

ANNOUNCEMENT

£350,000,000 of 8.750% Senior Secured Notes due 2019 (the “**Senior Secured Notes**”)

£175,000,000 of 12.250% Senior Notes due 2020 (the “**Senior Notes**”)

(Collectively referred to as the “**Notes**”)

(ISIN: XS0794786011 / ISIN: XS0794785633

ISIN: XS0794787415 / ISIN: XS0794787175)

Issued by Elli Finance (UK) Plc (“**EFUK**”) and Elli Investments Limited (“**EIL**”, together with EFUK, the “**Issuers**”, and together with their subsidiaries, “**Four Seasons**”)

The Notes are admitted to the Official List of the Irish Stock Exchange and to trading on the Global Exchange Market

Four Seasons Health Care (“**Four Seasons**” or the “**Company**”) today announces that the Issuers and H/2 Capital Partners, on behalf of its affiliated investment funds (“**H/2**”), have signed a £70.0 million super senior facility agreement dated 15 March 2018 (the “**Facility**”). The Facility will assist the Company in stabilising operations and ensuring continuity of care for residents.

The net proceeds from the Facility will be used to fund working capital and to prepay and cancel in full the £40.0 million super senior credit facility made available to the Company pursuant to a credit facility agreement dated 9 October 2017.

Pursuant to the governance deeds executed in connection with the Facility terms, the Company has implemented a number of governance changes to facilitate a consensual restructuring. Following such changes, independent directors have been named to, and will comprise a majority of, the boards of directors of EIL and Elli Acquisitions Limited (“**EAL**”). In addition, the Company has agreed to appoint Martin Healy as a senior professional responsible for facilitating the implementation of a restructuring. Mr. Healy, who will report to the boards of EIL and EFUK, is an experienced executive with expertise in restructuring and post-acquisition integration.

In connection with the Facility, the Issuers have also entered into supplemental indentures dated 15 March 2018 in respect of the Notes (“**Supplemental Indentures**”). The Facility agreement and governance deeds can be found on the “Investor” section of the Four Seasons Health Care website (please click the following link to view the document: <https://www.fshc.co.uk/investors>). The Supplemental Indentures will be made available to noteholders upon written request to the respective Issuers.

The standstill agreement between the parties includes several remaining milestones that are required to be met on or before specific dates over the restructuring process. These milestones include long-stop dates of 16 April 2018 for agreement on a restructuring plan and 1 June 2018 for the approval of the restructuring.

Robbie Barr, Chairman, Four Seasons Health Care, said: “We are very appreciative of H/2 expanding its already substantial commitment to Four Seasons Health Care in providing this funding in pursuit of a consensual agreement. We welcome the independent directors to the boards of EIL and EAL, and the appointment of Martin Healy to the Four Seasons team. This incremental liquidity and the revised governance structure benefit all stakeholders and further promote continuity of care for our residents.”

Four Seasons and H/2 Capital Partners continue to work together to facilitate an orderly transition and seek agreement on implementation terms for a restructuring on behalf of creditors. The primary objective of a restructuring plan is to create a sustainable, long-term capital structure that best serves residents, patients and employees.

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For more information on Four Seasons Health Care, please visit <https://www.fshc.co.uk/investors>.

This announcement has been given by the Issuers of the Notes:

Norcliffe House

Old Bank Chambers

Station Road

La Grand Rue

Wilmslow

St Martin's, Guernsey

SK9 1BU

GY4 6RT

EXECUTION VERSION

15 **March 2018**

£70,000,000 CREDIT FACILITY AGREEMENT

between

ELLI ACQUISITIONS LIMITED
as Company

ELLI FINANCE (UK) PLC
as Original Borrower

THE FINANCIAL INSTITUTIONS
as Original Lenders

WILMINGTON TRUST (LONDON) LIMITED
as Agent

and

BARCLAYS BANK PLC
as Security Agent

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THIS AGREEMENT is made on 15 March 2018 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**, a public limited company incorporated under the laws of England and Wales with its registered office at Norcliffe House, Station Road, Wilmslow, SK9 1BU and registered with company number 08094161 (the “**Original Borrower**”);
- (3) **THE ENTITIES** listed in in Part 3 of Schedule 1 as the original guarantors (the “**Original Guarantors**”);
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part 1 of Schedule 1 as lenders (the “**Original Lenders**”);
- (5) **Wilmington Trust (London) Limited**, a private limited liability company incorporated under the laws of England and Wales with its registered office at Third Floor, 1 King's Arms Yard, London EC2R 7AF and registered company number 05650152, as agent of the other Finance Parties (the “**Agent**”); and
- (6) **BARCLAYS BANK PLC**, as security trustee and as security agent for the Secured Parties (the “**Security Agent**”).

IT IS AGREED as follows

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Acceleration Notice**” means a notice served by the Agent pursuant to and in accordance with Clause 25.17 (*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 Guarantor” means a company which becomes an Additional Guarantor in accordance with Clause 28.5 (*Additional Guarantors*).

“Additional Guernsey Transaction Security Document” means a security interest agreement in respect of a bank account between the Company and the Security Agent dated on or about the date of this Agreement.

“Additional Jersey Transaction Security Documents” means:

- (a) a security interest agreement in respect of Fino (Jersey) Newco 1 Limited and Silver Springs Limited between brighterkind Jersey Developments Limited (formerly FSHC Jersey Developments Limited) and the Security Agent dated on or about the date of this Agreement;
- (b) a security interest agreement in respect of Rhyme (Jersey) Limited between Elli Acquisitions Limited and the Security Agent dated on or about the date of this Agreement;
- (c) a security interest agreement in respect of a bank account between PHF (CHP) Limited and the Security Agent dated on or about the date of this Agreement;
- (d) a security interest agreement in respect of, amongst others, PHF Securities No. 1 Limited and PHF Securities No. 2 Limited, between Principal Healthcare Finance Limited and the Security Agent dated on or about the date of this Agreement; and
- (e) a security interest agreement in respect of brighterkind Jersey Developments Limited (formerly FSHC Jersey Developments Limited) and Principal Healthcare Finance Limited between Rhyme (Jersey) Limited and the Security Agent dated on or about the date of this Agreement.

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

“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 12 (*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*).

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

“Asset Threshold” has the meaning given to it in paragraph (d)(ii) of Clause 24.12 (*Guarantors*).

“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 PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte 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.

“**Availability Period**” means:

- (a) in relation to the Initial Utilisation, the period from and including the date of this Agreement to and including the date falling three Business Days thereafter; and
- (b) in relation to any other Utilisation, the period from and including the Closing Date to and including 15 May 2018.

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

“**Available Facility**” means the aggregate for the time being of each Lender's Available Commitment.

“**Base Reference Bank Rate**” means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Base Reference Banks in relation to LIBOR as the rate at which the relevant Base Reference Bank could borrow funds in the London interbank market in Sterling and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in Sterling and for that period.

“**Base Reference Banks**” means, in relation to LIBOR, the principal London office of Barclays Bank PLC, HSBC Bank plc and The Royal Bank of Scotland plc or such other banks as may be appointed by the Agent in consultation with the Company.

“**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 the amount (if any) by which:

- (a) the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period; exceeds:
- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Budget**” means 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.

“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 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).

“**Change of Control**” has the meaning given to that term in Schedule 16 (*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.

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

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

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading Commitment in Part 1 of Schedule 1 (*The Original Parties*) 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.

“**Commitment Documents**” means the commitment letter in respect of this Facility dated 8 February 2018 (including, for the avoidance of doubt, the term sheet appended thereto) as amended pursuant to a letter dated 1 March 2018 and a letter dated 9 March 2018.

“**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*).

“**Confidential Information**” means all information relating to the Company, any Obligor, the Group, the Equity Investors or any Equity Investor Affiliate (but only to the extent such information relates to the Finance Documents), 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, the Equity Investors, any Equity Investor Affiliate or any of its or their advisers; or

- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group, the Equity Investors, any Equity Investor Affiliate 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 (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group, the Equity Investors, any Equity Investor Affiliate or any of its or their 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, the Equity Investors or any Equity Investor Affiliate, 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 10 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Company and the relevant Lender.

“Connected Party” means an employee, director, officer, agent, contractor, legal adviser, other professional adviser or financial adviser, and in relation to any entity, fund, partnership or undertaking, includes each member of its senior management.

“Constitutional Documents” means the memorandum, articles of association and, in respect of a company incorporated in Guernsey, the articles of incorporation of each of the Holdco Guarantor, the Company, Elli Group (UK) Ltd and the Original Borrower.

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

“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;
- (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).

“**EBITDA Threshold**” has the meaning given to it in paragraph (d)(ii) of Clause 24.12 (*Guarantors*).

“**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 Clause 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, at any time:

- (a) any member of the Group that is party to a Third Party Lease as a tenant and which has in its ordinary course of business:
 - (i) granted security to a landlord pursuant to such Third Party Lease with respect to its obligations thereunder; or
 - (ii) contractually agreed to grant security to a landlord pursuant to such Third Party Lease with respect to its obligations thereunder, unless it has ceased to (or ceased to be contractually obliged to) grant such security;
- (b) any member of the Group which is acquired after the date of this Agreement, provided:
 - (i) such acquisition is not prohibited under the undertakings contained in Schedule 16 (*Restrictive Covenants*);
 - (ii) such member of the Group is, at the time of such acquisition, a party to any arrangements pursuant to which it is contractually obliged not to grant security or provide guarantees unless following such acquisition, it has ceased to be subject to such obligations; and (iii) such arrangements were not imposed or entered into in connection with such acquisition; and
- (c) any member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it) which in aggregate have a value of £250,000 or more.

Notwithstanding the foregoing and for the avoidance of doubt, none of the following entities shall constitute Excluded Subsidiaries at any time:

- (i) any of the Company, Elli Group (UK) Ltd or the Original Borrower; and
- (ii) Rhyme Jersey Ltd, unless (A) it has, granted security to a landlord pursuant to any Third Party Lease or contractually agreed to grant security to a landlord pursuant to such Third Party Lease and (B) such security or contractual agreement remains in force at the date of this Agreement.

“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.

“Existing Facility Agreement” means the £40,000,000 credit facility agreement dated 9 October 2017 (as amended and/or amended and restated from time to time) between, among others, the Original Borrower, Global Loan Agency Services Limited as agent and Barclays Bank PLC as security agent.

“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, regulation or guidance notes of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

“FATCA Application Date” means:

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

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

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

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

“Fee Letter” means:

- (a) any letter or letters dated on or about the date of this Agreement between the Company and the Agent setting out any of the fees referred to in Clause 14 (*Fees*); and
- (b) the letter dated 24 April 2012 originally between Elli Capital Limited (whose rights and obligations under the letter were subsequently novated to the Original Borrower pursuant to a deed of novation dated 27 June 2012) and the Security Agent setting out the fee payable to the Security Agent referred to in Clause 14 (*Fees*).

“Finance Document” means this 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 paragraph 3(e) of Part 1 (*Initial Conditions Precedent*) of Schedule 2 (*Conditions Precedent*), any Utilisation Request, any Commitment Confirmation and any other document designated as a Finance Document by the Agent and the Company provided that where the term “Finance Document” is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedging Agreement shall be a Finance Document only for the purposes of:

- (a) the definition of **“Material Adverse Effect”**;
- (b) the definition of **“Transaction Security Document”**;
- (c) paragraph 1.2(a)(iv) of Clause 1.2 (*Construction*);
- (d) Clause 20 (*Guarantee, Indemnity and Security*);
- (e) Clause 24.8 (*Pari Passu Ranking*);
- (f) Clause 28.6 (*Resignation of a Guarantor*);
- (g) Clause 21.33 (*Foreign Corrupt Practices, OFAC sanctions, Use of Proceeds and Sanctions*);
- (h) Clause 25 (*Events of Default*) (other than paragraph (b) of Clause 25.12 (*Repudiation and Rescission of Agreements*) and Clause 25.17 (*Acceleration*)); and
- (i) Clause 32.7 (*Set-Off by Obligors*).

“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;
- (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-Restricted Group debit or credit balances shall be considered “Financial Indebtedness” for the purposes of Clause 25.4 (*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.

“Forbearance Arrangements” means any arrangement in respect of Financial Indebtedness of any member of the Holdco Group in place on or prior to the date of this Agreement:

- (a) pursuant to the Standstill Agreement (but only for so long as a Forbearance Expiration Date has not occurred); and
- (b) any other arrangements approved by the Majority Lenders prior to the date of this Agreement.

“Forbearance Expiration Date” has the meaning given to that term in the Standstill Agreement.

“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.

“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 on or around the date of this Agreement; 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 on or around the date of this Agreement.

“Governance Documents” means the documentation dated on or around the date of this Agreement entered into by the Company and certain Affiliates of the Company and various other parties in respect of the corporate governance of the Company and the Holdco Guarantor, 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.

“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 in the agreed form.

“**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**” means Elli Finance II Ltd.

“**GuernseyCo Loan**” means an unsecured loan made in cash by GuernseyCo 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 or High Yield Exchange Notes 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;
- (d) the Original Borrower; and
- (e) each Luxco.

“**Holdco Group**” means the Holdco Guarantor and each of its Subsidiaries from time to time.

“**Holdco Guarantor**” means Elli Investments Limited, a limited company incorporated under the laws of Guernsey as a wholly-owned direct Subsidiary of Elli Finance II Ltd.

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

“**Initial Utilisation**” means the first Utilisation of the Facility and made for the purposes set out in paragraph (a) of Clause 3.1 (*Purpose*).

“**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, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may 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, 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.

“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*).

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

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan, each as of the Specified Time on the Quotation Day for Sterling.

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

“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 Opinion” means any legal opinion delivered to the Agent under Clause 4.1 (*Initial Conditions Precedent*) or Clause 4.2 (*Further Conditions Precedent*).

“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 the Legal Opinions.

“Lender” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 26 (*Changes to the Lenders*), which in each case has not ceased to be a Lender in accordance with the terms of this Agreement.

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

- (a) the applicable Screen Rate;
- (b) if no Screen Rate is available for the Interest Period of that Loan, the Interpolated Screen Rate for that Loan; or
- (c) if:
 - (i) no Screen Rate is available for Sterling; or (ii) no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan, the Base Reference Bank Rate,

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

“**Limitation Acts**” means the Limitation Act 1980, the Foreign Limitation Periods Act 1984, the Limitation (Northern Ireland) Order 1989 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.

“**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
- (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 16 (*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 Holders**” has the meaning given to that term in the Standstill Agreement.

“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.

“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:

- (a) 3.75 per cent. per annum; or
- (b) in relation to any Unpaid Sum, the rate per annum specified in paragraph (a) above.

“Material Adverse Effect” means a material adverse effect on:

- (a) the business, operations, assets or financial condition of the Group taken as a whole; or
- (b) the ability of the Obligors taken as a whole to perform their payment obligations under the Finance Documents (taking into account funds lawfully available to the Obligors from other members of the Group without breaching the terms of this Agreement); or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents in a manner and to an extent materially adverse to the interests of the Finance Parties under the Finance Documents.

“Material Company” means, at any time:

- (a) an Obligor;
- (b) a wholly-owned member of the Group that holds shares in an Obligor;
- (c) a member of the Group which is an issuer of the Notes or a guarantor of the Notes; or
- (d) a Subsidiary of the Company which:
 - (i) is listed in Schedule 13 (*Material Companies*) provided that such Subsidiaries will only continue to be Material Companies to the extent they meet the conditions in paragraph (d)(i)(ii) below; or
 - (ii) 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 (d)(i)(ii) above shall be determined by reference to the most recent Annual Financial Statements or Quarterly Financial Statements of the Holdco Group 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 of the Holdco Group 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

Holdco Group's Auditors as representing an accurate reflection of the revised EBITDA and gross assets of the Holdco Group).

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

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

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

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

“**Monthly 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*).

“**New Shareholder Injections**” means:

- (a) the aggregate amount of any capital contribution made by the Holdco Guarantor after the date of this Agreement for any class of shares in the Company;
- (b) the aggregate amount of any Shareholder Loan referred to in paragraph (b) of the definition thereof made by the Holdco Guarantor to the Company after the date of this Agreement; and
- (c) the aggregate amount of any Lux Shareholder Loan referred to in paragraph (a)(iii) of the definition thereof made by Luxco 2 to Elli Group (UK) Ltd, which, for the avoidance of doubt, in the case of paragraphs (b) and (c) 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 16 (*Restrictive Covenants*) and (ii) which is subject to the Transaction Security.

“**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.

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

“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 16 (*Restrictive Covenants*).

“Original Borrower” means the company listed in Part 2 of Schedule 1 (*The Original Parties*) as the original borrower.

“Original Financial Statements” means:

- (a) in relation to each Original Obligor, means its audited consolidated financial statements for the Financial Year ended 31 December 2016; 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 3 of Schedule 1 (*The Original Parties*) as the original guarantors.

“Original Obligor” means:

- (a) the Original Borrower; or
- (b) an Original Guarantor.

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

“Party” means a party to this Agreement.

“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.

“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*).

“Quotation Day” means, in relation to any period for which an interest rate is to be determined, the first day of that period, unless market practice differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

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

“Refinancing Indebtedness” has the meaning given to it in Schedule 16 (*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 Entity” has the meaning given to it in paragraph (b)(i) of Clause 22.7 (*Year-End*).

“Relevant Interbank Market” means the London interbank market.

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

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts 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*).

“Replacement Debt” means Refinancing Indebtedness where the proceeds are applied within one Business Day (or, if longer, the applicable notice period) of the incurrence of the Refinancing Indebtedness (provided that the Company shall use its reasonable endeavours to procure that it is applied on the same day) in prepayment, purchase, defeasance or redemption of (a) the Notes or any Term Debt or (b) any Refinancing Indebtedness.

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

“**Resignation Letter**” means a letter substantially in the form set out in Schedule 8 (*Form of Resignation Letter*).

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

“**Restricted Subsidiary**” has the meaning given to it in Schedule 16 (*Restrictive Covenants*).

“**Rhyme Jersey Ltd**” means Rhyme (Jersey) Limited a private limited liability company incorporated under the laws of Jersey with its registered office at 44 Esplanade, St. Helier JE4 9WG and registered with company number 87995.

“**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 date of this Agreement, 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.

“**Screen Rate**” means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Sterling and the relevant period displayed on LIBOR01 and LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If the service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Lenders.

“**Secured Parties**” 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).

“**Security Shortfall**” has the meaning given to it in paragraph (e)(i) of Clause 24.12 (*Guarantors*).

“**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;
- (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 16 (*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 on or around the date of this Agreement; 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” and dated on or around the date of this Agreement.

“Specified Time” means a time determined in accordance with Schedule 11 (*Timetable*).

“Standstill Agreement” means the deferral and standstill agreement dated 14 December 2017 and made between, amongst others, the Original Borrower as Senior Secured Notes Issuer (as defined therein), the Holdco Guarantor as Senior Notes Issuer (as defined therein) and H/2 Credit Manager LLC for and on behalf of certain investment funds managed by it or its affiliates, as amended pursuant to an amendment letter dated 8 February 2018 and as such agreement may be further amended, extended and/or replaced from time to time.

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

“Subject Defaults” means:

- (a) the Original Borrower’s failure to pay interest due under the Senior Secured Notes Indenture on 15 December 2017; and
- (b) the Holdco Guarantor’s failure to pay interest due under the High Yield Notes Indenture on 15 December 2017.

“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.

“**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).

“**Term Debt**” means on any date, Financial Indebtedness with a scheduled maturity date 12 Months or more from the date on which such Financial Indebtedness was incurred (and for the avoidance of doubt excluding the Facility).

“**Termination Date**” means 364 days from and including the date of this Agreement.

“**Third Party Chargor**” means:

- (a) Luxco 1;
- (b) Luxco 2; and
- (c) 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.

“**Third Party Lease**” means any lease or licence between a member of the Group (as tenant) and a person who is not a member of the Group (as landlord) in respect of a property from which such member of the Group operates a care home, hospital or specialist unit or specialist centre.

“**Total Commitments**” means the aggregate of the Commitments of all the Lenders, up to a maximum aggregate amount of £70,000,000.

“**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 (a) each of the documents listed in Schedule 17 (*Transaction Security*), (b) each Additional Jersey Transaction Security Document, (c) the Additional Guernsey Security Document, and (d) 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.

“**UK**” means the United Kingdom.

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

“**Unrestricted Subsidiary**” has the meaning given to that term in Schedule 16 (*Restrictive Covenants*).

“**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.

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 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;
 - (v) guarantee (other than Clause 20 (*Guarantee, Indemnity and Security*)) has the meaning given to it in Schedule 16 (*Restrictive Covenants*);

- (vi) indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (vii) a 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);
 - (viii) 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;
 - (ix) a reference to set-off includes any right of retention, claim for compensation or right to balance accounts on insolvency;
 - (x) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xi) 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 25.17 (*Acceleration*).
 - (f) The Non-Remediable Event of Default referred to in paragraph (e) above means any circumstance constituting an Event of Default under:
 - (i) Clause 25.2 (*Other Obligations*) as a result of breach of Clause 24.26 (*Administration*);
 - (ii) Clause 25.1 (*Non-Payment*);
 - (iii) Clause 25.5 (*Insolvency*), but excluding for this purpose only any Event of Default arising thereunder because any Restricted Subsidiary is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, in each case solely as a result of the liabilities of such Restricted Subsidiary exceeding its assets (as shown in the unconsolidated balance sheet of such Restricted Subsidiary) provided (i) this results directly from the incurrence by such Restricted Subsidiary of intra-Restricted Group liabilities, (ii) there is no other Event of Default at such time with respect to such Restricted Subsidiary and (iii) such Event of Default is remedied within 5 Business Days of any Obligor becoming aware of the same;
 - (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*);
- (ix) Clause 25.14 (*Governance*); or
- (x) Clause 25.15 (*Standstill Agreement*).

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 Standstill Agreement

This Agreement is without prejudice to the Standstill Agreement.

1.8 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.

1.9 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 37 (*Remedies and waivers*), failing to exercise any right or remedy under any Finance Document; or (v) 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 following:

- (a) the rights, powers or claims of the Security Agent (including for the avoidance of doubt, any successor Security Agent), or of any Lender or any holder of the Senior Secured Notes or the High Yield Notes under or in respect of, or in connection with, those two deeds of accession both dated 18 November 2016 and executed by FSHC and Barclays Bank Plc in its capacity as Security Agent, including, without limitation, any rights, powers or claims directly or indirectly with respect to: (i) any of the Unreported Assets; and/or (ii) any direct or indirect subsidiary of FSHC which owns, whether directly or indirectly, any of the Unreported Assets; or
- (b) the merits of (i) the claim by FSHC in the Rectification Proceedings or the merits of any contesting of, and/or defence to it, (ii) any application or claim whatsoever in, or arising out of, the Rectification Proceedings by any person.

For the purposes of this Clause:

“**Unreported Assets**” means the assets of Brighterkind (PC) Limited and of its subsidiaries from time to time; and

“**Rectification Proceedings**” means proceedings between FSHC and Barclays Bank PLC with Claim No HC-2017-001662 before the English Courts (and any appeal therefrom).

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) 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 16 (*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 CONDITIONS OF UTILISATION

4.1 Initial Conditions Precedent

- (a)** The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' Participation*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received (or waived receipt of) all of the documents and other evidence listed in Part 1 and Part 2 of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent (acting on the written instructions of the Majority Lenders, acting reasonably) (save for the documents described in paragraphs 6(a),(b), (e) and (f) of Part 1 of Schedule 2 (*Conditions Precedent*), which are provided for information only). The Agent shall notify the Company and the Lenders promptly upon being so satisfied.

- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in the paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification (subject to the requirements of paragraph (a) above). The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Further Conditions Precedent

Subject to Clause 4.1 (*Initial Conditions Precedent*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' Participation*) in relation to a Utilisation if on the date of the Utilisation Request and on the proposed Utilisation Date, in relation to any Utilisation:

- (a) no Default is continuing or would result from the proposed Utilisation;
- (b) neither any Obligor nor the Agent (acting on the instruction of the Majority Lenders) is aware of any event or circumstance which is reasonably likely to result in a Default (other than any Default which may arise under Clause 25.4 (*Cross Default*), Clause 25.5 (*Insolvency*) or paragraph (a) of Clause 25.6 (*Insolvency Proceedings*) by virtue of a suspension of payments, in each case solely as a result of: (i) the Original Borrower's failure to pay interest due under the Senior Secured Notes Indenture; or (ii) the Holdco Guarantor's failure to pay interest due under the High Yield Notes Indenture (but, for the avoidance of doubt, this shall not include any other Default arising under Clause 25.5 (*Insolvency*) as a consequence of such failure to pay));
- (c) a Forbearance Expiration Date has not occurred and the Standstill Agreement is in full force and effect and each party thereto (other than the Majority Holders) is in compliance with all provisions and all of its obligations thereunder; and
- (d) the Repeating Representations to be made by each Obligor, are true in all material respects in each case by reference to the facts and circumstances then subsisting.

4.3 Maximum Number of Utilisations

A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation more than six Loans would be outstanding.

5 UTILISATION – LOANS

5.1 Delivery of a Utilisation Request

A Borrower (or the Company on its behalf) may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request for Loans

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Borrower;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (iii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and Amount*);
 - (iv) the proposed Interest Period complies with Clause 12 (*Interest Periods*);

- (v) it appends a Funds Flow Statement; and
 - (vi) it includes a confirmation that the proceeds of such Utilisation shall be applied in accordance with Clause 3.1 (*Purpose*).
- (b) Only one Utilisation may be requested in a Utilisation Request.

5.3 Currency and Amount

- (a) The currency specified in a Utilisation Request must be Sterling.
- (b) The amount of the proposed Utilisation must be:
 - (i) (in respect of the Initial Utilisation) an amount not exceeding £49,000,000;
 - (ii) (in respect of any other Utilisation) an amount which is a minimum of £4,000,000 or, if less, the Available Facility; and
 - (iii) an amount which does not cause the aggregate of all Utilisations (including the proposed Utilisation) to exceed the Total Commitments.

5.4 Lenders' Participation

- (a) If all of the conditions set out in this Agreement have been met, and subject to Clause 7 (*Repayment*), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office by the Specified Time.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 Cancellation of Commitment

- (a) If the Initial Utilisation has not been made on or before the end of the time specified under paragraph (a) of the definition of "Availability Period", the Total Commitments shall be immediately cancelled and all obligations of the Lenders pursuant to this Agreement shall cease.
- (b) The Commitments which are unutilised at the end of the relevant Availability Period for those Commitments shall be immediately cancelled on that date.

6 [RESERVED]

7 REPAYMENT

The Borrower shall repay the Loans in full on the Termination Date.

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 Voluntary Cancellation

At any time during the Availability Period, the Company may, if it gives the Agent not less than three Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of £1,000,000) of the Available Facility. Any cancellation under this Clause 8.2 shall reduce the Commitments of the Lenders rateably.

8.3 Voluntary Prepayment

- (a) A Borrower to which a Utilisation has been made may, if it or the Company gives the Agent not less than three Business 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 16 (*Restrictive Covenants*) is applied in prepayment and cancellation of the Facility at the times and in the order of application contemplated by Clause 9.3 (*Application of Mandatory Prepayments*).

9.2 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
 - (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.

9.3 Application of Mandatory Prepayments

- (a) A cancellation of Commitments and/or prepayment of Utilisations made under Clause 9.1 (*Mandatory prepayment on Asset Dispositions*) shall be applied in the following order:
 - (i) **first**, in cancellation of Available Commitments under the Facility (and the Available Commitment of the Lenders under the Facility will be cancelled rateably); and
 - (ii) **secondly**, in prepayment of Utilisations and cancellation of Commitments (and the Utilisations will be prepaid rateably and applied, as amongst the Lenders on a pro rata basis with a corresponding cancellation of Commitments).
- (b) The Borrowers shall make the cancellation and prepayments referred to in paragraph (a) above at the time required by paragraph 5 of Schedule 16 (*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

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

- (a) Margin; and
- (b) LIBOR.

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 (and, if the Interest Period is longer than three Months, on the dates falling at three Monthly intervals after the first day of the 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, subject to paragraph (b) below, is two per cent. higher than the rate which would have been payable if the overdue amount had, during the period of nonpayment, 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) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

11.4 Notification of Rates of Interest

The Agent shall promptly notify the Lenders and the relevant Borrower (or the Company on its behalf) of the determination of a rate of interest under this Agreement.

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.

12.2 Non-Business Days

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

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 Absence of Quotations

Subject to Clause 13.2 (*Market Disruption*) if LIBOR is to be determined by reference to the Base Reference Banks but a Base Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Base Reference Banks.

13.2 Market Disruption

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable (and in any event by close of business on the date falling at least one Business Day prior to the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If:
 - (i) the percentage rate per annum notified by a Lender pursuant to paragraph (a)(ii) above is less than LIBOR; or
 - (ii) a Lender has not notified the Agent of a percentage rate per annum pursuant to paragraph (a)(ii) above, the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR.

(c) In this Agreement:

“**Market Disruption Event**” means:

- (i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one (if there is more than one) of the Base Reference Banks supplies a rate to the Agent to determine LIBOR for Sterling for the relevant Interest Period; or
- (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 35 per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR.

13.3 Alternative Basis of Interest or Funding

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

13.4 Break Costs

- (a) Each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each 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 which they accrue.

14 FEES

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 1 of Schedule 1 (*the Original Parties*), and
- (A) where the Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 days of the date of this Agreement; 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:

- (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 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.
- (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.
- (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 1 of Schedule 1 (*the Original Parties*); 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

- (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

- (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) 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 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 date of this Agreement shall indicate in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to 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 date of this Agreement.
- (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 date of this Agreement (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 date of this Agreement 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 date of this Agreement (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 (v) above.

(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

The Company shall (or shall procure that the relevant Obligor will), within three Business Days of demand, indemnify each other Secured Party against any cost, loss or liability incurred by it as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 31 (*Sharing Among The Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.

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) 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 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.
- (d) 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.
- (e) 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.
- (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 date of this Agreement) promptly on demand pay the Agent (subject to Clause 29.16 (*Agent's Management Time*)), 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; and
- (b) any other Finance Documents executed after the date of this Agreement.

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 (*Agent's Management Time*)) 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

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 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 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.

20.11 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.

20.12 Droit waivers

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

- (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.

20.13 Security

- (a) Subject to paragraphs (b) and (c) below, on the date of this Agreement, each Obligor confirms that:
 - (i) any 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 will be 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 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; and
- (b) Elli Investments Limited 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.

21 REPRESENTATIONS

21.1 General

- (a) Each Obligor 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.
- (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 date of this Agreement 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

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 Forbearance Arrangements or 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; and, other than those exceptions set out therein, none of the circumstances described in Clause 25.5 (*Insolvency*) applies to any Restricted Subsidiary.

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 the Additional Jersey Transaction Security Documents where such registration shall be made and such fees paid prior to the date of such Additional Jersey Transaction Security Documents).

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 Event of Default and, on the date of this Agreement and on the Closing Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document; and
- (b) other than the Subject Defaults, 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 date of this Agreement:

- (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 date of this Agreement 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 date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied; 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 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 22.1 (*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 date of this Agreement, 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.
- (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 16 (*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 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
 - (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 Part 1 of Schedule 2 (*Conditions Precedent*) 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.
- (b) The aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) and the aggregate gross assets of the members of the Group which are 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. of the aggregate of the earnings before interest, tax, depreciation and amortisation of the Group (calculated on the same basis as EBITDA) and consolidated gross assets of the Group.
- (c) The 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 Holdco Group at any time.

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 Holdco Guarantor, the Company and the Original Borrower is 31 December.

21.30 Documents

The documents delivered to the Agent by or on behalf of any Obligor pursuant to Clause 4.1 (*Initial Conditions Precedent*) 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 38.2 (*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 date of this Agreement, which are permitted to be made pursuant to paragraph (i) of the definition of “**Permitted Investments**” in Schedule 16 (*Restrictive Covenants*) are those set out in Schedule 19 (*Permitted Investments*).

21.35 Times When Representations Made

- (a) All the representations and warranties in this Clause 21 are made by each Original Obligor on the date of this Agreement.
- (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 date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

22 INFORMATION UNDERTAKINGS

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

22.1 Financial Statements

- (a) The Company 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 120 days after the end of each of its Financial Years, annual reports containing, to the extent applicable, the following information: (a) audited consolidated balance sheets of the Holdco Guarantor as of the end of the two most recent Financial Years and audited consolidated financial statements and statements of cash flow of the Holdco Guarantor 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 Holdco Guarantor (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 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 Holdco Guarantor, and a discussion of material commitments and contingencies and critical accounting policies, in a scope that is comparable in all material respects to information provided in a customary offering memorandum in connection with a high yield transaction in Europe pursuant to Rule 144A of the Securities Act; (d) description of the business, management and shareholders of the Holdco Guarantor, 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 Holdco Guarantor beginning with the Financial Quarter ending 31 March 2018, as the case may be, all quarterly reports of the Holdco Guarantor 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 Holdco Guarantor (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 Holdco Guarantor, 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 Holdco Guarantor or change in auditors of the Holdco Guarantor or any other material event that the Holdco Guarantor or any of its Restricted Subsidiaries announces publicly, a report containing a description of such event.

