherwise required to perfect (or facilitate the subsequent perfection, where applicable) and/or facilitate enforcement of, such security documents (in each case to the extent required to be delivered on the date of entry into such security document).
 16. Evidence that all expenses due and payable from the Company under this Agreement in respect of the Accession Document have been paid.
 17. If the Additional Obligor is incorporated in England and Wales, Scotland or Northern Ireland, evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply (if applicable) with sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
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18. If the Additional Obligor is not incorporated in England and Wales, Scotland or Northern Ireland, such documentary evidence as legal counsel to the Agent may require, that such Additional Obligor has complied (if applicable) with any law in its jurisdiction relating to financial assistance or analogous process and a certificate of such Additional Obligor confirming the same.
 19. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 42.3 (*Service of Process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
 20. If the proposed Additional Obligor is a Jersey company, evidence that it has received consent under the Control of Borrowing (Jersey) Order 1958, as amended to its proposed borrowing and/or granting of security (as the case may be) pursuant to its entry into the Finance Documents to which it is a party.
 21. In respect of:
 - (a) the Additional Obligor if it is incorporated in the UK and its shares are subject to any Security Interest created under any Security Document; and
 - (b) each company incorporated in the UK and whose shares are subject to any Security Interest created by the Additional Obligor under any Security Document, either:
 - (i) a certificate of an authorised signatory of the Company certifying that:
 - (A) each member of the Group has complied on time with any notice it has received under Part 21A of the Companies Act 2006 from that company; and
 - (B) (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 company which, if the company is a member of the Group, is certified by an authorised signatory of the Company to be correct, complete and not amended or superseded as at a date no earlier than the date of the Accession Letter; or
 - (ii) a certificate of an authorised signatory of the Company certifying that that company is not required to comply with Part 21A of the Companies Act 2006.

Schedule 3
Utilisation Request

[RESERVED]

Schedule 4
[Reserved]

Schedule 5
Form of Transfer Certificate

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

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

Dated:

**ELLI FINANCE (UK) PLC (IN ADMINISTRATION) – £[●] Credit Facility Agreement
as amended and restated pursuant to the First Amendment and Restatement Agreement
(as amended from time to time, the “Facility Agreement”)**

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the “**Agreement**”) shall take effect as a Transfer Certificate for the purpose of the Facility Agreement and as a Creditor/Creditor Representative Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 26.5 (*Procedure for Transfer*) of the Facility Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender’s Commitment, rights and obligations referred to in the Schedule in accordance with Clause 26.5 (*Procedure for Transfer*).
 - (b) The proposed Transfer Date is [□].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 35.2 (*Addresses*) are set out in the Schedule.
3. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor that it is:

[a Qualifying Lender (other than a Treaty Lender)] [a Treaty Lender]
[not a Qualifying Lender].¹
4. [The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is [not] a U.S. Person.]
5. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 26.4 (*Limitation of Responsibility of Existing Lenders*).
6. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

¹ Delete as applicable. Each New Lender is required to confirm which category it falls within.

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- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.²

[The New Lender confirms (for the benefit of the Agent and without liability to any Obligor) that it is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme (reference number [0]) and is tax resident in [0], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Company that:

- (i) each Borrower which is a Party as a Borrower as at the Transfer Date must, to the extent that the New Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to Clause 2.1 (*The Facility*) of the Facility Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of the Transfer Date; and
- (ii) each Additional Borrower which becomes an Additional Borrower after the Transfer Date must, to the extent that the New Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to Clause 2.1 (*The Facility*) of the Facility Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of becoming an Additional Borrower.³

[7/8] The New Lender confirms that it is not an Equity Investor or Equity Investor Affiliate.

[8/9] We refer to Clause 20.6 (*Changes of Senior Creditor*) of the Intercreditor Agreement.

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

² Include only if the New Lender is a UK Non-Bank Lender i.e. falls within paragraph (ii) of the definition of Qualifying UK Lender in Clause 1.1 (Definitions) of the Facility Agreement.

³ This confirmation must be included if the New Lender holds a passport under the HMRC DTTP scheme and wishes to apply that scheme to the Agreement.

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

[9/10] This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[10/11] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

[11/12] This Agreement has been entered into on the date stated at the beginning of this Agreement.

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

2

THE SCHEDULE

COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED

[insert relevant details]

[Facility Office address, fax number, email address of New Lender and attention details for notices and account details for payments,]

[Existing Lender] [New Lender]

Market Entity Identifier: Market Entity Identifier:

By: By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facility Agreement by the Agent, and as a Creditor/Creditor Representative Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [0].

[Agent]

By:

[Security Agent] By:]

Schedule 6
Form of Assignment Agreement

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

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

Dated:

**ELLI FINANCE (UK) PLC (IN ADMINISTRATION) – £[●] Credit Facility Agreement
as amended and restated pursuant to the First Amendment and Restatement Agreement
(as amended from time to time, the “Facility Agreement”)**

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This is an Assignment Agreement. This agreement (the **Agreement**) shall take effect as an Assignment Agreement for the purpose of the Facility Agreement and as a Creditor/Creditor Representative Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 26.6 (*Procedure for Assignment*) of the Facility:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facility Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender’s Commitments and participations in Utilisations under the Facility Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in Utilisations under the Facility Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [●].
4. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender)]
 - (b) [a Treaty Lender]
 - (c) [not a Qualifying Lender]⁴.

⁴ Delete as applicable. Each New Lender is required to confirm which category it falls within.

-
5. [The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is [not] a U.S. Person.]
 6. On the Transfer Date the New Lender becomes:
 - (a) Party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
 - (b) Party to the Intercreditor Agreement as a Credit Facility Lender.
 7. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 35.2 (*Addresses*) are set out in the Schedule.
 8. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 26.4 (*Limitation of Responsibility of Existing Lenders*).

[The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (iii) 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.]⁵

[The New Lender confirms (for the benefit of the Agent and without liability to any Obligor) that it is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme (reference number [0]) and is tax resident in [0], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Company that:

- (iv) each Borrower which is a Party as a Borrower as at the Transfer Date must, to the extent that the New Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to Clause 2.1 (*The Facility*) of

⁵ Include only if the New Lender is a UK Non-Bank Lender i.e. falls within paragraph (ii) of the definition of Qualifying UK Lender in Clause 1.1 (Definitions) of the Facility Agreement.

the Facility Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of the Transfer Date; and

- (v) each Additional Borrower which becomes an Additional Borrower after the Transfer Date must, to the extent that the New Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to Clause 2.1 (*The Facility*) of the Facility Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of becoming an Additional Borrower.]⁶

[9/10] The New Lender confirms that it is not an Equity Investor or Equity Investor Affiliate.

[10/11] We refer to clause 20.2 (*New Credit Facility Lenders and Creditor Representatives*) of the Intercreditor Agreement:

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

[11/12] This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 26.7 (*Copy of Transfer Certificate or Assignment Agreement to Company*), to the Company (on behalf of each Obligor) of the assignment referred to in this Agreement.

[12/13] This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[13/14] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

[14/15] This Agreement has been entered into on the date stated at the beginning of this Agreement.

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

⁶ This confirmation must be included if the New Lender holds a passport under the HMRC DTTP scheme and wishes to apply that scheme to the Agreement.

THE SCHEDULE

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

[Facility Office address, fax number, email address of New Lender and attention details for notices and account details for payments,]

[Existing Lender] [New Lender]

Market Entity Identifier: Market Entity Identifier:

By: By:

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

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

[Agent] By:

[Security Agent] By:

Schedule 7
Form of Accession Document

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

From: [Acceding Entity] and [Company] Dated:

Dear Sirs

ELLI FINANCE (UK) PLC (IN ADMINISTRATION) – £[●] Credit Facility Agreement as amended and restated pursuant to the First Amendment and Restatement Agreement (as amended from time to time, the “Facility Agreement”)

1. We refer to the Facility Agreement and to the Intercreditor Agreement. This deed (the **Accession Document**) shall take effect as an Accession Document for the purposes of the Facility Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in paragraphs 1- 3 of this Accession Document unless given a different meaning in this Accession Document.
2. [Acceding Entity] agrees to become [an Original Borrower] / [an Original Guarantor] / [an Additional Borrower] / [and Additional Guarantor] / and to be bound by the terms of the Facility Agreement and the other Finance Documents (other than the Intercreditor Agreement) as / [an Original Guarantor pursuant to Clause 28.4 (*Original Guarantors*)] / [an Additional Borrower pursuant to Clause 28.2 (*Additional Borrowers*)] / [an Additional Guarantor pursuant to Clause 28.5 (*Additional Guarantors*)] of the Facility Agreement. [Acceding Entity] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [□].
3. [Acceding Entity’s] administrative details for the purposes of the Facility Agreement and the Intercreditor Agreement are as follows:

Address: Fax No.: Attention:

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

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

Relevant Documents.

IT IS AGREED as follows:

- (a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Document, bear the same meaning when used in this paragraph 4.

-
- (b) The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
- (i) [any Transaction Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (ii) all proceeds of that Transaction Security; and]⁷
 - (iii) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties, on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
- (c) The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
- (d) [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].⁸

[4]/[5] This Accession Document and any non-contractual obligations arising out of or in connection with it are governed by English law.

THIS ACCESSION DOCUMENT has been signed on behalf of the Security Agent (for the purposes of paragraph 4 above only), signed on behalf of the Company and executed as a deed by [Acceding Entity] and is delivered on the date stated above.

⁷ Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as trustee for the Secured Parties.

⁸ Include this paragraph in this Accession Deed if the Subsidiary is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

[Acceding Entity]

[EXECUTED as a DEED)

By: [Acceding Entity])

_____ Director

_____ Director/Secretary

OR

[EXECUTED as a DEED

By: [Acceding Entity]

_____ Signature of Director

_____ Name of Director

in the presence of

_____ Signature of witness

_____ Name of witness

_____ Address of witness

_____ Occupation of witness]

The [Company]

By: _____ [Company]

The Security Agent

[Full name of current Security Agent] By:

Date:

Schedule 8
Form of Resignation Letter

To: [●] as Agent

From: [resigning Obligor] and [Company] Dated:

Dear Sirs

**ELLI FINANCE (UK) PLC (IN ADMINISTRATION) – £[●] Credit Facility Agreement
as amended and restated pursuant to the First Amendment and Restatement Agreement
(as amended from time to time, the “Facility Agreement”)**

1. We refer to the Facility Agreement. This is a Resignation Letter. Terms defined in the Facility Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [Clause 28.3 (*Resignation of a Borrower*)]/[Clause 28.6 (*Resignation of a Guarantor*)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facility Agreement and the Finance Documents (other than the Intercreditor Agreement).
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request;
 - (b) *[[this request is given in relation to a Third Party Disposal of [resigning Obligor];
and
 - (c) [●]***
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Company]

[resigning Obligor]

By:

By:

NOTES:

- * Insert where resignation only permitted in case of a Third Party Disposal.
- ** Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.
- * * Insert any other conditions required by the Facility Agreement.

Schedule 9
Form of Compliance Certificate

To: [●] as Agent

From: [Company] Dated:

Dear Sirs

**ELLI FINANCE (UK) PLC (IN ADMINISTRATION) – £[●] Credit Facility Agreement
as amended and restated pursuant to the First Amendment and Restatement Agreement
(the “Facility Agreement”)**

1. We refer to the Facility Agreement. This is a Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. [We confirm that no Default is continuing.]*
3. [We confirm that the following companies constitute Material Companies for the purposes of the Facility Agreement: [●].] **
4. Since delivery of the previous Compliance Certificate [the following changes to Senior Management have taken place:] / [there have been no changes to Senior Management].