- (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 18 (*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 Company 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) set out (in reasonable detail) computations as to compliance with Clause 23.1 (*Minimum EBITDA*), (ii) (only in respect of a Compliance Certificate supplied by the Company 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 (iii) 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 Company (one of whom must be 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 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 Company's Auditors in the form agreed by the Auditors, the Company and the Majority Lenders.
- (d) The 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 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 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 Holdco Guarantor 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

Company notifies the Agent that there has been a change in the Accounting Principles or the accounting practices, in which case (i) the Company shall supply to the Agent a full description of the change signed by a Senior Management person and (ii) the Company and the Agent shall promptly negotiate in good faith for not less than 30 days with a view to agreeing (x) any amendments to any other relevant term of the Finance Documents which would provide the Lenders with equivalent protection to that given at the date of this Agreement and (y) any other amendments to this Agreement which are necessary to ensure that the adoption by the Holdco Group of such different accounting basis does not result in any material alteration in the commercial effect of the obligations of Holdco or 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 23.1 (*Minimum EBITDA*) and 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.

- (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,

provided that, if the Agent requires such discussions with the Auditors more than once in any Financial Year and on such subsequent occasions within that Financial Year the relevant financial information proves to be complete and accurate in all material respects, then the costs of the Auditors in relation to such investigation shall be at the expense of the Lenders; and

- (ii) shall (provided that (i) it is the general and/or market practice for the Auditors to do so and (ii) the Agent and the 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) supply to the Agent a report issued by its Auditors stating which of its

Subsidiaries are Material Companies and confirming that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of the Guarantors and 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. of earnings before interest, tax, depreciation and amortisation of the Group (calculated on the same basis as EBITDA) and 80 per cent. consolidated gross assets of the Group.

- (d) The Company shall use commercially reasonable endeavours to procure that the Company's Auditors enter into the engagement letter referred to in paragraph (c)(ii) above with the Agent.
- (e) 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 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 Company 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 Company 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;
 - (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 the Holdco Guarantor and the Company.
- (c) If the Holdco Guarantor or the Company updates or changes the Budget, the Company 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 Company (one of whom shall be 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 Company (one of whom shall be 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.

22.7 Year-End

- (a) Subject to paragraph (b) below, no member of the Holdco Group, no GuernseyCo and no Luxco shall change its Accounting Reference Date.
- (b) The Company may change its Accounting Reference Date one time only prior to the Termination Date, provided that:
- (i) the Company shall ensure that each GuernseyCo and each Holdco (the Relevant Entity) shall have the same Accounting Reference Date and that, if the Accounting Reference Date of any GuernseyCo, Holdco or Relevant Entity is changed, the same change shall be made to the Accounting Reference Date of each of the GuernseyCos and each Holdco and each Relevant Entity;
 - (ii) for the Financial Year in which the Accounting Reference Date is changed, the Company shall ensure that the Annual Financial Statements and Quarterly Financial Statements to be delivered at the end of the Financial Quarter following such a change contain sufficient information (including pro forma statements prepared on the basis of a 31 December accounting reference date) as may be reasonably required by the Agent to enable the Lenders to make an accurate comparison between the financial position indicated in the relevant financial statements and the Original Financial Statements; and
 - (iii) if this would not result, directly or indirectly, in any failure or inability to deliver any financial statements prior to the expiry of any relevant time period specified in clause 22.1 (*Financial Statements*).

22.8 Unrestricted Subsidiaries

- (a) If the board of directors of the Company designates a Subsidiary to be an “**Unrestricted Subsidiary**” in accordance with Schedule 16 (*Restrictive Covenants*), the Company shall (or shall procure that the relevant Subsidiary will) deliver to the Agent a certified copy of a resolution of the board of directors giving effect to such designation and an Officer's Certificate certifying that such designation complied with the conditions set out in the definition of “**Unrestricted Subsidiary**” in Schedule 16 (*Restrictive Covenants*).
- (b) The Company may not designate any member of the Group as an “**Unrestricted Subsidiary**” if, as a result of such designation, the test in paragraph (d)(ii) of Clause

24.12 (*Guarantors*) would not be met if tested on a pro forma basis taking into account such designation.

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 to do so would breach any applicable law or regulation.

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 date of this Agreement;

- (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 date of this Agreement; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with “**know your customer**” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations 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 on Part 3 of Schedule 1 (*The Original Parties*) 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 GuernseyCo, any Luxco, 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 FINANCIAL COVENANTS

23.1 Minimum EBITDA

The Company must ensure that in respect of each Relevant Period, commencing with the Relevant Period ending on 31 December 2017, EBITDA of the Restricted Group shall not be less than £33,000,000.00 for that Relevant Period.

23.2 Financial testing

The financial covenant set out in Clause 23.1 (*Minimum EBITDA*) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to paragraphs (a)(i) and (b) of Clause 22.1 (*Financial Statements*) and/or each Compliance Certificate delivered pursuant to Clause 22.2 (*Provision and Contents of Compliance Certificate*).

23.3 EBITDA

For the purposes of testing compliance with the covenant in Clause 23.1 (*Minimum EBITDA*) and the undertaking in Clause 24.12 (*Guarantors*), EBITDA for the Relevant Period shall be determined by reference to the most recently delivered Annual Financial Statements or (as the case may be) Quarterly Financial Statements.

24 GENERAL UNDERTAKINGS

The undertakings in this Clause 24 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

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
 - (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;
 - (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 date of this Agreement.

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) 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):

- (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;
 - (i) 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;
 - (ii) not discontinue the use of any material Intellectual Property necessary for the business of the Group; and
 - (iii) 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 (iii) above, or, in the case of paragraphs (i) and (ii) above, such use, permission to use or omission, is reasonably likely to have or has a Material Adverse Effect.

- (b) 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 16 (*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;
 - (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 Forbearance Arrangements; 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 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 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) directly related or reasonably incidental to the establishment and/or maintenance of its or its Subsidiaries' corporate existence;
- (vii) in the case of Elli Finance II Ltd only, the issuance of any additional payment in kind bonds or loans;
- (viii) in the case of GuernseyCo and the Holdco Guarantor, their entry into and performance of their obligations under the GuernseyCo Loan;
- (ix) 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);
- (x) the entry into and performance of its obligations under the Forbearance Arrangements; or
- (xi) 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
- (xii) 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 and paragraphs (e), (f) and (g) below, 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 and paragraphs (e), (f) and (g) below, any Restricted Subsidiary that becomes a Material Company and any Material Company acquired in accordance with this Agreement after the date of this Agreement 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 thirty 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 thirty Business Days of its acquisition (if earlier) other than the initial acquisition at the date of this Agreement.

- (c) Subject to paragraphs (e), (f) and (g) below, 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*).
- (d) Subject to the Agreed Security Principles and paragraphs (e), (f) and (g) below, the Company shall ensure that:
 - (i) on the date falling 20 Business Days after the date of this Agreement; and
 - (ii) thereafter, when tested once in each Financial Year by reference to the most recent Compliance Certificate supplied by the Company in relation to the Annual Financial Statements delivered to the Agent pursuant to this Agreement:
 - (A) the aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) 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. of the aggregate of the earnings before interest, tax, depreciation and amortisation of the Group (calculated on the same basis as EBITDA) (the “**EBITDA Threshold**”); and
 - (B) the aggregate gross assets of the Guarantors (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. of the consolidated gross assets of the Group (the “**Asset Threshold**”),

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.

- (e) If at any time (i) any Guarantor is or becomes unable to provide Transaction Security or an Excluded Subsidiary is unable to become a Guarantor solely as a result of being an Excluded Subsidiary and (ii) this results (or would result) in the Guarantors in respect of whom Transaction Security is granted representing less than the EBITDA Threshold or the Asset Threshold:
 - (i) the Company shall promptly notify the Agent of the same, certifying the amount of shortfall from each such Threshold and reasonable details in relation thereto (the “**Security Shortfall**”);
 - (ii) for so long as the Security Shortfall (or any part thereof) remains outstanding:
 - (A) the Company shall ensure that each member of the Group (subject to paragraph (g) below) that is not already a Guarantor hereunder will promptly accede to this Agreement as an Additional Guarantor in accordance with and subject to the Agreed Security Principles;

- (B) no Guarantor shall be permitted to resign as a Guarantor under Clause 28.6 (*Resignation of a Guarantor*), except pursuant to a Third Party Disposal under Clause 28.7 (*Resignation*);
- (C) no Guarantor shall be designated as an Unrestricted Subsidiary pursuant to Clause 22.8 (*Unrestricted Subsidiaries*); and
- (iii) the Company shall promptly provide the Agent with any other information reasonably requested by the Agent in relation to the financial condition, assets and operations of the Holdco Group, any member of the Holdco Group (including the Excluded Subsidiaries) and the Third Party Leases.
- (f) The Company shall not be in breach of paragraph (d) above solely as a result of any Security Shortfall for so long as it continues to comply with its obligations under paragraph (e) above.
- (g) 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 become a Guarantor and/or provide Transaction Security hereunder to the extent a security shortfall exists at such time.

24.13 Further Assurance

- (a) Subject to the Agreed Security Principles, each Obligor shall (and the Company shall procure that each Third Party Chargor and each Restricted Subsidiary 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 located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Subject to the Agreed Security Principles, each Obligor shall (and the Company shall procure that each Restricted Subsidiary 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 3 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 when tested once in each Financial Year by reference to the most recent Compliance Certificate supplied by the Company in relation to the Annual Financial Statements delivered to the Agent pursuant to this Agreement, the 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 (the Property Security) is not less than 80 per cent. of the aggregate value of all Freehold Properties owned by the Group at any time (the Freehold Property Threshold).

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 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), except in relation to any person (other than the Company or any Obligor) except to the extent that such change could not reasonably be expected to be materially adverse to the rights and interests of the Finance Parties under the Finance Document.

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 16 (*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 Party; 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 (other than a Luxco) or any other member of the Holdco Group seek the appointment of an administrator, liquidator, receiver or any other insolvency office holder, such person shall be the insolvency officeholders of Ernst & Young LLP ("EY") who are named as, or selected by the EY client service team named in the engagement letter between EY and certain Holdcos on 11 December 2017 (each an "EY 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 (other than a Luxco) or other member of the Holdco Group, the relevant Holdco or member of the Holdco Group shall exercise all its corporate powers to ensure that an EY 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 Conditions subsequent

- (a)** The Company undertakes to:
 - (i)** publicly announce its entry into this Agreement as soon as reasonably practicable, and in any event by no later than one Business Day after its entry into this Agreement; and
 - (ii)** post and maintain the Commitment Documents and 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.
- (b)** Each Holdco (other than each Luxco) shall, within 15 days of the date of this Agreement, appoint the Implementation Officer.

25 EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 25 is an Event of Default (save for Clause 25.17 (Acceleration)).

25.1 Non-Payment

An Obligor or any Third Party Chargor 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 Other Obligations

- (a)** Any Holdco, Obligor or Third Party Chargor 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 Clause 23 (*Financial Covenants*), paragraph (b) of Clause 24.24 (*Valuations*), Clause 24.26 (*Administration*), Clause 24.27 (*Co-operation*) or paragraph (b) of Clause 24.28 (*Conditions Subsequent*).
- (c)** No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 30 days (or, in the case of a breach of Clause 24.20 (*Centre of Main Interests*), within 10 days) of the earlier of (i) the Agent giving notice to the Company, the relevant Obligor or the Third Party Chargor and (ii) any Obligor becoming aware of the failure to comply.

25.3 Misrepresentation

Any representation or statement made or deemed to be made by any Holdco, any Obligor or any Third Party Chargor 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 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:

- (a) the Agent giving notice to the relevant Holdco, Obligor or Third Party Chargor; and
- (b) any Obligor becoming aware of the misrepresentation.

25.4 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 25.4 as a result of:
 - (i) prior to, but not including, the Forbearance Expiration Date, the Subject Defaults, unless the Senior Secured Notes and / or the High Yield Notes are accelerated (whether as a result of that failure to make payment or otherwise);
 - (ii) any arrangement which falls within paragraph (b) of the definition of “Forbearance Arrangements”; or
 - (iii) the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £20,000,000 (or its equivalent in any other currency or currencies).

25.5 Insolvency

- (a) The Holdco Guarantor, the Company, a Restricted Subsidiary or a Third Party Chargor is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more classes of its creditors (excluding for this purpose, discussions with a Finance Party) with a view to rescheduling any of its indebtedness.
- (b) No Event of Default will occur under paragraph (a) above because any Restricted Subsidiary is unable or admits inability to pay its debts as they fall due or is deemed to or

declared to be unable to pay its debts under applicable law, in each case solely as a result of the liabilities of such Restricted Subsidiary exceeding its assets (as shown in the unconsolidated balance sheet of such Restricted Subsidiary) provided (i) this results directly from the incurrence by such Restricted Subsidiary of intra-Restricted Group liabilities, (ii) there is no other Event of Default at such time with respect to such Restricted Subsidiary and (iii) such Event of Default is remedied within 5 Business Days of any Obligor becoming aware of the same.

- (c) A moratorium is declared in respect of any indebtedness of the Holdco Guarantor, the Company, a Restricted Subsidiary or a Third Party Chargor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.
- (d) No Event of Default will occur under paragraph (a) above as a result of: (i) the Forbearance Arrangements; or (ii) prior to, but not including the Forbearance Expiration Date, the Subject Defaults.

25.6 Insolvency Proceedings

- (a) Any corporate action or legal proceedings is taken in relation to:
 - (i) the suspension of payments (other than in respect of the Subject Defaults and pursuant to the Forbearance Arrangements), a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor;
 - (ii) a composition, compromise, assignment or arrangement with any classes of creditors of the Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor (other than pursuant to the Forbearance Arrangements);
 - (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 Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor or any of their assets;
 - (iv) enforcement of any Security over any assets of the Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor with an aggregate value of £7,500,000 (or its equivalent in other currencies);
 - (v) saisie proceedings in Guernsey in respect of any realty of the Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor;
 - (vi) the commencement of proceedings towards the making of a declaration (or the making of a declaration) that the affairs of the Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor are “en desastre”;
 - (vii) the making of an application for a preliminary vesting order in saisie proceedings in Guernsey in respect of the Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor (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 Holdco Guarantor, the Company, any Restricted Subsidiary or any Third Party Chargor,

or any analogous procedure, step, corporate action or legal proceeding is taken in any jurisdiction.

- (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 16 (*Restrictive Covenants*).

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 £7,500,000 (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.
- (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.

25.9 Intercreditor Agreement

- (a) Any party to the Intercreditor Agreement (other than a Finance Party) 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 30 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 16 (*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) 10 per cent. or more of EBITDA; or
 - (ii)** the assets of the Restricted Subsidiary or Restricted Subsidiaries affected by such Expropriation (individually or in aggregate) represent(s) 10 per cent. or more of the gross assets of the Restricted Group calculated on a consolidated basis.

25.12 Repudiation and Rescission of Agreements

- (a)** An Obligor, any Third Party Chargor 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 Appointer) 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 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) If at any time the Implementation Officer ceases to remain appointed at each and every Holdco (other than a Luxco) other than as a result of such Implementation Officer's resignation.
- (c) If at any time the articles of incorporation of either the Holdco Guarantor or the Company are amended other than in accordance with the terms of the applicable Governance Document.
- (d) 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.
- (e) 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.
- (f) A representation or warranty given by any party in a Governance Document (other than the Appointor) is incorrect in any material respect.

25.15 Standstill Agreement

- (a) A Forbearance Expiration Event has occurred or any party to the Standstill Agreement (other than the Majority Holders) fails to comply with the provisions of, or does not perform its obligations under, the Standstill Agreement.
- (b) A representation or warranty given by any party in the Standstill Agreement (other than the Majority Holders) is incorrect in any material respect.
- (c) Any party to the Standstill Agreement (other than the Majority Holders) rescinds or repudiates or purports to rescind or repudiate the Standstill Agreement.

25.16 Material Adverse Change

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

25.17 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 another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”) 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 £2,000,000 and integral multiples of £500,000 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) The Agent shall notify the Company of an assignment or transfer by an Existing Lender within 5 Business Days following date of notification to the Agent of such assignment or transfer provided that any failure to provide such notification will not prejudice the validity of such assignment or transfer.
- (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
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the nonperformance 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 26.10 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other 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 26.10 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released from the obligations (the Relevant Obligations) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a Lender and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 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 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 (or, if the Interest Period is longer than three Months, on the next of the dates which falls at three-Monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 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 (i) 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 2 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 2 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 3 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 2 of Schedule 2 (*Conditions Precedent*).

28.5 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) 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 2 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 2 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 (*Resignation of a Borrower*);
 - (iv) the Company has delivered a certificate to the Agent confirming that the resignation of any such Guarantor will not result in the remaining Guarantors failing to meet the EBITDA Threshold or the Asset Threshold, or in a Security Shortfall, in each case on a pro forma basis (after taking into account the requested Guarantor resignation) at such time; and
 - (v) 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 or 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.
- (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 paragraph (a)(ii) 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 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.
- (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.
- (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 26.10 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day, unless it has received not less than five 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 34.6 (*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 34.2 (*Addresses*) and paragraph (a) of Clause 34.6 (*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 Base Reference Banks

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

29.16 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*).

29.17 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.

29.18 Deduction from Amounts Payable by the Agent

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

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;
- (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:
 - (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 (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 38 (*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 (c) 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 NOTICES

34.1 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.

34.2 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.

34.3 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 34.2 (*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 34.3 will be deemed to have been made or delivered to each of the Obligors.

34.4 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 34.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

34.5 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.

34.6 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;
 - (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 39.1 (*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).

34.7 Use of Websites

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

- (iii) the information is in a format previously agreed between the Company and the Agent.

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

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

If the Company notifies the Agent under paragraph (c)(i) or 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.

34.8 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.

35 CALCULATIONS AND CERTIFICATES

35.1 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.

35.2 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.

35.3 Day Count Convention

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

36 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.

37 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.

38 AMENDMENTS AND WAIVERS

38.1 Intercreditor Agreement

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

38.2 Required Consents

- (a) Subject to Clause 38.3 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 38.
- (c) Each Obligor agrees to any such amendment or waiver permitted by this Clause 38 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.

38.3 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 CONFIDENTIALITY

39.1 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 39.2 (*Disclosure of Confidential Information*) and Clause 39.3 (*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 39 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).

39.2 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*));
- (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 39.2(b)(i), 39.2(b)(ii) and 39.2(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.

39.3 Disclosure to Numbering Service Providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
 - (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) the 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
 - (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 Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its

services in accordance with the standard terms and conditions of that numbering service provider.

- (c) 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 Obligors; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

39.4 Entire Agreement

This Clause 39 (*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.

39.5 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.

39.6 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 39.2 (*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 39 (*Confidentiality*).

39.7 Continuing Obligations

The obligations in this Clause 39 (*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.

40 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.

41 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 20.13(a)(v) and Clause 20.13(b) to (e), which shall be governed by, and construed in accordance with, Guernsey law; (B) save for Clauses 20.13(a)(i) to (iv) and 20.13(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 16 (*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 16 (*Restrictive Covenants*) shall also be enforced in accordance with English law.

42 ENFORCEMENT

42.1 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.

42.2 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 41 (*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.

[Reserved]

PART 2

ORIGINAL BORROWER

Original Borrower

Elli Finance (UK) PLC

Place of Incorporation

England and Wales

PART 3
ORIGINAL GUARANTORS

Original Guarantor	Place of Incorporation
Alliance Care (Dales Homes) Limited	England
Brighterkind (Granby Care) Limited	England
Brighterkind Health Care Group Limited	England
Brighterkind Health Care Limited	England
Brighterkind Jersey Developments Limited	Jersey
County Healthcare Limited	England
Elli Investments Limited	Guernsey
Elli Acquisitions Limited	Guernsey
Elli Group (UK) Ltd	England
Elli Finance (UK) PLC	England
Fife Nursing Homes Limited	Scotland
Fino (Jersey) Newco 1 Limited	Jersey
Fino Seniorco Limited	Cayman Islands
Four Seasons (H2) Limited	England
Four Seasons (JB) Limited	England
Four Seasons (No 10) Limited	Northern Ireland
Four Seasons (No 7) Limited	Northern Ireland
Four Seasons 2000 Limited	England
Four Seasons Group Holdings Limited	England
Four Seasons Group Limited	Isle of Man
Four Seasons Health Care (Capital) Limited	England
Four Seasons Health Care	Isle of Man

Original Guarantor	Place of Incorporation
(England) Limited	
Four Seasons Health Care (Northern Ireland) Limited	Isle of Man
Four Seasons Health Care (Scotland) Limited	Scotland
Four Seasons Health Care Holdings Limited	England
Four Seasons Health Care Limited	England
Four Seasons Health Care Properties (Specialist) Limited	England
Four Seasons Homes No 4 Limited	England
Four Seasons Homes No 6 Limited	England
FSHC (UK) Limited	England
FSHC Developments (Properties) Limited	England
FSHC Properties (CH2) Limited	England
FSHC Properties (Holdings) Limited	Barbados
FSHC Properties (Manor) Limited	England
Granby Care Limited	England
Huntercombe (BIR) Limited	England
Huntercombe (Granby One) Limited	England
Huntercombe Homes No 3 Limited	England
Huntercombe (No 12) Limited	England
Huntercombe (No 13) Limited	England
Huntercombe (No 14) Limited	England
Huntercombe (SP) Limited	England

Original Guarantor	Place of Incorporation
Huntercombe Properties (Frenchay) Limited	England
Huntercombe Property Leasing Limited	Jersey
Leeland Limited	England
Mericourt Limited	England
PHF (CHP) Limited	Jersey
PHF Securities No 1 Limited	Jersey
PHF Securities No 2 Limited	Jersey
Principal Healthcare Limited	England
Principal Healthcare Finance (UK) No 1 Limited	England
Principal Healthcare Finance (UK) No 2 Limited	England
Principal Healthcare Finance Limited	Jersey
Rhyme (Jersey) Limited	Jersey
Silver Springs Limited	Jersey
Sistine Properties (Westbury) Limited	England
Speciality Care (REIT Homes) Limited	England
Tamaris Healthcare (England) Limited	England
Tamulst Care Limited	England
The Huntercombe Group (Leaseco) Limited	England
The Huntercombe Group Limited	England
Whitefield Nursing Home Limited	Scotland

SCHEDULE 2

CONDITIONS PRECEDENT

PART 1

INITIAL CONDITIONS PRECEDENT

1. The Original Obligors

- (a) A copy of the Constitutional Documents and of the constitutional documents of each Original Obligor.
- (b) A copy of a resolution of the board of directors or any other relevant corporate body (or, any type of management board, committee of the board or executives) of each Original Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) in the case of an Original Obligor other than the Company, authorising the Company to act as its agent to the extent legally permissible in connection with the Finance Documents.
- (c) If applicable, a copy of a resolution of the board of directors of the relevant company, establishing the committee referred to in paragraph (b) above.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents and related documents, who will be signing the Finance Documents to which such entity is a party.
- (e) If required by law or requested by a legal adviser to the Agent (acting reasonably), a copy of a resolution signed by all the holders of the issued shares (or a sole participant's decision) in each Original Guarantor approving the terms of, and the transactions contemplated by, the Finance Documents to which that Original Guarantor is a party.
- (f) If required by law, a copy of a resolution of the board of directors of each corporate shareholder of each Original Obligor approving the terms of the resolution referred to in paragraph (e) above.
- (g) A certificate of each Original Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not, subject to any agreed limitations in the Finance Documents, cause any borrowing, guarantee, security or similar limit binding on such Original Obligor to be exceeded.
- (h) In relation to each Original Obligor which is incorporated outside the United Kingdom, such documentary evidence as legal counsel to the Agent may reasonably require that

such Original Obligor has complied with any law in its jurisdiction relating to financial assistance or any analogous process.

- (i) A certificate of an authorised signatory of each Original Obligor, dated as of the date of this Agreement, certifying that each copy document relating to it specified in this Part 1 of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
- (j) In respect of each company incorporated in the United Kingdom whose shares are subject to any Security created under any Transaction 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) 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 this Agreement; 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.
- (k) In respect of each Original Obligor which is a Jersey company, evidence that it has received consent under the Control of Borrowing (Jersey) Order 1958 (as amended).
- (l) In respect of each Original Obligor which is a Cayman Islands company:
 - (i) a Certificate of Good Standing issued by the Registrar of Companies; and
 - (ii) a certified copy of each of the following:
 - (A) a register of mortgages and charges;
 - (B) a register of directors and officers; and
 - (C) a register of members.

2. Governance Changes

(a) The Holdco Guarantor

- (i) Each Governance Document relating to the Holdco Guarantor, including without limitation the applicable Governance Deed and Side Deed, duly executed by the parties thereto.
- (ii) A duly executed letter of consent and declaration of eligibility from each new director of the Holdco Guarantor.

- (iii) A copy of the resolution of the board of directors of the Holdco Guarantor approving the execution of the applicable Governance Documents, the appointment of each new director of the Holdco Guarantor and the issue of one ordinary share to each Appointor Director and the Mutual Director (each as defined in the applicable Governance Deed).
- (iv) A copy of the shareholders resolution signed by all the holders of the issued shares in the Holdco Guarantor approving the appointment of each new director, the issue of one ordinary share to each Appointor Director and the Mutual Director (each as defined in the applicable Governance Deed) and adoption of new articles of incorporation of the Holdco Guarantor.
- (v) A duly executed resignation letter from each director resigning from their position as director of the Holdco Guarantor.

(b) The Company

- (i) Each Governance Document relating to the Company, including without limitation the applicable Governance Deed and Side Deed, duly executed by the parties thereto.
- (ii) A duly executed letter of consent and declaration of eligibility from each new director of each of the Company
- (iii) A copy of the resolution of the board of directors of the Company approving the execution of the applicable Governance Documents and the appointment of each new director of the Company.
- (iv) A copy of the shareholders resolution signed by all the holders of the issued shares in the Company approving the appointment of each new director and adoption of new articles of incorporation of the Company.
- (v) A duly executed resignation letter from each director resigning from their position as director of the Company.

3. Finance Documents

Each of the following documents (in the agreed form) duly executed or delivered by each of the parties thereto:

- (a) this Agreement;
- (b) the Fee Letter;
- (c) a Creditor/Creditor Representative Accession Undertaking (as defined in the Intercreditor Agreement) in respect of the accession of the Agent to the Intercreditor Agreement in its capacity as a Creditor Representative; and
- (d) a Creditor/Creditor Representative Accession Undertaking (as defined in the Intercreditor Agreement) in respect of the accession of the Original Lender to the Intercreditor Agreement in its capacity as a Credit Facility Lender.
- (e) Third party security confirmation letters entered into in favour of the Agent and Security Agent by:
 - (i) Carmel Capital VIII S.à r.l; and

- (ii) Carmel Capital IX S.à r.l.
- (f) each Additional Jersey Security Document together with:
 - (i) share certificates, duly executed stock transfer forms and a certified copy of the updated register of members noting the creation of Security in respect of each Original Obligor that is a Jersey company; and
 - (ii) duly executed notices and (to the extent required under the terms of the relevant Additional Jersey Transaction Security Document) acknowledgements in respect of the Additional Jersey Transaction Security Documents;
- (g) the Additional Guernsey Transaction Security Document; and
- (h) the Utilisation Request relating to the Initial Utilisation to be made on the first Utilisation Date.

4. **Group Information**

A certificate of the Company (signed by a director) certifying as being true and complete and attaching a copy of the Group Structure Chart.

5. **Legal opinions**

- (a) A legal opinion of Weil, Gotshal & Manges (UK) LLP, legal advisers to the Lender in England, addressed to the Finance Parties.
- (b) A legal opinion of Loyens & Loeff Luxemburg S.à r.l. as to Luxembourg law addressed to the Finance Parties.
- (c) A legal opinion of Maples and Calder as to Cayman Islands law addressed to the Finance Parties.
- (d) A legal opinion of DQ Advocates Limited as to Isle of Man law addressed to the Finance Parties.
- (e) A legal opinion of Bedell Cristin as to Guernsey law addressed to the Finance Parties.
- (f) A legal opinion of Bedell Cristin as to Jersey law addressed to the Finance Parties.
- (g) A legal opinion of Tughans as to Northern Ireland law addressed to the Finance Parties.
- (h) A legal opinion of Burness Paull LLP as to Scottish law addressed to the Finance Parties.
- (i) A legal opinion Harridyal-Sodha & Associates (LizaLaw) as to Barbados law addressed to the Finance Parties.

6. Senior Secured Bond Documents and High Yield Bond Documents

- (a) A duly executed officer's certificate from an authorised signatory of the Senior Secured Notes Issuer to the Senior Secured Notes Trustee under the Senior Secured Notes Indenture certifying that the conditions precedent to the execution of the eighth supplemental indenture to the Senior Secured Notes Indenture have been met.
- (b) A duly executed officer's certificate from an authorised signatory of the High Yield Notes Issuer to the High Yield Notes Trustee under the High Yield Notes Indenture certifying that the conditions precedent to the execution of the seventh supplemental indenture to the High Yield Notes Indenture have been met.
- (c) A duly executed private consent letter from the consenting noteholders (constituting the holders of a majority in aggregate principal amount of the Senior Secured Notes then outstanding) to the Senior Secured Notes Issuer consenting to the eighth supplemental indenture to the Senior Secured Notes Indenture with respect of the financing made available pursuant to this Agreement.
- (d) A duly executed private consent letter from the consenting noteholders (constituting the holders of a majority in aggregate principal amount of the High Yield Notes then outstanding) to the High Yield Notes Issuer consenting to the seventh supplemental indenture to the High Yield Notes Indenture with respect to the financing made available pursuant to this Agreement.
- (e) Statement of Accounts/Custodian Holding Statement provided by the Lender to the Senior Secured Notes Trustee under the Senior Secured Notes Indenture for proof of holdings requirements with respect to the eighth supplemental indenture to the Senior Secured Notes Indenture.
- (f) Statement of Accounts/Custodian Holding Statement provided by Lender to the High Yield Notes Trustee for proof of holdings requirements with respect to the seventh supplemental indenture to the High Yield Notes Indenture.
- (g) Eighth supplemental indenture to the Senior Secured Notes Indenture.
- (h) Seventh supplemental indenture to the High Yield Notes Indenture.

7. Other Documents and Evidence

- (a) To the extent not already provided, 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 by the Agent.
- (b) Evidence that all fees, costs and expenses then due and payable under Clause 14 (*Fees*) and Clause 19 (*Costs and Expenses*) will be paid with proceeds from the Initial Utilisation.
- (c) The Standstill Agreement is in full force and effect and each party thereto (other than the Majority Holders) is in compliance with all provisions and all of its obligations thereunder.
- (d) The Funds Flow Statement.
- (e) Evidence that a prepayment and cancellation notice has been delivered pursuant to clauses 8.2 (*Voluntary Cancellation*) and 8.3 (*Voluntary Prepayment*) of the Existing Facility Agreement.

- (f) The engagement letter between the Implementation Officer and each Holdco (other than each Luxco) in such form agreed between the Company and the Majority Lenders.
- (g) Evidence that each Transaction Security Document listed in Schedule 17 (*Transaction Security*) and each Transaction Security Document referred to in confirmation letters delivered pursuant to paragraph 3(e) of this Part 1 of Schedule 2 is in full force and effect and that each Obligor's entry into each such Transaction Security Document to which it is a party was duly authorised by all necessary corporate action on part of that Obligor duly executed by the relevant person or persons so authorised, including without limitation:
 - (i) such duly executed stock transfer forms in respect of any Transaction Security over shares as the Agent (acting on the instructions of the Majority Lenders) may request; and
 - (ii) a certified register of members in respect of each company which shares are subject to Transaction Security.
- (h) A registration consent executed by each grantor of the Additional Jersey Transaction Security Documents to permit the Additional Jersey Transaction Security Documents to be registered on the security interests register maintained under part 8 of the Security Interests (Jersey) Law 2012.

PART 2

CONDITIONS PRECEDENT TO FIRST UTILISATION

1. Evidence that all amounts outstanding under the Existing Facility Agreement have been paid or will be paid simultaneously with the making of the Initial Utilisation (such evidence to be satisfied by provision of a payoff letter signed by the agent under the Existing Facility Agreement and a description of such payment in the Funds Flow Statement).
2. A certificate of an authorised signatory of the Company, dated as of the Closing Date, certifying that the Standstill Agreement is in full force and effect and each party thereto (other than the Majority Holders) is in compliance with all provisions and all of its obligations thereunder.
3. A certificate of an authorised signatory of the Company, dated as of the Closing Date, certifying that each copy document relating to it, any other Obligor specified in this Part 1 of Schedule 2 (*Conditions Precedent*) is in full force and effect and has not been amended or superseded as at a date no earlier than the Closing Date.

PART 3

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.
9. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part 2 of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession 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 Deed; 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 Deed.
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.
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 42.2 (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) 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

From: [Borrower][Company]*
To: [Agent]

Dated:

Dear Sirs:

**ELLI FINANCE (UK) PLC – £70,000,000 Credit Facility Agreement
dated ____ [●] (as amended from time to time, the “Facility Agreement”)**

1. We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
 - (a) Borrower: [●]
 - (b) Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)
 - (c) Currency of Loan: Sterling
 - (d) Amount: [●] or, if less, the Available Facility
 - (e) Interest Period: [●]
3. We confirm that each condition specified in Clause 4.2 (*Further Conditions Precedent*) is satisfied on the date of this Utilisation Request.
4. We confirm that the Utilisation will be applied in accordance with the Funds Flow Statement appended hereto.
5. We confirm that the proceeds of the Utilisation will be applied in accordance with Clause 3.1 (*Purpose*).
6. [The proceeds of this Loan should be credited to [account]].
7. This Utilisation Request is irrevocable.

Yours faithfully

.....

[the Company on behalf of [insert name of relevant Borrower]]/[insert name of Borrower]*

NOTES:

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

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 – £70,000,000 Credit Facility Agreement
dated _____ [●] (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 34.2 (*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:
 - (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

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

- (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 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 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.

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 – £70,000,000 Credit Facility Agreement
dated ____ [●] (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.
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 34.2 (*Addresses*) are set out in the Schedule.

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

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:

- (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.]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.

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.

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.

[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.

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 – £70,000,000 Credit Facility Agreement
dated ____ [●] (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 – £70,000,000 Credit Facility Agreement
dated ____ [●] (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.

* * * * Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the Auditors.

SCHEDULE 10

LMA FORM OF CONFIDENTIALITY UNDERTAKING

[Letterhead of Seller]

To: [insert name of Potential Purchaser]

Re: [●] (the **Company**) — £70,000,000 Credit Facility Agreement dated [●] (the **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**

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 11
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
LIBOR is fixed	Quotation Day as of 11:00 a.m.
Base Reference Banks to supply LIBOR quotation in accordance with Clause 13.1 (<i>Absence of Quotation Day Quotations</i>)	Quotation Day Noon
U = date of Utilisation	
U-X = X Business Days prior to date of Utilisation	

SCHEDULE 12

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)(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.
 - (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) above, the obligations to be secured are the Secured Obligations (as defined below). To the extent possible, the Security is to be granted in favour of the Security Agent on behalf of each Finance Party (including each Hedge Counterparty) from time to time.
- (b) 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):

Secured Obligations has the meaning given to it in the Intercreditor Agreement.

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

- (c) The Secured Obligations will be limited:
 - (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

by 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 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 of the type referred to in paragraph (b) of the definition of "Excluded Subsidiary" in Clause 1.1 (*Definitions*) 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 Secured 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 over 80% by value of the freehold 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. The Company is entitled to procure the release at any

time of any such mortgages granted by any member of the Group provided that at least 80% by value of the freehold properties remains secured at all times.

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*

Notification of pledges over 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 5 Business Days of the relevant Security being granted 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.

If Security is granted in respect of bank accounts (other than any account used to provide cash cover), the relevant pledgor shall be free to deal with those bank accounts (unless that account is required to be restricted under the terms of this Agreement) until a further notice has been given by the Security Agent to the relevant account bank, provided that such further notice may only be given if an Acceleration Notice has been served.

(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, provided that such requests may not be issued more frequently than once every three months.

(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 5 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

- (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 13

MATERIAL COMPANIES

Four Seasons (Bamford) Limited

SCHEDULE 14
[RESERVED]

SCHEDULE 15

[RESERVED]

SCHEDULE 16

RESTRICTIVE COVENANTS

PART 1

COVENANTS

1. LIMITATION ON INDEBTEDNESS

- (a) The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Indebtedness; provided, however, that the Borrower or a Guarantor may Incur Indebtedness if on the date of such Incurrence and after giving pro forma effect thereto (including pro forma application of the proceeds thereof), (i) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries is greater than 2.0 to 1.0 and (ii) the Consolidated Leverage Ratio shall be equal to or less than 4.0 to 1.0.
- (b) Paragraph 1(a) will not prohibit the Incurrence of the following Indebtedness:
- (i) Indebtedness Incurred pursuant to any Credit Facility (including letters of credit or bankers' acceptances issued or created under any Credit Facility), and any Refinancing Indebtedness in respect thereof and Guarantees in respect of such Indebtedness in a maximum aggregate principal amount at any time outstanding not exceeding the sum of (x)(I) the greater of £40 million and (II) 40 % of Consolidated EBITDA and (y) any amounts available to be Incurred under Paragraph 1(b)(x), up to a maximum amount of £75 million, determined on a pro forma basis (including pro forma application of the proceeds thereof) as per the most recently ended four quarter period for which financial statements are available, plus in the case of any refinancing of any Indebtedness permitted under this paragraph 1(b)(i) or any portion thereof, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such refinancing provided that without the prior consent of the Majority Lenders additional Indebtedness may only be borrowed under this paragraph 1(b)(i) from Lenders and on a pro rata basis to the Available Commitments of all such Lenders that agree to provide such additional Indebtedness;
- (ii)
- (A) Guarantees by the Company or any Restricted Subsidiary of Indebtedness of the Company or any Restricted Subsidiary in each case so long as the Incurrence of such Indebtedness being guaranteed is permitted under the terms of this Agreement; provided, 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 Restricted Subsidiary; provided, however, that:
- (A) 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

- (B) 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 (B) the High Yield Notes and High Yield Notes Guarantees and (C) Refinancing Indebtedness that is Incurred in respect of any Indebtedness described in this Paragraph 1(b)(iv) or Incurred pursuant to paragraph 1(a) and (E) Management Advances;
- (v) Indebtedness under Currency Agreements, Interest Rate Agreements and Commodity Hedging Agreements entered into for bona fide hedging purposes of the Company or its Restricted Subsidiaries and not for speculative purposes (as determined in good faith by the Board of Directors or senior management of the Company);
- (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 greater of (x) £ 10 million and (y) 1% of Total Assets;
- (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;
- (viii) Indebtedness arising from agreements providing for customary guarantees, indemnification, obligations in respect of earn-outs or other adjustments of purchase price or, in each case, similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Capital Stock of a Subsidiary (other than Indebtedness Incurred by any Person acquiring or disposing of such business or assets or such Subsidiary for the purpose of financing such acquisition or disposition); provided that in connection with any disposition, the maximum liability of the Company and its Restricted Subsidiaries in respect of all such Indebtedness (other than in respect of environmental matters) shall at no time exceed the gross proceeds, including the fair market value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

- (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 or the discounting or factoring of receivables for credit management purposes, in each case, not in connection with the borrowing of money and Incurred or undertaken in the ordinary course of business on arm's length commercial terms; and
- (x) Indebtedness in an aggregate principal amount which, when taken together with any Refinancing Indebtedness in respect thereof and the principal amount of all other Indebtedness Incurred pursuant to this Paragraph 1(b)(x) and then outstanding, will not exceed £30 million provided, however, that no Indebtedness in excess of £15 million at any one time outstanding may be Incurred pursuant to this Paragraph 1(b)(x) by a Restricted Subsidiary that is not a Guarantor.
- (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 (x) 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;
 - (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) for the purposes of determining "Consolidated EBITDA" under paragraph (y) of Paragraph 1(b)(i), (i) pro forma effect shall be given to Consolidated EBITDA on the same basis as for calculating the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries and (ii) Consolidated EBITDA shall be measured as at the time that the Borrower obtains new commitments (in the case of revolving facilities) or incurs new Indebtedness (in the case of term facilities);
 - (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) If at any time an Unrestricted Subsidiary becomes a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be Incurred by a Restricted Subsidiary as of such date (and, if such Indebtedness is not permitted to be Incurred as of such date under this Paragraph 1, the Company shall be in default of this Paragraph 1).
- (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 date of this Agreement shall be calculated based on the relevant currency exchange rate in effect on the date of this Agreement; and (c) if and for so long as any such Indebtedness is subject to a Currency Agreement with respect to the currency in which such Indebtedness is denominated covering principal and interest on such Indebtedness, the amount of such Indebtedness, if denominated in 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) except:
 - (A) dividends or distributions payable in Capital Stock of the Company (other than Disqualified Stock) or in options, warrants or other rights to purchase such Capital Stock of the Company or in Subordinated Shareholder Funding; and
 - (B) dividends or distributions payable to the Company or a Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to holders of its Capital Stock other than the Company or another Restricted Subsidiary on no more than a pro rata basis, measured by value);
 - (ii) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Company or any direct or indirect Parent held by Persons other than the Company or a Restricted Subsidiary (other than in exchange for Capital Stock of the Company (other than Disqualified Stock));
 - (iii) 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 (other than (a) any such principal payment, purchase, repurchase, redemption, defeasance or other acquisition or retirement or in anticipation of satisfying a sinking fund obligation, principal instalment or final maturity, in each case, due within one year of the date of purchase, repurchase, redemption, defeasance or other acquisition or retirement and (b) any Indebtedness Incurred pursuant to paragraph (iii) of Paragraph 1(b) (Limitation on Indebtedness); provided, that this Paragraph 2(a)(iii) shall not prohibit the capitalization of interest or other amounts due in respect of such Subordinated Indebtedness;
 - (iv) 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; provided, that this Paragraph 2(a)(iv) shall not prohibit the capitalization of interest or other amounts due in respect of such Subordinated Shareholder Funding; or
 - (v) 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)(v) above are referred to herein as a **"Restricted Payment"**).
- (b) The foregoing provisions will not prohibit any of the following (collectively, **"Permitted Payments"**):
- (i) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Capital Stock, Disqualified Stock, Designated Preference Shares, Subordinated Shareholder Funding or Subordinated Indebtedness made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Company (other than Disqualified Stock or Designated Preference Shares), Subordinated Shareholder Funding or a substantially concurrent contribution to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares or through an Excluded Contribution) of the Company;
 - (ii) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness made by exchange for, or out of the proceeds of the

substantially concurrent sale of, Refinancing Indebtedness permitted to be Incurred pursuant to Paragraph 1 (Limitation on Indebtedness);

- (iii) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Preferred Stock of the Company or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Preferred Stock of the Company or a Restricted Subsidiary, as the case may be, that, in each case, is permitted to be Incurred pursuant to Paragraph 1 (Limitation on Indebtedness), and that in each case, constitutes Refinancing Indebtedness;
- (iv) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Indebtedness:
 - (A) from Net Available Cash to the extent permitted under Paragraph 5 (Limitation on Sales of Assets and Subsidiary Stock), but only (A) if the Company shall have first complied with the terms described under Paragraph 5 (Limitation on Sales of Assets and Subsidiary Stock) and repaid all Loans required to be repaid thereby, prior to purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness and (B) at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest; or
 - (B) to the extent required by the agreement governing such Subordinated Indebtedness, following the occurrence of a Change of Control (or other similar event described therein as a “change of control”), but only (i) if the Company shall have complied or complies with the terms of Clause 9.2 (*Change of Control*) of this Agreement and prepaid or prepays all Loans required to be prepaid thereby, prior to or substantially concurrent with purchasing, repurchasing, redeeming, defeasing or otherwise acquiring or retiring such Subordinated Indebtedness (and provided that any offer to purchase such Subordinated Indebtedness upon such change of control shall not settle until payment has been made to, or all Available Commitments have been cancelled with respect to, all Lenders making an election to such effect pursuant to such Clause 9.2 (*Change of Control*) and (B) at a purchase price not greater than 101% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest; or
 - (C) (i) consisting of Acquired Indebtedness (other than Indebtedness Incurred (A) 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 otherwise acquired by the Company or a Restricted Subsidiary or (B) otherwise in connection with or contemplation of such acquisition) and (ii) at a purchase price not greater than 100% of the principal amount of such Subordinated Indebtedness plus accrued and unpaid interest and any premium required by the terms of any Acquired Indebtedness;
- (v) any dividends paid within 60 days after the date of declaration if at such date of declaration such dividend would have complied with this Paragraph 2(b);
- (vi) the purchase, repurchase, redemption, defeasance or other acquisition, cancellation or retirement for value of Capital Stock of the Company or any Parent (including any options, warrants or other rights in respect thereof) and loans, advances, dividends or distributions by the Company to any Parent to permit such Parent to purchase, repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of any Parent (including any options, warrants or other rights in respect thereof), or payments to purchase, repurchase, redeem, defease or otherwise acquire, cancel or retire for value Capital Stock of any Parent (including any options, warrants or other rights in respect

thereof), in each case from Management Investors; provided that such payments, loans, advances, dividends or distributions do not exceed an amount (net of repayments of any such loans or advances) equal to (A) £5 million plus (B) the Net Cash Proceeds received by the Company or its Restricted Subsidiaries since the date of this Agreement (including through receipt of proceeds from the issuance or sale of its Capital Stock or Subordinated Shareholder Funding to a Parent) from, or as a contribution to the equity (in each case under this Paragraph 2(b)(vi), other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Company from, the issuance or sale to Management Investors of Capital Stock (including any options, warrants or other rights in respect thereof) and (C) the Net Cash Proceeds received by the Company or its Restricted Subsidiaries since the date of this Agreement from any insurance claim made under any “key man” life insurance maintained by the Company or its Restricted Subsidiaries;

- (vii) the declaration and payment of dividends to holders of any class or series of Disqualified Stock, or of any Preferred Stock of a Restricted Subsidiary, Incurred in accordance with Paragraph 1 (Limitation on Indebtedness);
- (viii) purchases, repurchases, redemptions, defeasances or other acquisitions or retirements of Capital Stock deemed to occur upon the exercise of stock options, warrants or other rights in respect thereof if such Capital Stock represents a portion of the exercise price thereof;
- (ix) dividends, loans, advances or distributions to any Parent or other payments by the Company or any Restricted Subsidiary in amounts equal to (without duplication):
 - (A) the amounts required for any Parent to pay (x) any Parent Expenses or (y) any Related Taxes;
 - (B) Management Advances; and
 - (C) amounts constituting or to be used for purposes of making payments to the extent specified in paragraphs (ii), (v), (vii) and (xi) of Paragraph 6(c) (Limitation on Affiliate Transactions), provided that any such Restricted Payments made under paragraphs 2(b)(ix)(A)(x) or, pursuant to paragraph 2(b)(ix)(C) above (solely in respect of payments specified in paragraph (v) of Paragraph 6(c)) do not exceed an aggregate amount of £2,000,000 per calendar year.
- (x) payments by the Company, or loans, advances, dividends or distributions to any Parent to make payments, to holders of Capital Stock of the Company or any Parent in lieu of the issuance of fractional shares of such Capital Stock; provided, however, that any such payment, loan, advance, dividend or distribution shall not be for the purpose of evading any limitation of this Paragraph 2 or otherwise to facilitate any dividend or other return of capital to the holders of such Capital Stock (as determined in good faith by the Board of Directors);
- (xi) Investments in an aggregate amount outstanding at any time not to exceed the aggregate cash amount of Excluded Contributions, or consisting of non-cash Excluded Contributions, or Investments to the extent made in exchange for or using as consideration Investments previously made under this Paragraph 2(b)(xi);
- (xii) (i) the declaration and payment of dividends to holders of any class or series of Designated Preference Shares of the Company issued after the date of this Agreement; and (ii) the declaration and payment of dividends to any Parent or any Affiliate thereof, the proceeds of which will be used to fund the payment of dividends to holders of any class or series of Designated Preference Shares of such Parent issued after the date of this Agreement; provided, however, that, in the case of clauses (i) and (ii), the amount of all dividends declared or paid pursuant to this Paragraph 2(b)(xii) shall not exceed the Net Cash Proceeds received by the Company or the aggregate amount contributed in cash to

the equity (other than through the issuance of Disqualified Stock or an Excluded Contribution or, in the case of Designated Preference Shares by a Parent or an Affiliate the issuance of Designated Preference Shares) of the Company or contributed as Subordinated Shareholder Funding to the Company, from the issuance or sale of such Designated Preference Shares;

- (xiii) dividends or other distributions of Capital Stock of Unrestricted Subsidiaries; and
 - (xiv) dividends and distributions to the Holdco Guarantor for the payment of regularly scheduled interest as such interest comes due on under the High Yield Notes, provided that the Holdco Guarantor applies such dividends and distributions in payment of such interest substantially concurrently with the receipt thereof.
- (c) The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The fair market value of any cash Restricted Payment shall be its face amount, and the fair market value of any non-cash Restricted Payment shall be determined conclusively by the Board of Directors of the Company acting in good faith.

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 date of this Agreement 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 (x) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock and (y) the subordination of (including the application of any standstill requirements to) loans or advances made to the 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 date of this Agreement;
 - (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
 - (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) any encumbrance or restriction pursuant to Purchase Money Obligations and Capitalized Lease Obligations permitted under this Agreement, in each case, that impose encumbrances or restrictions on the property so acquired or any encumbrance or restriction pursuant to a joint venture agreement that imposes restrictions on the transfer of the assets of the joint venture;

- (vi) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition to a Person of all or substantially all the Capital Stock or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;
- (vii) customary provisions in leases, licenses, joint venture agreements, and other similar agreements and instruments entered into in the ordinary course of business;
- (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;
- (xi) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be Incurred subsequent to the date of this Agreement pursuant to Paragraph 1 (Limitation on Indebtedness) if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Lenders than (i) the encumbrances and restrictions contained in the Finance Documents, together with the security documents associated therewith, and the Intercreditor Agreement, in each case as in effect on the date of this Agreement or (ii) in comparable financings (as determined in good faith by the Company) and where, in the case of this clause (xi), the Company determines at the time such Indebtedness is Incurred that such encumbrances or restrictions will not adversely affect, in any material respect, the Borrowers' ability to make principal or interest payments on the Loans;
- (xii) restrictions effected in connection with a Qualified Receivables Financing that, in the good faith determination of the Board of Directors of the Company, are necessary or advisable to effect such Qualified Receivables Financing; 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 (including, for the avoidance of doubt, if such Asset Disposition is a Permitted Asset Swap);
 - (ii) in any such Asset Disposition, or series of related Asset Dispositions (except to the extent the Asset Disposition is a Permitted Asset Swap), at least 75% of the consideration from such Asset Disposition (excluding any consideration by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, other than Indebtedness) received by the Company or such Restricted Subsidiary, as the 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 9.3 (*Application of Mandatory Prepayments*) within 10 Business Days of receipt of the Net Available Cash; and
 - (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.
- (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) For the purposes of paragraph (ii) of Paragraph 5(a), the following will be deemed to be cash:
- (i) the assumption by the transferee of Indebtedness of the Company or Indebtedness of a Restricted Subsidiary (other than Subordinated Indebtedness of the Borrower or a Guarantor) and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition;
 - (ii) securities, notes or other obligations received by the Company or any Restricted Subsidiary from the transferee that are converted by the Company or such Restricted Subsidiary into cash or Cash Equivalents within 180 days following the closing of such Asset Disposition;
 - (iii) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that the Company and each other Restricted Subsidiary are released from any Guarantee of payment of such Indebtedness in connection with such Asset Disposition;
 - (iv) consideration consisting of Indebtedness of the Company (other than Subordinated Indebtedness) received after the date of this Agreement from Persons who are not the Company or any Restricted Subsidiary; and
 - (v) any Designated Non-Cash Consideration received by the Company or any Restricted Subsidiary in such Asset Dispositions having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this Paragraph 5 that is at that time outstanding, not to exceed the greater of (i) £25 million and (ii) 2.75% of Total Assets (with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value).

6. **LIMITATION ON AFFILIATE TRANSACTIONS**

- (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 aggregate value in excess of £2 million unless:
- (i) the terms of such Affiliate Transaction taken as a whole are not materially less favorable to the Company or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction or the execution of the agreement providing for such transaction in arm's length dealings with a Person who is not such an Affiliate;

- (ii) in the event such Affiliate Transaction involves an aggregate value in excess of £10 million, the terms of such transaction have been approved by a resolution of the majority of the members of the Board of Directors of the Company; and
 - (iii) in the event such Affiliate Transaction involves an aggregate value in excess of £30 million, the Company has received a written opinion from an Independent Financial Adviser that such Affiliate Transaction is fair, from a financial standpoint, to the Company and its Restricted Subsidiaries or that the terms are not materially less favorable than those that could reasonably have been obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate.
- (b) Any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in paragraph (ii) of Paragraph 6(a) if such Affiliate Transaction is approved by a resolution of a majority of the Disinterested Directors. If there are no Disinterested Directors, any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in Paragraph 6(a) if the Company or any of its Restricted Subsidiaries, as the case may be, delivers to the Agent a letter from an Independent Financial Adviser stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Company or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person on an arm's length basis.
- (c) The provisions of Paragraph 6(a) will not apply to:
 - (i) any Restricted Payment permitted to be made pursuant to the covenant described under Paragraph 2 (Limitation on Restricted Payments), any Permitted Payments (other than pursuant to paragraphs (ix)(B), and (ix)(C) of Paragraph 2(b)) or any Permitted Investment (other than Permitted Investments as defined in paragraphs (a)(ii), (b), (k) and (o) of the definition thereof);
 - (ii) any issuance or sale of Capital Stock, options, other equity-related interests or other securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, or entering into, or maintenance of, any employment, consulting, collective bargaining or benefit plan, program, agreement or arrangement, related trust or other similar agreement and other compensation arrangements, options, warrants or other rights to purchase Capital Stock of the Company, any Restricted Subsidiary or any Parent, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits or consultants' plans (including valuation, health, insurance, deferred compensation, severance, retirement, savings or similar plans, programs or arrangements) or indemnities provided on behalf of officers, employees, directors or consultants approved by the Board of Directors of the Company, in each case in the ordinary course of business;
 - (iii) any Management Advances;
 - (iv) any transaction between or among the Company and any Restricted Subsidiary (or entity that becomes a Restricted Subsidiary as a result of such transaction), or between or among Restricted Subsidiaries;
 - (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 date of this Agreement, 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 or to the extent not more disadvantageous to the Lenders in any material respect and the entry into and performance of any registration rights or other listing agreement in connection with any Public Offering;
- (vii) execution and delivery of any Tax Sharing Agreement and performance of any Tax Sharing Agreement to the extent not prohibited by the definition of “Permitted Payments”, or the formation and maintenance of any consolidated group for tax, accounting or cash pooling or management purposes in the ordinary course of business;
- (viii) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case in the ordinary course of business, which are either fair to the Company or the relevant Restricted Subsidiary in the reasonable determination of the Board of Directors or the senior management of the Company or the relevant Restricted Subsidiary, as applicable, or on terms no less favorable than those that could reasonably have been obtained at such time from an unaffiliated party;
- (ix) any transaction in the ordinary course of business between or among the Company or any Restricted Subsidiary and any Affiliate of the Company or an Associate or similar entity that would constitute an Affiliate Transaction solely because the Company or a Restricted Subsidiary or any Affiliate of the Company or a Restricted Subsidiary or any Affiliate of any Permitted Holder owns an equity interest in or otherwise controls such Affiliate, Associate or similar entity;
- (x) (i) issuances or sales of Capital Stock (other than Disqualified Stock or Designated Preference Shares) of the Company or options, warrants or other rights to acquire such Capital Stock or Subordinated Shareholder Funding; provided that the interest rate and other financial terms of such Subordinated Shareholder Funding are approved by a majority of the members of the Board of Directors of the Company in their reasonable determination and (ii) any amendment, waiver or other transaction with respect to any Subordinated Shareholder Funding in compliance with the other provisions of this Agreement;
- (xi) payment to any Permitted Holder of all reasonable out of pocket expenses Incurred by such Permitted Holder in connection with its direct or indirect investment in the Company and its Subsidiaries; and
- (xii) any transaction effected as part of a Qualified Receivables Financing.

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, unless:
 - (i) the resulting, surviving or transferee Person (the “**Successor Company**”) will be a Person organized and existing under the laws of any member state of the European Union on January 1, 2004, or the United States of America, any State of the United States or the District of Columbia, Canada or any province of Canada, Norway or Switzerland and the Successor Company (if not the Company or the Borrower) will expressly assume all the obligations of the Company or the Borrower, as applicable, under this Agreement, the Intercreditor Agreement and the Transaction Security Documents;

- (ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;
 - (iii) immediately after giving effect to such transaction, either (i) the Successor Company would be able to Incur at least an additional £1.00 of Indebtedness pursuant to the first paragraph of the covenant described under Paragraph 1 (Limitation on Indebtedness) or (ii) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such transaction; and
 - (iv) the Company shall have delivered to the Agent an Officer's Certificate and an Opinion of Counsel, each to the effect that such consolidation, merger or transfer (if any) comply with this Agreement, and that all conditions precedent therein provided for relating to such transaction have been complied with and an Opinion of Counsel to the effect that the assumption (if any) of obligations under Paragraph 7(a)(i) above has been duly authorized, executed and delivered and is a legal, valid and binding agreement enforceable against the Successor Company and this Agreement constitutes legal, valid and binding obligations of the Successor Company, enforceable in accordance with its terms (in each case, in form and substance reasonably satisfactory to the Agent); provided that in giving an Opinion of Counsel, counsel may rely on an Officer's Certificate as to any matters of fact, including as to satisfaction of Paragraphs 7(a)(ii) and 7(a)(iii) above.
- (b) Any Indebtedness that becomes an obligation of the Company or any Restricted Subsidiary (or that is deemed to be Incurred by any Restricted Subsidiary that becomes a Restricted Subsidiary) as a result of any such transaction undertaken in compliance with this covenant, and any Refinancing Indebtedness with respect thereto, shall be deemed to have been Incurred in compliance with Paragraph 1 (Limitation on Indebtedness).
 - (c) For purposes of this Paragraph 7 only, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all the properties and assets of the Company.
 - (d) The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company or the Borrower, as applicable, under this Agreement but in the case of a lease of all or substantially all its assets, the predecessor company will not be released from its obligations under this Agreement.
 - (e) Notwithstanding the paragraphs (ii) and (iii) of Paragraph 7(a) (which do not apply to transactions referred to in this Paragraph 7(e)) and, other than with respect to Paragraph 7(c), Paragraph 7(a)(iv), (i) any Restricted Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to the Company and (ii) any Restricted Subsidiary may consolidate or otherwise combine with, merge into or transfer all or part of its properties and assets to any other Restricted Subsidiary. Notwithstanding the preceding paragraphs (ii) and (iii) of Paragraph 7(a) (which do not apply to the transactions referred to in this Paragraph 7(e)), the Company may consolidate or otherwise combine with or merge into an Affiliate incorporated or organized for the purpose of changing the legal domicile of the Company, reincorporating the Company in another jurisdiction, or changing the legal form of the Company.
 - (f) Paragraphs 7(a) through 7(e) (other than the requirements of Paragraph 7(a)(ii)) shall not apply to the creation of a new subsidiary as a Restricted Subsidiary of the Company.

Subsidiary Guarantors

- (g) 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, unless
 - (A) the other Person is the Company or any Restricted Subsidiary that is a Guarantor or becomes a Guarantor concurrently with the transaction; or
 - (B)
 - (I) either (x) a Guarantor is the continuing Person or (y) the resulting, surviving or transferee Person expressly assumes all the obligations of the Guarantor under this Agreement, the Intercreditor Agreement and the Transaction Security Documents; and
 - (II) immediately after giving effect to the transaction, no Default has occurred and is continuing; or
 - (C) the transaction constitutes a sale or other disposition (including by way of consolidation or merger) of the Guarantor or the sale or disposition of all or substantially all the assets of the Guarantor (in each case other than to the Company or a Restricted Subsidiary) otherwise permitted by this Agreement.

8. SUSPENSION OF COVENANTS ON ACHIEVEMENT OF INVESTMENT GRADE STATUS

- (a) If on any date following the date of this Agreement, the Loans have achieved Investment Grade Status and no Default or Event of Default has occurred and is continuing (a "Suspension Event"), then, beginning on that day and continuing until the Reversion Date, the following provisions of this Part 1 of Schedule 16 will not apply: Paragraph 1 (Limitation on Indebtedness), Paragraph 2 (Limitation on Restricted Payments), Paragraph 4 (Limitation on Restrictions on Distributions from Restricted Subsidiaries), Paragraph 5 (Limitation on Sales of Assets and Subsidiary Stock), Paragraph 6 (Limitation on Affiliate Transactions), the provisions of paragraph (a)(iii) of Paragraph 7 (Merger and Consolidation), Paragraph 9 (Impairment of Security Interest) and Paragraph 13 (Limitation on Sale and Leaseback Transactions) and, in each case, any related default provision in this Agreement will cease to be effective and will not be applicable to the Company and its Restricted Subsidiaries.
- (b) The provisions of this Part 1 of Schedule 16 disappplied by Paragraph 8(a) and any related default provisions will again apply according to their terms from the first day on which a Suspension Event ceases to be in effect. Such provisions will not, however, be of any effect with regard to actions of the Company or the Restricted Subsidiaries properly taken during the continuance of the Suspension Event, and Paragraph 2 (Limitation on Restricted Payments) will be interpreted as if it has been in effect since the date of this Agreement except that no default will be deemed to have occurred solely by reason of a Restricted Payment made while Paragraph 2 (Limitation on Restricted Payments) was suspended.
- (c) On the Reversion Date, all Indebtedness Incurred during the continuance of the Suspension Event will be classified, at the Company's option, as having been Incurred pursuant to Paragraph 1(a) (Limitation on Indebtedness) or one of the paragraphs of Paragraph 1(b) (Limitation on Indebtedness), to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Event

and outstanding on the Reversion Date. To the extent such Indebtedness would not be so permitted to be incurred under Paragraphs 1(a) or 1(b) (Limitation on Indebtedness) such Indebtedness will be deemed to have been outstanding on the date of this Agreement, so that it is classified as permitted under paragraph (b)(iii)(C) of Paragraph 1 (Limitation on Indebtedness).

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 (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), unless contemporaneously with such amendment, extension, renewal, restatement, supplement or modification or release (followed by an immediate retaking of a Lien of at least equivalent ranking over the same assets), the Holdco Guarantor or the Company (as applicable) delivers to the Security Agent and the Agent, either (1) a solvency opinion, in form and substance reasonably satisfactory to the Security Agent and the Agent, from an independent financial adviser or appraiser or investment bank of international standing which confirms the solvency of the Holdco Guarantor and its Subsidiaries or the Company and its Subsidiaries, taken as a whole (as applicable), after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a lien of at least equivalent ranking over the same assets), (2) a certificate from the chief financial officer or the Board of Directors of the relevant Person which confirms the solvency of the person granting the security interest after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a lien of at least equivalent ranking over the same assets), or (3) an opinion of counsel (subject to customary qualifications), in form and substance reasonably satisfactory to the Security Agent and the Agent, confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or release (followed by an immediate retaking of a lien of at least equivalent ranking over the same assets), the Lien or Liens created under the Transaction Security Document, so amended, extended, renewed, restated, supplemented, modified or released and retaken are valid and perfected Liens not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Lien or Liens were not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification or release and retake and to which the new Indebtedness secured by the Permitted Collateral Lien is not subject. In the event that the Holdco Guarantor, the Company and its Restricted Subsidiaries comply with the requirements of this Paragraph 9, the Agent and the Security Agent shall (subject to customary protections and indemnifications) consent to such amendments without the need for instructions from 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 on terms that in the good faith judgment of the Company are not materially less favorable to the Holders), including containing substantially the same terms with respect to the application of the proceeds of the collateral held thereunder and the means of enforcement, it being understood that an increase in the amount of Indebtedness being subject to the terms of the Intercreditor Agreement or Additional Intercreditor Agreement will not be deemed to be less favorable to the Holders and will be permitted by this covenant if the incurrence of such Indebtedness and any Lien in its favor is permitted by Paragraph 1 (Limitation on Indebtedness) and Paragraph 3 (Limitation on Liens); 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 date of this Agreement.
- (b) At the written direction of the Company and without the consent of the Lenders, 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 the Indenture), (iii) add Restricted Subsidiaries to the Intercreditor Agreement, (iv) further secure the Loans (including additional Indebtedness incurred in compliance with this Agreement), (v) 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 material 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 38 (*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) upon release of a Guarantee (with respect to the Liens securing such Guarantee granted by such Guarantor);
 - (iii) in connection with any disposition of Collateral to any person other than the Company or any of its Restricted Subsidiaries, or to a Guarantor; provided that if the Collateral is disposed to a Guarantor, the relevant Collateral becomes immediately subject to a substantially equivalent Lien in favor of the Security Agent securing the Loans (but

excluding any transaction subject to paragraphs (a) to (f) of Paragraph 7 (Merger and Consolidation); provided, further, that, in each case, such disposition is permitted by this Agreement;

- (iv) if the Company designates any Subsidiary Guarantor to be an Unrestricted Subsidiary in accordance with the applicable provisions of this Agreement, the release of the property, assets and Capital Stock of such Unrestricted Subsidiary;
 - (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; provided that the Borrower or any Guarantor may enter into a sale and leaseback transaction if the Borrower or that Guarantor, as applicable, could have (a) incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction pursuant to Paragraph 1 (Limitation on Indebtedness) and (iii) incurred a Lien to secure such Indebtedness pursuant to the covenant described above pursuant to Paragraph 3 (Limitation on Liens).

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, whether owned on the date of this Agreement or acquired after that date, or any interest therein or any income or profits therefrom, securing any Indebtedness or Attributable Debt except Permitted Collateral Liens.

PART 2

DEFINITIONS

Any capitalised terms used in this Schedule 16 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 16 (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 2 of Schedule 16 are to the Paragraphs of Part 1 of this Schedule 16.

“Additional Assets” means:

- (a) any property or assets (other than Indebtedness and Capital Stock) used or to be used by the Company, a Restricted Subsidiary or otherwise useful in a Similar Business (it being understood that capital expenditures on property or assets already used in Similar Business or to replace any property or assets that are the subject of such Asset Disposition shall be deemed an investment in Additional Assets);
- (b) the Capital Stock of a Person that is engaged in a Similar Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Company or a Restricted Subsidiary; or
- (c) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary.