Signed

Director

Director

Of

Of

[Company]

[Company]

[insert applicable certification language]

.....

for and on behalf of

[name of Auditors of the Company]****

NOTES:

- * If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.
- ** Statement to be included when Compliance Certificate accompanies Annual Financial Statements.
- * * * Supporting calculations to be provided on Lender request

Schedule 10
Form of Operational Stability Covenant Compliance Certificate

Part A

Form of Operational Stability Covenant Compliance Certificate

To: [•] as Agent

From: [Company]

Dated:

Dear Sirs

ELLI FINANCE (UK) PLC (IN ADMINISTRATION) – £[•] Credit Facility Agreement as amended and restated pursuant to the First Amendment and Restatement Agreement (the “Facility Agreement”)

1. We refer to the Facility Agreement. This is an Operational Stability Covenant Compliance Certificate. Terms defined in the Facility Agreement have the same meaning when used in this Operational Stability Covenant Compliance Certificate unless given a different meaning in this Operational Stability Covenant Compliance Certificate.
2. The relevant Test Date in respect of this Operational Stability Covenant Compliance Certificate is *[insert Test Date]* [2021/2022/2023]. The Monthly Budget Metrics applicable to this Operational Stability Covenant Compliance Certificate are *[insert reference to the 11 relevant Monthly Budget Metric]* [and the Quarterly Budgeted Metrics applicable to this Operational Stability Covenant Compliance Certificate are *[insert reference to the 11 relevant Quarterly Budgeted Metric]*.*
3. We confirm that: (a) for the period from 1 April 2021 to the Test Date** all cash, Cash Equivalents and non-cash proceeds have been applied in respect of each expense category as set out in the table below; [and] (b) each reported Maximum Expenditure (General Usage) Covenant set out in the table below is the percentage of the Monthly Budget Metric as set out in the table below[; and (c) each reported Maximum Expenditure (General Usage) Covenant set out in the table below is the percentage of the Quarterly Budgeted Metric as set out in the table below].

Covenant No.	Expense Category	Cumulative (1 April 2021 to the Test Date)			Monthly (Month Being Tested)			
		Budgeted Amount	Use of Cash	Variance	Budgeted Amount	Use of Cash	Variance	Pass /Fail
1	Net Working Capital Unwind Expenses	£[•]	£[•]	[•]%	£[•]	£[•]	[•]%	

Covenant No.	Expense Category	Cumulative (1 April 2021 to the Test Date)			Monthly (Month Being Tested)			
		Budgeted Amount	Use of Cash	Variance	Budgeted Amount	Use of Cash	Variance	Pass /Fail
2	MIP and Annual Bonuses Expenses relating to the period up to 31 December 2021 and Severance Costs	£[•]	£[•]	[•]%	£[•]	£[•]	[•]%	
3	Rebranding Costs	£[•]	£[•]	[•]%	£[•]	£[•]	[•]%	
4	Litigation and Insurance Accruals Expenses	£[•]	£[•]	[•]%	£[•]	£[•]	[•]%	
5	D&O Insurance Cost	£[•]	£[•]	[•]%	£[•]	£[•]	[•]%	
6	Liquidation/ Wind-Down Expenses	£[•]	£[•]	[•]%	£[•]	£[•]	[•]%	
7	Contingent Liabilities Expenses	£[•]	£[•]	[•]%	£[•]	£[•]	[•]%	
8	Professional Fees and Other Exceptional Costs	£[•]	£[•]	[•]%	£[•]	£[•]	[•]%	

		Quarterly (<i>Quarter Being Tested</i>)			
Covenant No.	Expense Category	Budgeted Amount	Use of Cash	Variance	Pass/Fail
1	Net Working Capital Unwind Expenses	£[•]	£[•]	[•]%	
2	MIP and Annual Bonuses Expenses relating to the period up to 31 December 2021 and Severance Costs	£[•]	£[•]	[•]%	
3	Rebranding Costs	£[•]	£[•]	[•]%	
4	Litigation and Insurance Accruals Expenses	£[•]	£[•]	[•]%	
5	D&O Insurance Cost	£[•]	£[•]	[•]%	
6	Liquidation/ Wind-Down Expenses	£[•]	£[•]	e[•]%	
7	Contingent Liabilities Expenses	£[•]	£[•]	[•]%	
8	Professional Fees and Other Exceptional Costs	£[•]	£[•]	[•]%	

-
5. We confirm that, for the period from 1 January 2022 to the Test Date:
- (a) Monthly Capital Expenditure for the period of *[Insert monthly period]* was £[•], which is [•]% of the Monthly Budget Metric (£[•]) [and [•]% of the Quarterly Budgeted Metric (£[•])]; For the *[insert monthly period]* period, Capital Expenditure *[Passed/Failed]* relative to the budgeted amount. For the *[insert quarterly period]* period, Capital Expenditure *[Passed/Failed]* relative to the budgeted amount. Cumulatively from 1 April 2021 to the Test Date, Capital Expenditure has been £[•], relative to the budgeted amount of £[•] for a variance of £[•]. Cumulatively from 1 January 2022 to the Test Date, Capital Expenditure has been £[•], relative to the budgeted amount of £[•] for a variance of £[•]. For the cumulative period from 1 January 2022 to the Test Date, Capital Expenditure *[Passed/Failed]* relative to the applicable Maximum Expenditure Covenant for 1 January 2022 through 31 December 2022 and
 - (b) Monthly Central Costs for the period of *[Insert monthly period]* were £[•], which is [•]% of the Monthly Budget Metric (£[•]) [and [•]% of the Quarterly Budgeted Metric (£[•])]. For the *[insert monthly period]* period, Central Costs *[Passed/Failed]* relative to the budgeted amount. For the *[insert quarterly period]* period, Central Costs *[Passed/Failed]* relative to the budgeted amount. Cumulatively from 1 April 2021 to the Test Date, Central Cost has been £[•], relative to the budgeted amount of £[•] for a variance of £[•]. Cumulatively from 1 January 2022 to the Test Date, Central Cost has been £[•], relative to the budgeted amount of £[•] for a variance of £[•]. For the cumulative period from 1 January 2022 to the Test Date, Central Cost *[Passed/Failed]* relative to the applicable Maximum Expenditure Covenant for 1 January 2022 through 31 December 2022.
6. We confirm that, for the period from 1 January 2023 to the Test Date:
- (a) Monthly Capital Expenditure for the period of *[Insert monthly period]* was £[•], which is [•]% of the Monthly Budget Metric (£[•]) [and [•]% of the Quarterly Budgeted Metric (£[•])]; For the *[insert monthly period]* period, Capital Expenditure *[Passed/Failed]* relative to the budgeted amount. For the *[insert quarterly period]* period, Capital Expenditure *[Passed/Failed]* relative to the budgeted amount. Cumulatively from 1 January 2023 to the Test Date, Capital Expenditure has been £[•], relative to the budgeted amount of £[•] for a variance of £[•]. For the cumulative period from 1 January 2023 to the Test Date, Capital Expenditure *[Passed/Failed]* relative to the applicable Maximum Expenditure Covenant for 1 January 2023 through 30 June 2023 and
 - (b) Monthly Central Costs for the period of *[Insert monthly period]* were £[•], which is [•]% of the Monthly Budget Metric (£[•]) [and [•]% of the Quarterly Budgeted Metric (£[•])]. For the *[insert monthly period]* period, Central Costs *[Passed/Failed]* relative to the budgeted amount. For the *[insert quarterly period]* period, Central Costs *[Passed/Failed]* relative to the budgeted amount. Cumulatively from 1 January 2023 to the Test Date, Central Cost has been £[•], relative to the budgeted amount of £[•] for a variance of £[•]. For the cumulative period from 1 January 2023
-

to the Test Date, Central Cost [Passed/Failed] relative to the applicable Maximum Expenditure Covenant for 1 January 2023 through 30 June 2023.

7. We confirm that, for the period from 1 July 2023 to the Test Date:
- (a) Monthly Capital Expenditure for the period of [*Insert monthly period*] was £[•], which is [•]% of the Monthly Budget Metric (£[•]) [and [•]% of the Quarterly Budgeted Metric (£[•])]; For the [*insert monthly period*] period, Capital Expenditure [*Passed/Failed*] relative to the budgeted amount. For the [*insert quarterly period*] period, Capital Expenditure [*Passed/Failed*] relative to the budgeted amount. Cumulatively from 1 July 2023 to the Test Date, Capital Expenditure has been £[•], relative to the budgeted amount of £[•] for a variance of £[•]. For the cumulative period from 1 July 2023 to the Test Date, Capital Expenditure [Passed/Failed] relative to the applicable Maximum Expenditure Covenant for 1 July 2023 through 30 September 2023 and
 - (b) Monthly Central Costs for the period of [*Insert monthly period*] were £[•], which is [•]% of the Monthly Budget Metric (£[•]) [and [•]% of the Quarterly Budgeted Metric (£[•])]. For the [*insert monthly period*] period, Central Costs [*Passed/Failed*] relative to the budgeted amount. For the [*insert quarterly period*] period, Central Costs [*Passed/Failed*] relative to the budgeted amount. Cumulatively from 1 July 2023 to the Test Date, Central Cost has been £[•], relative to the budgeted amount of £[•] for a variance of £[•]. For the cumulative period from 1 July 2023 to the Test Date, Central Cost [Passed/Failed] relative to the applicable Maximum Expenditure Covenant for 1 July 2023 through 30 September 2023.
8. We confirm that:
- (a) for the period from 1 April 2021 to the Test Date, Operating Cash Flow is £[•], relative to the budgeted amount of £[•]. For [*insert monthly period*], Operating Cash Flow was £[•], relative to the budgeted amount of £[•]. This was [•]% of the Monthly Budget Metric. For [*insert monthly period*], the Operating Cash Flow [*Passed/Failed*] relative to the budgeted amount. For the [*insert quarterly period*], Operating Cash Flow was £[•], relative to the budgeted amount of £[•]. This was [•]% of the Quarterly Budget Metric. For [*insert quarterly period*], the Operating Cash Flow [*Passed/Failed*] relative to the budgeted amount.];
 - (b) for the period from 1 January 2023 to the Test Date, Operating Cash Flow is £[•], relative to the budgeted amount of £[•]. For [*insert monthly period*], Operating Cash Flow was £[•], relative to the budgeted amount of £[•]. This was [•]% of the Monthly Budget Metric. For [*insert monthly period*], the Operating Cash Flow [*Passed/Failed*] relative to the budgeted amount. For the [*insert quarterly period*], Operating Cash Flow was £[•], relative to the budgeted amount of £[•]. This was [•]% of the Quarterly Budget Metric. For [*insert quarterly period*], the Operating Cash Flow [*Passed/Failed*] relative to the budgeted amount.]; and
 - (c) for the period from 1 July 2023 to the Test Date, Operating Cash Flow is £[•], relative to the budgeted amount of £[•]. For [*insert monthly period*], Operating Cash

Flow was £[•], relative to the budgeted amount of £[•]. This was [•]% of the Monthly Budget Metric. For *[insert monthly period]*, the Operating Cash Flow *[Passed/Failed]* relative to the budgeted amount. For the *[insert quarterly period]*, Operating Cash Flow was £[•], relative to the budgeted amount of £[•]. This was [•]% of the Quarterly Budget Metric. For *[insert quarterly period]*, the Operating Cash Flow *[Passed/Failed]* relative to the budgeted amount.].

Signed

Chief Executive Officer

Chief Financial Officer

[insert applicable certification language]

.....

for and on behalf of

[name of Auditors of the Company]****

NOTES:

* Percentage of Quarterly Budgeted Metric only to be included in this Compliance Certificate where this an applicable Quarterly Budgeted Metric.

** Initial Test Date is 30 November 2021, with each subsequent Test Date being on the last day of each Month thereafter until the Termination Date.