“Affiliate” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Asset Disposition” means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of business), transfer, issuance or other disposition, or a series of related sales, leases (other than operating leases entered into in the ordinary course of business), transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors' qualifying shares), property or other assets (each referred to for the purposes of this definition as a “disposition”) by the 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 9.2 (*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;
- (b) a disposition of cash, Cash Equivalents, Temporary Cash Investments or Investment Grade Securities;
- (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;

- (e) transactions permitted under Paragraph 7 (Merger and Consolidation) or a transaction that constitutes a Change of Control;
- (f) an issuance of Capital Stock by a Restricted Subsidiary to the Company or to another Restricted Subsidiary or as part of or pursuant to an equity incentive or compensation plan approved by the Board of Directors;
- (g) [RESERVED];
- (h) any Restricted Payment that is permitted to be made, and is made, under the covenant described above under Paragraph 2 (Limitation on Restricted Payments) and the making of any Permitted Payment or Permitted Investment or, solely for purposes of paragraph (iii) of Paragraph 5(a) (Limitation on Sales of Assets and Subsidiary Stock) asset sales, the proceeds of which are used to make such Restricted Payments or Permitted Investments;
- (i) dispositions in connection with Permitted Liens;
- (j) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;
- (k) the licensing or sub-licensing of intellectual property or other general intangibles and licenses, sub-licenses, leases or subleases of other property, in each case, in the ordinary course of business;
- (l) foreclosure, condemnation or any similar action with respect to any property or other assets;
- (m) the sale or discount (with or without recourse, and on customary or commercially reasonable terms) of accounts receivable or notes receivable arising in the ordinary course of business, or the conversion or exchange of accounts receivable for notes receivable;
- (n) sales or dispositions of receivables in connection with any Qualified Receivables Financing;
- (o) any disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary;
- (p) any disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Company or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired, or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;
- (q) any surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;
- (r) any disposition with respect to property built, owned or otherwise acquired by the Company or any Restricted Subsidiary pursuant to customary sale and leaseback transactions, finance leases, asset securitizations and other similar financings permitted by this Agreement;
- (s) any disposition of property which is on the market as at the date of this Agreement or to which a member of the Group has contractually committed to prior to the date of this Agreement and, in each case, which have been disclosed to, and approved by, the Majority Lenders;
- (t) any disposition of assets for cash, where the Net Available Cash (when aggregated with the Net Available Cash from any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs) does not exceed £5,390,000 (or its equivalent in other currencies) in aggregate during the life of the Facility.

“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 date of this Agreement and not giving effect to changes after the date of this Agreement. 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;
- (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 date of this Agreement), 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 date of this Agreement), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of the Company; provided that for the purposes of this clause, no Change of Control shall be deemed to occur by reason of the Company becoming a Subsidiary of a Successor Parent;
- (b) following the 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
- (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
- (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 Leverage” means the sum of the aggregate outstanding Financial Indebtedness of the Company and its Restricted Subsidiaries (excluding Hedging Obligations except to the extent provided in paragraph (c) of Paragraph 1(f) (Limitation on Indebtedness)) as of the relevant date of calculation on a consolidated basis in accordance with GAAP.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (x) Consolidated Leverage at such date to (y) the aggregate amount of Consolidated EBITDA for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which internal consolidated financial statements of the Company are available; provided, however, that for the purposes of calculating Consolidated EBITDA for such period, if, as of such date of determination:

- (a) since the beginning of such period the Company or any Restricted Subsidiary has disposed of any company, any business, or any group of assets constituting an operating unit of a business (any such disposition, a Sale) or if the transaction giving rise to the need to calculate the Consolidated Leverage Ratio is such a Sale, Consolidated EBITDA for such period will be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the assets which are the subject of such Sale for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such period; provided that if any such Sale constitutes “discontinued operations” in accordance with the then applicable GAAP, Consolidated Net Income shall be reduced by an amount equal to the Consolidated Net Income (if positive) attributable to such operations for such period or increased by an amount equal to the Consolidated Net Income (if negative) attributable thereto for such period;
- (b) since the beginning of such period, the Company or any Restricted Subsidiary (by merger or otherwise) has made an Investment in any Person that thereby becomes a Restricted Subsidiary, or otherwise has acquired any company, any business, or any group of assets constituting an operating unit of a business (any such Investment or acquisition, a Purchase), including any such Purchase occurring in connection with a transaction causing a calculation to be made hereunder, Consolidated EBITDA for such period will be calculated after giving pro forma effect thereto as if such Purchase occurred on the first day of such period;
- (c) since the beginning of such period, any Person (that became a Restricted Subsidiary or was merged or otherwise combined with or into the Company or any Restricted Subsidiary since the beginning of such period) will have made any Sale or any Purchase that would have required an adjustment pursuant to paragraph (a) or (b) above if made by the Company or a Restricted Subsidiary since the beginning of such period, Consolidated EBITDA for such period will be calculated after giving pro forma effect thereto as if such Sale or Purchase occurred on the first day of such period; and
- (d) for the purposes of this definition and the definitions of Consolidated EBITDA, Consolidated Income Taxes, Consolidated Interest Expense, Consolidated Net Income and Fixed Charge Coverage Ratio, (a) calculations will be as determined in good faith by a responsible financial or accounting officer of the Company (including in respect of synergies and cost savings) and (b) in determining the amount of Indebtedness outstanding on any date of determination, pro forma effect shall be given to any Incurrence, repayment, repurchase, defeasance or other acquisition, retirement or discharge of Indebtedness as if such transaction had occurred on the first day of the relevant period.

“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;
- (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.

“Consolidated Secured Leverage Ratio” means the Consolidated Leverage Ratio, but calculated by excluding from Financial Indebtedness all Financial Indebtedness other than Secured Indebtedness and by excluding Secured Indebtedness that is secured by a Lien on the Collateral on a junior priority basis.

“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
- (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, with respect to the Company or any of its Subsidiaries, one or more debt facilities, indentures or other arrangements (including under the Finance Documents or commercial paper facilities and overdraft facilities) with banks, other financial institutions or investors providing for revolving credit loans, term loans, notes, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables), letters of credit or other Indebtedness, in each case, as amended, restated, modified, renewed, refunded, replaced, restructured, refinanced, repaid, increased or extended from time to time (whether in whole or in part and whether or not with the original administrative agent and lenders or another administrative agent or agents or other banks or institutions and whether provided under the Finance Documents or one or more other credit or other agreements, indentures, financing agreements or otherwise) and in each case including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing (including any notes and letters of credit issued pursuant thereto and any Guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other Guarantees, pledges, agreements, security agreements and collateral documents). Without limiting the generality of the foregoing, the term “Credit Facility” shall include any agreement or instrument (a) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (b) adding Subsidiaries of the Company as additional borrowers or guarantors thereunder, (c) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (d) otherwise altering the terms and conditions thereof.

“Currency Agreement” means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency futures contract, currency option contract, currency derivative or other similar agreement to which such Person is a party or beneficiary.

“Default” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“Designated Non-Cash Consideration” means the fair market value (as determined in good faith by the Company) of non-cash consideration received by the Company or one of its Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Non-Cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, less the amount of cash, Cash Equivalents or Temporary Cash Investments received in connection with a subsequent payment, redemption, retirement, sale or other disposition of such Designated Non-Cash Consideration. A particular item of Designated Non-Cash Consideration will no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in compliance with the covenant described under Paragraph 5 (Limitation on Sales of Assets and Subsidiary Stock).

“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 (x) 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 (y) 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 or through an Excluded Contribution) of the Company or any of its Restricted Subsidiaries.

“Escrowed Proceeds” means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or Incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term “Escrowed Proceeds” shall include any interest earned on the amounts held in escrow.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder, as amended.

“Excluded Contribution” means Net Cash Proceeds or property or assets received by the Company as capital contributions to the equity (other than through the issuance of Disqualified Stock or Designated Preference Shares) of the Company after the date of this Agreement or from the issuance or sale (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company

or any Subsidiary of the Company for the benefit of its employees to the extent funded by the Company or any Restricted Subsidiary) of Capital Stock (other than Disqualified Stock or Designated Preference Shares) of the Company, in each case, to the extent designated as an Excluded Contribution pursuant to an Officer's Certificate of the Company on or about the date such capital contributions are made or such Capital Stock is issued or sold..

“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 Charge Coverage Ratio” means, with respect to any Person on any determination date, the ratio of Consolidated EBITDA of such Person for the most recently completed four consecutive fiscal quarters ending immediately prior to such determination date for which internal consolidated financial statements are available to the Fixed Charges of such Person and its Restricted Subsidiaries for such four consecutive fiscal quarters. In the event that the Company or any Restricted Subsidiary Incurs, assumes, Guarantees, redeems, defeases, retires or extinguishes any Indebtedness (other than Indebtedness incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the Fixed Charge Coverage Ratio Calculation Date), then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such Incurrence, assumption, Guarantee, redemption, defeasance, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period, provided, however, that the pro forma calculation of Fixed Charges shall not give effect to (i) any Indebtedness incurred on the Fixed Charge Coverage Ratio Calculation Date pursuant to provisions of Paragraph 1(b) (Limitation on Indebtedness) or (ii) the discharge on the Fixed Charge Coverage Ratio Calculation Date of any Indebtedness to the extent that such discharge results from the proceeds incurred pursuant to the provisions of Paragraph (b) (Limitations on Indebtedness).

- (a) For purposes of making the computation referred to above, any Investment, acquisitions, dispositions, mergers, consolidations and disposed or discontinued operations that have been made by the Company or any of its Restricted Subsidiaries during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations and disposed or discontinued operations (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger or consolidation or disposed or discontinued any operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect thereto for such period as if such Investment, acquisition, disposition, merger, consolidation or disposed or discontinued operation had occurred at the beginning of the applicable four-quarter period.
- (b) For purposes of this definition, whenever pro forma effect is to be given to a transaction, the pro forma calculations shall be made in good faith by a responsible financial or chief accounting officer of the Company (including synergies and cost savings). If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to

accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Company may designate.

“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 16, all ratios and calculations based on GAAP contained in this Schedule 16 shall be computed in accordance with GAAP. At any time after the date of this Agreement, the Company may elect to establish that GAAP shall mean GAAP as in effect on or prior to the date of such election; provided that any such election, once made, shall be irrevocable. At any time after the date of this Agreement, the Company may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references in this Schedule 16 to GAAP shall thereafter be construed to mean IFRS (except as otherwise provided in this Schedule 16), including as to the ability of the Company to make an election pursuant to the previous sentence; provided that any such election, once made, shall be irrevocable; provided, further, that any calculation or determination in Schedule 16 that requires the application of GAAP for periods that include fiscal quarters ended prior to the Company's election to apply IFRS shall remain as previously calculated or determined in accordance with GAAP; provided, further again, that the Company may only make such election if it also elects to report any subsequent financial reports required to be made by the Company, including pursuant to the covenants set forth in Clause 22 (*Information Undertakings*), in IFRS. The Company shall give notice of any such election made in accordance with this definition to the Agent.

“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:

- (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; provided that at any date after the date of this Agreement the Company may make an irrevocable election to establish that “IFRS” shall mean IFRS as in effect on a date that is on or prior to the date of such election. The Company shall give notice of any such election to the Agent.

“Immaterial Subsidiary” means any Restricted Subsidiary that (i) has not guaranteed any other Indebtedness of the Company or any Guarantor and (ii) (A) has Total Assets (as determined in accordance with GAAP) of less than 5% of the Company's consolidated Total Assets and (B) has Consolidated EBITDA of less than 5% of the Company's Consolidated EBITDA (in each case, measured (i) for the four quarters ended most recently for which internal financial statements are available, (ii) on a pro forma basis giving effect to any acquisitions or depositions of companies, division or lines of business since such balance sheet date or the start of such four quarter period, as applicable and (iii) on the basis of management accounts and excluding intercompany balances, investments in subsidiaries and joint ventures and intangible assets).

“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;
- (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 date of this Agreement, 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 date of this Agreement 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 16, 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 and obligations that are Standard Securitization Undertakings;
- (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
- (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).

For purposes of Paragraph 2 (*Limitation on Restricted Payments*):

- (a) **“Investment”** will include the portion (proportionate to the Company's equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the fair market value of the net assets of such Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; provided, however, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Company will be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to (i) the Company's “Investment” in such Subsidiary at the time of such redesignation less (ii) the portion (proportionate to the Company's equity interest in such Subsidiary) of the fair market value of the net assets (as conclusively determined by the Board of Directors of the Company in good faith) of such Subsidiary at the time that such Subsidiary is so re-designated a Restricted Subsidiary; and
- (b) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Company.

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:

- (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.

“Investment Grade Status” shall occur when the Loans receive both of the following:

- (a) a rating of “BBB–” or higher from S&P Global Ratings; and
- (b) a rating of “Baa3” or higher from Moody's;

or the equivalent of such rating by either 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.

“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).

“Management Advances” means loans or advances made to, or Guarantees with respect to loans or advances made to, directors, officers, employees or consultants of any Parent, the Company or any Restricted Subsidiary, including:

- (a) (x) in respect of travel, entertainment or moving related expenses Incurred in the ordinary course of business or (y) for purposes of funding any such person's purchase of Capital Stock or Subordinated Shareholder Funding (or similar obligations) of the Company, its Subsidiaries or any Parent with (in the case of this sub-clause (a)) the approval of the Board of Directors; and
- (b) in respect of moving related expenses Incurred in connection with any closing or consolidation of any facility or office,

not exceeding £2.5 million in the aggregate outstanding at any time.

“Management Investors” means the officers, directors, employees and other members of the management of or consultants to any Parent, the Company or any of their respective Subsidiaries, or spouses, family members or relatives thereof, or any trust, partnership or other entity for the benefit of or the beneficial owner of which (directly or indirectly) is any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Company, any Restricted Subsidiary or any Parent.

“Market Capitalization” means an amount equal to (a) the total number of issued and outstanding shares of common stock or common equity interests of the IPO Entity on the date of the declaration of the relevant dividend multiplied by (b) the arithmetic mean of the closing prices per share of such common stock or common equity interests for the 30 consecutive trading days immediately preceding the date of declaration of such dividend.

“Moody's” means Moody's Investors Service, Inc. or any of its successors or assigns that is a Nationally Recognized Statistical Rating Organization.

“Nationally Recognized Statistical Rating Organization” means a nationally recognized statistical rating organization within the meaning of Section 3(a)(62) of the Exchange Act.

“Net Available Cash” from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or instalment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

- (a) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all Taxes paid or required to be paid or accrued as a liability under GAAP (after taking into account any available tax credits or deductions 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.

“Net Cash Proceeds” with respect to any issuance or sale of Capital Stock or Subordinated Shareholder Funding, means the cash proceeds of such issuance or sale net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance or sale and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing agreements).

“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 date of this Agreement and any holding companies established by any Permitted Holder for purposes of holding its investment in any Parent.

“Parent Expenses” means:

- (a) costs (including all professional fees and expenses) Incurred by any Parent in connection with reporting obligations under or otherwise Incurred in connection with compliance with applicable laws, rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, this Agreement or any other agreement or instrument relating to Indebtedness of the

Company or any Restricted Subsidiary, including in respect of any reports filed with respect to the Securities Act, Exchange Act or the respective rules and regulations promulgated thereunder;

- (b) customary indemnification obligations of any Parent owing to directors, officers, employees or other Persons under its charter or by-laws or pursuant to written agreements with any such Person to the extent relating to the Company and its Subsidiaries;
- (c) obligations of any Parent in respect of director and officer insurance (including premiums therefor) to the extent relating to the Company and its Subsidiaries;
- (d) (i) general corporate overhead expenses, including professional fees and expenses and other operational expenses of any Parent or any Equity Investor or any of its Affiliates related to the ownership or operation of the business of the Company or any of its Restricted Subsidiaries and Equity Investor or any of its Affiliates (including, without limitation, accounting, legal, corporate reporting, and administrative expenses as well as payments made pursuant to secondment, employment or similar agreements entered into between the Company and/or any of its Restricted Subsidiaries and/or any Parent and any Equity Investor or any of its Affiliates or any employee thereof) or (ii) costs and expenses with respect to any litigation or other dispute relating to the Transactions or the ownership, directly or indirectly, of the Company by any Parent;
- (e) other fees, expenses and costs relating directly or indirectly to activities of the Company and its Subsidiaries in an amount not to exceed £1 million in any fiscal year;
- (f) expenses Incurred by any Parent in connection with any public offering or other sale of Capital Stock or Indebtedness:
 - (i) where the net proceeds of such offering or sale are intended to be received by or contributed to the Company or a Restricted Subsidiary,
 - (ii) in a pro-rated amount of such expenses in proportion to the amount of such net proceeds intended to be so received or contributed, or
 - (iii) otherwise on an interim basis prior to completion of such offering so long as any Parent shall cause the amount of such expenses to be repaid to the Company or the relevant Restricted Subsidiary out of the proceeds of such offering promptly if completed; and
- (g) costs and expenses incurred by the Company or any Restricted Subsidiary pursuant to any secondment, employment or similar arrangement entered into between any Parent or Equity Investor and the Company or any Restricted Subsidiary.

“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.

“Permanent Debt” has the meaning given to it in the Engagement Letter.

“Permitted Asset Swap” means the concurrent purchase and sale or exchange of assets used or useful in a Similar Business or a combination of such assets and cash, Cash Equivalents or Temporary Cash Investments between the Company or any of its Restricted Subsidiaries and another Person; provided that any cash or Cash Equivalents received in excess of the value of any cash or Cash Equivalents sold or exchanged must be applied in accordance with the covenant described under Paragraph 5 (Limitation on Sales of Assets and Subsidiary Stock).

“Permitted Collateral Liens” means:

- (a) Liens on the Collateral described in one or more of paragraphs (b)(x), (c), (d), (e), (f), (h), (i), (k), (l), (r), (t), (w), (x), (y) and (aa) of the definition of “Permitted Liens”,
- (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), (v), (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 (and not, for the avoidance of doubt, any other Credit Facility or any Refinancing Indebtedness used to refinance this Credit Facility or any subsequent Credit Facility) 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 date of this Agreement, as provided in the Intercreditor Agreement as in effect on the date of this Agreement and provided further that each of the parties thereto will have entered into the Intercreditor Agreement or an Additional Intercreditor Agreement;
- (c) Liens on the Collateral securing Indebtedness incurred under Paragraph 1(a) (Limitation on Indebtedness); provided that, in the case of this paragraph (c), after giving effect to such incurrence on that date, the Consolidated Secured Leverage Ratio is less than 3.25 to 1.0; and provided, further, subject to the Agreed Security Principles, that the Loans are secured on any other property or assets securing such Indebtedness on a *pari passu* basis;
- (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 Equity Investors and any Affiliate or Related Person of any of them, (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 date of this Agreement) 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):

- (a) Investments in (i) a Restricted Subsidiary (including the Capital Stock of a Restricted Subsidiary) or the Company or (ii) a Person (including the Capital Stock of any such Person) that is engaged in any Similar Business and such Person will, upon the making of such Investment, become a Restricted Subsidiary;
- (b) Investments in another Person if such Person is engaged in any Similar Business and as a result of such Investment such other Person is merged, consolidated or otherwise combined with or into, or transfers or conveys all or substantially all its assets to, the Company or a Restricted Subsidiary;
- (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) Management Advances;
- (g) Investments in Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the 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) Investments made as a result of the receipt of non-cash consideration from a sale or other disposition of property or assets, including an Asset Disposition, in each case, that was made in compliance with Paragraph 5 (Limitation on Sales of Assets and Subsidiary Stock);
- (i) Investments in existence on, or made pursuant to legally binding commitments in existence on, the date of this Agreement;
- (j) Currency Agreements, Interest Rate Agreements, Commodity Hedging Agreements and related Hedging Obligations, which transactions or obligations are Incurred in compliance with Paragraph 1(b) (Limitation on Indebtedness);
- (k) bona fide Investments, taken together with all other Investments made pursuant to this paragraph (k) and at any time outstanding, in an aggregate amount at the time of such Investment not to exceed £5 million; provided that, if an Investment is made pursuant to this paragraph in a Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary or is subsequently designated a Restricted Subsidiary pursuant to Paragraph 2 (Limitation on Restricted Payments), such Investment shall thereafter be deemed to have been made pursuant to paragraphs (a) or (b) of the definition of "Permitted Investments" and not this paragraph;
- (l) pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business or Liens otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under the covenant described under Paragraph 3 (Limitation on Liens);
- (m) any Investment to the extent made using Capital Stock of the Company (other than Disqualified Stock) or Capital Stock of any Parent as consideration;
- (n) any transaction to the extent constituting an Investment that is permitted and made in accordance with the provisions of Paragraph 6(c) (Limitation on Affiliate Transactions) (except those described in paragraphs (i), (iii), (vi), (viii), (ix) and (xi) of Paragraph 6(c));

- (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 19 (*Permitted Investments*).

“Permitted Liens” means, with respect to any Person:

- (a) Liens on assets or property of a Restricted Subsidiary that is not a Guarantor securing Indebtedness of any Restricted Subsidiary that is not a Guarantor;
- (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 (y) 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) Liens on assets or property of the Company or any Restricted Subsidiary securing Hedging Obligations permitted under this Agreement;
- (h) leases, licenses, subleases and sublicenses of assets (including real property and intellectual property rights), in each case entered into in the ordinary course of business;

- (i) Liens arising out of judgments, decrees, orders or awards not giving rise to an Event of Default so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree, order or award have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (j) Liens on assets or property of the 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 date of this Agreement provided such Liens have been disclosed to, and approved by, the Majority Lenders prior to the date of this Agreement;
- (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) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;
- (t) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;
- (u) Liens on receivables Incurred in connection with a receivables financing;

- (v) Liens securing Indebtedness incurred under paragraph (x) of Paragraph 1(b) (*Limitation on Indebtedness*) with local financial institutions;
- (w) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters or arrangers thereof) or on cash set aside at the time of the Incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose;
- (x) 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;
- (y) 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;
- (z) [RESERVED];
- (aa) Liens on Capital Stock or other securities or assets of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary; and
- (bb) Liens on Receivables Assets Incurred in connection with a Qualified Receivables Financing.

“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.

“Qualified Receivables Financing” means any Receivables Financing of a Receivables Subsidiary that meets the following conditions: (1) the Board of Directors of the Company shall have determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Company and the Receivables Subsidiary, (2) all sales of accounts receivable and related assets to the Receivables Subsidiary are made at fair market value (as determined in good faith by the Company) and (3) the

financing terms, covenants, termination events and other provisions thereof shall be on market terms (as determined in good faith by the Company) and may include Standard Securitization Undertakings.

“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.

“Receivables Assets” means any assets that are or will be the subject of a Qualified Receivables Financing.

“Receivables Financing” means any transaction or series of transactions that may be entered into by the Company or any of its Subsidiaries pursuant to which the Company or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Receivables Subsidiary (in the case of a transfer by the Company or any of its Subsidiaries), or (b) any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of the Company or any of its Subsidiaries, and any assets related thereto, including all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable and any Hedging Obligations entered into by the Company or any such Subsidiary in connection with such accounts receivable.

“Receivables Repurchase Obligation” means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“Receivables Subsidiary” means a Wholly Owned Subsidiary of the Company (or another Person formed for the purposes of engaging in a Qualified Receivables Financing with the Company in which the Company or any Subsidiary of the Company makes an Investment and to which the Company or any Subsidiary of the Company transfers accounts receivable and related assets) which engages in no activities other than in connection with the financing of accounts receivable of the Company and its Subsidiaries, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Company (as provided below) as a Receivables Subsidiary and:

- (a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is guaranteed by the Company or any other Restricted Subsidiary of the Company (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is subject to terms that are substantially equivalent in effect to a guarantee of any losses on securitized or sold receivables by the Company or any other Restricted Subsidiary of the Company, (iii) is recourse to or obligates the Company or any other Restricted Subsidiary of the Company in any way other than pursuant to Standard Securitization Undertakings, or (iv) subjects any property or asset of the Company or any other Restricted Subsidiary of the Company, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings,
- (b) with which neither the Company nor any other Restricted Subsidiary of the Company has any contract, agreement, arrangement or understanding other than on terms which the Company reasonably believes to be no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Company, and
- (c) to which neither the Company nor any other Restricted Subsidiary of the Company has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Company shall be evidenced to the Agent by filing with the Agent a copy of the resolution of the Board of Directors of the Company giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing conditions.

“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 16 shall have a correlative meaning.

“Refinancing Indebtedness” means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness existing on the date of this Agreement or Incurred in compliance with this Agreement including Indebtedness 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, (ii) any amendments to the cash interest payable in respect of the Senior Secured Notes or the High Yield Notes subsequent to the date of this Agreement 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; and
- (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 or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary and 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.

“Refinancing Indebtedness” in respect of any Credit Facility or any other Indebtedness may be Incurred from time to time after the termination, discharge or repayment of any such Credit Facility or other Indebtedness.

“Related Person”, with respect to any Equity Investor, FSHC or an Affiliate of FSHC, means:

- (a) any controlling equity holder or Subsidiary of such Person; or
- (b) in the case of an individual, any spouse, family member or relative of such individual, any trust or partnership for the benefit of one or more of such individual and any such spouse, family member or relative, or the estate, executor, administrator, committee or beneficiaries of any thereof; or
- (c) any trust, corporation, partnership or other Person for which one or more of the Permitted Holders and other Related Persons of any thereof constitute the beneficiaries, stockholders, partners or owners thereof, or Persons beneficially holding in the aggregate a majority (or more) controlling interest therein; or
- (d) in the case of the Equity Investors any investment fund or vehicle managed, sponsored or advised by such Person or any successor thereto, or by any Affiliate of such Person or any such successor; or
- (e) any Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such Person; or
- (f) any Related Fund of such Person.

“Related Taxes” means:

- (a) any Taxes (other than (x) Taxes measured by gross or net income, receipts or profits and (y) withholding Taxes), required to be paid (provided such Taxes are in fact paid) by any 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; provided that distributions shall be permitted in respect of the income of an Unrestricted Subsidiary only to the extent such Unrestricted Subsidiary distributed cash for such purpose to the Company or its Restricted Subsidiaries.

“Restricted Investment” means any Investment other than a Permitted Investment.

“Restricted Subsidiary” means any Subsidiary of the Company (including the Borrower) other than an Unrestricted Subsidiary.

“Reversion Date” means, after the Notes have achieved Investment Grade Status, the date, if any, that such Notes shall cease to have such Investment Grade Status.

“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 date of this Agreement 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.

“Standard Securitization Undertakings” means representations, warranties, covenants, indemnities and Guarantees of performance entered into by the Company or any Subsidiary of the Company which the Company has determined in good faith to be customary in a Receivables Financing, including those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

“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 date of this Agreement 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 date of this Agreement; 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 date of this Agreement 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
 - (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.

“Successor Parent” with respect to any Person means any other Person with more than 50% of the total voting power of the Voting Stock of which is, at the time the first Person becomes a Subsidiary of such other Person, “beneficially owned” (as defined below) by one or more Persons that “beneficially owned” (as defined below) more than 50% of the total voting power of the Voting Stock of the first Person immediately prior to the first Person becoming a Subsidiary of such other Person. For purposes hereof, “beneficially own” has the meaning correlative to the term “beneficial owner,” as such term is defined in Rules 13d-3 and 13d-5 under the Exchange Act (as in effect on the date of this Agreement).

“Tax Sharing Agreement” means any tax sharing or profit and loss pooling or similar agreement or an agreement to buy or sell tax losses or profits, in each case with customary or arm's-length terms entered into with any Parent or Unrestricted Subsidiary, as the same may be amended, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and of this Agreement.

“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) in each case, having capital and surplus aggregating in excess of £250 million (or the foreign currency equivalent thereof) and whose long-term debt is rated at least “A” by S&P Global Ratings or “A-2” by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P Global Ratings or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;
- (d) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in paragraph (a) or (b) above entered into with a Person meeting the qualifications described in paragraph (b) above;
- (e) Investments in commercial paper, maturing not more than 270 days after the date of acquisition, issued by a Person (other than the Company or any of its Subsidiaries), with a rating at the time as of which any Investment therein is made of “P-2” (or higher) according to Moody's or “A-2” (or higher) according to S&P Global Ratings (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P Global Ratings or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);
- (f) Investments in securities maturing not more than one year after the date of acquisition issued or fully Guaranteed by any state, commonwealth or territory of the United States of America, Canada, any European Union member state or Switzerland, Norway or by any political subdivision or taxing authority of any such state, commonwealth, territory, country or member state, and rated at least “BBB” by S&P Global Ratings or “Baa3” by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P Global Ratings or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization);
- (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);
- (h) any money market deposit accounts issued or offered by a commercial bank organized under the laws of a country that is a member of the Organization for Economic Co-operation and Development, in each case, having capital and surplus in excess of £250 million (or the foreign

currency equivalent thereof) or whose long term debt is rated at least “A” by S&P Global Ratings or “A2” by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P Global Ratings or Moody's then exists, the equivalent of such rating by any Nationally Recognized Statistical Rating Organization) at the time such Investment is made;

- (i) investment funds investing 95% of their assets in securities of the type described in paragraphs (a) through (h) above (which funds may also hold reasonable amounts of cash pending investment and/or distribution); and
- (j) investments in money market funds complying with the risk limiting conditions of Rule 2a-7 (or any successor rule) of the SEC under the U.S. Investment Company Act of 1940, as amended.

“**Terra Firma**” means Terra Firma Investments (GP) 3 Limited.

“**Total Assets**” means the consolidated total assets of the Company and its Restricted Subsidiaries in accordance with GAAP as shown on the most recent balance sheet of such Person.

“**UK Government Obligations**” means direct obligations of, or obligations guaranteed by, the United Kingdom, and the payment for which the United Kingdom pledges its full faith and credit.

“**Uniform Commercial Code**” means the New York Uniform Commercial Code.

“**Unrestricted Subsidiary**” means:

- (a) any Subsidiary of the Company that at the time of determination is an Unrestricted Subsidiary (as designated by the Board of Directors of the Company with the prior consent of the Majority Lenders in the manner provided below); and
- (b) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Company may designate any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger, consolidation or other business combination transaction, or Investment therein), other than the Borrower, to be an Unrestricted Subsidiary only if:

- (i) the Majority Lenders have provided their prior consent to such Subsidiary being designated an Unrestricted Subsidiary;
- (ii) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of, or own or hold any Lien on any property of, the Company or any other Subsidiary of the Company which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary; and
- (iii) such designation and the Investment of the Company in such Subsidiary complies with Paragraph 2 (Limitation on Restricted Payments).

Any such designation by the Board of Directors of the Company shall be evidenced to the Agent by filing with the Agent a resolution of the Board of Directors of the Company giving effect to such designation and an Officer's Certificate certifying that such designation complies with the foregoing conditions.

The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, that immediately after giving effect to such designation (1) no Default or Event of Default would result therefrom and (2)(x) the Company could Incur at least £1.00 of additional Indebtedness under Section (a) (Limitation on Indebtedness) or (y) the Fixed Charge Coverage Ratio for the Company and its Restricted Subsidiaries would not be worse than it was immediately prior to giving effect to such designation, in each case, on a pro forma basis taking into account such designation. Any such designation by the Board of Directors shall be evidenced to the Agent by promptly filing with the

Agent a copy of the resolution of the Board of Directors giving effect to such designation or an Officer's Certificate certifying that such designation complied with the foregoing provisions.

“Voting Stock” of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors.

“Wholly Owned Restricted Subsidiary” means a Restricted Subsidiary of the 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 17

TRANSACTION SECURITY

Barbados law

1. A share charge between Principal Healthcare Finance Limited and Barclays Bank PLC dated 20 November 2015

Cayman Islands law

2. A share mortgage in respect of the shares in Fino Seniorco Limited between Elli Finance (UK) PLC and Barclays Bank PLC dated 12 July 2012

English law

3. A debenture between, amongst others, Fino Seniorco Limited, Mericourt Limited, Principal Healthcare Finance Limited and Barclays Bank PLC dated 10 August 2012
4. A supplemental security deed to the debenture dated 10 August 2012 between, amongst others, Elli Acquisitions Limited and Barclays Bank PLC dated 28 March 2013
5. A debenture between Elli Acquisitions Limited, Elli Group (UK) Limited, Elli Finance (UK) Plc and Barclays Bank PLC dated 12 July 2012
6. A share charge between Elli Acquisitions Limited and Barclays Bank PLC dated 12 July 2012
7. A first ranking Security Assignment of Intercompany Receivables between Elli Investments Limited, Carmel Capital VIII S.à r.l., Carmel Capital IX S.à r.l., Elli Group (UK) Limited and Barclays Bank PLC dated 12 July 2012
8. A Second Ranking Security Assignment of Intercompany Receivables between, Elli Investments Limited, Carmel Capital VIII S.à r.l., Carmel Capital IX S.à r.l., Elli Group (UK) Limited and Barclays Bank PLC dated 12 July 2012
9. A security accession deed supplemental to the debenture dated 10 August 2012 between FSHC Properties (Holdings) Limited, Elli Acquisitions Limited and Barclays Bank PLC dated 10 August 2012
10. A supplemental security deed to the debenture dated 10 August 2012 between Sistine Properties (Westbury) Limited, FSHC Properties (CH2) Limited, FSHC (SP) Limited (now Huntercombe SP Limited), Elli Acquisitions Limited and Barclays Bank PLC dated 7 October 2015
11. A supplemental security deed to the debenture dated 10 August 2012 between Fino (Jersey) Newco 1 Limited, Huntercombe Property Leasing Limited, Elli Acquisitions Limited and Barclays Bank PLC dated 7 October 2015
12. A supplemental security deed to the debenture dated 10 August 2012 between Principal Healthcare Finance (UK) No. 2 Limited, Elli Acquisitions Limited and Barclays Bank PLC dated 27 December 2012
13. A deed of accession dated 18 November 2016 between FSHC Group Holdings Limited and Barclays Bank PLC in relation to the first ranking security assignment of intercompany receivables dated 12 July 2012 between certain Group companies and others and Barclays Bank PLC

14. A deed of accession dated 18 November 2016 between FSHC Group Holdings Limited and Barclays Bank PLC in relation to the second ranking security assignment of intercompany receivables dated 12 July 2012 between certain Group companies and others and Barclays Bank PLC
15. A security accession deed supplemental to the debenture dated 10 August 2012 between The Huntercombe Group (Leaseco) Limited and Barclays Bank PLC dated 7 October 2015

Guernsey law

16. A first ranking security interest agreement in respect of shares in Elli Acquisitions Limited between Elli Investments Limited and Barclays Bank PLC dated 12 July 2012
17. A second ranking security interest agreement in respect of shares in Elli Acquisitions Limited between Elli Investments Limited and Barclays Bank PLC dated 12 July 2012

Jersey law

18. A security interest agreement in respect of Fino (Jersey) Newco 1 Limited and Silver Springs Limited between FSHC Jersey Developments Limited (now brighterkind Jersey Developments Limited) and Barclays Bank PLC dated 10 August 2012.
19. A security interest agreement in respect of Rhyme (Jersey) Limited between Elli Acquisitions Limited and Barclays Bank PLC dated 12 July 2012
20. A security interest agreement in respect of a bank account between PHF (CHP) Limited and Barclays Bank PLC dated 10 August 2012
21. A security interest agreement in respect of, amongst others, PHF Securities No. 1 Limited and PHF Securities No. 2 Limited, between Principal Healthcare Finance Limited and Barclays Bank PLC dated 10 August 2012
22. A security agreement relating to shares in Huntercombe Property Leasing Limited between Rhyme (Jersey) Limited and Barclays Bank PLC dated 7 October 2015
23. A security agreement relating to shares in PHF (CHP) Limited between Principal Healthcare Finance Limited and Barclays Bank PLC dated 7 October 2015
24. A security interest agreement in respect of FSHC Jersey Developments Limited (now brighterkind Jersey Developments Limited) and Principal Healthcare Finance Limited between Rhyme (Jersey) Limited and Barclays Bank PLC dated 10 August 2012

Luxembourg law

25. A second ranking deposit account pledge agreement between Carmel Capital VIII S.à r.l. and Barclays Bank PLC dated 12 July 2012
26. A first ranking deposit account pledge agreement between Carmel Capital IX S.à r.l. and Barclays Bank PLC dated 12 July 2012
27. A second ranking deposit account pledge agreement between Carmel Capital IX S.à r.l. and Barclays Bank PLC dated 12 July 2012
28. A first ranking deposit account pledge agreement between Carmel Capital VIII S.à r.l. and Barclays Bank PLC dated 12 July 2012

29. A second ranking share pledge agreement between Carmel Capital VIII S.à r.l. and Barclays Bank PLC dated 12 July 2012
30. A first ranking share pledge agreement between Carmel Capital VIII S.à r.l. and Barclays Bank PLC dated 12 July 2012

Manx law

31. A share charge in respect of the shares in Four Seasons Health Care (Isle of Man) Limited, Four Seasons Health Care (England) Limited and Four Seasons Health Care (Northern Ireland) Limited between FSHC (UK) Limited and Barclays Bank PLC dated 10 August 2012
32. A share charge in respect of the shares in Four Seasons Health Care Properties Limited between Four Seasons Group Limited and Barclays Bank PLC dated 10 August 2012
33. A share charge in respect of the shares in Four Seasons Group Limited between FSHC Properties (Holdings) Limited and Barclays Bank PLC dated 10 August 2012

Northern Irish law

34. A debenture between, amongst others, Tamulst Care Limited, Four Seasons Homes No. 6 Limited and Barclays Bank PLC dated 10 August 2012
35. A share charge between Four Seasons Group Holdings Limited and Barclays Bank PLC dated 10 August 2012
36. A share charge between Four Seasons Health Care (Northern Ireland) Limited and Barclays Bank PLC dated 10 August 2012
37. A supplemental security deed to the debenture dated 10 August 2012 between Tamulst Care Limited, Four Seasons Homes No. 3 Limited (now Huntercombe Homes No.3 Limited), Four Seasons Homes No. 6 Limited, Four Seasons Health Care (Northern Ireland) Limited, Four Seasons (No. 7) Limited, Elli Acquisitions Limited and Barclays Bank PLC dated 16 April 2013

Scottish law

38. A share pledge in respect of shares in Whitefield Nursing Home Limited between Mericourt Limited and Barclays Bank PLC dated August 2012
39. A share pledge in respect of shares in Fife Health Care Limited between Four Seasons Health Care (Capital) Limited and Barclays Bank PLC dated August 2012
40. A share pledge in respect of shares in Four Seasons Health Care (Scotland) Limited between Four Seasons Group Holdings Limited and Barclays Bank PLC dated August 2012
41. A share pledge in respect of shares in Fife Nursing Homes Limited between Four Seasons Group Holdings Limited and Barclays Bank PLC dated August 2012
42. A share pledge in respect of shares in Whitefield Nursing Home Limited between FSHC Newco Limited (now brighterkind Health Care Limited) and Barclays Bank PLC dated October 2015
43. A bond and floating charge by Whitefield Nursing Home Limited in favour of Barclays Bank PLC dated August 2012
44. A bond and floating charge by Four Seasons Health Care (Scotland) Limited in favour of Barclays Bank PLC dated August 2012

45. A bond and floating charge by Fife Nursing Homes Limited in favour of Barclays Bank PLC dated August 2012
46. A standard security (Colinton Care Home) by Sistine Properties (Westbury) Limited in favour of Barclays Bank PLC dated 1 October 2015
47. A standard security (Angusfield House Care Home) by Sistine Properties (Westbury) Limited in favour of Barclays Bank PLC dated 1 October 2015
48. A standard security (St. Margaret's Care Home) by Sistine Properties (Westbury) Limited in favour of Barclays Bank PLC dated 1 October 2015
49. A standard security (Whitefield Lodge Nursing Home) by Whitefield Nursing Home Limited in favour of Barclays Bank PLC dated 8 August 2012
50. A standard security (Lammermuir House) by Tamaris Healthcare (England) Limited in favour of Barclays Bank PLC dated 8 August 2012
51. A standard security (Allander Court) by Tamaris Healthcare (England) Limited in favour of Barclays Bank PLC dated 8 August 2012
52. A standard security (Allander Court) by Principal Healthcare Finance (UK) No. 1 Limited in favour of Barclays Bank PLC dated 8 August 2012
53. A standard security (Cumbrae Lodge) by PHF Securities No. 1 Limited in favour of Barclays Bank PLC dated 9 August 2012
54. A standard security (Lammermuir House) by PHF Securities No. 2 Limited in favour of Barclays Bank PLC dated 8 August 2012
55. A standard security (Murdostoun Castle Nursing Home) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 8 August 2012
56. A standard security (Gilmerton Nursing Home) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 8 August 2012
57. A standard security (Craigieknowes Nursing Home) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 8 August 2012
58. A standard security (Colinton Nursing Home) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 8 August 2012
59. A standard security (Carrickstone Nursing Home) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 8 August 2012
60. A standard security (Campsie View Nursing Home) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 8 August 2012
61. A standard security (Benarty View Nursing Home) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 8 August 2012
62. A standard security (Angusfield Nursing Home) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 8 August 2012
63. A standard security (Whitefield Lodge) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 1 October 2015

64. A standard security (Murdostoun Castle) by FSHC Properties (BIR) Limited (now Huntercombe (BIR) Limited) in favour of Barclays Bank PLC dated 8 August 2012
65. A standard security (Huntercombe Edinburgh) by FSHC (SP) Limited (now Huntercombe (SP) Limited) in favour of Barclays Bank PLC dated 8 August 2012
66. A standard security (Murdostoun Neurological Care Centre) by FSHC (SP) Limited (now Huntercombe (SP) Limited) in favour of Barclays Bank PLC dated 1 October 2015
67. A standard security (Lunardi Court Nursing Home) by Four Seasons Homes No. 4 Limited in favour of Barclays Bank PLC dated 8 August 2012
68. A standard security (Angusfield Nursing Home) by Four Seasons Homes No. 4 Limited in favour of Barclays Bank PLC dated 8 August 2012
69. A standard security (Murdostoun Castle) by Four Seasons Health Care (Scotland) Limited in favour of Barclays Bank PLC dated 8 August 2012
70. A standard security (Gilmerton Nursing Home) by Four Seasons Health Care (Scotland) Limited in favour of Barclays Bank PLC dated 8 August 2012
71. A standard security (Craigieknowes Nursing Home) by Four Seasons Health Care (Scotland) Limited in favour of Barclays Bank PLC dated 8 August 2012
72. A standard security (Carrickstone Nursing Home) by Four Seasons Health Care (Scotland) Limited in favour of Barclays Bank PLC dated 8 August 2012
73. A standard security (Campsie View Nursing Home) by Four Seasons Health Care (Scotland) Limited in favour of Barclays Bank PLC dated 8 August 2012
74. A standard security (Murdostoun Castle Brain Injury Unit) by Four Seasons Health Care Properties (Frenchay) Limited (now Huntercombe Properties (Frenchay) Limited) in favour of Barclays Bank PLC dated 8 August 2012
75. A standard security (Huntercombe Edinburgh) by Four Seasons (No 14) Limited (now Huntercombe (No 14) Limited) in favour of Barclays Bank PLC dated 8 August 2012
76. A standard security (Tenant's interest in Colinton Nursing Home) by Four Seasons Health Care (Scotland) Limited in favour of Barclays Bank PLC dated 8 August 2012
77. A standard security (Lunardi Court Nursing Home) by FSHC Properties (CH2) Limited in favour of Barclays Bank PLC dated 8 August 2012

SCHEDULE 18

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 19

PERMITTED INVESTMENTS

None as at the date of this Agreement

THIS GOVERNANCE DEED is made on 15 March **2018** between the following parties:

- (1) **THE MAJORITY HOLDERS**, being certain investment funds managed or advised by H/2 Credit Manager LLC (a company incorporated in Delaware with registered number 6651098 and registered address at 680 Washington Boulevard, Seventh Floor, Stamford CT 06901) or its affiliates (such funds, together with H/2 Credit Manager LLC, collectively being the “**Appointor**”);
- (2) **ELLI INVESTMENTS LIMITED**, a non-cellular company limited by shares and organised under the laws of Guernsey with registered number 55185 and registered address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT (the “**Company**”);
- (3) **ELLI GROUP (UK) LIMITED**, a company incorporated in England and Wales with registered number 08092763 and registered address at Norcliffe House, Station Road, Wilmslow SK9 1BU (“**EGUK**”); and
- (4) **ELLI FINANCE (UK) PLC**, a company incorporated in England and Wales with registered number 08094161 and registered address at Norcliffe House, Station Road, Wilmslow SK9 1BU (“**EFUK**”),

(together, the “**Parties**”, and each, a “**Party**”).

WHEREAS:

- (A) The Company, the Appointor and EFUK, amongst others, entered into a standstill and deferral agreement on 14 December 2017 (as amended from time to time) (the “**Standstill Amendment**”).
- (B) This Deed contains the terms of governance for the Board (as defined below) and certain other matters concerning the Group, as set out herein.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed:

“**Appointor Directors**” has the meaning given in clause 2.1(a) and “**Appointor Director**” means any one of them;

“**Articles**” means the articles of incorporation of the Company (as amended from time to time);

“**Board**” means the board of Directors of the Company from time to time, including any duly appointed committee thereof;

“**Business Day**” means a day, except a Saturday or Sunday or a public holiday in England, Guernsey and the United States of America, on which banks in England, Guernsey and the United States of America are generally open for business;

“**Directors**” means the directors of the Company from time to time and “**Director**” means any of them;

“**EAL**” means Elli Acquisitions Limited, a non-cellular company limited by shares and organised under the laws of Guernsey with registered number 55186 and registered address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT;

“**Group**” means the Company and each of its direct or indirect subsidiaries (and each such entity a “**Group Company**”);

“Holder Advisers” has the meaning given to it in the Standstill Agreement;

“Implementation Officer” means the implementation officer appointed pursuant to clause 5;

“Incumbent Directors” has the meaning given in clause 2.1(c) and **“Incumbent Director”** means any one of them;

“Independent Director” means a person other than an individual having a relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director, and such person:

- (a) has not been employed by, formed a part of or been affiliated with, nor is or has been a director, employee, consultant, member or partner of, any member of the Sponsor Group, the Group or the Appointor;
- (b) has not, in the last three years, had a material business relationship with the Sponsor Group, the Group or the Appointor;
- (c) has not had close family ties with any directors, employees, consultants, members or partners of the Sponsor Group, the Group or the Appointor; and
- (d) has not received and does not (directly or indirectly) receive additional remuneration from any member of the Sponsor Group, the Group or the Appointor apart from: (i) a director’s fee properly received (or to be received) in respect of their appointment as a Director in accordance with this Deed, or (ii) participation in a share option or a performance-related pay scheme operated by the Sponsor Group, the Group or the Appointor;

“Investment Agreement” means the investment agreement entered into by (amongst others) the Company dated 12 July 2012 (as amended from time to time);

“IO Engagement Letter” has the meaning given in clause 5.2;

“Majority Holders” has the meaning given to it in the Standstill Agreement;

“Mutual Director” has the meaning given in clause 2.1(b);

“Procure” means:

- (i) in respect of a direct or indirect subsidiary undertaking, the passing of all necessary corporate authorisations, exercising all rights as a direct or indirect shareholder and taking all actions available to cause such other persons to take the relevant action(s); or
- (ii) in respect of a direct or indirect parent undertaking or an entity under common control, using reasonable commercial endeavours;

“Recipient” has the meaning given in clause 15.10(a);

“Side Deed” means the side deed from the Sponsors (as defined therein) for the benefit of the Addressees (as defined therein) entered into on or around the date of this Deed;

“Sponsor” means (i) Elli Capital Limited, a non-cellular company limited by shares and organised under the laws of Guernsey with registered number 54965 and registered address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT; (ii) FSHC Group Holdings Limited, a non-cellular company limited by shares and organised under the laws of Guernsey with registered number 55183 and registered address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT; and (iii) Elli Finance II Limited, a non-cellular company limited by shares and organised under the laws of Guernsey

with registered number 55184 and registered address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT; and

“**Sponsor Group**” has the meaning given to it in the Standstill Agreement.

1.2 In this Deed:

- (a) a reference to a clause, paragraph or Annex is, unless stated otherwise, a reference to a clause, paragraph or Annex of this Deed;
- (b) a reference to a paragraph or column in an Annex is, unless otherwise stated, a reference to a paragraph or column in that Annex or, where the Annex is split into parts, a reference to a paragraph or column in that part of the Annex;
- (c) a reference to legislation includes a reference to that legislation as amended, re-enacted or extended before the date of this Deed;
- (d) a reference to a “**person**” includes an individual, company, corporation, firm, partnership, joint venture, association, state, state agency, institution or trust (whether or not it has a separate legal personality);
- (e) a reference to one gender is a reference to all or any genders;
- (f) the singular includes the plural and vice versa;
- (g) a reference to a particular time of day is, unless specified otherwise, a reference to that time in London;
- (h) a reference to an action that is to take place on a particular day means, unless a time is specified, that action can take place at any time on or before 11.59 pm London time on that day;
- (i) “**including**” means that the words following it are illustrative and not exhaustive; and
- (j) a reference to a “**month**” means a calendar month.

2 THE BOARD

2.1 The Company hereby agrees with and undertakes to the Appointor that the Board shall consist of five (5) Directors (and no more), and shall comprise the following:

- (a) two (2) Independent Directors, appointed by the Appointor (the “**Appointor Directors**”);
- (b) one (1) Independent Director, mutually appointed by the Appointor and the Sponsor (the “**Mutual Director**”); and
- (c) two (2) Directors, appointed by the Sponsor (the “**Incumbent Directors**”).

2.2 The Company hereby agrees with and confirms to the Appointor that:

- (a) the Appointor selects and appoints Christopher Hill and Christopher Harris to be the first Appointor Directors on the Board;
- (b) the Appointor and Sponsor agree, select and appoint Allan Hayward to be the first Mutual Director on the Board; and

- (e) the Sponsor selects Ryan Macaskill and Lorcan Woods, being existing directors of the Company, to be the first Incumbent Directors on the Board,

in each case, with effect from the date of this Deed.

- 2.3 Each Director shall have one vote, and no Director or chairman of the Board shall have a casting vote.
- 2.4 The quorum necessary for the transaction of the business of the Directors shall be three (3) Directors, including either: (i) two Appointor Directors; or (ii) one Appointor Director and the Mutual Director. For the purposes of this clause, an alternate Director, duly appointed in accordance with this Deed, shall be counted in the quorum at a meeting at which the Director appointing such alternate Director is not present.
- 2.5 The Company hereby undertakes that it shall only appoint, re-appoint or remove a Director in accordance with this Deed and any appointment, re-appointment or removal of a Director purportedly undertaken other than in accordance with this Deed shall be a breach of this Deed and shall not be valid.

3 APPOINTMENT, RE-APPOINTMENT AND REMOVAL OF DIRECTORS

Appointor Directors

- 3.1 Appointor Directors shall only be appointed, re-appointed or removed by the Appointor. The Appointor shall be entitled to appoint, re-appoint or remove an Appointor Director at any time in its sole discretion, for any reason or no reason.
- 3.2 Where an Appointor Director ceases to be a Director, the Appointor agrees to nominate and appoint, without delay, a replacement Appointor Director.

Incumbent Directors

- 3.3 Incumbent Directors shall only be appointed, re-appointed or removed by the Sponsor. The Sponsor shall be entitled to appoint, re-appoint or remove an Incumbent Director at any time in its sole discretion, for any reason or no reason.

Mutual Directors

- 3.4 The Appointor and the Sponsor shall jointly, by written notice (signed by or on behalf of the Appointor and the Sponsor), be entitled to appoint, re-appoint or remove a Mutual Director as they see fit, at any time, in their discretion for any reason or no reason, in accordance with this Deed.
- 3.5 In the event that Allan Hayward (being the first Mutual Director) ceases to be the Mutual Director, the Appointor shall within twenty (20) Business Days of the date of termination propose, in a written notice, a replacement individual for appointment as the Mutual Director.
- 3.6 The Sponsor shall have ten (10) Business Days from the date of such written notice to approve or decline, by written notice, the appointment of the individual proposed. If the Sponsor fails to respond within the ten (10) Business Day time period or does not explicitly state that it has approved or declined the appointment of such individual, the Sponsor shall be deemed to have consented to the appointment of the proposed individual as the Mutual Director and the Company shall immediately proceed with the appointment.
- 3.7 If the Sponsor declines the appointment of the individual proposed, the Appointor shall propose an alternative individual in a second written notice to the Sponsor in accordance with the provisions of clauses 3.5 and 3.6 above, and such provisions shall apply in respect of such proposal.

- 3.8** In the event that the individual named in the second proposal notice is not appointed as the Mutual Director, the Appointor and the Sponsor agree to negotiate with each other (in good faith) to agree and jointly nominate (by written notice to the Company) and appoint, without delay, a replacement Mutual Director. Following agreement the Appointor and the Sponsor shall, without delay, deliver a notice to the Company specifying the identity of the replacement Mutual Director.
- 3.9** In the event that the Appointor or the Sponsor wishes to remove the Mutual Director, the Appointor or the Sponsor (as the case may be) shall deliver written notice to the Sponsor or the Appointor (as the case may be) of its desire to terminate the appointment of the Mutual Director.
- 3.10** The Appointor or the Sponsor (as the case may be) who receives the notice referred to in paragraph 3.9 above shall have ten (10) Business Days from the date of such written notice to approve or refuse, by written notice, the removal of the Mutual Director. If the Appointor or the Sponsor (as the case may be) refuses, in its sole discretion for any or no reason, to agree to the removal, the Mutual Director shall remain in office. If the Appointor and the Sponsor both approve the removal of such Mutual Director, or the party receiving the written notice pursuant to clause 3.9 fails to respond in the ten (10) Business Day time period or does not explicitly state its approval or refusal to the proposed termination, then the Appointor shall propose a replacement by written notice to the Sponsor and the provisions of clauses 3.6, 3.7 and 3.8 shall apply to govern the selection and appointment of a replacement Mutual Director, provided that the existing Mutual Director shall remain in office until the date of appointment of a replacement Mutual Director.

Procedure

- 3.11** The Company hereby agrees and undertakes that, notwithstanding any other provision of this Deed, it will not accept or implement the nomination, appointment, re-appointment or removal of an Appointor Director, Mutual Director or Incumbent Director if any such action would result in a majority of Directors having tax residency in any single jurisdiction (excluding Guernsey).
- 3.12** Any appointment, re-appointment or removal of any Appointor Director or Incumbent Director of the Company made pursuant to this clause 3 shall be done by written notice from the Party proposing such appointment, re-appointment or removal to each of the other Parties to this Deed, and shall take effect on the date specified in the notice. In the event of an appointment or re-appointment of an Appointor Director such notice shall include a written statement from the Appointor confirming that such director is an Independent Director and in the event of an appointment or re-appointment of a Mutual Director such notice shall include a written statement from both the Appointor and the Sponsor confirming that such director is an Independent Director.
- 3.13** The Company hereby undertakes to all Parties immediately to take all necessary steps, to implement and pass all necessary corporate authorisations and to perform all requisite actions required to implement any appointment, re-appointment or removal made pursuant to this Deed.
- 3.14** Any notice appointing, re-appointing or removing an Appointor Director must be signed on behalf of the Appointor; any notice appointing, re-appointing or removing an Incumbent Director must be signed on behalf of the Sponsor; and any notice appointing, re-appointing or removing a Mutual Director must be signed on behalf of both the Appointor and the Sponsor.
- 3.15** The Company shall not amend, waive or modify the terms of any appointment or engagement agreement/letter for any Appointor Director without the prior written consent of the Appointor. The Company shall not amend, waive or modify the terms of appointment or engagement agreement/letter for the Mutual Director without the prior written consent of both the Appointor and the Sponsor.

Change of control or other event

- 3.16** Notwithstanding the foregoing, in the event that:

- (a) the Sponsor Group ceases to be the direct or indirect majority shareholder of the Company, the Sponsor's rights to appoint, re-appoint or remove Incumbent Directors in this Deed shall be suspended with automatic and immediate effect and the Appointor shall be entitled to remove any or all Incumbent Directors (in its absolute discretion) from the Board and from the board of any Group Company and require the appointment of further Appointor Director(s) in the place of such Incumbent Director(s) by notice in writing to the Company. The Company shall Procure such removal and Procure that the appointment is effective upon the date specified by the Appointor in the notice; or
- (b) any Director(s) affiliated or connected to the Sponsor or the Appointor is/are required to vacate office pursuant to Article 28.1.5 (each of such Director(s) being a "**Leaving Director**"), the Appointor or the Sponsor (as the case may be) who appointed such Leaving Director(s) (the "Suspended Party") shall have its rights to appoint, re-appoint or remove Directors pursuant to this Deed suspended with automatic and immediate effect and the other Party (being whichever of the Sponsor and the Appointor is not the Suspended Party) shall be entitled to remove any and all of the Suspended Party's Directors (in its absolute discretion) from the Board and from the board of any Group Company and require the appointment of a further Director(s) in their place by notice in writing to the Company. The Company shall Procure such removal and Procure that the appointment is effective upon the date specified by the Appointor in the notice.

Insurance

3.17 The Company shall at all times maintain in full force and effect a directors' and officers' insurance policy in amounts and on terms which are not materially less favourable (as to scope of coverage or otherwise) than the insurance cover currently in place and the Company shall procure that each Director shall be covered by the terms of such insurance from (and including) the date of their appointment.

4 ALTERNATE DIRECTORS

4.1 Notwithstanding any provisions of the Articles, only:

- (a) the Appointor may appoint (or re-appoint) a person to act as an alternate Appointor Director and may terminate such appointment;
- (b) the Appointor and the Sponsor mutually may appoint (or re-appoint) a person to act as an alternate Mutual Director and may mutually terminate such appointment; and
- (c) the Sponsor may appoint (or re-appoint) a person to act as an alternate Incumbent Director and may terminate such appointment.

4.2 Any appointment, re-appointment or removal of any alternate Director of the Company made pursuant to clause 4.1 shall be done by written notice and shall take effect on the date specified in such notice. Any notice appointing, re-appointing or removing an alternate Appointor Director must be signed by or on behalf of the Appointor; any notice appointing, re-appointing or removing an alternate Incumbent Director must be signed by or on behalf of the Sponsor; and any notice appointing, re-appointing or removing an alternate Mutual Director must be signed by or on behalf of both the Appointor and the Sponsor.

4.3 In the event of an appointment or re-appointment of an alternate Appointor Director such notice shall include a written statement from the Appointor confirming that such alternate director is an Independent Director and in the event of an appointment or re-appointment of an alternate Mutual Director, such notice shall include a written statement from both the Appointor and the Sponsor confirming that such director is an Independent Director.

5 IMPLEMENTATION OFFICER

- 5.1** The Company, EGUK and EFUK each hereby agree with and undertake to the Appointor that each shall engage Martin Healy (acting through Cashelard Capital Limited) as Implementation Officer on the date of this Deed.
- 5.2** The Company, EAL, EGUK and EFUK have entered into an engagement letter to appoint the Implementation Officer on the date of this Deed (the “**IO Engagement Letter**”).
- 5.3** Subject to the IO Engagement Letter, the Board of the Company, by vote of the Independent Directors, shall be entitled to remove the Implementation Officer at any time without cause and upon any such removal EGUK and EFUK agree to remove such person as the Implementation Officer of EFUK and EGUK.
- 5.4** In the event that the Implementation Officer’s appointment has been terminated in accordance with clause 5.3 or upon the Implementation Officer’s voluntary resignation, death or disability, the Appointor shall promptly provide the Company, EAL, EGUK and EFUK with a list of up to three (3) persons proposed by the Appointor to be appointed as the Implementation Officer. Within five (5) Business Days of the date specified in such list, the Board of the Company, by a vote of the Independent Directors, shall select and appoint one of the persons named in such list to serve as Implementation Officer. EGUK and EFUK agree, at the same time, to appoint such person as their Implementation Officer of EGUK and EFUK.
- 5.5** The Company shall agree with the new Implementation Officer an engagement letter substantially in the form of the IO Engagement Letter, provided that the final form of which must first be approved, in writing, by the Appointor, and each of the Company, EGUK and EFUK agree to enter into such final agreed form of new IO Engagement Letter.
- 5.6** The Company, EGUK or EFUK (as applicable) shall permit the Implementation Officer, without limitation:
- (a) to perform his/her duties as set out in the IO Engagement Letter;
 - (b) to perform such other additional duties as the board of the Company may reasonably require; and
 - (c) periodically to report to the boards of EFUK and the Company as set out in the IO Engagement Letter.
- 5.7** The Company, EGUK or EFUK (as applicable) shall not reduce or materially amend the scope and/or number of duties of the Implementation Officer set out in the IO Engagement Letter, provided that additional duties may be introduced in accordance with clause 5.6(b) above.

6 ACTIONS BY THE COMPANY

- 6.1** The Company shall simultaneously with the execution of this Deed adopt new Articles in the form annexed hereto.
- 6.2** Any actual or purported amendment of the Articles shall be a breach of this Governance Deed and shall not be valid.
- 6.3** Without the prior written consent of the Appointor, the Company shall not issue shares, grant rights to subscribe for shares, convert any security into shares or undertake any other alteration to its share capital and the Company shall Procure that no Group Company shall issue shares, grant rights to subscribe for shares, convert any security into shares or undertake any other alteration to its share capital.

6.4 Any breach of the Side Deed by the Sponsors (as defined therein) shall be a breach of this Governance Deed.

7 EQUALITY OF INFORMATION

7.1 The Company acknowledges and agrees that all information relating to the Group and its affairs must be made equally available to all Directors at the same time and in the same manner.

7.2 The Company shall not provide any information:

- (a) to a Director; and/or
- (b) to a direct or indirect shareholder of the Company,

unless such information is communicated or made available to all Directors at substantially the same time and in the same manner.

7.3 The Company shall promptly provide copies of all notices and/or correspondence received from a direct or indirect shareholder of the Company or a member of the Sponsor Group to all of the Directors at substantially the same time and in the same manner.

7.4 The Company shall promptly pass to the Holder Adviser(s) any written notices received from any Director (including those delivered pursuant to the Articles, pursuant to their appointment or engagement letter or notices disclosing their interests or conflicts).

8 ADDITIONAL ACTIONS AND AGREEMENT(S)

The Company hereby undertakes to refrain, and to Procure that each member of the Sponsor Group refrains, from taking any action or entering into any agreement that contravenes, contradicts, frustrates or delays the effect of any term of this Deed, the Side Deed or the Articles.

9 INSOLVENCY PRACTITIONERS

9.1 If the Company, EGUK, EFUK or any Group Company seeks the appointment of an administrator, liquidator, receiver or any other insolvency office holder in respect of the Company, EGUK, EFUK or any Group Company (as applicable), such person shall be an insolvency office holder from Ernst & Young LLP (“EY”) who is named as, or selected by, the EY client service team named in the engagement letter entered into between, among others, EY and the Company dated 11 December 2017 (each, an “EY IP”).

9.2 Notwithstanding the above, to the extent that any person other than the Company, EGUK, EFUK or any Group Company seeks to appoint an administrator, liquidator, receiver or any other insolvency office holder in respect of the Company, EGUK, EFUK or any Group Company (as applicable), the Company, EGUK and EFUK (as applicable) shall Procure that each Group Company shall use all its corporate powers to ensure that an EY IP is appointed to such office.

9.3 The Company, EGUK and EFUK (as applicable) shall immediately notify the Holder Advisers in writing as soon as it:

- (a) is, or becomes aware that any Group Company is, considering an appointment pursuant to clause 9.1; or
- (b) becomes aware that any person other than the Company, EGUK, EFUK or a Group Company is considering an appointment pursuant to clause 9.2.

10 NOTICES

Form of notice

10.1 A notice, consent, approval or other communication given under this Deed or in connection with this Deed (each a “**Notice**” for the purposes of this clause) must be in writing in English and signed by or on behalf of the person giving it. Such Notice will be served by delivering it, in accordance with clause 10.2, to a Party due to receive it at the address set out in clause 10.4. For the avoidance of doubt, a Notice shall not be validly served by facsimile or electronic mail.

Method of service

10.2 Service of a Notice must only be effected by one of the following methods:

- (a) personally delivered to the relevant address set out in clause 10.4 and shall be deemed to have been served upon delivery if delivered during a Business Day, or at the start of the next Business Day if delivered at any other time;
- (b) by prepaid first class post to a relevant United Kingdom address set out in clause 10.4 and shall be deemed served at the start of the second Business Day after the date of posting;
- (c) by prepaid recognised international courier to a relevant non-United Kingdom address set out in clause 10.4 and shall be deemed served at the start of the third Business Day after the date of posting,

10.3 In clause 10.2 “**during a Business Day**” means any time between 9.00 am and 6.00 pm on a Business Day based on the local time at the location where the Notice is to be served. References to “**the start of [a] Business Day**” shall be construed accordingly.

Address for service

10.4 Notices shall be addressed as follows:

(a) Notices to the Appointor:

Name: [REDACTED]

Address: [REDACTED]

By email (which shall not constitute notice) to: [REDACTED]

With copies to (which shall not constitute notice):

Name [REDACTED]

Address: Address: [REDACTED]

By email to: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

(b) Notices to the Company:

Name: [REDACTED]

Address: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

(c) Notices to EGUK and/or EFUK:

Name: [REDACTED]

Address: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

(d) Notices to the Holder Advisers:

- Contact details to be notified pursuant to clause 10.5.

(e) Notices to the Sponsor:

Name: [REDACTED]

Address: [REDACTED]

Change or addition of details

10.5 A Party may amend the details included in clause 10.4, add details to clause 10.4 or require further copies of Notices to be sent, provided that it first gives all other Parties at least five (5) Business Days' prior written notice of such change in accordance with this clause 10. Until the end of such notice period, service on either address shall remain effective.

11 ASSIGNMENT

11.1 Except as otherwise provided in this Deed, no Party may assign or in any other way dispose of any of its rights or obligations under this Deed.

11.2 The Appointor may, at any time, assign its rights and obligations under this Deed to any person or persons who is/are a Majority Holder from time to time, provided that (i) written notice of such assignment shall be provided to the other Parties; and (ii) the proposed assignee(s) has/have entered into a deed of adherence to this Deed and warranted to each other Party in such deed of adherence that they are a Majority Holder. Following assignment the assignee(s) shall be deemed to be the Appointor hereunder.

12 AMENDMENTS

No amendment, change or addition to this Deed is effective or binding on a Party unless in writing and executed by all of the Parties.