Part B
Operational Stability Covenant Report

Schedule 11
LMA Form of Confidentiality Undertaking

[Letterhead of Seller]

To: [insert name of Potential Purchaser]

Re: **ELLI FINANCE (UK) PLC (IN ADMINISTRATION) – £[●] Credit Facility Agreement as amended and restated pursuant to the First Amendment and Restatement Agreement (the “Facility Agreement”)**

Dear Sirs

We understand that you are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation 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 or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the “**Acquisition**”). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. **CONFIDENTIALITY UNDERTAKING**

You undertake (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, and (b) until the Acquisition is completed to use the Confidential Information only for the Permitted Purpose.¹²

2. **PERMITTED DISCLOSURE**

We agree that you may disclose:

- (a) to any of your Affiliates and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 2(a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) subject to the requirements of the Agreement, to any person:
 - (i) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire under the Agreement such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given

pursuant to this subparagraph (i) of paragraph 2(b) has delivered a letter to you in equivalent form to this letter;

(ii) with (or through) whom you enter into (or may potentially enter into) any sub- participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or any Obligor such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (ii) of paragraph 2(b) has delivered a letter to you in equivalent form to this letter;

(iii) to whom information is required or requested to be disclosed by 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 such Confidential Information as you shall consider appropriate; and

(c) notwithstanding paragraphs 2(a) and 2(b) above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to you.

3. NOTIFICATION OF DISCLOSURE

You agree (to the extent permitted by law and regulation) to inform us:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to sub- paragraph (iii) of paragraph 2(b) above 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 letter.

4. RETURN OF COPIES

If you do not enter into the Acquisition and we so request in writing, you shall return or destroy all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (iii) of paragraph 2(b) above.

5. CONTINUING OBLIGATIONS

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until (a) if you become a party to the Agreement as a lender of record, the date on which you become such a party to the Agreement; (b) if you enter into the Acquisition but it does not result in you becoming a party to the Agreement as a lender of record, the date falling [twelve] months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or (c) in any other case the date falling [twelve] months after the date of your final receipt (in whatever manner) of any Confidential Information.

6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC

You acknowledge and agree that:

- (a) neither we, nor any member of the Group nor any of our or their respective officers, employees or advisers (each a **Relevant Person**) (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- (b) we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. ENTIRE AGREEMENT: NO WAIVER; AMENDMENTS, ETC

- (a) This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- (b) No failure or delay in exercising any right or remedy under this letter will operate as a waiver thereof of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will preclude any further exercise thereof or the exercise of any other right or remedy under this letter.
- (c) The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. INSIDE INFORMATION

You acknowledge 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 you undertake not to use any Confidential Information for any unlawful purpose.

9. NATURE OF UNDERTAKINGS

The undertakings given by you under this letter are given to us and are also given for the benefit of the Company and each other member of the Group.

10. THIRD PARTY RIGHTS

- (a) Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this letter.
- (b) The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- (c) Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

11. GOVERNING LAW AND JURISDICTION

- (a) This letter (including the agreement constituted by your acknowledgement of its terms) (the **Letter**) and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.
- (b) The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

12. DEFINITIONS

13. In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

Confidential Information means all information relating to the Company, any Obligor, the Group, the Finance Documents, the Facility and/or the Acquisition which is provided to you in relation to the Finance Documents or the Facility by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (c) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the Group and which, in either

case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

Group means the Company and its subsidiaries for the time being (as such term is defined in the Companies Act 2006).

Permitted Purpose means considering and evaluating whether to enter into the Acquisition.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of [Seller]

To: [Seller]

The Company and each other member of the Group We acknowledge and agree to the above:

.....

For and on behalf of

[Potential Purchaser]

Schedule 12
Timetable

Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Requests</i>))	U-3 5.00 pm
Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' Participation</i>)	U-3 5.00 pm
Each Lender makes its participation in a Loan available in accordance with Clause 5.4 (<i>Lenders' Participation</i>)	U 2.00 pm

U = date of Utilisation

U-X = X Business Days prior to date of Utilisation

Schedule 13
Agreed Security Principles

1. Considerations

- (a) In determining what guarantees and Security will be provided in support of the Facility and any Hedging Agreements, the following matters will be taken into account. Security shall not be created or perfected and guarantees shall not be granted, or in each case shall be limited, to the extent that it would:
- (i) result in any breach of corporate benefit, general legal or statutory limitations, financial assistance, capital maintenance, fraudulent preference or thin capitalisation laws or regulations (or analogous restrictions) of any applicable jurisdiction;
 - (ii) result in a significant risk to the officers of the relevant grantor of Security or a guarantee of contravention of their fiduciary duties and/or of civil or criminal liability;
 - (iii) result in costs that are disproportionate to the benefit obtained by the beneficiaries of that Security or guarantee; or
 - (iv) subject to Clause 24.12 (*Guarantors*), result in the breach of the terms of any security or guarantee granted, or (where the relevant member of the Group contractually agreed to do so) to be granted, by an Excluded Subsidiary.
- (b) The Company will use all reasonable endeavours to assist in demonstrating that adequate corporate benefit accrues to the Group and each Obligor and to overcome any such limitations to the extent reasonable practicable.
- (c) For the avoidance of doubt, in these Agreed Security Principles, “cost” includes, but is not limited to, income tax cost, registration taxes payable on the creation or enforcement or for the continuance of any guarantee or Security, stamp duties, out-of-pocket expenses, and other fees and expenses directly incurred by the relevant grantor of a guarantee or Security or any of its direct or indirect owners, subsidiaries or Affiliates. In this regard the guarantees and Security shall to the extent possible be granted with a view to minimising any stamp duty, notarisation, registration or other applicable fees, charges, taxes and duties which may arise, (including, where relevant, by limiting the amount secured or maximum amount recoverable under that guarantee or Security) but subject in all cases to any steps necessary to achieve this only being taken in circumstances where (1) such guarantee or Security would otherwise not be created because of the operation of paragraph 1(a)(iii) above or (2) the additional stamp duty, notarisation, registration or other applicable fees, charges, taxes and duties (as applicable) which would be payable in the event such steps are not taken would be disproportionate to the benefit obtained by the beneficiaries if the guarantee or Security is granted without such steps being taken.

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- (d) In the event of transfers or assignments under the Facility amongst Lenders following the completion of primary syndication of the Facility involving any transfer of Security, any cost shall be for the account of the transferee and transferor and not for the account of the relevant grantor of Security or any of its direct or indirect owners, Subsidiaries or Affiliates (provided that nothing in this paragraph will affect the obligations of the Company under Clause 19.3 (*Enforcement and Preservation Costs*)).
 - (e) For the avoidance of doubt, any costs or expenses incurred in respect of a transfer of any Security effected in connection with a transfer or assignment under the Facility amongst the Lenders or to a successor Lender on or before the completion of primary syndication of the Facility will be for the account of the relevant grantor of such Security or an Obligor.
 - (f) For the avoidance of doubt, any costs or expenses incurred in respect of a transfer of any Security effected in connection with a replacement of the Security Agent will be for the account of the relevant grantor of such Security or an Obligor.

2. Obligations to be Secured

- (a) Subject to paragraph 1 (*Considerations*) above and paragraph (b) below, the obligations to be secured are the Secured Obligations. To the extent possible, the Security is to be granted in favour of the Security Agent on behalf of each Secured Party (including each Hedge Counterparty) from time to time.
- (b) The Transaction Security to be granted over the TreasuryCo Charged Account shall secure the Credit Facility Secured Obligations (as defined below) and to the extent possible, shall be granted in favour of the Security Agent on behalf of each Finance Party from time to time.
- (c) For ease of reference, the following definitions should, to the extent legally possible, be incorporated into each Transaction Security Document (with the capitalised terms used in them having the meaning given to them in the Intercreditor Agreement) (other than the definition of Credit Facility Secured Obligations which shall only be incorporated into the Transaction Security Document relating to the TreasuryCo Charged Account):

“**Credit Facility Secured Obligations**” means all present and future monies, debts, liabilities and obligations due at any time by any Obligor under the Credit Facility Agreement.

“**Secured Obligations**” has the meaning given to it in the Intercreditor Agreement.

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

- (d) The Secured Obligations and the Credit Facility Secured Obligations will be limited:

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- (i) to avoid any breach of corporate benefit, financial assistance, fraudulent preference, thin capitalisation rules or the laws or regulations (or analogous restrictions) of any applicable jurisdiction; and
 - (ii) to avoid any significant risk to officers of the relevant member of the Group that is granting Transaction Security of contravention of their fiduciary duties and/or civil or criminal or personal liability.

3. General

- (a) Where appropriate, defined terms in the Transaction Security Documents should mirror those in this Agreement.
- (b) The parties to this Agreement agree to negotiate the form of each Transaction Security Document in good faith and in compliance with the Agreed Security Principles.
- (c) The form of guarantee is set out in Clause 20 (*Guarantee, Indemnity and Security*) of this Agreement and, with respect to any Additional Guarantor incorporated in a jurisdiction in respect of which no limitation language has been agreed before, is subject to any limitations set out in the Accession Document applicable to such Additional Guarantor provided that such limitations are acceptable to the Agent taking into account these Agreed Security Principles.
- (d) Each guarantee will to the extent possible under local law be an upstream, cross stream and downstream guarantee and will guarantee, and all Transaction Security will secure, *inter alia* all liabilities of the Obligors under the Finance Documents in accordance with, and subject to, the requirements of the Agreed Security Principles.
- (e) The Security shall, to the extent possible under local law, be enforceable on delivery of an Acceleration Notice.
- (f) The Security will be first ranking to the extent possible and, if required under local law, shall be registered (subject to these Agreed Security Principles).
- (g) To the extent possible, all Security shall be given in favour of the Security Agent. "Parallel debt" provisions will be used where necessary or appropriate; such provisions will be contained in the Intercreditor Agreement and not the individual Transaction Security Documents unless required under local laws. To the extent possible, there should be no action required to be taken in relation to the guarantees or any Transaction Security when any Lender transfers any of its participation in the Facility to a new Lender.
- (h) Save as otherwise agreed with respect to real estate assets, any assets which are subject to third party arrangements which are permitted by the Facility and which prevent those assets from being granted as Security will be excluded in any relevant Transaction Security Document, provided that reasonable endeavours to obtain consent to the granting of Security over any such assets owned by Group companies shall be used by the Group if the relevant asset is material in the context of the Group taken as a whole or has a value greater than £250,000 (except in respect of

any assets of an Excluded Subsidiary which are subject to any such third party arrangements).

- (i) Perfection of the Transaction Security and other legal formalities will be completed as soon as practicable and, in any event, within the time periods specified in the Finance Documents or (if earlier or to the extent no such time periods are specified in the Finance Documents) as soon as reasonably practicable and in any event within the time periods specified by applicable law in order to ensure due perfection.

4. Specific assets

(a) *Share Security*

Where shares in a company are pledged, the relevant Transaction Security Document will be governed by the laws of the jurisdiction in which such company is incorporated or established and not by the law of the jurisdiction of incorporation or residence of the pledgor.

Where customary, on, or as soon as reasonably practicable following, execution of the share pledge, the share certificate (or equivalent) and a stock transfer form (or equivalent) executed in blank will be provided to the Security Agent and where required by law the share certificate or shareholders' register (or equivalent) will be endorsed or written up and the endorsed share certificate or a copy of the written up register (or equivalent) provided to the Security Agent (or such equivalent procedure as may be customary in the jurisdiction in which the relevant company is incorporated or established).

Customary limitations on the exercise of voting rights by the pledgor to protect the validity and enforceability of Security over shares shall apply.

Unless and until an Acceleration Notice is served, (i) the pledgor may retain and exercise voting rights to any shares pledged in a manner which does not materially and adversely affect the interests or rights of the Finance Parties (including, without limitation, the validity or enforceability of the Security) or would cause a Default to occur and (ii) the pledgor will be permitted to pay dividends upstream to the extent permitted under the Finance Documents from proceeds received by it from its Subsidiaries in accordance with the Finance Documents.

To the extent permitted by law, the constitutional documents of the entity whose shares are charged or pledged will be amended to remove any restriction on the transfer or the registration of the transfer of such shares on enforcement of the relevant Security.

Customary representations as to good title to the shares which are subject to any pledge of the pledgor will be included in the relevant share pledges.

(b) *Real Estate*

Legal mortgages (or as applicable standard securities) over 80% by value of the freehold (or as applicable heritable) properties of the Holdco Group, with such Security registered (to the extent as appropriate or as required by local law to perfect such Security) with the relevant land registries.

Leasehold properties will not be the subject of Security. Subject to Clause 24.12 (*Guarantors*), members of the Group who have entered into security in favour of landlords, or which are contractually obliged to do so under their leasing arrangements with their landlords, shall not be required to enter into any Transaction Security Document.

(c) *Bank Accounts*

Bank accounts of each Obligor (other than (i) the bank accounts of Silver Springs Ltd which were not the subject of Transaction Security before the First Amendment and Restatement Effective Date; and (ii) the Joint Administrators' Accounts), and of TreasuryCo (other than the Uncharged Account) shall be subject to Transaction Security in accordance with Clause 24.28 (*Bank Accounts*) and the relevant Transaction Security Documents shall include the ability to completely block all accounts on the occurrence of any Event of Default and Cash Dominion Event.

Notification of Transaction Security over the bank accounts (other than trust accounts) will be given (subject to local law advice) to the bank(s) with whom the accounts are maintained as soon as possible and in any event within 10 Business Days of the First Amendment Effective Date and the relevant pledgor shall use its reasonable endeavours to obtain acknowledgement of that notice within 10 Business Days of service. The relevant pledgor shall request that the account bank waive any rights of pledge or set off it may have under its general banking provisions.

(d) *Fixed Assets*

If a member of the Group grants Security over its fixed assets (other than real estate), it shall be free to deal with those assets in the course of its business and as otherwise expressly permitted under this Agreement.

No notice, whether to third parties or by attaching a notice to the fixed assets, shall be served or attached unless and until an Acceleration Notice has been served or the Agent has requested such notice be served or attached to ensure the validity, perfection and/or enforceability of such Security under local law.

(e) *Inventory*

No security shall be granted over inventory, stock-in-trade or similar assets, save to the extent attached to or used in Property over which security is taken or as part of floating charges where a company is entering into a debenture. Security granted in respect of inventory, stock-in-trade or similar assets shall be granted in a manner and to the extent that such Security does not prevent or hinder the manufacture, transfer and sale of the Group's inventory and stock-in-trade in the ordinary course

of its business, provided that no Acceleration Notice has been served and provided further that inventory or stock-in-trade shall be transferred intra-Group subject to any such Security or otherwise substantially equivalent Security governed by the law of the jurisdiction where the inventory is located, which shall be granted by the transferee of such inventory or stock-in-trade where reasonably practicable.

(f) *Receivables*

No notification may be given to debtors in respect of receivables that are subject to Security until an Acceleration Notice has been served. This principle does not apply to Security granted over any receivables owed to the Company by its shareholders, over any receivables owed by a Hedge Counterparty under a Hedging Agreement, over any receivables owed to an Intra-Group Lender in connection with any Intra-Group Liabilities (each as defined in the Intercreditor Agreement), or to receivables owed between Carmel Capital VIII and Carmel Capital IX, the Holdco Guarantor and Carmel Capital VIII or between Carmel Capital IX and Elli Group (UK) Limited, in which case a notification of Security will be given to the relevant debtors as soon as reasonably practicable.

If a member of the Group grants Security over its receivables, it shall be free to deal with those receivables in the ordinary course of its business in accordance with the terms of this Agreement and subject to the terms of the Intercreditor Agreement until an Acceleration Notice is served.

With regard to any Security granted in respect of receivables, to the extent that the Secured Parties' local counsel deem it necessary (acting reasonably) to require that the relevant pledgor provide the Security Agent with regular updates to the list of receivables subject to such Security, such updates shall not be required any more frequently than once every six months, or as soon as practicable upon request by the Security Agent.

(g) *Intellectual Property*

No security shall be granted over Intellectual Property.

(h) *Insurance Policies*

Security over insurance policies shall be granted only over insurance policies in respect of Property in respect of which security is to be granted and no security shall be granted over professional indemnity, employer's liability, third party liability or other liability policies or business interruption insurance. If required by local law to perfect Security or to exclude the possibility that a debtor pays to the relevant pledgor with discharging effect, notice of the Security will be served on an insurance provider within 10 Business Days of the Security being granted and the relevant pledgor shall use its reasonable endeavours to obtain an acknowledgement of that notice within 10 Business Days of service.

5. Undertakings/Representations and Warranties

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- (a) The Transaction Security Documents shall operate to create and preserve Security rather than to impose new commercial obligations. Accordingly, any representations, warranties or undertakings which are required to be included in any Transaction Security Document shall reflect (to the extent to which the subject matter of such representation, warranty and undertaking is the same as the corresponding representation, warranty and undertaking in this Agreement) the commercial deal set out in this Agreement (save to the extent that Secured Parties' local counsel deem it necessary (acting reasonably) to include any further provisions (or deviate from those contained in this Agreement) in order to protect or preserve the Security granted to the Secured Parties). Notwithstanding the above, the Transaction Security will not operate so as to prevent transactions which are expressly permitted under this Agreement or to require additional consent or authorisations for such transactions.
- (b) In addition, no Transaction Security Document shall prohibit the use or disposal of the assets subject to the Transaction Security where such use or disposal is permitted under the terms of this Agreement or another Finance Document and occurs in accordance with the provisions of this Agreement and the other Finance Documents, including for the avoidance of doubt and without limitation, real estate.
- (c) To the extent any new Security is taken over the shares (or partnership or other ownership interests) in a member of the Group, security is also granted over all receivables that are (or may be) owed by such member of the Group to any direct or indirect Affiliate of Elli Capital Ltd (other than a member of the Group).

Schedule 14
Material Companies

[To be populated]

Schedule 15
[Reserved]

Schedule 16
[Reserved]

Schedule 17
Restrictive Covenants

Part A
Covenants

1. Limitation on Indebtedness

- (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness.
- (b) Paragraph 1(a) will not prohibit the Incurrence of the following Indebtedness:
 - (i) Indebtedness under this Agreement;
 - (ii)
 - (A) Guarantees by the Company or any Restricted Subsidiary of Indebtedness of the Company or any member of the Intercreditor Group in each case so long as the Incurrence of such Indebtedness being guaranteed is permitted under the terms of this Agreement and with respect to any guarantee of any Indebtedness of a member of the Intercreditor Group which is not a Restricted Subsidiary, only to the extent such Indebtedness and guarantee is existing as at the First Amendment and Restatement Agreement Execution Date; provided, however, that if the Indebtedness being guaranteed is subordinated to the Loans, then the guarantee granted pursuant to this Paragraph 1(b)(ii)(A) by a Guarantor shall be subordinated to its Guarantee of the Loans; and
 - (B) without limiting Paragraph 3 (*Limitation on Liens*), Indebtedness arising by reason of any Lien granted by or applicable to such Person securing Indebtedness of the Company or any Restricted Subsidiary so long as the Incurrence of such Indebtedness being secured is permitted under the terms of this Agreement;
 - (iii) Indebtedness of the Company owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Company or any member of the Intercreditor Group; provided, however, that:
 - (A) any Indebtedness owing to or held by any member of the Intercreditor Group which is not a Restricted Subsidiary, is only permitted to the extent such Indebtedness and guarantee is existing as at the First Amendment and Restatement Agreement Execution Date;
 - (B) if the Borrower or any Guarantor is the obligor on any such Indebtedness and the obligee is not the Borrower or a Guarantor, it is expressly subordinated in right of payment to prior payment in full of

the Loans or the applicable Guarantee pursuant to the terms of the Intercreditor Agreement; and

- (C) 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 Company or a Restricted Subsidiary, and any sale or other transfer of any such Indebtedness to a Person other than the Company or a Restricted Subsidiary, shall be deemed, in each case, to constitute an Incurrence of such Indebtedness not permitted by this paragraph 1(b)(iii) by the Company or such Restricted Subsidiary, as the case may be;
- (iv) Indebtedness represented by (A) the Senior Secured Notes and Senior Secured Notes Guarantees and (B) the High Yield Notes and High Yield Notes Guarantees
- (v) [RESERVED];
- (vi) Indebtedness represented by Capitalized 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 Company or any of its Restricted Subsidiaries, and in each case any Refinancing Indebtedness in respect thereof, in an aggregate principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this Paragraph 1(b)(vi) and then outstanding, will not exceed at any time outstanding the amount of any such obligations which are disclosed to the Lenders as being outstanding as at the First Amendment Effective Date (provided that this provision will not limit the ability to replace or refinance these obligations in the ordinary course and where the amount outstanding is not increased);
- (vii) Indebtedness in respect of (A) 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 Company 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, (B) 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, provided that, if and to the extent drawn upon, such instruments or obligations are reimbursed no later than the 30th Business Day following such drawing, (C) the financing of insurance premiums in the ordinary course of business; and (D) any customary cash management, cash pooling or netting

or setting off arrangements in the ordinary course of business between the members of the Group;

- (viii) Indebtedness of FSHCL or FSHCGL owing to the Company or any Restricted Subsidiary where such Indebtedness has been incurred to fund the professional fees and costs in connection with the ongoing administration processes and any subsequent liquidation of those companies to the extent such funding was permitted in accordance with the Operational Stability Covenants;
- (ix)
 - (A) Indebtedness arising from the honoring 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;
 - (B) Customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business; and
 - (C) Indebtedness Incurred by a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, 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; and
- (x) [RESERVED].
- (c) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with this Paragraph 1:
 - (i) any Indebtedness incurred under any paragraph above may not be reclassified into another paragraph. Borrowings made under this Agreement may only be incurred pursuant to paragraph 1(b)(i) and may not be reclassified;
 - (ii) 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;
 - (iii) 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 (i), (vi) or (w) of Paragraph 1(b) or pursuant to Paragraph 1(a) and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;

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- (iv) the principal amount of any Disqualified Stock of the Company 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;
 - (v) [RESERVED]
 - (vi) Indebtedness permitted by this Paragraph 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 Paragraph 1 permitting such Indebtedness; and
 - (vii) 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.
- (d) Accrual of interest, accrual of dividends, the accretion of accreted value, the accretion or amortization 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, including a change from GAAP to IFRS, will not be deemed to be an Incurrence of Indebtedness for purposes of this Paragraph 1. The amount of any Indebtedness outstanding as of any date shall be (a) the accreted value thereof in the case of any Indebtedness issued with original issue discount and (b) the principal amount, or liquidation preference thereof, in the case of any other Indebtedness.
- (e) [RESERVED].
- (f) For purposes of determining compliance with any sterling-denominated restriction on the Incurrence of Indebtedness, the Sterling 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 Company, 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 sterling, and such refinancing would cause the applicable sterling-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such sterling-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 Sterling Equivalent of the principal amount of any such Indebtedness outstanding on the First Amendment and Restatement Agreement Execution Date shall be calculated based on the relevant currency exchange rate in effect on the First Amendment and Restatement Agreement Execution Date; and (c) if and for so long as any such Indebtedness is subject to a Currency Agreement with respect to the currency in
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which such Indebtedness is denominated covering principal and interest on such Indebtedness, the amount of such Indebtedness, if denominated in sterling, will be the amount of the principal payment required to be made under such Currency Agreement and, otherwise, the Sterling Equivalent of such amount plus the Sterling 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 paragraph (i) of Paragraph 1(b) or for calculating the amount of Indebtedness outstanding under the Finance Documents, to the extent a Credit Facility is utilized for the purpose of guaranteeing or cash collateralizing any letter of credit or guarantee, such guarantee or collateralization and issuance of such letter of credit or guarantee shall be deemed to be a utilization of such Credit Facility permitted under paragraph (i) of Paragraph 1(b) without double counting.