13 TERMINATION OF THE DEED

13.1 This Deed shall terminate on the earlier of:

- (a) the Appointor delivering a written notice to the other Parties to this effect; and
- (b) replacement governance arrangements, as approved by the Majority Holders in their sole discretion, being entered into and taking effect pursuant to a restructuring of the Group.

13.2 This clause 13, clause 11 and clause 17 shall survive termination. Termination does not affect the Parties' accrued rights and obligations as at termination.

WARRANTIES

14

Each Party warrants to each other Party as at the date of this Deed that:

14.1

- (a) it is duly incorporated or formed, validly existing and in good standing under the laws of its jurisdiction of incorporation;
- (b) it has all requisite power and authority, and has taken all necessary actions, to enter into and exercise its rights and perform its obligations under this Deed and the other documents referred to in it;
- (c) this Deed and each of the other documents referred to in it which have been or are to be executed by that Party constitute valid and binding obligations of it and are enforceable against it in accordance with their terms; and
- (d) the execution of this Deed, and each of the other documents referred to in it which have been or are to be executed by that Party, and the performance by it of and compliance by it with their terms, by it does not and will not conflict with, constitute a breach of or give rise to an event of default under its constitutional documents, any agreement or instrument to which it is a party or any law, judgment, writ, injunction or decree of any court or agency binding upon it.

14.2 The Appointor warrants to each other Party, as at the date of this Deed, that funds advised or managed by H/2 Credit Manager LLC, together, are a Majority Holder.

14.3 The Company warrants to each other Party, as at the date of this Deed, that it is a wholly-owned subsidiary of Elli Finance II Limited.

14.4 EGUK warrants to each other Party, as at the date of this Deed, that it is a wholly-owned subsidiary of the Company.

14.5 EFUK warrants to each other Party, as at the date of this Deed, that it is a wholly-owned subsidiary of EGUK.

15 MISCELLANEOUS

Further assurance

15.1 Each Party must, and must use all reasonable efforts and take all reasonable steps to procure that any other person will:

- (a) do all such further acts and things;
- (b) execute and perform such further deeds and documents; and
- (c) give such further assurances,

in each case as may reasonably be required to give effect to this Deed.

15.2 The Company shall Procure that all Group Companies shall:

- (a) do all such further acts and things;
- (b) execute and perform such further deeds and documents; and
- (c) give such further assurances,

in each case as may reasonably be required to give effect to this Deed.

Conflict and requirements of law

- 15.3 Where the provisions of the Articles, constitutional documents, the Investment Agreement or any other agreement or arrangement in relation to the Group or any part thereof conflict with a provision of this Deed, each Party agrees that the provisions of this Deed prevail and shall Procure that each member of the Group and/or the Sponsor Group complies with the provisions of this Deed.
- 15.4 Nothing in this Deed shall require the Directors or any Party hereto to take any actions prohibited by applicable laws (including applicable fiduciary duties) or omit taking any actions that are required by applicable laws (including applicable fiduciary duties).

Unlawful fetter

- 15.5 Neither the Company nor the Appointor is bound by a provision of this Deed to the extent it constitutes an unlawful fetter on any of its statutory powers, but that provision remains valid and binding as regards each other Party to which it is expressed to apply.

Successors and assigns bound

- 15.6 This Deed is binding on each Party's successors in title or assigns or (in the case of a Party who is an individual) his personal representatives, but such a person is not entitled to the benefit of its provisions unless that person has entered into a deed of adherence adhering to the terms of this Deed.

No partnership or agency

- 15.7 This Deed is not to be construed as creating a partnership or an agency relationship (except to the extent expressly described) between any of the Parties.

Counterparts

- 15.8 This Deed may be executed in any number of counterparts, each of which when executed and delivered is an original, but all of which when taken together constitutes a single instrument.

Indulgence

- 15.9 No relaxation, forbearance, indulgence or delay (each an "**Indulgence**") of a Party in exercising a right under this Deed is to be construed as a waiver of that right and does not affect the ability of that Party subsequently to exercise that right or to pursue a remedy in respect of it, nor does any Indulgence constitute a waiver of any other right.

Compromise

- 15.10 Except where a clause makes a contrary express provision:
- (a) a liability to the Appointor may be released or compromised, wholly or partially, and any time or Indulgence may be given, by the Appointor to any person (a "**Recipient**") in writing in the Appointor's absolute discretion without prejudicing or otherwise affecting their rights and remedies against any other person, whether that other person is under the same or similar liability, including a liability held with the Recipient; and
 - (b) each Party is responsible only for its own acts and defaults and has no liability for the act or default of any other Party.

Service of Process Agent

- 15.11** Each of the Parties irrevocably and unconditionally agrees, without prejudice to any other method(s) of service permitted by law, to accept service of any proceedings commenced against it in accordance with clause 17.2 if any such proceedings are served on it in accordance with clause 10 of this Deed.

Remedies

- 15.12** Each of the Parties acknowledges that damages may not be an adequate remedy for any breach of any of the provisions of this Deed. Accordingly, any non-breaching Party shall be entitled to seek the remedies of specific performance and injunctive or other equitable relief, in each case without the necessity of giving a cross undertaking or security in connection with any application for such remedy and/or relief for any threatened or actual breach of the provisions of this Deed and the foregoing (a) is without prejudice to any other rights or remedies under this Deed or law or equity and (b) shall not operate as a waiver or limitation with respect to any of the rights or remedies referred to in (a).

16 THIRD PARTY RIGHTS

- 16.1** Unless expressly provided to the contrary, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term of this Deed. In relation hereto, the Sponsor shall be entitled as a third party to rely upon and enforce the rights and benefits, in so far as they relate to the appointment, re-appointment or removal of Incumbent Directors and/or the Mutual Director, expressly given to it in this Deed.

- 16.2** Notwithstanding clause 16.1, consent of any person who is not a Party is not required to rescind or vary this Deed at any time except that the rights and benefits, in so far as they relate to the appointment, re-appointment or removal of Incumbent Directors and/or the Mutual Director, expressly given to the Sponsor under this Deed may only be rescinded or varied with its consent.

17 GOVERNING LAW AND JURISDICTION

- 17.1** This Deed (together with all documents to be entered into pursuant to it which are not expressed to be governed by another law) and all matters (including without limitation, any contractual or non-contractual obligation) arising from or in connection with it are governed by, and are to be construed and take effect in accordance with, English law.

- 17.2** The courts of England have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Deed (including without limitation claims for set-off or counterclaim) or the legal relationships established by this Deed.

THIS GOVERNANCE DEED is made on 15 March **2018** between the following parties:

- (1) **THE MAJORITY HOLDERS**, being certain investment funds managed or advised by H/2 Credit Manager LLC (a company incorporated in Delaware with registered number 6651098 and registered address at 680 Washington Boulevard, Seventh Floor, Stamford CT 06901) or its affiliates (such funds, together with H/2 Credit Manager LLC, collectively being the “**Appointor**”);
- (2) **ELLI ACQUISITIONS LIMITED**, a non-cellular company limited by shares and organised under the laws of Guernsey with registered number 55186 and registered address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT (the “**Company**”);
- (3) **ELLI GROUP (UK) LIMITED**, a company incorporated in England and Wales with registered number 08092763 and registered address at Norcliffe House, Station Road, Wilmslow SK9 1BU (“**EGUK**”); and
- (4) **ELLI FINANCE (UK) PLC**, a company incorporated in England and Wales with registered number 08094161 and registered address at Norcliffe House, Station Road, Wilmslow SK9 1BU (“**EFUK**”),

(together, the “**Parties**”, and each, a “**Party**”).

WHEREAS:

- (A) The Company, the Appointor and EFUK, amongst others, entered into a standstill and deferral agreement on 14 December 2017 (as amended from time to time) (the “**Standstill Amendment**”).
- (B) This Deed contains the terms of governance for the Board (as defined below) and certain other matters concerning the Group, as set out herein.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed:

“**Appointor Directors**” has the meaning given in clause 2.1(a) and “**Appointor Director**” means any one of them;

“**Articles**” means the articles of incorporation of the Company (as amended from time to time);

“**Board**” means the board of Directors of the Company from time to time, including any duly appointed committee thereof;

“**Business Day**” means a day, except a Saturday or Sunday or a public holiday in England, Guernsey and the United States of America, on which banks in England, Guernsey and the United States of America are generally open for business;

“**Directors**” means the directors of the Company from time to time and “**Director**” means any of them;

“**EIL**” means Elli Investments Limited, a non-cellular company limited by shares and organised under the laws of Guernsey with registered number 55185 and registered address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT;

“**Group**” means EIL and each of its direct or indirect subsidiaries (and each such entity a “**Group Company**”);

“**Holder Advisers**” has the meaning given to it in the Standstill Agreement;

“**Implementation Officer**” means the implementation officer appointed pursuant to clause 5;

“**Incumbent Directors**” has the meaning given in clause 2.1(c) and “**Incumbent Director**” means any one of them;

“**Independent Director**” means a person other than an individual having a relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director, and such person:

- (a) has not been employed by, formed a part of or been affiliated with, nor is or has been a director, employee, consultant, member or partner of, any member of the Sponsor Group, the Group or the Appointor;
- (b) has not, in the last three years, had a material business relationship with the Sponsor Group, the Group or the Appointor;
- (c) has not had close family ties with any directors, employees, consultants, members or partners of the Sponsor Group, the Group or the Appointor; and
- (d) has not received and does not (directly or indirectly) receive additional remuneration from any member of the Sponsor Group, the Group or the Appointor apart from: (i) a director’s fee properly received (or to be received) in respect of their appointment as a Director in accordance with this Deed, or (ii) participation in a share option or a performance-related pay scheme operated by the Sponsor Group, the Group or the Appointor;

“**Investment Agreement**” means the investment agreement entered into by (amongst others) the Company dated 12 July 2012 (as amended from time to time);

“**IO Engagement Letter**” has the meaning given in clause 5.2;

“**Majority Holders**” has the meaning given to it in the Standstill Agreement;

“**Mutual Director**” has the meaning given in clause 2.1(b);

“**Procure**” means:

- (i) in respect of a direct or indirect subsidiary undertaking, the passing of all necessary corporate authorisations, exercising all rights as a direct or indirect shareholder and taking all actions available to cause such other persons to take the relevant action(s); or
- (ii) in respect of a direct or indirect parent undertaking or an entity under common control, using reasonable commercial endeavours;

“**Recipient**” has the meaning given in clause 15.10(a);

“**Side Deed**” means the side deed from the Sponsors (as defined therein) and EIL for the benefit of the Addressees (as defined therein) entered into on or around the date of this Deed;

“**Sponsor**” means (i) Elli Capital Limited, a non-cellular company limited by shares and organised under the laws of Guernsey with registered number 54965 and registered address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT; (ii) FSHC Group Holdings Limited, a non-cellular company limited by shares and organised under the laws of Guernsey with registered number 55183 and registered

address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT; and (iii) Elli Finance II Limited, a non-cellular company limited by shares and organised under the laws of Guernsey with registered number 55184 and registered address at Old Bank Chambers, La Grande Rue, St Martins, Guernsey GY4 6RT; and

“**Sponsor Group**” has the meaning given to it in the Standstill Agreement.

1.2 In this Deed:

- (a) a reference to a clause, paragraph or Annex is, unless stated otherwise, a reference to a clause, paragraph or Annex of this Deed;
- (b) a reference to a paragraph or column in an Annex is, unless otherwise stated, a reference to a paragraph or column in that Annex or, where the Annex is split into parts, a reference to a paragraph or column in that part of the Annex;
- (c) a reference to legislation includes a reference to that legislation as amended, re-enacted or extended before the date of this Deed;
- (d) a reference to a “**person**” includes an individual, company, corporation, firm, partnership, joint venture, association, state, state agency, institution or trust (whether or not it has a separate legal personality);
- (e) a reference to one gender is a reference to all or any genders;
- (f) the singular includes the plural and vice versa;
- (g) a reference to a particular time of day is, unless specified otherwise, a reference to that time in London;
- (h) a reference to an action that is to take place on a particular day means, unless a time is specified, that action can take place at any time on or before 11.59 pm London time on that day;
- (i) “**including**” means that the words following it are illustrative and not exhaustive; and
- (j) a reference to a “**month**” means a calendar month.

2 THE BOARD

2.1 The Company hereby agrees with and undertakes to the Appointor that the Board shall consist of five (5) Directors (and no more), and shall comprise the following:

- (a) two (2) Independent Directors, appointed by the Appointor (the “**Appointor Directors**”);
- (b) one (1) Independent Director, mutually appointed by the Appointor and the Sponsor (the “**Mutual Director**”); and
- (c) two (2) Directors, appointed by the Sponsor (the “**Incumbent Directors**”).

2.2 The Company hereby agrees with and confirms to the Appointor that:

- (a) the Appointor selects and appoints Christopher Hill and Christopher Harris to be the first Appointor Directors on the Board;
- (b) the Appointor and Sponsor agree, select and appoint Allan Hayward to be the first Mutual Director on the Board; and

- (e) the Sponsor selects Ryan Macaskill and Lorcan Woods, being existing directors of the Company, to be the first Incumbent Directors on the Board,

in each case, with effect from the date of this Deed.

- 2.3 Each Director shall have one vote, and no Director or chairman of the Board shall have a casting vote.
- 2.4 The quorum necessary for the transaction of the business of the Directors shall be three (3) Directors, including either: (i) two Appointor Directors; or (ii) one Appointor Director and the Mutual Director. For the purposes of this clause, an alternate Director, duly appointed in accordance with this Deed, shall be counted in the quorum at a meeting at which the Director appointing such alternate Director is not present.
- 2.5 The Company hereby undertakes that it shall only appoint, re-appoint or remove a Director in accordance with this Deed and any appointment, re-appointment or removal of a Director purportedly undertaken other than in accordance with this Deed shall be a breach of this Deed and shall not be valid.

3 APPOINTMENT, RE-APPOINTMENT AND REMOVAL OF DIRECTORS

Appointor Directors

- 3.1 Appointor Directors shall only be appointed, re-appointed or removed by the Appointor. The Appointor shall be entitled to appoint, re-appoint or remove an Appointor Director at any time in its sole discretion, for any reason or no reason.
- 3.2 Where an Appointor Director ceases to be a Director, the Appointor agrees to nominate and appoint, without delay, a replacement Appointor Director.

Incumbent Directors

- 3.3 Incumbent Directors shall only be appointed, re-appointed or removed by the Sponsor. The Sponsor shall be entitled to appoint, re-appoint or remove an Incumbent Director at any time in its sole discretion, for any reason or no reason.

Mutual Directors

- 3.4 The Appointor and the Sponsor shall jointly, by written notice (signed by or on behalf of the Appointor and the Sponsor), be entitled to appoint, re-appoint or remove a Mutual Director as they see fit, at any time, in their discretion for any reason or no reason, in accordance with this Deed.
- 3.5 In the event that Allan Hayward (being the first Mutual Director) ceases to be the Mutual Director, the Appointor shall within twenty (20) Business Days of the date of termination propose, in a written notice, a replacement individual for appointment as the Mutual Director.
- 3.6 The Sponsor shall have ten (10) Business Days from the date of such written notice to approve or decline, by written notice, the appointment of the individual proposed. If the Sponsor fails to respond within the ten (10) Business Day time period or does not explicitly state that it has approved or declined the appointment of such individual, the Sponsor shall be deemed to have consented to the appointment of the proposed individual as the Mutual Director and the Company shall immediately proceed with the appointment.
- 3.7 If the Sponsor declines the appointment of the individual proposed, the Appointor shall propose an alternative individual in a second written notice to the Sponsor in accordance with the provisions of clauses 3.5 and 3.6 above, and such provisions shall apply in respect of such proposal.

- 3.8** In the event that the individual named in the second proposal notice is not appointed as the Mutual Director, the Appointor and the Sponsor agree to negotiate with each other (in good faith) to agree and jointly nominate (by written notice to the Company) and appoint, without delay, a replacement Mutual Director. Following agreement the Appointor and the Sponsor shall, without delay, deliver a notice to the Company specifying the identity of the replacement Mutual Director.
- 3.9** In the event that the Appointor or the Sponsor wishes to remove the Mutual Director, the Appointor or the Sponsor (as the case may be) shall deliver written notice to the Sponsor or the Appointor (as the case may be) of its desire to terminate the appointment of the Mutual Director.
- 3.10** The Appointor or the Sponsor (as the case may be) who receives the notice referred to in paragraph 3.9 above shall have ten (10) Business Days from the date of such written notice to approve or refuse, by written notice, the removal of the Mutual Director. If the Appointor or the Sponsor (as the case may be) refuses, in its sole discretion for any or no reason, to agree to the removal, the Mutual Director shall remain in office. If the Appointor and the Sponsor both approve the removal of such Mutual Director, or the party receiving the written notice pursuant to clause 3.9 fails to respond in the ten (10) Business Day time period or does not explicitly state its approval or refusal to the proposed termination, then the Appointor shall propose a replacement by written notice to the Sponsor and the provisions of clauses 3.6, 3.7 and 3.8 shall apply to govern the selection and appointment of a replacement Mutual Director, provided that the existing Mutual Director shall remain in office until the date of appointment of a replacement Mutual Director.

Procedure

- 3.11** The Company hereby agrees and undertakes that, notwithstanding any other provision of this Deed, it will not accept or implement the nomination, appointment, re-appointment or removal of an Appointor Director, Mutual Director or Incumbent Director if any such action would result in a majority of Directors having tax residency in any single jurisdiction (excluding Guernsey).
- 3.12** Any appointment, re-appointment or removal of any Appointor Director or Incumbent Director of the Company made pursuant to this clause 3 shall be done by written notice from the Party proposing such appointment, re-appointment or removal to each of the other Parties to this Deed, and shall take effect on the date specified in the notice. In the event of an appointment or re-appointment of an Appointor Director such notice shall include a written statement from the Appointor confirming that such director is an Independent Director and in the event of an appointment or re-appointment of a Mutual Director such notice shall include a written statement from both the Appointor and the Sponsor confirming that such director is an Independent Director.
- 3.13** The Company hereby undertakes to all Parties immediately to take all necessary steps, to implement and pass all necessary corporate authorisations and to perform all requisite actions required to implement any appointment, re-appointment or removal made pursuant to this Deed.
- 3.14** Any notice appointing, re-appointing or removing an Appointor Director must be signed on behalf of the Appointor; any notice appointing, re-appointing or removing an Incumbent Director must be signed on behalf of the Sponsor; and any notice appointing, re-appointing or removing a Mutual Director must be signed on behalf of both the Appointor and the Sponsor.
- 3.15** The Company shall not amend, waive or modify the terms of any appointment or engagement agreement/letter for any Appointor Director without the prior written consent of the Appointor. The Company shall not amend, waive or modify the terms of appointment or engagement agreement/letter for the Mutual Director without the prior written consent of both the Appointor and the Sponsor.

Change of control or other event

- 3.16** Notwithstanding the foregoing, in the event that:

- (a) the Sponsor Group ceases to be the direct or indirect majority shareholder of the Company, the Sponsor's rights to appoint, re-appoint or remove Incumbent Directors in this Deed shall be suspended with automatic and immediate effect and the Appointor shall be entitled to remove any or all Incumbent Directors (in its absolute discretion) from the Board and from the board of any Group Company and require the appointment of further Appointor Director(s) in the place of such Incumbent Director(s) by notice in writing to the Company. The Company shall Procure such removal and Procure that the appointment is effective upon the date specified by the Appointor in the notice; or
- (b) any Director(s) affiliated or connected to the Sponsor or the Appointor is/are required to vacate office pursuant to Article 28.1.5 (each of such Director(s) being a "**Leaving Director**"), the Appointor or the Sponsor (as the case may be) who appointed such Leaving Director(s) (the "Suspended Party") shall have its rights to appoint, re-appoint or remove Directors pursuant to this Deed suspended with automatic and immediate effect and the other Party (being whichever of the Sponsor and the Appointor is not the Suspended Party) shall be entitled to remove any and all of the Suspended Party's Directors (in its absolute discretion) from the Board and from the board of any Group Company and require the appointment of a further Director(s) in their place by notice in writing to the Company. The Company shall Procure such removal and Procure that the appointment is effective upon the date specified by the Appointor in the notice.

Insurance

3.17 The Company shall at all times maintain in full force and effect a directors' and officers' insurance policy in amounts and on terms which are not materially less favourable (as to scope of coverage or otherwise) than the insurance cover currently in place and the Company shall procure that each Director shall be covered by the terms of such insurance from (and including) the date of their appointment.

4 ALTERNATE DIRECTORS

4.1 Notwithstanding any provisions of the Articles, only:

- (a) the Appointor may appoint (or re-appoint) a person to act as an alternate Appointor Director and may terminate such appointment;
- (b) the Appointor and the Sponsor mutually may appoint (or re-appoint) a person to act as an alternate Mutual Director and may mutually terminate such appointment; and
- (c) the Sponsor may appoint (or re-appoint) a person to act as an alternate Incumbent Director and may terminate such appointment.

4.2 Any appointment, re-appointment or removal of any alternate Director of the Company made pursuant to clause 4.1 shall be done by written notice and shall take effect on the date specified in such notice. Any notice appointing, re-appointing or removing an alternate Appointor Director must be signed by or on behalf of the Appointor; any notice appointing, re-appointing or removing an alternate Incumbent Director must be signed by or on behalf of the Sponsor; and any notice appointing, re-appointing or removing an alternate Mutual Director must be signed by or on behalf of both the Appointor and the Sponsor.

4.3 In the event of an appointment or re-appointment of an alternate Appointor Director such notice shall include a written statement from the Appointor confirming that such alternate director is an Independent Director and in the event of an appointment or re-appointment of an alternate Mutual Director, such notice shall include a written statement from both the Appointor and the Sponsor confirming that such director is an Independent Director.

5 IMPLEMENTATION OFFICER

- 5.1** The Company, EGUK and EFUK each hereby agree with and undertake to the Appointor that each shall engage Martin Healy (acting through Cashelard Capital Limited) as Implementation Officer on the date of this Deed.
- 5.2** The Company, EIL, EGUK and EFUK have entered into an engagement letter to appoint the Implementation Officer on the date of this Deed (the “**IO Engagement Letter**”).
- 5.3** Subject to the IO Engagement Letter, the board of EIL, by vote of its Independent Directors, shall be entitled to remove the Implementation Officer at any time without cause and upon any such removal the Company, EGUK and EFUK agree to remove such person as the Implementation Officer of the Company, EFUK and EGUK.
- 5.4** In the event that the Implementation Officer’s appointment has been terminated in accordance with clause 5.3 or upon the Implementation Officer’s voluntary resignation, death or disability, the Appointor shall promptly provide the Company, EIL, EGUK and EFUK with a list of up to three (3) persons proposed by the Appointor to be appointed as the Implementation Officer. Within five (5) Business Days of the date specified in such list, the board of EIL, by a vote of its Independent Directors, shall select and appoint one of the persons named in such list to serve as Implementation Officer. The Company, EGUK and EFUK agree, at the same time, to appoint such person as their Implementation Officer.
- 5.5** EIL shall agree with the new Implementation Officer an engagement letter substantially in the form of the IO Engagement Letter, provided that the final form of which must first be approved, in writing, by the Appointor, and each of the Company, EGUK and EFUK agree to enter into such final agreed form of new IO Engagement Letter.
- 5.6** The Company, EGUK or EFUK (as applicable) shall permit the Implementation Officer, without limitation:
- (a) to perform his/her duties as set out in the IO Engagement Letter;
 - (b) to perform such other additional duties as the board of EIL may reasonably require; and
 - (c) periodically to report to the boards of EFUK and EIL as set out in the IO Engagement Letter.
- 5.7** The Company, EGUK or EFUK (as applicable) shall not reduce or materially amend the scope and/or number of duties of the Implementation Officer set out in the IO Engagement Letter, provided that additional duties may be introduced in accordance with clause 5.6(b) above.

6 ACTIONS BY THE COMPANY

- 6.1** The Company shall simultaneously with the execution of this Deed adopt new Articles in the form annexed hereto.
- 6.2** Any actual or purported amendment of the Articles shall be a breach of this Governance Deed and shall not be valid.
- 6.3** Without the prior written consent of the Appointor, the Company shall not issue shares, grant rights to subscribe for shares, convert any security into shares or undertake any other alteration to its share capital and the Company shall Procure that no Group Company shall issue shares, grant rights to subscribe for shares, convert any security into shares or undertake any other alteration to its share capital.

6.4 Any breach of the Side Deed by the Sponsors (as defined therein) and/or EIL shall be a breach of this Governance Deed.

7 EQUALITY OF INFORMATION

7.1 The Company acknowledges and agrees that all information relating to the Group and its affairs must be made equally available to all Directors at the same time and in the same manner.

7.2 The Company shall not provide any information:

- (a) to a Director; and/or
- (b) to a direct or indirect shareholder of the Company,

unless such information is communicated or made available to all Directors at substantially the same time and in the same manner.

7.3 The Company shall promptly provide copies of all notices and/or correspondence received from a direct or indirect shareholder of the Company or a member of the Sponsor Group to all of the Directors at substantially the same time and in the same manner.

7.4 The Company shall promptly pass to the Holder Adviser(s) any written notices received from any Director (including those delivered pursuant to the Articles, pursuant to their appointment or engagement letter or notices disclosing their interests or conflicts).

8 ADDITIONAL ACTIONS AND AGREEMENT(S)

The Company hereby undertakes to refrain, and to Procure that each member of the Sponsor Group refrains, from taking any action or entering into any agreement that contravenes, contradicts, frustrates or delays the effect of any term of this Deed, the Side Deed or the Articles.

9 INSOLVENCY PRACTITIONERS

9.1 If the Company, EGUK, EFUK or any Group Company seeks the appointment of an administrator, liquidator, receiver or any other insolvency office holder in respect of the Company, EGUK, EFUK or any Group Company (as applicable), such person shall be an insolvency office holder from Ernst & Young LLP (“EY”) who is named as, or selected by, the EY client service team named in the engagement letter entered into between, among others, EY and the Company dated 11 December 2017 (each, an “EY IP”).

9.2 Notwithstanding the above, to the extent that any person other than the Company, EGUK, EFUK or any Group Company seeks to appoint an administrator, liquidator, receiver or any other insolvency office holder in respect of the Company, EGUK, EFUK or any Group Company (as applicable), the Company, EGUK and EFUK (as applicable) shall Procure that each Group Company shall use all its corporate powers to ensure that an EY IP is appointed to such office.

9.3 The Company, EGUK and EFUK (as applicable) shall immediately notify the Holder Advisers in writing as soon as it:

- (a) is, or becomes aware that any Group Company is, considering an appointment pursuant to clause 9.1; or
- (b) becomes aware that any person other than the Company, EGUK, EFUK or a Group Company is considering an appointment pursuant to clause 9.2.

10 NOTICES

Form of notice

10.1 A notice, consent, approval or other communication given under this Deed or in connection with this Deed (each a “**Notice**” for the purposes of this clause) must be in writing in English and signed by or on behalf of the person giving it. Such Notice will be served by delivering it, in accordance with clause 10.2, to a Party due to receive it at the address set out in clause 10.4. For the avoidance of doubt, a Notice shall not be validly served by facsimile or electronic mail.

Method of service

10.2 Service of a Notice must only be effected by one of the following methods:

- (a) personally delivered to the relevant address set out in clause 10.4 and shall be deemed to have been served upon delivery if delivered during a Business Day, or at the start of the next Business Day if delivered at any other time;
- (b) by prepaid first class post to a relevant United Kingdom address set out in clause 10.4 and shall be deemed served at the start of the second Business Day after the date of posting;
- (c) by prepaid recognised international courier to a relevant non-United Kingdom address set out in clause 10.4 and shall be deemed served at the start of the third Business Day after the date of posting,

10.3 In clause 10.2 “**during a Business Day**” means any time between 9.00 am and 6.00 pm on a Business Day based on the local time at the location where the Notice is to be served. References to “**the start of [a] Business Day**” shall be construed accordingly.

Address for service

10.4 Notices shall be addressed as follows:

(a) Notices to the Appointor:

Name: [REDACTED]

Address: [REDACTED]

By email (which shall not constitute notice) to: [REDACTED]

With copies to (which shall not constitute notice):

Name [REDACTED]

Address: Address: [REDACTED]

By email to: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

(b) Notices to the Company:

Name: [REDACTED]

Address: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

(c) Notices to EGUK and/or EFUK:

Name: [REDACTED]

Address: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

With copies to (which shall not constitute notice):

[REDACTED]

For the attention of: [REDACTED]

By email to: [REDACTED]

(d) Notices to the Holder Advisers:

- Contact details to be notified pursuant to clause 10.5.

(e) Notices to the Sponsor:

Name: [REDACTED]

Address: [REDACTED]

Change or addition of details

10.5 A Party may amend the details included in clause 10.4, add details to clause 10.4 or require further copies of Notices to be sent, provided that it first gives all other Parties at least five (5) Business Days' prior written notice of such change in accordance with this clause 10. Until the end of such notice period, service on either address shall remain effective.

11 ASSIGNMENT

11.1 Except as otherwise provided in this Deed, no Party may assign or in any other way dispose of any of its rights or obligations under this Deed.

11.2 The Appointor may, at any time, assign its rights and obligations under this Deed to any person or persons who is/are a Majority Holder from time to time, provided that (i) written notice of such assignment shall be provided to the other Parties; and (ii) the proposed assignee(s) has/have entered into a deed of adherence to this Deed and warranted to each other Party in such deed of adherence that they are a Majority Holder. Following assignment the assignee(s) shall be deemed to be the Appointor hereunder.

12 AMENDMENTS

No amendment, change or addition to this Deed is effective or binding on a Party unless in writing and executed by all of the Parties.

13 TERMINATION OF THE DEED

13.1 This Deed shall terminate on the earlier of:

- (a) the Appointor delivering a written notice to the other Parties to this effect; and
- (b) replacement governance arrangements, as approved by the Majority Holders in their sole discretion, being entered into and taking effect pursuant to a restructuring of the Group.

13.2 This clause 13, clause 11 and clause 17 shall survive termination. Termination does not affect the Parties' accrued rights and obligations as at termination.

14 WARRANTIES

14.1 Each Party warrants to each other Party as at the date of this Deed that:

- (a) it is duly incorporated or formed, validly existing and in good standing under the laws of its jurisdiction of incorporation;
- (b) it has all requisite power and authority, and has taken all necessary actions, to enter into and exercise its rights and perform its obligations under this Deed and the other documents referred to in it;
- (c) this Deed and each of the other documents referred to in it which have been or are to be executed by that Party constitute valid and binding obligations of it and are enforceable against it in accordance with their terms; and
- (d) the execution of this Deed, and each of the other documents referred to in it which have been or are to be executed by that Party, and the performance by it of and compliance by it with their terms, by it does not and will not conflict with, constitute a breach of or give rise to an event of default under its constitutional documents, any agreement or instrument to which it is a party or any law, judgment, writ, injunction or decree of any court or agency binding upon it.

14.2 The Appointor warrants to each other Party, as at the date of this Deed, that funds advised or managed by H/2 Credit Manager LLC, together, are a Majority Holder.

14.3 The Company warrants to each other Party, as at the date of this Deed, that it is a wholly-owned subsidiary of EIL.

14.4 EGUK warrants to each other Party, as at the date of this Deed, that it is a wholly-owned subsidiary of the Company.

14.5 EFUK warrants to each other Party, as at the date of this Deed, that it is a wholly-owned subsidiary of EGUK.

15 MISCELLANEOUS

Further assurance

15.1 Each Party must, and must use all reasonable efforts and take all reasonable steps to procure that any other person will:

- (a) do all such further acts and things;
- (b) execute and perform such further deeds and documents; and
- (c) give such further assurances,

in each case as may reasonably be required to give effect to this Deed.

15.2 The Company shall Procure that all Group Companies shall:

- (a) do all such further acts and things;
- (b) execute and perform such further deeds and documents; and
- (c) give such further assurances,

in each case as may reasonably be required to give effect to this Deed.

Conflict and requirements of law

- 15.3 Where the provisions of the Articles, constitutional documents, the Investment Agreement or any other agreement or arrangement in relation to the Group or any part thereof conflict with a provision of this Deed, each Party agrees that the provisions of this Deed prevail and shall Procure that each member of the Group and/or the Sponsor Group complies with the provisions of this Deed.
- 15.4 Nothing in this Deed shall require the Directors or any Party hereto to take any actions prohibited by applicable laws (including applicable fiduciary duties) or omit taking any actions that are required by applicable laws (including applicable fiduciary duties).

Unlawful fetter

- 15.5 Neither the Company nor the Appointor is bound by a provision of this Deed to the extent it constitutes an unlawful fetter on any of its statutory powers, but that provision remains valid and binding as regards each other Party to which it is expressed to apply.

Successors and assigns bound

- 15.6 This Deed is binding on each Party's successors in title or assigns or (in the case of a Party who is an individual) his personal representatives, but such a person is not entitled to the benefit of its provisions unless that person has entered into a deed of adherence adhering to the terms of this Deed.

No partnership or agency

- 15.7 This Deed is not to be construed as creating a partnership or an agency relationship (except to the extent expressly described) between any of the Parties.

Counterparts

- 15.8 This Deed may be executed in any number of counterparts, each of which when executed and delivered is an original, but all of which when taken together constitutes a single instrument.