- (g) Notwithstanding any other provision of this Paragraph 1, the maximum amount of Indebtedness that the Company or a Restricted Subsidiary may Incur pursuant to this Paragraph 1 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. **Limitation on Restricted Payments**

- (a) The Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to:
- (i) declare or pay any dividend or make any distribution on or in respect of the Company's or any Restricted Subsidiary's Capital Stock (including any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries)
 - (ii) make any principal payment on, or purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness;
 - (iii) make any payment on, or purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Shareholder Funding;
 - (iv) 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 2(a)(i) to 2(a)(iv) above are referred to herein as a "**Restricted Payment**").
- (b) The foregoing provisions will not prohibit payments between Restricted Subsidiaries for the funding of (i) any payments or repayments to be made under or in respect of this Agreement; or (ii) payments or transaction in the ordinary course

necessary to permit the relevant Restricted Subsidiaries to continue to operate and to preserve continuity care for the residents of any care homes operated by the Group and provided that, in respect of (ii) the aggregate payments made by Restricted Subsidiaries that are Obligors to Restricted Subsidiaries that are not Obligors or Third Party Chargors (excluding Luxcos) does not exceed at any time (net for payments received by Obligors and Third Party Chargors (excluding Luxcos) from entities that are not Obligors) £1,500,000 in aggregate.

3. **Limitation on Liens**

The Company will not, and will 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 Restricted Subsidiary), whether owned on the Initial Signing Date or acquired after that date, or any interest therein or any income or profits therefrom, which Lien is securing any Indebtedness or Attributable Debt (such Lien, the “**Initial Lien**”), except (a) in the case of any property or asset that does not constitute Transaction Security, (1) Permitted Liens or (2) Liens on property or assets that are not Permitted Liens if the Loans and this Agreement are directly secured at least equally and ratably 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 Transaction Security, Permitted Collateral Liens.

4. **Limitation on Restrictions on Distributions from Restricted Subsidiaries**

(a) The Company will not, and will 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:

- (i) 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 Company or any Restricted Subsidiary;
- (ii) make any loans or advances to the Company or any Restricted Subsidiary; or
- (iii) sell, lease or transfer any of its property or assets to the Company or any Restricted Subsidiary;

provided that (w) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (x) the subordination of (including the application of any standstill requirements to) loans or advances made to the Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary shall not be deemed to constitute such an encumbrance or restriction.

(b) Paragraph 4(a) will not prohibit:

- (i) any encumbrance or restriction pursuant to (i) any Credit Facility (including under the Finance Documents) or (ii) any other agreement or instrument, in each case, in effect at or entered into on the Initial Signing Date;

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- (ii) 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 Company or any Restricted Subsidiary, or on which such agreement or instrument is assumed by the Company 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 utilized to consummate, the transaction or series of related transactions pursuant to which such Person became a Restricted Subsidiary or was acquired by the Company or was merged, consolidated or otherwise combined with or into the Company or any Restricted Subsidiary entered into or in connection with such transaction) and outstanding on such date; provided that, for the purposes of this Paragraph 4(b)(ii), 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 Company or any Restricted Subsidiary when such Person becomes the successor company;
 - (iii) 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 (i) or (ii) of this Paragraph 4(b) or this Paragraph 4(b)(iii) (an “Initial Agreement”) or contained in any amendment, supplement or other modification to an agreement referred to in paragraphs (i) or (ii) of this Paragraph 4(b) or this Paragraph 4(b)(iii); provided, however, that the encumbrances and restrictions with respect to such Restricted Subsidiary contained in any such agreement or instrument are no less favorable 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 Company);
 - (iv) any encumbrance or restriction:
 - (A) 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;
 - (B) contained in mortgages, pledges, charges or other security agreements permitted under this Agreement or securing Indebtedness of the Company 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
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- (C) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Restricted Subsidiary;
 - (v) [RESERVED]
 - (vi) [RESERVED]
 - (vii) customary provisions in leases, licenses, and other similar agreements and instruments entered into in the ordinary course of business and permitted under this Agreement;
 - (viii) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order, or required by any regulatory authority;
 - (ix) any encumbrance or restriction on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;
 - (x) any encumbrance or restriction pursuant to Currency Agreements, Interest Rate Agreements or Commodity Hedging Agreements in existence prior to the First Amendment and Restatement Effective Date and expressly consented to by the Lenders;
 - (xi) [RESERVED];
 - (xii) [RESERVED]; or
 - (xiii) any encumbrance or restriction existing by reason of any lien permitted under Paragraph 3 (*Limitation on Liens*).

5. Limitation on Sales of Assets and Subsidiary Stock

- (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:
 - (i) the Company 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 Company, of the shares and assets subject to such Asset Disposition;
 - (ii) in any such Asset Disposition, or series of related Asset Dispositions, at least 100% 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 Company or such Restricted Subsidiary, as the

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- case may be, is in the form of cash, Cash Equivalents or Temporary Cash Investments;
- (iii) an amount equal to 100% of the Net Available Cash from such Asset Disposition (other than an Asset Disposition falling within paragraph (t) of the definition of "Asset Disposition") is applied by the Company or such Restricted Subsidiary, as the case may be in prepayment of the Facility in accordance with Clause 9.4 (*Application of Mandatory Prepayments*) within 10 Business Days of receipt of the Net Available Cash;
 - (iv) no Event of Default is continuing at the time of making the Asset Disposition or would occur as a result of the Asset Disposition; and
 - (v) the Company has notified the Agent and the Lenders of the Asset Disposition in writing at least thirty (30) days in advance of the expected completion date of that Asset Disposition.
- (b) To the extent that any portion of Net Available Cash payable in respect of the Loans is denominated in a currency other than pound sterling, the amount thereof payable in respect of the Loans shall not exceed the net amount of funds in pound sterling that is actually received by the Company upon converting such portion into pound sterling.
 - (c) The Obligors shall establish two Proceeds Holding Accounts in respect of prospective Net Available Cash from any Asset Disposition in Jersey satisfactory to the Lenders (in the Lenders' sole and absolute discretion) no later than the First Extended Maturity Date (the "Jersey Proceeds Holding Accounts"). The Obligors shall consult with the Implementation Officer and the Agent in respect of the establishment of the Jersey Proceeds Holding Accounts, shall coordinate with the Implementation Officer and the Agent in respect of the establishment of the Jersey Proceeds Holding Accounts, and shall notify the Agent and the Lenders within two (2) Business Days of the establishment of the Jersey Proceeds Holding Accounts.
 - (d) In the event that an Obligor is permitted pursuant to the terms of this Agreement to dispose of an interest in real property in circumstances where both the heritable and the long leasehold interest in such real property is held by the same Obligor, such Obligor will dispose of both the heritable and long leasehold interest in such real property simultaneously unless the Agent has provided its prior written consent to a disposal of only one interest in the relevant real property.
 - (e) Notwithstanding the above, if the application of 100% of the Net Available Cash to the prepayment of the Facility would result in the aggregate Utilisations being less than £1,000,000, then the Company shall notify the Agent and the Lenders of this at least ten (10) business days prior to the anticipated receipt of the Net Available Cash. Within five (5) business days of being notified, the Lenders may elect (such election to be made in each Lender's sole and absolute discretion), via written notice to the Agent, the percentage of Net Available Cash (such percentage equal to or greater than 0% and less than or equal to 100%) to be applied to such Lender's share
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of the Facility's repayment, with the Net Available Cash that is not applied to the repayment of the Facility to be transferred to a Proceeds Holding Account within two business days of the Company's receipt of the Net Available Cash (it being agreed that the application of Net Available Cash may be used to reduce the Utilizations to £1,000,000). In no event shall the Borrower or any other Obligor prepay the Facility in contravention of the proceeding sentence. If this paragraph (e) is expected to apply, then at least fifteen (15) business days prior to the anticipated receipt of Net Available Cash in respect of any Asset Disposition other than Jersey, the applicable Obligor shall establish a Proceeds Holding Account satisfactory to the Lenders (in the Lenders' sole and absolute discretion). Prior to establishing any Proceeds Holding Account, the Company or the relevant Restricted Subsidiary shall consult with the Implementation Officer and the Agent in respect of the establishment of such Proceeds Holding Account, shall coordinate with the Implementation Officer and the Agent in respect of the establishment of such Proceeds Holding Account, and shall notify the Agent and the Lenders within two (2) Business Days of the establishment of such Proceeds Holding Account.

6. Limitation on Affiliate Transactions

- (a) The Company will not, and will 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 Company (such transaction or series of transactions being an "**Affiliate Transaction**") involving value individually or in aggregate in excess of £100,000 at any time.
- (b) [RESERVED].
- (c) The provisions of Paragraph 6(a) will not apply to (in each case expressly subject to the Operational Stability Covenants):
 - (i) [RESERVED]
 - (ii) [RESERVED]
 - (iii) [RESERVED];
 - (iv) any transaction between or among:
 - (A) any Obligor and any other Obligor;
 - (B) any transaction constituting an Investment made by an Excluded Subsidiary in an Obligor; or
 - (C) any transaction constituting an Investment made by an Obligor in an Excluded Subsidiary where the aggregate of all such Investments does not exceed at any time (net of any Investments made in paragraph (B) above) £100,000; or
 - (v) 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 Company, any Restricted Subsidiary or any Parent (whether directly or indirectly and including through any Person owned or controlled by any of such directors, officers or employees);

- (vi) the entry into and performance of obligations of the Company 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 Initial Signing 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 Paragraph 6; and
- (vii) the formation and maintenance of any consolidated group for tax, accounting or cash pooling or management purposes in the ordinary course of business between the members of the Group.

7. **Merger and Consolidation**

The Company

- (a) Neither the Company nor the Borrower will consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person.

Subsidiary Guarantors

- (b) No Subsidiary Guarantor may:
 - (i) consolidate with or merge with or into any Person, or
 - (ii) 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
 - (iii) permit any Person to merge with or into the Subsidiary Guarantor.

8. [RESERVED]

9. **Impairment of Security Interest**

The Holdco Guarantor shall not and the Company 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 Transaction Security (it being understood, subject to the proviso below, that the Incurrence of Permitted Collateral Liens shall under no circumstances be deemed to materially impair the security interest with respect to the Transaction Security) for the benefit of the Finance Parties, and the Holdco Guarantor shall not and the Company 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 Transaction Security other than Permitted Collateral Liens; provided that the Holdco Guarantor, the

Company and its Restricted Subsidiaries may Incur Permitted Collateral Liens and the Transaction Security may be discharged, transferred or released in accordance with this Agreement, the Intercreditor Agreement or the applicable Transaction Security Documents; provided further, however, that, except with respect to any discharge or release expressly permitted by this Agreement, the Intercreditor Agreement or the applicable Transaction Security Documents, the Transaction Security Documents may not be amended, extended, renewed, restated, supplemented or otherwise modified or released without the prior written consent of the Security Agent acting on the instructions of the Finance Parties.

10. **Amendments to the Intercreditor Agreement and Additional Intercreditor Agreements**

- (a) At the request of the Company, in connection with the Incurrence or refinancing by the Company or its Restricted Subsidiaries of any Indebtedness secured or permitted to be secured on the Collateral, the Company, the relevant Restricted Subsidiaries, the Agent and the Security Agent shall enter into an intercreditor or similar agreement or a restatement, amendment or other modification of the existing Intercreditor Agreement (an “**Additional Intercreditor Agreement**”) with the holders of such Indebtedness (or their duly authorized representatives) on substantially the same terms as the Intercreditor Agreement or otherwise acceptable to the Lenders (in their sole and absolute discretion)), including containing substantially the same terms with respect to the application of the proceeds of the collateral held thereunder and the means of enforcement, provided that such Additional Intercreditor Agreement will not impose any personal obligations on the Agent or, in the opinion of the Agent, adversely affect the rights, duties, liabilities or immunities of the Agent under this Agreement or the Intercreditor Agreement. As used herein, the term “Intercreditor Agreement” shall include references to any Additional Intercreditor Agreement that supplements or replaces the Intercreditor Agreement entered into on or prior to the Initial Signing Date.
- (b) At the written direction of the Company and with the consent of the Lenders and the Obligor Administration Companies, the Agent shall from time to time enter into one or more amendments to any Intercreditor Agreement to: (i) cure any ambiguity, omission, defect or inconsistency of any such agreement, (ii) increase the amount or types of Indebtedness covered by any such agreement that may be Incurred by the Company that is subject to any such agreement (provided that such Indebtedness is Incurred in compliance with this Agreement), (iii) add Restricted Subsidiaries to the Intercreditor Agreement, (iv) further secure the Loans (including additional Indebtedness incurred in compliance with this Agreement), (u) make provision for equal and ratable pledges of the Collateral to secure additional Indebtedness incurred in compliance with this Agreement or to implement any Permitted Collateral Liens or (vi) make any other change to any such agreement that does not adversely affect the Lenders in any respect. The Company shall not otherwise direct the Agent to enter into any amendment to any Intercreditor Agreement without the consent of the Majority Lenders, except as otherwise permitted under Clause 39

(*Amendments and Waivers*) or as permitted by the terms of such Intercreditor Agreement, and the Company may only direct the Agent to enter into any amendment to the extent such amendment does not impose any personal obligations on the Agent or, in the opinion of the Agent, adversely affect the rights, duties, liabilities or immunities of the Agent under this Agreement or any Intercreditor Agreement.

11. **Release of Liens**

- (a) Subject to the terms of the Intercreditor Agreement or any Additional Intercreditor Agreement, to the extent a release is required by a Transaction Security Document, the Security Agent shall release, and the Agent shall release and if so requested direct the Security Agent to release, without the need for consent of the Lenders, Liens on the Collateral securing the Loans:
- (i) upon payment in full of principal, interest and all other obligations on the Loans;
 - (ii) [RESERVED];
 - (iii) [RESERVED];
 - (iv) [RESERVED];
 - (v) in connection with certain enforcement actions taken by the creditors under certain of the Company's Secured Indebtedness as provided under the Intercreditor Agreement; and
 - (vi) as may be permitted by Paragraph 9 (*Impairment of Security Interest*).
- (b) Each of these releases shall be effected by the Security Agent without the consent of the Lenders or any action on the part of the Agent.

12. **Anti-Layering**

Neither the Borrower nor any Guarantor will Incur any Indebtedness that is contractually subordinated in right of payment to other Indebtedness of the Borrower or such Guarantor unless such Indebtedness is also subordinated in right of payment to the Loans and the applicable Guarantee on substantially identical terms; provided, however, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Borrower or any Guarantor solely by virtue of being secured on assets or property other than the Collateral, by virtue of being secured on a junior priority basis or by virtue of the application of waterfall or other payment ordering provisions affecting different tranches of Indebtedness as set forth in the Intercreditor Agreement or any Additional Intercreditor Agreement.

13. **Limitation on Sale and Leaseback Transactions**

The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction.

14. **Holding Company Restriction**

The Holdco Guarantor will not directly or indirectly, create, Incur or suffer to exist any Lien upon any of its property or assets which constitute Transaction Security other than as disclosed in writing and consented by the Lenders prior to the First Amendment and Restatement Effective Date.

Part B
Definitions

Any capitalised terms used in this Schedule 17 that are not otherwise defined in this Schedule 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 17 (and only for those purposes), in accordance with New York law, notwithstanding that this Agreement is governed by English law. Unless otherwise expressly stated herein, references in this Part B of Schedule 17 are to the Paragraphs of Part A of this Schedule 17.

“**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 which for the avoidance of doubt includes cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities (each referred to for the purposes of this definition as a “disposition”) by the Company 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 Company and its Restricted Subsidiaries taken as a whole will be governed by Clause 9.3 (*Change of Control*) of this Agreement and/or Paragraph 7 (*Merger and Consolidation*) and not by Paragraph 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 Company or by the Company or a Restricted Subsidiary to a Restricted Subsidiary other than any disposition to a Person which in administration or liquidation;
- (b) a disposition of cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities in the ordinary course of business;
- (c) a disposition of inventory, trading stock or other assets in the ordinary course of business;
- (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 Company and its Restricted Subsidiaries;

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- (e) a transaction that constitutes a Change of Control;
 - (f) [RESERVED];
 - (g) [RESERVED];
 - (h) [RESERVED];
 - (i) dispositions in connection with Permitted Liens consented to by the Lenders;
 - (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 consented to by the Lenders; and
 - (k) dispositions not otherwise permitted pursuant to paragraphs (a) to (j) above, provided that the value of any such individual disposition does not exceed £20,000 and the value of all such dispositions made in aggregate until the Termination Date shall not exceed £200,000.

“**Associate**” means (i) any Person engaged in a Similar Business of which the Company or its Restricted Subsidiaries are the legal and beneficial owners of between 20% and 50% of all outstanding Voting Stock and (ii) any joint venture entered into by the Company or any Restricted Subsidiary.

“**Attributable Debt**” in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; provided, however, that if such sale and leaseback transaction results in a Capitalized Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of “Capitalized Lease Obligation.”

“**Board of Directors**” means (1) with respect to the Company or any corporation, the board of directors or managers, as applicable, of the corporation, or any duly authorized 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 authorized committee thereof; and (3) with respect to any other Person, the board or any duly authorized committee of such Person serving a similar function. Whenever any provision 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 or are authorized 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 (TARGET2) 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.

“**Capitalized Lease Obligations**” means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes on the basis of GAAP, as in effect on the Initial Signing Date and not giving effect to changes after the Initial Signing Date. The amount of Indebtedness represented by such obligation will be the capitalized 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 United States or Canadian governments, a member state of the European Union, Switzerland or Norway or, in each case, any agency or instrumentality of 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 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 (i) whose commercial paper is rated at least “A-1” or the equivalent thereof by S&P Global Ratings or at least “P-1” or the equivalent thereof by Moody’s (or if at the time neither is issuing comparable ratings, then a comparable rating of another Nationally Recognized Statistical Rating Organization) or (ii) (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 £500 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 Global Ratings or “P-2” or the equivalent thereof by Moody’s 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;

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- (e) readily marketable direct obligations issued by any state of the United States of America, any province of Canada, any member of the European Union, 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 Global Ratings (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 Global Ratings 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, a member state of the European Union, Switzerland, Norway or Japan eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized 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 Company becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) 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 Initial Signing Date), other than one or more Permitted Holders, is or becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Initial Signing Date), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Company;
- (b) following an Initial Public Offering of the Company or any Parent, during any period of two consecutive years, individuals who at the beginning of such period constituted the majority of the directors (excluding any employee representatives, if any) on the Board of Directors of the Company or any Parent (together with any new directors whose election by the majority of such directors on such Board of Directors of the Company or any Parent or whose nomination for election by shareholders of the Company or any Parent, as applicable, was approved by a vote of the majority of such directors on the Board of Directors of the Company or any Parent then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) ceased for any reason to constitute the majority of the directors (excluding any employee representatives, if any) on the Board of Directors of the Company or any Parent, then in office; or

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- (c) 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 of the assets of the Company and its Restricted Subsidiaries taken as a whole to a Person, other than a Restricted Subsidiary or one or more Permitted Holders.

“**Collateral**” means any assets over which Security is provided in respect of the Loans 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 any unrealised losses and minus any unrealised gains on any derivative instruments (other than any derivative instruments which are accounted for on a hedge accounting basis);
- (b) Consolidated Income Taxes;
- (c) consolidated depreciation expense;
- (d) consolidated amortization expense;
- (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, recapitalization 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 transactions (including any expenses in connection with related due diligence activities)), in each case, as determined in good faith by an Officer of the Company;
- (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) the amount of management, monitoring, consulting, secondment and advisory fees and related expenses paid in such period to the Permitted Holders to the extent permitted by the covenant described under Paragraph 6 (Limitation on Affiliate Transactions); and

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- (h) 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).
 - (i) Notwithstanding the foregoing, the provision for taxes and the depreciation, amortization, 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), corporation Tax and franchise Taxes of any of the Company 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, (a) interest payable (whether in cash or capitalized) on Financial Indebtedness of such Person and its Restricted Subsidiaries for such period, excluding any expense associated with Subordinated Shareholder Funding, plus (b) imputed interest with respect to Attributable Debt, less (c) interest income for such period.

“Consolidated Net Income” means, for any period, the net income (loss) of the Company 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 (b) below, any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that the Company’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 actually distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend or other distribution or return on investment or Restricted Subsidiary;
 - (b) any net gain (or loss) realized upon the sale or other disposition of any asset or disposed operations of the Company 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 Company);
 - (c) any extraordinary, exceptional, unusual or nonrecurring gain, loss or charge (as determined in good faith by the Company), or any charges or reserves in respect of any restructuring, redundancy or severance expense;
 - (d) the cumulative effect of a change in accounting principles;
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- (e) 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;
 - (f) 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;
 - (g) any unrealized gains or losses in respect of Hedging Obligations or any ineffectiveness recognized in earnings related to qualifying hedge transactions or the fair value of changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations;
 - (h) any unrealized foreign currency transaction gains or losses in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person and any unrealized foreign exchange gains or losses relating to translation of assets and liabilities denominated in foreign currencies;
 - (i) any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness or other obligations of the Company or any Restricted Subsidiary owing to the Company or any Restricted Subsidiary;
 - (j) 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 Company and the Restricted Subsidiaries), as a result of any consummated acquisition, or the amortization or write-off of any amounts thereof (including any write-off of in process research and development);
 - (k) any goodwill or other intangible asset impairment charge or write-off; and
 - (l) the impact of capitalized, accrued or accreting or pay-in-kind interest or principal on Subordinated Shareholder Funding.

“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;
 - (c) for the purchase or payment of any such primary obligation; or
 - (d) 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
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- (e) 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 this Agreement.

“**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.

“**Default**” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“**Designated Preference Shares**” means, with respect to the Company or any Parent, Preferred Stock (other than Disqualified Stock) that is issued for cash (other than to the Company or a Subsidiary of the Company or an employee stock ownership plan or trust established by the Company or any such Subsidiary for the benefit of their employees to the extent funded by the Company or such Subsidiary).

“**Disinterested Director**” means, with respect to any Affiliate Transaction, a member of the Board of Directors of the Company having no material direct or indirect financial interest in or with respect to such Affiliate Transaction, provided that no Sponsor Director (as defined in the applicable Governance Document) will be a Disinterested Director. A member of the Board of Directors of the Company shall be deemed not to have such a financial interest by reason of such member’s holding Capital Stock of the Company or any Parent 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 Company 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,
- (d) in each case on or prior to the earlier of (a) the Stated Maturity of the Notes or (b) the date on which there are no Notes outstanding; 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 Company 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 Paragraph 2 (Limitation on Restricted Payments).

“Equity Offering” means (w) a sale of Capital Stock of the Company (other than Disqualified Stock) other than offerings registered on Form S-8 (or any successor form) under the Securities Act or any similar offering in other jurisdictions, or (x) the sale of Capital Stock or other securities of a Parent, the proceeds of which are contributed to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Company or any of its Restricted Subsidiaries.

“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.

“fair market value” may be conclusively established by means of an Officer’s Certificate or a resolution of the Board of Directors of the Company 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), (c), (d), (e), (f) and (g) of the definition of “Indebtedness”.

“Fixed Charges” means, with respect to any Person for any period, the sum 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 Restricted Payments made pursuant to Paragraph 2(b)(xiv) during this period; determined on a consolidated basis in accordance with GAAP.

“GAAP” means generally accepted accounting principles in the United Kingdom as in effect on the date of any calculation or determination required hereunder. Except as otherwise set forth in this Schedule 17, all ratios and calculations based on GAAP contained in this Schedule 17 shall be computed in accordance with GAAP.

“Governance Document” has the meaning given to that term in Clause 1.1 (*Definitions*) of this Agreement.

“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:

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- (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).

“**IFRS**” means the International Financial Reporting Standards (formerly, International Accounting Standards) endorsed from time to time by the European Union or any variation thereof with which the Company or its Restricted Subsidiaries are, or may be, required to comply.