Indulgence

- 15.9 No relaxation, forbearance, indulgence or delay (each an "**Indulgence**") of a Party in exercising a right under this Deed is to be construed as a waiver of that right and does not affect the ability of that Party subsequently to exercise that right or to pursue a remedy in respect of it, nor does any Indulgence constitute a waiver of any other right.

Compromise

- 15.10 Except where a clause makes a contrary express provision:
- (a) a liability to the Appointor may be released or compromised, wholly or partially, and any time or Indulgence may be given, by the Appointor to any person (a "**Recipient**") in writing in the Appointor's absolute discretion without prejudicing or otherwise affecting their rights and remedies against any other person, whether that other person is under the same or similar liability, including a liability held with the Recipient; and
 - (b) each Party is responsible only for its own acts and defaults and has no liability for the act or default of any other Party.

Service of Process Agent

- 15.11** Each of the Parties irrevocably and unconditionally agrees, without prejudice to any other method(s) of service permitted by law, to accept service of any proceedings commenced against it in accordance with clause 17.2 if any such proceedings are served on it in accordance with clause 10 of this Deed.

Remedies

- 15.12** Each of the Parties acknowledges that damages may not be an adequate remedy for any breach of any of the provisions of this Deed. Accordingly, any non-breaching Party shall be entitled to seek the remedies of specific performance and injunctive or other equitable relief, in each case without the necessity of giving a cross undertaking or security in connection with any application for such remedy and/or relief for any threatened or actual breach of the provisions of this Deed and the foregoing (a) is without prejudice to any other rights or remedies under this Deed or law or equity and (b) shall not operate as a waiver or limitation with respect to any of the rights or remedies referred to in (a).

16 THIRD PARTY RIGHTS

- 16.1** Unless expressly provided to the contrary, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce or enjoy the benefit of any term of this Deed. In relation hereto, the Sponsor shall be entitled as a third party to rely upon and enforce the rights and benefits, in so far as they relate to the appointment, re-appointment or removal of Incumbent Directors and/or the Mutual Director, expressly given to it in this Deed.

- 16.2** Notwithstanding clause 16.1, consent of any person who is not a Party is not required to rescind or vary this Deed at any time except that the rights and benefits, in so far as they relate to the appointment, re-appointment or removal of Incumbent Directors and/or the Mutual Director, expressly given to the Sponsor under this Deed may only be rescinded or varied with its consent.

17 GOVERNING LAW AND JURISDICTION

- 17.1** This Deed (together with all documents to be entered into pursuant to it which are not expressed to be governed by another law) and all matters (including without limitation, any contractual or non-contractual obligation) arising from or in connection with it are governed by, and are to be construed and take effect in accordance with, English law.

- 17.2** The courts of England have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Deed (including without limitation claims for set-off or counterclaim) or the legal relationships established by this Deed.

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THE COMPANIES (GUERNSEY) LAW, 2008 (AS AMENDED)

NON-CELLULAR COMPANY LIMITED BY SHARES

ARTICLES OF INCORPORATION

of

ELLI INVESTMENTS LIMITED

1 DEFINITIONS

In these Articles, if not inconsistent with the subject or context, the following words have the following meaning:

these Articles	the articles of incorporation of the Company in their present form or as from time to time altered.
Appointor Director	a Director, being an Appointor Director (as defined in the Governance Deed) appointed in accordance with and subject to the Governance Deed.
Business Day	a day which is not a Saturday, Sunday or public holiday in Guernsey.
Clear Days	in relation to a period of notice, shall mean that period excluding the day when the notice is served or deemed to be served and the day for which it is given or on which it is to take effect.
the Court	means the Royal Court of Guernsey sitting as an Ordinary Court.
Default Interests	shall have the meaning given to it in Article 11.5.1.
Department	shall have the meaning given to it in Article 3.
Direction Notice	shall have the meaning given to it in Article 11.4.
Distribution	shall have the meaning ascribed to it by Section 301 of the Law.
Dividend	shall have the meaning ascribed to it by Section 302 of the Law.
the Directors	the directors of the Company, comprising the Appointor Directors, the Mutual Director and the Incumbent Directors, who number not less than the Quorum required by these Articles.
Electronic Means	shall have the meaning ascribed to it by the Law.

Eligible Members	the Members entitled to vote on the circulation date of a Written Resolution.
Governance Deed	means the deed relating to the Company entered into by the Company, the Appointor (as defined therein), Elli Group (UK) Limited and Elli Finance (UK) PLC on or about the date hereof.
Guernsey Security Interest Agreement	a security interest agreement made under and pursuant to the Security Interests (Guernsey) Law, 1993 (as amended).
Incumbent Director	a Director, being an Incumbent Director (as defined in the Governance Deed) appointed in accordance with and subject to the Governance Deed.
Interested Party	shall have the meaning given to it in Article 11.1.
Law	the Companies (Guernsey) Law, 2008 (as amended).
Member	in relation to shares means the person whose name is entered in the Register as the holder of the shares.
Memorandum	the memorandum of incorporation of the Company for the time being current.
Month	thirty one days.
Mutual Director	a Director, being a Mutual Director (as defined in the Governance Deed) appointed in accordance with and subject to the Governance Deed.
Office	the registered office for the time being of the Company.
Ordinary Resolution	a resolution of the Company passed as an ordinary resolution in accordance with the Law by a simple majority of the votes of the Members entitled to vote and voting in person or by attorney or by proxy at a meeting or by a simple majority of the total voting rights of Eligible Members by Written Resolution.
present or present in person	in relation to general meetings of the Company and to meetings of the holders of any class of shares, includes present by attorney or by proxy or, in the case of a corporate Member, by representative
Prohibited Resolution	a resolution in the context of a Requisition Request which would, if passed, be ineffective (whether by reason of inconsistency with any

enactment or the Company's Memorandum or Articles or otherwise), be defamatory of any person, or be frivolous or vexatious.

Quorum

three (3) Directors duly appointed in accordance with these Articles and the Governance Deed, including either:

(i) two (2) Appointor Directors; or

(ii) one (1) Appointor Director and the Mutual Director.

An alternate Appointor Director or Mutual Director, duly appointed in accordance with these Articles and the Governance Deed, shall be counted in the Quorum at a meeting at which the Appointor Director or Mutual Director appointing such alternate Appointor Director or Mutual Director is not present.

Register

the register of Members to be kept pursuant to the Law.

Registrar

shall mean the Registrar of Companies.

Requisition Request

a request for the holding of a general meeting of the Company stating the general nature of the business to be dealt with at the meeting which may include the text of a resolution intended to be moved at that general meeting, provided it is not a Prohibited Resolution

Seal

shall have the meaning given to it in Article 32.1.

Secretary

any person appointed to perform any of the duties of secretary of the Company (including an assistant or deputy secretary) and in the event of two or more persons being appointed as joint secretaries any one or more of the persons so appointed

Side Deed

means the deed relating to the Company entered into by the Sponsor Companies (as defined therein) and the Addressees (as defined therein) on or about the date hereof.

Special Resolution

a resolution of the Members passed as a special resolution in accordance with the Law by a majority of not less than seventy five per cent. of the votes of the Members entitled to vote and voting in person or by attorney or by proxy at a meeting or by seventy five per cent. of the total voting rights of Eligible Members by Written Resolution.

the Statutes	the Law and every statute (including any orders, ordinances, regulations or other subordinate legislation made under it) from time to time in force concerning companies in so far as it applies to the Company, and shall be deemed to include any statutory modification or re-enactment of such law.
Transferee Company	shall have the meaning given to it in Article 38.4
Unanimous Resolution	a resolution of the Members passed as a unanimous resolution in accordance with the Law.
Waiver Resolution	a resolution of the Members passed as a waiver resolution in accordance with the Law by a majority of not less than ninety per cent. of the votes of the Members entitled to vote and voting in person or by attorney or by proxy at a meeting or by not less than ninety per cent. of the total voting rights of Eligible Members by Written Resolution.
Written Resolution	a resolution of the Members in writing passed as a written resolution in accordance with the Law.

2 INTERPRETATION

- 2.1 *share* includes a fraction of a share and save where these Articles otherwise provide, a fraction of a share shall rank *pari passu* and proportionately with a whole share of the same class.
- 2.2 *in writing* and *written* includes the reproduction of words and figures in any visible form including in electronic form.
- 2.3 Words importing the singular number only shall include the plural number and vice versa.
- 2.4 Words importing a particular gender only shall include any other gender.
- 2.5 Words importing persons shall include associations and bodies of persons, whether corporate or unincorporated.
- 2.6 Subject to the preceding paragraphs of this Article and Article 1, any words defined in the Statutes shall, if not inconsistent with the subject or context, bear the same meaning in these Articles
- 2.7 The headings are inserted for convenience only and shall not affect the interpretation of these Articles.
- 2.8 Where the provisions of the Articles or any part thereof conflict with a provision of the Governance Deed, the provisions of the Governance Deed shall prevail.

3 STANDARD ARTICLES NOT TO APPLY

The standard articles of incorporation prescribed by the States of Guernsey Commerce and Employment Department (the “**Department**”) pursuant to section 16(2) of the Law do not apply to the Company.

4 POWER OF THE BOARD TO ISSUE SHARES

4.1 Subject to the provisions of the Law and the Governance Deed, on such terms and conditions as they see fit, the Directors may:

4.1.1 exercise the power of the Company to issue shares or grant rights to subscribe for, or convert any security into shares, in accordance with the Law;

4.1.2 issue shares of different types or shares of different classes including but not limited to shares which:

- (a) are redeemable shares,
- (b) confer preferential rights to distribution of capital or income,
- (c) do not entitle the holder to voting rights,
- (d) entitle the holder to restricted voting rights,

and the creation or issuance of any such shares or any additional shares ranking equally with an existing type or class of share is deemed not to vary the rights of any existing Member;

4.1.3 subject to Article 6, convert all or any classes of the Company's shares into redeemable shares;

4.1.4 issue shares which have a nominal or par value;

4.1.5 issue shares of no par value,

4.1.6 issue any number of shares they see fit;

4.1.7 issue fractions of a share;

4.1.8 make arrangements on the issue of shares to distinguish between Members as to the amounts and times of payments of calls on their shares; and

4.1.9 pay Dividends and Distributions in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

4.2 Subject to Article 4.1, where the Company has issued only a single class of shares the Directors may issue shares of that class or grant rights to subscribe for or to convert any security into such shares.

4.3 Where the Directors have resolved to issue different classes of shares in accordance with these Articles, the Directors have the authority to issue an unlimited number of shares and, where required by the Law, such authority shall expire on the date which is five years from the date of the adoption of these Articles (unless previously renewed, revoked or varied by Ordinary Resolution of the Company) save that the Directors may issue shares or grant rights to subscribe for or to convert any security into shares after authorisation has expired if the shares are issued or the rights are granted, in pursuance of an offer or agreement made by the Company before the authorisation expired and the authorisation allowed the Company to make an offer or agreement which would or might require shares to be issued, or rights to be granted, after the authorisation had expired.

4.4 The Company may acquire its own shares (including any redeemable shares). Any shares so acquired by the Company may be cancelled or held as treasury shares provided that the number of

shares of any class held as treasury shares must not at any time exceed ten per cent. (or such other percentage as may be prescribed from time to time by the Department) of the total number of issued shares of that class. Any shares acquired in excess of this limit shall be treated as cancelled.

- 4.5 The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

5 COMPANY NOT OBLIGED TO RECOGNISE ANY TRUST

No person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these Articles or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

6 VARIATION OF CLASS RIGHTS

- 6.1 All or any of the rights, privileges, or conditions for the time being attached to any class or group of shares may only be varied:

6.1.1 with the consent in writing from the holders of seventy five per cent. in value of the issued shares of that class (excluding any treasury shares); or

6.1.2 with the sanction of a Special Resolution passed at a separate general meeting of the shareholders of that class sanctioning the variation. To any such meeting all the provisions of these Articles shall *mutatis mutandis* apply, but so that the necessary quorum shall be Members of the class or group affected, holding or representing by proxy one-third of the capital paid on the issued shares of the class or group affected (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Members who are present shall be a quorum) provided that this paragraph is not to derogate from any power the Company would have had if this paragraph were omitted.

7 CALLS ON SHARES

- 7.1 Subject to the terms of issue of the shares, the Directors may make calls upon the Members in respect of any moneys unpaid on their shares and each Member shall (subject to receiving at least fourteen Clear Days' notice specifying when and where payment is to be made) pay the Company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of any sum due thereunder, be revoked in whole or part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect whereof the call was made.

- 7.2 A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.

- 7.3 The Directors may, on issue of shares, differentiate between holders as to the amounts and times of payment of calls on their shares. Joint holders of a share shall be jointly and severally liable for the payment of all calls or other moneys in respect thereof.

- 7.4 Any sum which by the terms of issue of a share is made payable upon issuance or at any fixed date and any instalment of a call shall, for all purposes of this Article, be deemed to be a call duly made and payable on the date fixed for payment, and in case of non-payment the provisions of this Article as to payment of interest and expenses, forfeiture and the like, and all other relevant

provisions of this Article shall apply as if such sum or instalments were a call duly made and notified as hereby provided.

- 7.5** If any Member shall fail to pay on or before the day appointed for payment thereof any call to which he may have become liable, he shall pay interest on the amount in arrear from the day appointed for payment thereof to the time of actual payment, at such rate, to be determined by the Directors from time to time, provided, however, that the Directors may remit the whole or any part of such interest. The Directors may also charge the person obliged to make the call any costs or expenses that have been incurred by the Company due to that non-payment. The Directors may, at their absolute discretion, waive payment of interest or charges under this Article.
- 7.6** No Member shall be entitled to receive any Dividend or Distribution or to receive notice of or attend or vote at any meeting or upon a poll, or to exercise any privileges as a Member until all calls or other sums due by him to the Company, whether alone or Jointly with any other person, together with interest and expenses (if any) shall have been paid. The Directors may, at their absolute discretion, waive any suspension of rights under this Article.
- 7.7** The Directors may, if they think fit, receive from any Member willing to advance the same, all or any part of the moneys payable upon the shares held by him beyond the sums actually called up thereon, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the Member paying such sum in advance and the Directors shall agree upon, but any amount so for the time being paid in advance of calls shall not unless the Directors shall in any particular instance otherwise determine, be included or taken into account in ascertaining the amount of Dividend or Distribution payable upon the share in respect of which such advance has been made.

8 FORFEITURE

- 8.1** If any Member fails to pay the whole or any part of a call on the day it becomes due and payable, the Directors may at any time thereafter during such time as the call or any part thereof, or any interest which shall have accrued thereon, remains unpaid, serve a notice on him requiring him to pay such call or such part thereof as remains unpaid, together with any accrued interest and together with any expenses that may have been incurred by the Company by reason of such non-payment.
- 8.2** The notice shall name a day, not being less than fourteen Clear Days from the date of the notice on or before which the call or such part as aforesaid and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place at which payment is to be made and shall state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.
- 8.3** If the notice is not complied with, any shares in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all unpaid Dividends, Distributions, and interest due and to become due thereon and any moneys paid up in advance of calls.
- 8.4** Where any share has been forfeited in accordance with this Article, notice of the forfeiture shall forthwith be given to the holder of the share or the person entitled to the share by transmission, as the case may be, and an entry of such notice having been given of the forfeiture, with the date thereof, shall forthwith be made in the Register opposite the shares, but no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as aforesaid.
- 8.5** Notwithstanding any such forfeiture as aforesaid, the Directors may, at any time before the forfeited share has been otherwise disposed of, permit the share so forfeited to be reclaimed upon

payment of all calls and interest due upon and expenses incurred in respect of the share, and upon such further terms (if any) as they shall think fit.

- 8.6** Every share which shall be forfeited shall thereupon become the property of the Company and may be either cancelled, sold, re-allotted, re-issued, held as a treasury share or otherwise disposed of by the Directors, either to the person who was before forfeiture the holder thereof or entitled thereto, or to any other person, upon such terms and in such manner as the Directors shall think fit. The Directors may annul any forfeiture upon such terms as they shall think fit.
- 8.7** A Member whose shares have been forfeited shall, notwithstanding, be liable to pay to the Company all calls made or payable and not paid on such shares at the time of forfeiture, and interest thereon to the date of payment, and all expenses (whether then payable or not) in the same manner in all respects as if the shares had not been forfeited, and to satisfy all (if any) of the claims and demands which the Company might have enforced in respect of the shares at the time of the forfeiture, without any deduction or allowance for the value of the shares at the time of forfeiture
- 8.8** The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share, and all other rights and liabilities incidental to the share, as between the Member whose share is forfeited and the Company.
- 8.9** A declaration in writing that the deponent is a Director of the Company and that a share has been duly forfeited in pursuance of this Article, and stating the time when it was forfeited, shall, as against all persons claiming to be entitled to the share adversely to the forfeiture thereof, be conclusive evidence of the facts therein stated, and such declaration shall, together with a certificate of proprietorship of the share delivered to a purchaser or allottee thereof, constitute a good title to the share and the new holder thereof shall be discharged from all calls made and other moneys payable prior to such purchase or allotment.
- 8.10** Upon any sale after forfeiture, or for enforcing a lien in purported exercise of the powers herein given, the Directors may nominate some person to execute a transfer of the share sold in the name and on behalf of the registered holder or his legal personal representative and on such transfer being executed by the purchaser may cause the purchaser's name to be entered in the Register in respect of the shares sold and the purchaser shall not be bound to see to the regularity of the proceedings or to the application of the purchase money, and after his name has been entered in the Register in respect of such shares the validity of the sale shall not be impeached by any person and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively. The holder of a share that has been forfeited ceases to be a Member in respect of that share and the Member's name is deemed to have been removed from the Register on the date of forfeiture.

9 LIEN

- 9.1** Subject always to the provisions of Article 9.4, the Company shall have a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Company shall have a first lien on all shares (other than fully paid shares) standing registered in the name of a single person for all money payable by him or his estate to the Company. The Company's lien on a share shall extend to all Dividends and Distributions payable thereon.
- 9.2** Subject to the provisions of the Law with respect to Dividends and Distributions, the Directors may at any time, either generally or in a particular case, waive any lien that has arisen or declare any share to be wholly or in part exempt from the provisions of Article 9.1.
- 9.3** For the purpose of enforcing such lien the Directors may sell the shares subject thereto in such manner as they think fit, but no sale shall be made until such time as the moneys are presently

payable and notice in writing stating the amount due, and giving notice of intention to sell in default shall have been served on such Member or the person (if any) entitled by transmission to the shares and default shall have been made for fourteen Clear Days after such notice. The net proceeds of any such sale shall be applied in or towards satisfaction of the debts, liabilities and engagements aforesaid, the residue (if any) shall be paid to the Member or the person (if any) entitled by transmission to the shares or who would be so entitled but for such sale.

- 9.4** Notwithstanding any other provision of these Articles, the Company shall not have a lien in any case over any share which is subject to a security interest pursuant to a Guernsey Security Interest Agreement and which is to be transferred to or by the person (or its nominees) in whose favour the security interest exists.

10 TRANSFER OF SHARES

- 10.1** Any Member may transfer all or any of his shares by instrument in writing in the usual or common form or in any other form which the Directors may approve. The instrument of transfer shall be executed by the transferor (and in the case of partly paid shares by the transferee) and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof. Shares of different classes shall not be transferred by the same instrument of transfer

- 10.2** Every instrument of transfer shall be left at the Office, or such other place as the Directors may prescribe, with the certificate of every share to be thereby transferred and such other evidence as the Directors may reasonably require to prove the title of the transferor or his right to transfer the shares; and the transfer and certificate shall remain in the custody of the Directors but shall be at all reasonable times produced at the request and expense of the transferor or transferee and their respective representatives or any of them. A new certificate shall be delivered to the transferee after the transfer is completed and registered on his application for the same and when necessary a balance certificate shall be delivered to the transferor if required by him in writing. Notwithstanding the foregoing, no fee shall be payable and the Directors shall not require evidence to prove the title of a transferor or his right to transfer any share in any case where the proposed transfer of a share pursuant to, or in connection with, a Guernsey Security Interest Agreement relating to the shares in the Company and made between, as the case may be, any legal or beneficial shareholder in the Company and any lender, security trustee, security agent, or other secured party under financing made or to be made available to the Company or to any other member of the group of companies of which the Company is a member or to any partnership of which the Company is a partner.

- 10.3** The Directors may, in their discretion and without assigning any reasons therefor, refuse to register a transfer of any share to any person of whom they shall not approve as transferee, provided that:

10.3.1 a transfer of any share that has not been made in accordance with the Side Deed shall not be registered; and

10.3.2 notwithstanding Article 10.3.1, where any shares are the subject of a security interest created by a Guernsey Security Interest Agreement in favour of a secured party, the Directors shall not be entitled to refuse to register any transfer of shares to and by that secured party (including any transfer to the secured party's nominee(s)).

If the Directors refuse to register a transfer of any share (not being a transfer to or by a secured party as aforesaid) they shall within one month after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.

- 10.4** These Articles are subject to, and do not limit or restrict the Company's powers to transfer shares in accordance with, the Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005.

10.5 Notwithstanding anything to the contrary contained in these Articles, Articles 10.1 to 10.4 inclusive shall not apply and there shall be no restriction on the transfer of any share where such transfer is made pursuant to, or in connection with, a Guernsey Security Interest Agreement relating to shares in the Company and made between, as the case may be, any legal and/or beneficial shareholder in the Company and any lender, security trustee, security agent or other secured party under financing made or to be made available to the Company or to any other member of the group of companies of which the Company is a member or to any partnership of which the Company is a partner.

11 DISCLOSURE OF OWNERSHIP

11.1 The Directors shall have power by notice in writing to require any Member to disclose to the Company the identity of any person other than the Member (an “**Interested Party**”) who has any interest (whether direct or indirect) in the shares held by the Member and the nature of such interest or have been so interested at any time during the three years immediately preceding the date on which the notice is issued. For these purposes, a person shall be treated as having an interest in shares if they have any interest in them whatsoever, including but not limited to any interest acquired by any person as a result of:

11.1.1 entering into a contract to acquire them;

11.1.2 being entitled to exercise, or control the exercise of, any right conferred by the holding of the shares;

11.1.3 having the right to call for delivery of the shares; or

11.1.4 having the right to acquire an interest in shares or having the obligation to acquire such an interest.

11.2 Any such notice shall require any information in response to such notice to be given in writing within such reasonable time as the Directors shall determine subject to Article 11.10.2.

11.3 The Company shall maintain a register of Interested Parties and whenever in pursuance of a requirement imposed on a Member as aforesaid the Company is informed of an Interested Party the identity of the Interested Party and the nature of the interest shall be promptly inscribed therein together with the date of the request. At no time shall the Company permit the register of Interested Parties:

11.3.1 to be kept or maintained in the United Kingdom; or

11.3.2 to be inspected by anyone other than a director of the Company.

11.4 If any Member has been duly served with a notice given by the Directors in accordance with Article 11.1 and is in default after the prescribed deadline (as determined by the Directors in accordance with Article 11.2) in supplying to the Company the information thereby required, then the Directors may in their absolute discretion at any time thereafter serve a notice (a “**Direction Notice**”) upon such Member.

11.5 A Direction Notice may direct that, in respect of:

11.5.1 any shares in relation to which the default occurred (all or the relevant number as appropriate of such shares being the “**Default Interests**”); and

11.5.2 any other shares held by the Member,

the Member shall not be entitled to vote at a general meeting or meeting of the holders of any class of shares of the Company either personally or by proxy or exercise any other right conferred

by membership in relation to meetings of the Company or of the holders of any class of share of the Company

11.6 Where the Default Interests represent at least one quarter of one per cent. (0.25%) of the number of shares in issue of the class of shares concerned, the Direction Notice may additionally direct that in respect of the Default Interests:

11.6.1 any Dividend or Distribution or the proceeds of any repurchase or repayment on the Default Interests or part thereof which would otherwise be payable on such shares shall be retained by the Company without any liability to pay interest thereon when such money is finally paid to the Member; and

11.6.2 no transfer of the Default Interests held by such Member shall be registered unless:

(a) the Member is not himself in default as regards supplying the information requested; and

(b) when presented for registration the transfer is accompanied by a certificate by the Member in a form satisfactory to the Directors to the effect that after due and careful enquiry the Member is satisfied that no person who is in default as regards supplying such information is interested in any of the shares the subject of the transfer.

11.7 The Company shall send to each other person appearing to be interested in the shares the subject of any Direction Notice a copy of the notice, but failure or omission by the Company to do so shall not invalidate such notice.

11.8 If shares are issued to a Member as a result of that Member holding other shares in the Company and if the shares in respect of which the new shares are issued are Default Interests in respect of which the Member is for the time being subject to particular restrictions, the new shares shall on issue become subject to the same restrictions whilst held by that Member as such Default Interests. For this purpose, shares which the Company procures to be offered to Members pro rata (or pro rata ignoring fractional entitlements and shares not offered to certain Members by reason of legal or practical problems associated with offering shares outside the United Kingdom or Guernsey) shall be treated as shares issued as a result of a Member holding other shares in the Company.

11.9 Any Direction Notice shall have effect in accordance with its terms for as long as the default, in respect of which the Direction Notice was issued, continues. As soon as practicable after the Direction Notice has ceased to have effect (and in any event within five working days thereafter) the Directors shall procure that the restrictions imposed by Articles 11.5 and 11.6 shall be removed and that any sums withheld pursuant to Article 11.6.1 are paid to the relevant Member.

11.10 For the purpose of this Article:

11.10.1 a person shall be treated as appearing to be interested in any shares if the Member holding such shares has given to the Company a notification which either (a) names such person as being so interested or (b) fails to establish the identities of those interested in the shares and (after taking into account the said notification and any other relevant notification) the Company knows or has reasonable cause to believe that the person in question is or may be interested in the shares; and

11.10.2 the prescribed deadline in respect of any particular Member is twenty eight days from the date of service of the said notice in accordance with Article 11.1 except where the Default Interests represent at least one quarter of one per cent. (0.25%) of the number of shares in issue of the class of shares concerned in which case such deadline shall be fourteen days

11.11 Any Member who has been given notice of an Interested Party in accordance with Article 11.1 who subsequently ceases to have any party interested in his shares or has any other person interested in his shares, shall notify the Company in writing of the cessation or change in such interest and the Directors shall promptly amend the register of Interested Parties accordingly.

12 THE REGISTER

12.1 The Company shall keep a Register in accordance with the Law. The registration of transfers of shares may be suspended at such times and for such a period (not exceeding in aggregate thirty days in any calendar year) as the Directors may determine

12.2 In the case of the death of a Member, the survivor or survivors where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole holder, shall be the only person or persons recognised by the Company as having any title to or interest in his shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.

12.3 A person entitled to shares in consequence of the death or bankruptcy of a Member shall not be entitled to receive notice of or attend or vote at any meeting, or, save as aforesaid and save as regards the receipt of such Dividends or Distributions as the Directors shall not elect to retain, to exercise any of the rights and privileges of a Member, unless and until he shall have been registered as the holder of the shares.

13 CERTIFICATES

13.1 If the Company elects to issue share certificates, every Member shall be entitled to receive within one month after issue or lodgement of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or if the Member shall so request several certificates each for one or more of his shares.

13.2 Every certificate shall be signed in accordance with the common signature of the Company, shall specify the shares to which it relates and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

13.3 If a share certificate is defaced, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company in connection with the matter and generally upon such terms as the Directors shall think fit.

14 ALTERATION OF CAPITAL

14.1 The Company may by Ordinary Resolution:

14.1.1 consolidate and divide all or any of its shares into shares of larger amounts than its existing shares;

14.1.2 sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum or Articles or Ordinary Resolution, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

14.1.3 cancel any shares which, at the date of the passing of the resolution have not been taken or agreed to be taken by any person, and diminish the amount of its shares by the amount of the shares so cancelled;

- 14.1.4** redesignate the whole, or any particular class, of its shares into shares of another class;
- 14.1.5** convert all or any of its shares the nominal amount of which is expressed in a particular currency or former currency into shares of a nominal amount of a different currency, the conversion being effected at the rate of exchange (calculated to not less than three significant figures) current on the date of the resolution or on such other date as may be specified therein;
- 14.1.6** where its shares are expressed in a particular currency or former currency, denominate or redenominate it, whether expressing its amount in units or subdivisions of that currency or former currency, or otherwise.

15 GENERAL MEETINGS

- 15.1** Subject to the Law and these Articles, the first general meeting of the Company shall be held within a period of not more than eighteen months from the day on which the Company was incorporated. Subject to the Law, an annual general meeting shall be held once in every calendar year (provided that no more than fifteen months may elapse between one annual general meeting and the next) at such time and place as the Directors shall appoint, and in default of an annual general meeting any Member may, not less than 14 days after the last date upon which the meeting ought to have been held, apply to the Court to make such order as the Court thinks fit.
- 15.2** Meetings other than annual general meetings shall be called general meetings.
- 15.3** The Directors may whenever they think fit convene a general meeting.
- 15.4** The Directors are required to call a general meeting in accordance with the Law once the Company has received Requisition Requests to do so from Members who hold more than ten per cent. of such of the capital of the Company that carries the right of voting at general meetings of the Company (excluding any capital held as treasury shares).
- 15.5** Where the Directors are required to call a general meeting in accordance with Article 15.4 they must call a general meeting within twenty one days after the date on which they became subject to the requirement and must hold the general meeting on a date not more than twenty eight days after the date of the notice convening the meeting.
- 15.6** Any general meeting may be held in Guernsey, or elsewhere, as the Directors may from time to time determine.
- 15.7** The provisions of this Article 15 are without prejudice to the rights of Members under the Law to rescind the waiver of the requirement to hold an annual general meeting and without prejudice to any powers of the directors to convene a general meeting without a Member's requisition.

16 NOTICE OF GENERAL MEETINGS

- 16.1** Unless special notice is required in accordance with the Law, all general meetings shall be called by not less than ten Clear Days' notice in writing. The notice shall specify the place, the date and the time of the meeting, and in the case of any proposed Special Resolution, Waiver Resolution or Unanimous Resolution, the text of such proposed resolution and notice of the fact that the resolution proposed is proposed as a Special Resolution, Waiver Resolution or Unanimous Resolution (as applicable) and the general nature of the business to be dealt with at the meeting and shall be given to such persons as are, by these Articles or the Law, entitled to receive such notices from the Company, provided that a meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed by all the Members entitled to attend and vote thereat.

- 16.2** The accidental failure to provide notice of a meeting, or to send any other document to a person entitled to receive such notice or document, shall not invalidate the proceedings at that meeting or call into question the validity of any actions, resolutions or decisions taken.
- 16.3** All Members are deemed to have agreed to accept communications from the Company by Electronic Means in accordance with Article 37.6.
- 16.4** A Member present, either in person or by proxy, at any meeting of the Company or of the holders of any class of shares in the Company, is deemed to have received notice of the meeting and, where required, of the purpose for which it was called.
- 16.5** Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the Register, has been duly given to a person from whom he derives his title.

17 ELECTION AND POWERS OF CHAIRMAN

- 17.1** The chairman of any general meeting shall be either:
- 17.1.1** the chairman of the Directors;
 - 17.1.2** in the absence of the chairman of the Directors or if the Directors have no chairman, then the Directors shall nominate one of their number to preside as chairman;
 - 17.1.3** if neither the chairman of the Directors nor the nominated Director are present at the meeting, then the Directors present at the meeting shall elect one of their number to be the chairman;
 - 17.1.4** if only one Director is present at the meeting then he shall be chairman of the general meeting; or
 - 17.1.5** if no Directors are present at the meeting, then the Members present shall elect a chairman for the meeting by an Ordinary Resolution.
- 17.2** The chairman of the general meeting shall conduct the meeting in such a manner as he thinks fit and may adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. In addition, the chairman may limit the time for Members to speak.

18 RIGHT OF DIRECTORS TO SPEAK

A Director of the Company shall be entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of shares in the Company, regardless of whether that Director is a Member of the Company or of the relevant class.

19 PROCEEDINGS AT GENERAL MEETINGS

- 19.1** All business shall be deemed special that is transacted at a general meeting. All business that is transacted at an annual general meeting shall likewise be deemed special, with the exception of declaring a Dividend or Distribution, the consideration of the accounts, balance sheets, and the reports of the Directors and auditors, the election of Directors and the appointment of and the fixing of the remuneration of the auditors.
- 19.2** No business shall be transacted at any general meeting unless a quorum is present. Two Members present in person or by proxy and entitled to vote shall be a quorum. Where the Company has only one Member the quorum shall be one Member present at the meeting in person or by proxy.