“**Incur**” means issue, create, assume, enter into any Guarantee of, incur, extend or otherwise become liable for; 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 the terms “Incurred” and “Incurrence” have meanings correlative to the foregoing and any Indebtedness pursuant to any revolving credit or similar facility shall only 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) Capitalized Lease Obligations of such Person or Attributable Debt in respect of sale and leaseback transactions;

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- (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 (i) the fair market value of such asset at such date of determination (as determined in good faith by the Company) and (ii) 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 Subordinated Shareholder Funding or any lease, concession or license of property (or Guarantee thereof) which would be considered an operating lease under GAAP as in effect on the Initial Signing Date, any asset retirement obligations, prepayments or deposits received from clients or customers, in each case, in the ordinary course of business, or obligations under any license, permit or other approval (or Guarantees given in respect of such obligations) Incurred prior to the Initial Signing 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 17, and (other than with respect to letters of credit or Guarantees or Indebtedness specified in paragraph (e), (g) or (h) above) shall equal the amount thereof that would appear on the balance sheet of such Person (excluding any notes thereto) prepared on the basis of GAAP.

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 Company 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; or

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- (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.

“Independent Financial Adviser” 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 Company.

“Initial Public Offering” means an Equity Offering of common stock or other common equity interests of the Company or any Parent or any successor of the Company or any Parent of the Company (the IPO Entity) following which there is a Public Market and, as a result of which, the shares of common stock or other common equity interests of the IPO Entity in such offering are listed on an internationally recognized exchange or traded on an internationally recognized market.

“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 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 Company 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 Company 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 for in Paragraph 2(c) (*Limitation on Restricted Payments*).

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced (at the Company'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:

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- (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 a member of the European Union, or any agency or instrumentality thereof (other than Cash Equivalents);
 - (c) debt securities or debt instruments with a rating of “A–” or higher from S&P or “A3” or higher by Moody’s or the equivalent of such rating by such rating organization or, if no rating of Moody’s or S&P then exists, the equivalent of such rating by any other Nationally Recognized Statistical Ratings Organization, but excluding any debt securities or instruments constituting loans or advances among the Company 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.

“**IPO Entity**” has the meaning given to it in the definition of “Initial Public Offering”.

“**Junior Indebtedness Collateral**” means Collateral over which Security is provided in respect of the High Yield Notes.

“**Junior Pari Passu Indebtedness**” means Indebtedness of the Borrower or any Guarantor if such Indebtedness (or the guarantee thereof, as the case may be), ranks equally in right of payment to the High Yield Notes and is secured by Liens on the Junior Indebtedness Collateral on the same junior priority basis as such other Indebtedness.

“**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).

“**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:

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- (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 and any tax sharing agreements), 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, by its terms or by applicable law, are required 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 Parent, the Company 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 Company or any Restricted Subsidiary after such Asset Disposition.

“**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, 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 the Note Indenture 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 Company or its Subsidiaries.

“**Parent**” means any Person of which the Company at any time is or becomes a Subsidiary after the Initial Signing Date and any holding companies established by any Permitted Holder for purposes of holding its investment in any Parent.

“**Pari Passu Indebtedness**” means Indebtedness of the Borrower (other than Indebtedness of the Borrower pursuant to the Finance Documents) or any Guarantor if such Indebtedness or Guarantee, as the case may be, ranks equally in right of payment to the Loans or the Guarantees of the Loans which, in each case, is secured by Liens on the Collateral.

“**Permitted Collateral Liens**” means:

- (a) Liens on the Collateral described in one or more of paragraphs (b), (c), (d), (e), (f), (h), (i), (k), (l), (r), (t) (v), (w), (x) and (z) of the definition of “Permitted Liens”,

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- (b) Liens on the Collateral to secure Indebtedness of the Company or a Restricted Subsidiary that is permitted to be Incurred under paragraphs (i), (ii)(A) (in the case of (ii)(A), to the extent such Guarantee is in respect of Indebtedness otherwise permitted to be secured and specified in this definition of Permitted Collateral Liens), (iv)(A), (iv)(C) (if the original Indebtedness was so secured), (u), (vi) (other than with respect to Capitalized Lease Obligations) and (viii) of Paragraph 1(b) (*Limitation on Indebtedness*); provided, however, that such Lien ranks equal or junior to all other Liens on such Collateral securing Indebtedness of the Company or such Restricted Subsidiary, as applicable (except that a Lien in favor of Indebtedness Incurred under this Agreement pursuant to Paragraph 1(b)(i), may have super priority in respect of the proceeds from (i) the enforcement of the Collateral or (ii) certain distressed disposals not materially less favorable to the Lenders than that accorded to this Agreement on the Initial Signing Date, as provided in the Intercreditor Agreement as in effect on the Initial Signing Date and provided further that each of the parties thereto will have entered into the Intercreditor Agreement or an Additional Intercreditor Agreement;
- (c) [RESERVED];
- (d) Liens on the Junior Indebtedness Collateral securing High Yield Notes or Junior Pari Passu Indebtedness on a basis junior to the Loans; or
- (e) [RESERVED];
- (f) Liens on Collateral securing Refinancing Indebtedness in respect of any Indebtedness secured pursuant to the foregoing clauses (a), (b), (c), (d) or (e), to the same extent and on the same basis as provided in the foregoing clauses (a), (b), (c), (d) or (e), as applicable, provided, however, that Liens on Collateral securing any such Refinancing Indebtedness may not have super priority.

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 favor of the Security Agent for the benefit of the Finance Parties.

“Permitted Holders” means, collectively, (a) the Holdco Guarantor, (b) any one or more Persons whose beneficial ownership constitutes or results in a Change of Control in respect of which a Change of Control Offer (as each of those terms are defined in Senior Secured Notes Indenture) is made in accordance with the requirements of this Agreement, (c) Senior Management and (d) any Person who is acting as an underwriter in connection with a public or private offering of Capital Stock of any Parent or the Company, acting in such capacity. For the purposes of determining whether a group of related persons (as such term is used in Sections 13(d) and 14(d) of the Exchange Act as in effect on the Initial Signing Date) is or becomes a Permitted Holder pursuant to this definition, any group that includes a Permitted Holder shall also be deemed to be a Permitted Holder, provided that Permitted Holders as defined in clauses (a), (b) and (c) above retain exclusive beneficial ownership and control of at least 50.1% of the total voting power of the Voting Stock of the Company beneficially owned by any group that becomes a

Permitted Holder at any time as a result of the application of this sentence (without giving effect to the existence of such group or any other group).

“**Permitted Investment**” means (in each case, by the Company or any of its Restricted Subsidiaries), subject to compliance with the Operational Stability Covenants:

- (a) Investments in a Restricted Subsidiary (including the Capital Stock of a Restricted Subsidiary) or the Company;
- (b) [RESERVED];
- (c) Investments in cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;
- (d) Investments in receivables owing to the Company 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) [RESERVED];
- (g) Investments in Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Company 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 reorganization or similar arrangement including upon the bankruptcy or insolvency of a debtor;
- (h) [RESERVED];
- (i) Investments in existence on, or made pursuant to legally binding commitments in existence on, the Initial Signing Date, provided that (in each case) each Investment was disclosed to and approved by the Majority Lenders prior to the Initial Signing Date;
- (j) [RESERVED];
- (k) [RESERVED];
- (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 the covenant described under Paragraph 3 (*Limitation on Liens*);
- (m) [RESERVED];
- (n) [RESERVED];
- (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 Paragraph 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 the Loans, the Senior Secured Notes and the High Yield Notes; and
 - (r) any Investment set out in Schedule 23 (*Permitted Investments*).

“**Permitted Liens**” means, with respect to any Person:

- (a) [RESERVED]
- (b) (x) 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 and (x) Liens on the undertaking, property and assets of any Restricted Subsidiary granted in connection with any leasehold real property owned by such Restricted Subsidiary from time to time in favor of the relevant lessor from time to time;
- (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 favor 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 Company 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 Company 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 Company and its Restricted Subsidiaries;

- (g) [RESERVED];
- (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 in place as at the Initial Signing Date;
- (i) [RESERVED];
- (j) Liens on assets or property of the Company or any Restricted Subsidiary for the purpose of securing Capitalized 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 (i) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under this Agreement and (ii) any such Lien may not extend to any assets or property of the Company 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 Company 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 Initial Signing Date provided such Liens have been disclosed to, and approved by, the Majority Lenders prior to the Initial Signing Date;
- (n) [RESERVED];
- (o) Liens on assets or property of the Company or any Restricted Subsidiary securing Indebtedness or other obligations of the Company or such Restricted Subsidiary owing to the Company or another Restricted Subsidiary, or Liens in favor of the Company 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 Agreement; 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 Capitalized Lease Obligation or operating lease;
- (r) (i) 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 Company or any Restricted Subsidiary has easement rights or on any leased property and subordination or similar arrangements relating thereto and (ii) any condemnation or eminent domain proceedings affecting any real property;
- (s) [RESERVED];
- (t) [RESERVED];
- (u) Liens securing Indebtedness incurred under paragraph (w) of Paragraph 1(b) (*Limitation on Indebtedness*) with local financial institutions;
- (v) [RESERVED];
- (w) 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;
- (x) 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;
- (y) [RESERVED];
- (z) [RESERVED]; and
- (aa) [RESERVED].

“**Person**” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

“**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.

“**Public Market**” means any time after:

- (a) an Equity Offering has been consummated; and
- (b) shares of common stock or other common equity interests of the IPO Entity having a market value in excess of £50 million on the date of such Equity Offering have been distributed pursuant to such Equity Offering.

“Public Offering” means any offering, including an Initial Public 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 17 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 Initial Signing Date or Incurred in compliance with this Agreement including Indebtedness that refinances Refinancing Indebtedness; provided, however, that:

- (a) such Refinancing Indebtedness has a final maturity date that is no earlier than 3 months after the final maturity of the Indebtedness being Refinanced and has a weighted average life to maturity that is equal to or greater than that of the Indebtedness being Refinanced;
- (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 (including, 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);
- (c) such Refinancing Indebtedness does not increase the all-in yield in respect of the Senior Secured Notes or the High Yield Notes (or any refinancing thereof) provided that, in determining the applicable all-in yield under this paragraph (c): (i) upfront fees, any original issue discount, costs and expenses, in each case paid in cash in connection with the relevant Senior Secured Notes or the High Yield Notes, as applicable, (amortising on a straight line basis over the period remaining to the maturity of such Senior Secured Notes or the High Yield Notes) shall be included,

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- (ii) any amendments to the cash interest payable in respect of the Senior Secured Notes or the High Yield Notes subsequent to the Initial Signing Date shall be included; (iii) any base rate floor applicable to the Senior Secured Notes or the High Yield Notes shall be equated to interest margin for determining the applicable all-in yield to the extent that the floor is higher than the prevailing base rate at the time of the amendment, and (iv) the calculation of the all-in yield in respect of the Senior Secured Notes or the High Yield Notes shall exclude any pay-in-kind interest with respect to the Senior Secured Notes or the High Yield Notes;
- (d) if the Indebtedness being refinanced is expressly subordinated to the Loans or any Guarantee pursuant to the terms of the Intercreditor Agreement, such Refinancing Indebtedness is subordinated to the Loans or such Guarantee pursuant to the terms of the Intercreditor Agreement on terms at least as favorable 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 Company provided, further, that no Restricted Subsidiary that is not a Guarantor shall Incur any Refinancing Indebtedness if the proceeds thereof are used, directly or indirectly, to refinance any Indebtedness of the Borrower or a Guarantor; and
- (e) there shall be no Refinancing of this Credit Agreement other than by way of Takeout Financings acceptable to the Lenders in their sole and absolute discretion.

“Related Taxes” means:

- (a) any Taxes (other than (w) Taxes measured by gross or net income, receipts or profits and (x) withholding Taxes), required to be paid (provided such Taxes are in fact paid) by any Parent by virtue of its:
- (i) being organized 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 Company or any of the Company’s Subsidiaries);
 - (ii) issuing or holding Subordinated Shareholder Funding; or
 - (iii) being a holding company parent, directly or indirectly, of the Company or any of the Company’s Subsidiaries; and
- (b) if and for so long as the Company is a member of a group filing a consolidated or combined

tax return with any Parent, any consolidated or combined Taxes measured by income for which such Parent is liable up to an amount not to exceed the amount of any such Taxes that the Company and its Subsidiaries would have been required to pay on a separate company basis or on a consolidated basis if the Company 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 Company and its Subsidiaries.

“Restricted Investment” means any Investment other than a Permitted Investment.

“Restricted Subsidiary” means any Subsidiary of the Company, including the Borrower but excluding any Group company that is not an Obligor and which is in administration or liquidation.

“SEC” means the U.S. Securities and Exchange Commission.

“Secured Indebtedness” means any Indebtedness secured by a Lien on property or assets of the Company or any Restricted Subsidiary.

“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 the officers, directors, and other members of senior management of the Company or any of its Subsidiaries, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Company or any Parent.

“Similar Business” means (a) any businesses, services or activities engaged in by the Company or any of its Subsidiaries or any Associates on the Initial Signing Date and (b) any businesses, services and activities engaged in by the Company 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.

“Sterling Equivalent” means, with respect to any monetary amount in a currency other than sterling, at any time of determination thereof by the Company or the Agent, the amount of sterling obtained by converting such currency other than sterling involved in such computation into sterling at the spot rate for the purchase of sterling with the applicable currency other than sterling 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 Company) on the date of such determination.

“Subordinated Indebtedness” means, with respect to any person, any Indebtedness (whether outstanding on the Initial Signing Date or thereafter Incurred) which is expressly subordinated in right of payment to the Loans or any Guarantee pursuant to a written agreement (which, for the avoidance of doubt, will not include the Loans or any Pari Passu Indebtedness).

“Subordinated Shareholder Funding” means, collectively, (a) the Company’s existing preference shares and shareholder loans as of the Initial Signing Date; and (b) any funds provided to the Company or Elli Group UK Plc by any Parent, any Affiliate of any Parent or any Permitted Holder 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 Parent or a Permitted Holder, 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 amortization, redemption or other repayment of principal or any sinking fund payment prior to the first anniversary of the Stated Maturity of the Loans (other than through conversion or exchange of such funding into Capital Stock (other than Disqualified Stock) of the Company or any funding meeting the requirements of this definition);
- (b) does not require, prior to the first anniversary of the Stated Maturity of the Notes, 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 (other than by operation of law) 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 Stated Maturity of the Notes;
- (d) does not provide for or require any security interest or encumbrance over any asset of the Company or any of its Subsidiaries; and
- (e) pursuant to its terms or to the terms of the Intercreditor Agreement or any Additional Intercreditor Agreement is fully subordinated and junior in right of payment to the Loans or any Guarantee pursuant to subordination, payment blockage and enforcement limitation terms which are no less favourable in any material respect to the Lenders than those contained in the Intercreditor Agreement as in effect on the Initial Signing Date with respect to Shareholder Liabilities (as defined in the Intercreditor Agreement).

“**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

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- (ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“Subsidiary Guarantor” means a Guarantor other than the Company.

“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, (A) the United States of America or Canada, (B) any European Union member state, (C) Switzerland or Norway, (D) any country in whose currency funds are being held specifically pending application in the making of an investment or capital expenditure by the Company or a Restricted Subsidiary in that country with such funds or (E) any agency or instrumentality of any such country or member state, or
 - (ii) direct obligations of any country recognized by the United States of America rated at least “A” by S&P or “A-1” by Moody’s (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P 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,
 - (ii) any institution authorized 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 organized under the laws of any such country or member state or any political subdivision thereof,
- (c) [RESERVED];
- (d) [RESERVED];
- (e) [RESERVED];
- (f) [RESERVED];
- (g) [RESERVED];
- (h) [RESERVED];

(i) [RESERVED];

(j) [RESERVED];

“**Terra Firma**” means Terra Firma Investments (GP) 3 Limited.

“**Uniform Commercial Code**” means the New York Uniform Commercial Code.

“**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 Company, 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 Company or another Wholly Owned Subsidiary) is owned by the Company or another Wholly Owned Restricted Subsidiary.

“**Wholly Owned Subsidiary**” means a subsidiary of the Company, 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 Company or another Wholly Owned Subsidiary) is owned by the Company or another Wholly Owned Subsidiary.

Schedule 18
Transaction Security

[See Schedule 3 of the First Amendment and Restatement Agreement]

Schedule 19
Monthly Financial Information

Group Reporting

[Month] £k	Month			YTD		
	Actual	Budget	Variance	Actual	Budget	Variance
Income						
Payroll						
Care expenses						
Facility expenses						
Operating profit						
Rent						
Central costs						
EBITDA						
Effective beds						
Occupied beds						
Occupancy %						
Average weekly fee						
Profit per bed						

Regional/Divisional Reporting

[Month] £k	Month			YTD		
	Actual	Budget	Variance	Actual	Budget	Variance
Income						
Payroll						

Care expenses						
Facility expenses						
Operating profit						
Effective beds						
Occupied beds						
Occupancy %						
Average weekly fee						
Profit per bed						

CFO COMMENTARY:

Schedule 20
Reference Rate Terms

CURRENCY: Sterling.

Cost of funds as a fallback

Cost of funds will apply as a fallback.

Definitions

Additional Business Days: An RFR Banking Day.

Baseline CAS: The rate per annum as specified in the column entitled “Baseline CAS” in the table below for the relevant Interest Period

Interest Period	Baseline CAS
1 month or less but more than 1 week	0.0326%
2 months or less but more than 1 month	0.06333%
3 months or less but more than 2 months	0.1193%
6 months or less but more than 3 months	0.2766%
More than 6 months	0.4644%

Break Costs: None specified

Business Day Conventions (definition of “Month”)

(a) If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:

- (i) subject to paragraph (iii) 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;
- (ii) 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
- (iii) 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.

- (b) 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).

Central Bank Rate: The Bank of England's Bank Rate as published by the Bank of England from time to time.

Central Bank Rate Adjustment: In relation to the Central Bank Rate prevailing at close of business on any RFR Banking Day, the 20 per cent trimmed arithmetic mean (calculated by the Agent, or by any other Finance Party which agrees with the Company and the Agent to do so in place of the Agent) of the Central Bank Rate Spreads for the five most immediately preceding RFR Banking Days for which the RFR is available.

Central Bank Rate Spread: In relation to any RFR Banking Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Finance Party which agrees to do so in place of the Agent) of:

- (a) the RFR for that RFR Banking Day; and
- (b) the Central Bank Rate prevailing at close of business on that RFR Banking Day.

Daily Rate: The "Daily Rate" for any RFR Banking Day is:

- (a) the RFR for that RFR Banking Day; or
- (b) if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of:
- (i) the Central Bank Rate for that RFR Banking Day; and
- (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not

available, the percentage rate per annum which is the aggregate of:

- (i) the most recent Central Bank Rate for a day which is no more than five RFR Banking Days before that RFR Banking Day; and
- (ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to four decimal places and if, in either case, that rate is less than zero, the Daily Rate shall be deemed to be zero.

Lookback Period:

Five RFR Banking Days.

Margin:

means:

- (a) in respect of the Initial Loan Period, 8.00 per cent. per annum; and
- (b) in respect of the Extended Loan Period, 11.00 per cent. per annum; or
- (c) in relation to any Unpaid Sum, during:
 - (i) the Initial Loan Period, 11.00 per cent. per annum; and
 - (ii) the Extended Loan Period, 14.00.

Market Disruption Rate:

The percentage rate per annum which is the aggregate of:

- (a) the Cumulative Compounded RFR Rate for the Interest Period of the relevant Loan; and
- (b) the applicable Baseline CAS.

Relevant Market:

The sterling wholesale market.

Reporting Day:

The day which is the Lookback Period prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day.

RFR:

The SONIA (sterling overnight index average) reference rate displayed on the relevant screen of any authorised distributor of that reference rate.

RFR Banking Day:	A day (other than a Saturday or Sunday) on which banks are open for general business in London.
RFR Contingency Period	90 days
Interest Periods	
Length of Interest Period in absence of selection (paragraph (a) of Clause 12.1 (<i>Interest Periods and Terms</i>):	Three Months
Periods capable of selection as Interest Periods	Three Months
Reporting Times	
Deadline for Lenders to report market disruption in accordance with Clause 13.2 (<i>Market Disruption</i>)	Close of business in London on the Reporting Day for the relevant Loan.
Deadline for Lenders to report their cost of funds in accordance with Clause 13.3 (<i>Cost of funds</i>)	Close of business on the date falling 10 Business Days after the Reporting Day for the relevant Loan (or, if earlier, on the date falling 10 Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).

Schedule 21
Daily Non-Cumulative Compounded RFR Rate

The “**Daily Non-Cumulative Compounded RFR Rate**” for any RFR Banking Day “*i*” during an Interest Period for a Loan is the percentage rate per annum (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose) calculated as set out below:

$$(UCCDR_i - UCCDR_{i-1}) \times \frac{dcc}{n_i}$$

where:

“**UCCDR_i**” means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day “*i*”;

“**UCCDR_{i-1}**” means, in relation to that RFR Banking Day “*i*”, the Unannualised Cumulative Compounded Daily Rate for the immediately preceding RFR Banking Day (if any) during that Interest Period;

“**dcc**” means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number;

“**n_i**” means the number of calendar days from, and including, that RFR Banking Day “*i*” up to, but excluding, the following RFR Banking Day; and

the “**Unannualised Cumulative Compounded Daily Rate**” for any RFR Banking Day (the “**Cumulated RFR Banking Day**”) during that Interest Period is the result of the below calculation (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose):

$$ACCDR \times \frac{tn_i}{dcc}$$

where:

“**ACCDR**” means the Annualised Cumulative Compounded Daily Rate for that Cumulated RFR Banking Day;

“**tn_i**” means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the RFR Banking Day which immediately follows the last day of the Cumulation Period;

“**Cumulation Period**” means the period from, and including, the first RFR Banking Day of that Interest Period to, and including, that Cumulated RFR Banking Day;

“**dcc**” has the meaning given to that term above; and

the “**Annualised Cumulative Compounded Daily Rate**” for that Cumulated RFR Banking Day is the percentage rate per annum (rounded to four decimal places) calculated as set out below:

$$\left[\prod_{i=1}^{d_0} \left(1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{t_{n_i}}$$

where:

“**d₀**” means the number of RFR Banking Days in the Cumulation Period;

“**Cumulation Period**” has the meaning given to that term above;

“**i**” means a series of whole numbers from one to d₀, each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

“**DailyRate_{i-LP}**” means, for any RFR Banking Day “**i**” in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the Lookback Period prior to that RFR Banking Day “**i**”;

“**n_i**” means, for any RFR Banking Day “**i**” in the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day “**i**” up to, but excluding, the following RFR Banking Day;⁹

“**dcc**” has the meaning given to that term above; and

“**t_{n_i}**” has the meaning given to that term above.

Schedule 22
Cumulative Compounded RFR Rate

The “**Cumulative Compounded RFR Rate**” for any Interest Period for a Loan is the percentage rate per annum (rounded to the same number of decimal places as is specified in the definition of “Annualised Cumulative Compounded Daily Rate” in Schedule 21 (*Daily Non-Cumulative Compounded RFR Rate*)) calculated as set out below:

$$\left[\prod_{i=1}^{d_0} \left(1 + \frac{\text{DailyRate}_{i-LP} \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{d}$$

where:

“**d0**” means the number of RFR Banking Days during the Interest Period;

“**i**” means a series of whole numbers from one to d0, each representing the relevant RFR Banking Day in chronological order during the Interest Period;

“**DailyRatei-LP**” means for any RFR Banking Day “i” during the Interest Period, the Daily Rate for the RFR Banking Day which is the Lookback Period prior to that RFR Banking Day “i”;

“**ni**” means, for any RFR Banking Day “i”, the number of calendar days from, and including, that RFR Banking Day “i” up to, but excluding, the following RFR Banking Day;

“**dcc**” means 365 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number; and

“**d**” means the number of calendar days during that Interest Period.

Schedule 23
Permitted Investments

None.

Schedule 24
Appointing Obligor

[Insert list of Obligors to which an Implementation Officer is required to be appointed.]

SIGNATURES

[See First Amendment and Restatement Agreement]