- 19.3** Unless the Directors direct otherwise, the rights of a Member to vote at a general meeting are suspended if that Member has failed to pay any sum due and owing on his share, whether that sum is due as a result of a failure to pay a call or otherwise.
- 19.4** If within half an hour after the time appointed for a meeting a quorum is not present, the meeting, if convened by or upon the requisition of Members as hereinbefore provided, shall be dissolved. If otherwise convened, it shall stand adjourned to the same day in the next week (or if that day be a public holiday in the Guernsey to the next working day thereafter) at the same time and place and no notice of such adjournment need be given. At any such adjourned meeting, those Members who are present in person or by proxy shall be a quorum. If no Members are present at the adjourned meeting, the meeting shall be dissolved.
- 19.5** The chairman, with the consent of any meeting at which a quorum is present may (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. When a meeting is adjourned for fourteen days or more, seven Clear Days' notice at the least specifying the place, the date and the time of the adjourned meeting shall be given as in the case of the original meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting.
- 19.6** Every question submitted to a general meeting shall be determined in the first instance by a show of hands of the Members present in person or by proxy or by attorney and entitled to vote, but a poll may be demanded by no fewer than five Members having the right to vote on the resolution, or one or more of the Members present in person or by proxy representing at least ten per cent. of the total voting rights of all of the Members having the right to vote on the resolution. Unless a poll is duly demanded in accordance with these Articles, a declaration by the chairman that a resolution has been carried or lost or has or has not been carried by any particular majority and an entry to that effect in the minutes of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number, proportion or validity of the votes recorded in favour of or against such resolution.
- 19.7** If a poll is demanded, it shall be taken at the meeting at which the same is demanded or at such other time and place as the chairman shall direct, and the result of such poll shall be deemed the resolution of the meeting. The demand for a poll may be withdrawn.
- 19.8** The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 19.9** If a poll shall be duly demanded upon the election of a chairman or on any question of adjournment, it shall be taken at once.
- 19.10** In case of an equality of votes, either on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is taken, as the case may be, shall have a second vote if he is a Member and a casting vote if he is not a Member.

20 VOTES OF MEMBERS

- 20.1** Subject to any rights or restrictions attached to any shares, on a show of hands, every Member present in person or by proxy and entitled to vote shall have one vote, and on a poll every member present in person or by proxy shall have one vote for each share held by him, but this provision shall be subject to the conditions with respect to any special voting powers or restrictions for the time being attached to any shares which may be subject to special conditions.
- 20.2** Where there are joint registered holders of any share any one of such persons may vote at any meeting, either personally or by proxy, in respect of such share as if he were solely entitled thereto; and if more than one of such joint holders be present at any meeting personally or by

proxy that one of the said persons so present in person or by proxy whose name stands first in the Register in respect of such share shall alone be entitled to vote in respect thereof.

- 20.3** Any Member being under any legal disability may vote by his guardian or other legal representative. Any one of such persons may vote either personally or by proxy or by attorney
- 20.4** Upon a poll votes may be given personally or by proxy or by attorney and it shall not be necessary for a proxy or attorney to be entitled to attend the meeting in his own right. Deposit of an instrument of proxy shall not preclude a Member from attending and voting at the meeting or any adjournment thereof.
- 20.5** Subject to the provisions of the Law, the instrument appointing a proxy shall be in any common form or in such other form as the Directors may approve and whether sent to the Company in writing or in electronic form it shall be made under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation under its common seal or under the hand of an officer or attorney duly authorised in that behalf.
- 20.6** The appointment of a proxy and the power of attorney or other authority (if any) under which it is authenticated, or a copy of such authority certified notarially or in some other way approved by the Directors, shall:

20.6.1 in the case of an instrument in writing (including, whether or not the appointment of proxy is by Electronic Means, any such power of attorney or other authority) be deposited at the Office, or at such other place or places as determined by the Directors or as is specified in the notice convening the meeting or in any notice of any adjourned meeting or in any appointment of proxy sent out by the Company in relation to the meeting, not less than forty eight hours before the time of the holding of the meeting or adjourned meeting at which the person named in the appointment proposes to vote, or

20.6.2 in the case of an appointment by Electronic Means, where an address has been specified for the purpose of receiving documents or information in electronic form (in the notice convening the meeting, or in any instrument of proxy sent out by the Company in relation to the meeting or in any invitation in electronic form to appoint a proxy issued by the Company in relation to the meeting) be received at such address not less than forty eight hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote,

in default of which the proxy shall not be treated as valid unless the Directors otherwise determine in their discretion.

- 20.7** Any Member shall be entitled to appoint by power of attorney some person, whether a Member or not, to act as his attorney for the purposes of receiving notices of general meetings and attending general meetings and voting thereat, and upon such power of attorney being deposited at the Office together with a notice from the attorney giving his address, an entry thereof shall be made in the Register and all notices of meetings held during the continuance in force of such power of attorney shall be served upon the attorney thereby appointed as if such attorney were a Member of the Company and registered owner of the shares, and all notices, except where otherwise herein expressly provided, shall be deemed duly served if served upon such attorney in accordance with these Articles, and the attorney shall be entitled to attend any general meetings held during the continuance of his appointment and to vote thereat in respect of the shares of any Member appointing him, such vote to be exercised either personally or by proxy appointed by the attorney in accordance with these Articles. Every such power shall remain in full force notwithstanding the death of or its revocation by other means by the grantor, unless and until express notice in writing of such death or revocation shall have been given to the Company.
- 20.8** A vote given or poll demanded in accordance with the terms of an instrument of proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous

determination of the authority of the person voting or demanding a poll, unless a notice of the determination of the proxy, or of the authority under which the proxy was executed, shall have been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used.

- 20.9** Subject to the Law, a Written Resolution to which the requisite majority of eligible Members have, within twenty eight days of the date on which circulation of such Written Resolution, signified their agreement shall be as effective as if the same had been duly passed at a general meeting.

21 CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

Any corporation which is a Member may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member.

22 APPOINTMENT OF DIRECTORS

- 22.1** The board of Directors shall consist of five Directors comprising two Appointor Directors, one Mutual Director and two Incumbent Directors, to be appointed, removed and replaced as set out in the Governance Deed.
- 22.2** A person must not be appointed as a Director unless he has, in writing, consented to being a Director and declared that he is not ineligible to be a Director under the Statutes.
- 22.3** A Director need not be a Member but shall be entitled to receive notice of and attend all general meetings of the Company.
- 22.4** The Directors shall have power at any time and from time to time to appoint any person to be a Director (either to fill a casual vacancy or as an addition to the existing Directors) provided that such person is nominated and/or appointed in accordance with the Governance Deed.

23 REMUNERATION OF DIRECTORS

- 23.1** The remuneration of the Directors shall be determined by the Directors in their absolute discretion on or after the incorporation of the Company. Such remuneration shall be deemed to accrue from day to day.
- 23.2** The Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or general meetings of the Company or in connection with the business of the Company.
- 23.3** If any Director, being willing, shall be called upon to render or to perform and shall render or perform extra or special services of any kind or shall travel or go or reside in any country not his usual place of residence for any business or purposes of the Company, he shall be entitled to receive such sum as the Directors may think fit for expenses and also such remuneration as the Directors may think fit, either as a fixed sum or as a percentage of profits or otherwise, and such remuneration may, as the Directors shall determine, be either in addition to or in substitution for any other remuneration he may be entitled to receive, and the same shall be charged as part of the ordinary working expenses
- 23.4** The Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and make contributions to any fund and pay premiums for the purchase or provision of any such gratuity pension or allowance.

23.5 Notwithstanding Articles 23.1 to 23.4, the terms in respect of remuneration of a Director contained in any written arrangement between the Company and a Director shall prevail.

24 DIRECTORS' INTERESTS

24.1 A Director must, immediately after becoming aware of the fact that he is interested in a transaction or proposed transaction with the Company, disclose to the Directors (i) if the monetary value of the Director's interest is quantifiable, the nature and monetary value of that interest, or (ii) if the monetary value of the Director's interest is not quantifiable, the nature and extent of that interest, in each case unless the transaction or proposed transaction is between the Director and the Company, and is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.

24.2 Subject to the provisions of the Law, and provided that he has disclosed to the other Directors in accordance with the Law the nature and extent of any material interest of his, a Director notwithstanding his office:

24.2.1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company, or in which the Company is otherwise interested;

24.2.2 may act by himself or through his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a Director;

24.2.3 may be a Director or other officer of, or employed by, or a party to any transaction or arrangement with, a shareholder of or otherwise directly or indirectly interested in, any body corporate promoted by the Company, or with which the Company has entered into any transaction, arrangement or agreement or in which the Company is otherwise interested; and

24.2.4 shall not by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

24.3 For the purposes of this Article:

24.3.1 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified; and

24.3.2 an interest of which a Director is unaware shall not be treated as an interest of his.

24.4 A Director shall be counted in the Quorum at any meeting in relation to any resolution in respect of which he has declared an interest and may vote thereon.

24.5 A Director may continue to be or become a director, managing director, manager or other officer, employee or member of any company promoted by the Company or in which the Company may be interested or with which the Company has entered into any transaction, arrangement or agreement, and no such Director shall be accountable for any remuneration or other benefits received by him as a director, managing director, manager, or other officer or member of any such other company. The Directors may exercise the voting power conferred by the shares in any other company held or owned by the Company or exercisable by them as directors of such other company, in such manner in all respects as they think fit (including the exercise thereof in favour of any resolution appointing themselves or any of them directors, managing directors, managers or

other officers of such company, or voting or providing for the payment of remuneration to the directors, managing directors, managers or other officers of such company)

- 24.6** Any Director who, by virtue of office held or employment with any other body corporate, may from time to time receive information that is confidential to that other body corporate (or in respect of which he owes duties of secrecy or confidentiality to that other body corporate) shall be under no duty to the Company by reason of his being a Director to pass such information to the Company or to use that information for the benefit of the Company, in either case where the same would amount to breach of confidence or other duty owed to that other body corporate.

25 BORROWING POWERS

- 25.1** The Directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

- 25.2** The Directors may cause a proper register to be kept of all mortgages, charges and/or security interests specifically affecting the Company.

26 POWERS AND DUTIES OF DIRECTORS

- 26.1** The business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and registering the Company, and may exercise all such powers of the Company as are not, by the Statutes or by these Articles, required to be exercised by the Company in general meeting, subject, nevertheless, to any of these Articles, to the provisions of the Statutes and to such regulations, being not inconsistent with these Articles or the Statutes as may be prescribed by the Company by Ordinary Resolution; but no regulation made by the Company shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

- 26.2** Subject to any restriction thereon contained in the Statutes, the Directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purpose and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretion vested in him.

- 26.3** A power of attorney given by the Company shall be valid if executed by the Company under the common signature of the Company.

- 26.4** The Directors shall cause minutes to be made in books provided for the purpose:

26.4.1 of all appointments of officers;

26.4.2 of the names of the Directors present at all meetings of the Company and of the Directors; and

26.4.3 of all resolutions and proceedings at all meetings of the Company, of the Directors.

27 DIRECTORS' INSURANCE

To the fullest extent permitted by the Law and without prejudice to the provisions of Article 39, the Directors shall have the power to purchase and maintain insurance for or for the benefit of any

persons who are or were at any time Directors, officers or employees of the Company, or of any other company which is its holding company or in which the Company or such holding company or any of the predecessors of the Company or of such holding company has any interest whether direct or indirect or which is in any way allied to or associated with the Company, or of any subsidiary undertaking of the Company or of any such other company, including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or the exercise or purported exercise of their powers and/or otherwise in relation to or in connection with their duties, powers or offices in relation to the Company or any other such company or subsidiary undertaking.

28 RETIREMENT AND REMOVAL OF DIRECTORS

28.1 The office of Director shall, ipso facto, be vacated:

28.1.1 if he resigns his office by writing under his hand deposited at the Office, provided that the Company may agree to accept the resignation to take effect on a later date as specified by the resigning Director;

28.1.2 if he shall have absented himself (such absence not being absence with leave or by arrangement with the Directors on the affairs of the Company) from meetings of the Directors for six months in succession and the other Directors shall have resolved that his office shall be vacated;

28.1.3 if he becomes bankrupt, suspends payment or compounds with his creditors, or is adjudged insolvent or has his affairs declared en desastre or has a preliminary vesting order made against his Guernsey realty;

28.1.4 if he dies;

28.1.5 if he has been convicted of an indictable offence;

28.1.6 if he is removed from office by the board of Directors;

28.1.7 if he becomes ineligible to be a Director in accordance with the Statutes;

provided that until an entry of his office having been so vacated be made in the minutes of the Directors, his acts as a Director shall be as effectual as if his office were not vacated.

28.2 Notwithstanding Article 28.1.6, Directors shall only be removed in accordance with the Governance Deed.

29 PROCEEDINGS OF DIRECTORS

29.1 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit.

29.2 Questions arising at any meeting shall be decided by a majority of votes or as otherwise prescribed in the Governance Deed. Every Director present at a meeting of the Directors shall have one vote. In the case of an equality of votes, no Director shall have a second or casting vote.

29.3 A Director may, and the Secretary on the requisition of a Director shall, summon a meeting of the Directors by giving no less than 3 Business Days' notice of such meeting to all Directors, provided that the Directors may unanimously agree to a shorter period.

29.4 Notice of a Directors' meeting must be given to each Director, but need not be in writing.

- 29.5** Notice of any Directors' meeting must indicate:
- 29.5.1** its proposed date and time;
 - 29.5.2** where it is to take place; and
 - 29.5.3** if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

29.6 Subject to the provisions hereof, a meeting of Directors may be validly held notwithstanding that such Directors may not be in the same place provided that:

29.6.1 they are in constant communication with each other throughout by telephone, television or some other form of communication; and

29.6.2 all Directors entitled to attend such meeting so agree.

A person so participating in the meeting shall be deemed to be present in person and shall accordingly be counted in the Quorum and be entitled to vote.

29.7 A Quorum must be present for transaction of the business of Directors. A duly appointed alternate director shall be counted in the Quorum at which the Director appointing him is not present.

29.8 Subject to the provisions of the Governance Deed, if and so long as the number of Directors is reduced below the number fixed by or pursuant to these Articles as the necessary Quorum of the Directors, the continuing Directors or sole Director may only act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company for the purpose of increasing the number of Directors to that number, but for no other purpose.

29.9 The Directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes of the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting (the chairman shall not have a casting vote).

29.10 All acts done by any meeting of the Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any of the Directors or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

29.11 A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held, and may consist of several documents in the like form signed by any one or more of the Directors.

30 ALTERNATE DIRECTORS

30.1 Subject to the provisions of the Governance Deed to the contrary, any Director may at any time by writing under his hand and deposited at the Office, or delivered at a meeting of the Directors, appoint any person (including another Director) to be his alternate Director (provided that such appointment is accompanied by a consent to act signed by such person and that such person is eligible to be a Director of the Company under the Statutes) and may in like manner at any time terminate such appointment.

30.2 Subject to the provisions of the Governance Deed to the contrary, the appointment of an alternate Director shall terminate on the happening of any event which if he were a Director would cause him to vacate such office or if his appointor ceases to be a Director.

30.3 An alternate Director shall be entitled to receive notices of meetings of the Directors and shall be entitled to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present and generally at such meeting to perform all functions of his appointor as a Director and for the purposes of the proceedings at such meeting the provisions of these presents shall apply as if he (instead of his appointor) were a Director. If he shall be himself a Director, or shall attend any such meeting as an alternate for more than one Director, his voting rights shall be cumulative. If his appointor is unable to act his signature to any resolution in writing of the Directors shall be as effective as the signature of his appointor.

30.4 An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent mutatis mutandis as if he were a Director but he shall not be entitled to receive from the Company in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct.

31 SECRETARY

31.1 The Directors may at their discretion appoint such person to be Secretary on such terms as they see fit (including as to remuneration) and for the avoidance of doubt may (but are not obliged to) appoint one of their number to act as both Director and Secretary.

31.2 To the extent required by the Law where the Company has appointed a Secretary, and without prejudice to the responsibility of any other person or to any other responsibilities he may hold, the Secretary shall take reasonable steps to ensure:

31.2.1 that all registers and indexes are maintained in accordance with the provisions of the Statutes;

31.2.2 that all notices and documents required to be filed or served upon the Registrar or other persons are duly so filed or served;

31.2.3 that all resolutions, records and minutes of the Company are properly kept;

31.2.4 that copies of the Memorandum and Articles are kept fully up to date, and

31.2.5 that the Directors are aware of any obligations imposed by

(a) the Memorandum and Articles; and

(b) (if applicable) the rules of any stock exchange that the Company is listed on.

31.3 The Secretary may be removed in accordance with Article 28 as if the Secretary were a Director.

32 THE SEAL

32.1 The Company may have a common seal (the “Seal”) and if the Directors resolve to adopt a Seal the following provisions shall apply.

32.2 The Seal shall have the Company’s name engraved on it in legible letters.

32.3 The Directors shall provide for the safe custody of the Seal, which shall only be used pursuant to a resolution passed at a meeting of the Directors authorised to use the Seal, and in the presence of two Directors or of one Director and the Secretary or of such person or persons as the Directors may from time to time appoint, and such person or persons, as the case may be, shall sign every instrument to which the Seal is affixed.

33 RECORD DATES

Notwithstanding any other provision of these Articles, the Directors may fix a date as the record date for any notice of any general meeting, Dividend, Distribution, or issuance of share(s) and such record date may be on or at any time within six months before or after any date on which such notice, Dividend, Distribution, or issuance is given, made or paid (as appropriate).

34 DIVIDENDS, DISTRIBUTIONS AND RESERVES

- 34.1** The Directors may from time to time authorise Dividends and Distributions to be paid to the Members in accordance with the procedure set out in the Law and subject to any Member's rights attaching to their shares. The declaration of the Directors as to the amount of the Dividend or Distribution available shall be final and conclusive.
- 34.2** All Dividends and Distributions shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the Dividend or Distribution is paid; but if any share is issued on terms providing that it shall rank for Dividend or Distribution as from a particular date such share shall rank for Dividend or Distribution accordingly.
- 34.3** The Directors may, in relation to any Dividend or Distribution, direct that the Dividend or Distribution shall be satisfied wholly or partly by the distribution of assets, and in particular of paid up shares, debentures, or other securities of any other company, and where any difficulty arises in regard to the Dividend or Distribution the Directors may settle it as they think expedient, and in particular may authorise any person to sell and transfer any fractions or may ignore fractions altogether, and may fix the value for Dividend and Distribution purposes of any assets or any part thereof and may determine that cash shall be paid to any Members upon the footing of the value so fixed in order to secure equality of Dividend or Distribution and may vest any assets the subject of a Dividend or Distribution in trustees as may seem expedient to the Directors
- 34.4** The Directors may deduct from the Dividends or Distributions payable to any Member all such sums of money as may be due from him to the Company on account of calls or otherwise.
- 34.5** No Dividend or Distribution shall bear interest against the Company.
- 34.6** The receipt of the person appearing by the Register to be the holder of any shares shall be a sufficient discharge to the Company for any Dividend or Distribution or other moneys payable in respect of such shares; and where several persons are the Joint holders of a share the receipts of any one of them shall be a good discharge to the Company for any Dividends or Distributions or other moneys payable thereon.
- 34.7** A transfer of shares shall not pass the right to any Dividend or Distribution declared thereon before the registration of the transfer.
- 34.8** Unless otherwise directed, any Dividend or Distribution may be paid by way of electronic transfer in such manner as agreed between the Member and the Company or by cheque or warrant sent through the post to the registered address of the Member entitled thereto, or in the case of joint holders to that one whose name stands first on the Register in respect of the joint holding and every cheque or warrant so sent shall be payable to the order of the person to whom it is sent, and the payment of any such electronic transfer, cheque or warrant shall operate as a good discharge to the Company in respect of the Dividend or Distribution represented thereby, notwithstanding that it may subsequently appear that the same has been stolen or that the endorsement thereon has been forged.
- 34.9** All Dividends and Distributions unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed.

34.10 Any Dividend or Distribution which has remained unclaimed for a period of six years from the date of declaration thereof shall, if the Directors so resolve, be forfeited and cease to remain owing by the Company and shall thenceforth belong to the Company absolutely.

35 ACCOUNTS

35.1 The Directors shall keep proper books of account with respect to all the transactions, assets and liabilities of the Company in accordance with the Statutes

35.2 Subject to the Statutes, the books of account shall be kept at the Office, or at such other place or places as the Directors shall think fit and shall at all times be open to the inspection of the Directors and the Secretary

35.3 Accounts complying with the provisions of the Law (which for the avoidance of doubt include a profit and loss account and a balance sheet) shall be prepared by the Company. The accounts shall be accompanied by a report of the Directors stating the principal activities and the state and condition of the Company. The accounts and Directors' report shall be signed on behalf of the Directors by at least one of them.

35.4 Where the Company holds an annual general meeting:

35.4.1 a copy of the accounts and Directors' report with the auditor's report (if any) attached thereto shall be laid before that meeting; and

35.4.2 a copy of the accounts and Directors' report with the auditor's report (if any) attached thereto shall be delivered or sent by post to the registered address of the Members or sent by Electronic Means within twelve months of the end of the financial period to which such accounts and reports relate.

35.5 Where the Company is authorised not to hold an annual general meeting and does not do so, a copy of the accounts and Directors' report with the auditor's report (if any) attached thereto shall be delivered or sent by post to the registered address of the Members or sent by Electronic Means within twelve months of the end of the financial period to which such accounts and reports relate.

36 AUDIT

Unless the Company is eligible pursuant to the Statutes and the Members pass a Waiver Resolution exempting the Company from the requirement under the Law to have the Company's accounts audited, the Company shall appoint an auditor and the Company's accounts shall be audited in accordance with the Law.

37 NOTICES

37.1 A notice may be given by the Company to any Member either personally or by sending it by post in a pre-paid envelope addressed to the Member at his registered address or by Electronic Means in accordance with this Article Unless the Law shall specify otherwise a notice shall, unless the contrary is shown, be deemed to have been received:

37.1.1 in the case of a notice sent by post to an address in the United Kingdom, Channel Islands or the Isle of Man, on the third day after the day of posting;

37.1.2 in the case of a notice sent by post elsewhere by airmail, on the seventh day after posting;

37.1.3 in the case of a notice sent by Electronic Means, at the expiration of twenty four hours after the time it was sent in accordance with Article 37.8,

excluding, in the first two cases, any day which is a Saturday, Sunday, Good Friday, Christmas Day, a bank holiday in Guernsey or a day appointed as a day of public thanksgiving or public mourning in Guernsey.

- 37.2** A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the Register in respect of the share.
- 37.3** A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a Member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 37.4** Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- 37.4.1** every Member who has supplied to the Company a registered address for the giving of notices to him;
- 37.4.2** every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for his death or bankruptcy would be entitled to receive notice of the meeting;
- 37.4.3** each Director who is not a Member; and
- 37.4.4** the Company's auditor (where the Company has one).
- 37.5** The accidental failure to send, or the non-receipt by any person entitled to, any notice of or other document relating to any meeting or other proceeding shall not invalidate the relevant meeting or other proceeding.
- 37.6** Any Member may notify the Company of an address or fax number for the purpose of his receiving communications by Electronic Means from the Company, and having done so shall be deemed to have agreed to receive notices and other documents from the Company by Electronic Means of the kind to which the address or fax number relates. In addition, if a Member notifies the Company of his e-mail address or fax number, the Company may, but is not obliged to, satisfy its obligation to send him any notice or other document by:
- 37.6.1** publishing such notice or document on a web site; and
- 37.6.2** notifying him by e-mail to that e-mail address or fax to that fax number that such notice or document has been so published, specifying the address of the web site on which it has been published, the place on the web site where it may be accessed, how it may be accessed and (if it is a notice relating to a shareholders' meeting) stating (i) that the notice concerns a notice of a company meeting served in accordance with the Law (ii) the place, date and time of the meeting, (iii) whether the meeting is to be an annual or extraordinary general or class meeting, and (iv) such other information as the Law may prescribe.
- 37.7** For the avoidance of doubt, any address or fax number specified by a Member to the Company prior to the date of adoption of these Articles for the purpose of communicating by Electronic Means will constitute a notification of that address or fax number for the purposes of Article 38.6
- 37.8** Any document or notice which, in accordance with these Articles, may be sent by the Company by Electronic Means shall, if so sent, be deemed to be received at the expiration of twenty four hours after the time it was sent. Proof (in accordance with the formal recommendations of best practice contained in the guidance issued by the United Kingdom Institute of Chartered Secretaries and

Administrators) that a communication was sent by Electronic Means by the Company shall be conclusive evidence of such sending.

- 37.9 A communication by Electronic Means shall not be treated as received by the Company if it is rejected by computer virus protection arrangements.
- 37.10 All information relating to the Company, the group and its affairs to which the Directors are entitled must be made equally available to all Directors at the same time and in the same manner.
- 37.11 The Company shall not provide any information (i) to a Director; and/or (ii) to a direct or indirect shareholder of the Company, unless such information is communicated or made available to all Directors at substantially the same time and in the same manner.
- 37.12 The Company shall promptly provide copies of all notices and/or correspondence received from a direct or indirect shareholder of the Company or a member of the group to all of the Directors at substantially the same time and in the same manner.

38 WINDING UP

- 38.1 The Company may be wound up voluntarily if the Members pass a Special Resolution requiring that the Company be wound up voluntarily. Upon the passing of such Special Resolution, the process of voluntary winding up shall commence and the Company shall cease to carry on business except in so far as it may be expedient for the beneficial winding up of the Company. The Company's corporate state and powers shall be deemed to continue until the Company's dissolution.
- 38.2 If the Company shall be wound up, the surplus assets remaining after payment of all creditors, including the repayment of bank borrowings, shall be divided *pari passu* among the Members pro rata to their holdings of those shares which are subject to the rights of any shares which may be issued with special rights or privileges.
- 38.3 If the Company shall be wound up the liquidator may, with the sanction of a resolution of the Company passed by Special Resolution and any other sanction required by the Statutes, divide amongst the Members in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no Member shall be compelled to accept any shares or other securities whereon there is any liability.
- 38.4 Where the Company is proposed to be or is in the course of being wound up and the whole or part of its business or property is proposed to be transferred or sold to another company (the "Transferee Company") the liquidator may, with the sanction of an Ordinary Resolution, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the Transferee Company for distribution among the Members or may enter into any other arrangement whereby the Members may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefits from the Transferee Company.

39 INDEMNITY

- 39.1 The Directors, Secretary and other officer or employee for the time being of the Company shall be indemnified out of the assets of the Company to the fullest extent permitted by the Law from and against all actions, costs, charges, losses, damages and expenses in respect of which they may

lawfully be indemnified which they or any of them shall or may incur or sustain by reason of any contract entered into or any act done, concurred in, or omitted, in or about the execution of their duty or supposed duty or in relation thereto.

40 INSPECTION OF REGISTERS AND OTHER RECORDS

40.1 A Director shall be entitled at any time to inspect the Register, the minute books, the annual validation, the register of Directors and secretaries and the index, if any, of Members.

40.2 A Member shall be entitled in accordance with the Law, to inspect the Register and the other documents mentioned in 40.1 other than the minutes of proceedings at Directors' meetings.

40.3 Any person who is not a Director or a Member shall be entitled on fulfilling the requirements in the Law to inspect the Register, the register of Directors and secretaries and the index, if any, of Members.

40.4 The rights of inspection herein referred to shall be exercisable between 9 a.m and 5 p.m. on any weekday when banks in Guernsey are open for business.

40.5 Subject to Article 40.1, no Member shall (as such) have any right of inspecting any accounting records or other books or documents of the Company except as conferred by the Statutes or authorised by the Directors or by Ordinary Resolution.

41 COMMON SIGNATURE

The common signature of the Company may be either: "ELLI INVESTMENTS LIMITED" with the addition of the signature(s) of one or more officer(s) of the Company authorised generally or specifically by the Directors for such purpose, or such other person or persons as the Directors may from time to time appoint; or if the Directors resolve that the Company shall have a common seal, the common seal of the Company affixed in such manner as these Articles may from time to time provide, as the Directors may from time to time determine either generally or in any particular case.

42 AMENDMENT TO THESE ARTICLES

These Articles shall not be amended while the Governance Deed remains in force between the parties thereto. For the avoidance of doubt this article 42 shall be a provision for entrenchment for the purposes of section 44 of the Law.

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THE COMPANIES (GUERNSEY) LAW, 2008 (AS AMENDED)

NON-CELLULAR COMPANY LIMITED BY SHARES

ARTICLES OF INCORPORATION

of

ELLI ACQUISITIONS LIMITED

1 DEFINITIONS

In these Articles, if not inconsistent with the subject or context, the following words have the following meaning:

these Articles	the articles of incorporation of the Company in their present form or as from time to time altered.
Appointor Director	a Director, being an Appointor Director (as defined in the Governance Deed) appointed in accordance with and subject to the Governance Deed.
Business Day	a day which is not a Saturday, Sunday or public holiday in Guernsey.
Clear Days	in relation to a period of notice, shall mean that period excluding the day when the notice is served or deemed to be served and the day for which it is given or on which it is to take effect.
the Court	means the Royal Court of Guernsey sitting as an Ordinary Court.
Default Interests	shall have the meaning given to it in Article 11.5.1.
Department	shall have the meaning given to it in Article 3.
Direction Notice	shall have the meaning given to it in Article 11.4.
Distribution	shall have the meaning ascribed to it by Section 301 of the Law.
Dividend	shall have the meaning ascribed to it by Section 302 of the Law.
the Directors	the directors of the Company, comprising the Appointor Directors, the Mutual Director and the Incumbent Directors, who number not less than the Quorum required by these Articles.
Electronic Means	shall have the meaning ascribed to it by the Law.

Eligible Members	the Members entitled to vote on the circulation date of a Written Resolution.
Governance Deed	means the deed relating to the Company entered into by the Company, the Appointor (as defined therein), Elli Group (UK) Limited and Elli Finance (UK) PLC on or about the date hereof.
Guernsey Security Interest Agreement	a security interest agreement made under and pursuant to the Security Interests (Guernsey) Law, 1993 (as amended).
Incumbent Director	a Director, being an Incumbent Director (as defined in the Governance Deed) appointed in accordance with and subject to the Governance Deed.
Interested Party	shall have the meaning given to it in Article 11.1.
Law	the Companies (Guernsey) Law, 2008 (as amended).
Member	in relation to shares means the person whose name is entered in the Register as the holder of the shares.
Memorandum	the memorandum of incorporation of the Company for the time being current.
Month	thirty one days.
Mutual Director	a Director, being a Mutual Director (as defined in the Governance Deed) appointed in accordance with and subject to the Governance Deed.
Office	the registered office for the time being of the Company.
Ordinary Resolution	a resolution of the Company passed as an ordinary resolution in accordance with the Law by a simple majority of the votes of the Members entitled to vote and voting in person or by attorney or by proxy at a meeting or by a simple majority of the total voting rights of Eligible Members by Written Resolution.
present or present in person	in relation to general meetings of the Company and to meetings of the holders of any class of shares, includes present by attorney or by proxy or, in the case of a corporate Member, by representative
Prohibited Resolution	a resolution in the context of a Requisition Request which would, if passed, be ineffective (whether by reason of inconsistency with any

enactment or the Company's Memorandum or Articles or otherwise), be defamatory of any person, or be frivolous or vexatious.

Quorum

three (3) Directors duly appointed in accordance with these Articles and the Governance Deed, including either:

(i) two (2) Appointor Directors; or

(ii) one (1) Appointor Director and the Mutual Director.

An alternate Appointor Director or Mutual Director, duly appointed in accordance with these Articles and the Governance Deed, shall be counted in the Quorum at a meeting at which the Appointor Director or Mutual Director appointing such alternate Appointor Director or Mutual Director is not present.

Register

the register of Members to be kept pursuant to the Law.

Registrar

shall mean the Registrar of Companies.

Requisition Request

a request for the holding of a general meeting of the Company stating the general nature of the business to be dealt with at the meeting which may include the text of a resolution intended to be moved at that general meeting, provided it is not a Prohibited Resolution

Seal

shall have the meaning given to it in Article 32.1.

Secretary

any person appointed to perform any of the duties of secretary of the Company (including an assistant or deputy secretary) and in the event of two or more persons being appointed as joint secretaries any one or more of the persons so appointed

Side Deed

means the deed relating to the Company entered into by the Sponsor Companies (as defined therein) and the Addressees (as defined therein) on or about the date hereof.

Special Resolution

a resolution of the Members passed as a special resolution in accordance with the Law by a majority of not less than seventy five per cent. of the votes of the Members entitled to vote and voting in person or by attorney or by proxy at a meeting or by seventy five per cent. of the total voting rights of Eligible Members by Written Resolution.

the Statutes	the Law and every statute (including any orders, ordinances, regulations or other subordinate legislation made under it) from time to time in force concerning companies in so far as it applies to the Company, and shall be deemed to include any statutory modification or re-enactment of such law.
Transferee Company	shall have the meaning given to it in Article 38.4
Unanimous Resolution	a resolution of the Members passed as a unanimous resolution in accordance with the Law.
Waiver Resolution	a resolution of the Members passed as a waiver resolution in accordance with the Law by a majority of not less than ninety per cent. of the votes of the Members entitled to vote and voting in person or by attorney or by proxy at a meeting or by not less than ninety per cent. of the total voting rights of Eligible Members by Written Resolution.
Written Resolution	a resolution of the Members in writing passed as a written resolution in accordance with the Law.

2 INTERPRETATION

- 2.1 *share* includes a fraction of a share and save where these Articles otherwise provide, a fraction of a share shall rank *pari passu* and proportionately with a whole share of the same class.
- 2.2 *in writing* and *written* includes the reproduction of words and figures in any visible form including in electronic form.
- 2.3 Words importing the singular number only shall include the plural number and vice versa.
- 2.4 Words importing a particular gender only shall include any other gender.
- 2.5 Words importing persons shall include associations and bodies of persons, whether corporate or unincorporated.
- 2.6 Subject to the preceding paragraphs of this Article and Article 1, any words defined in the Statutes shall, if not inconsistent with the subject or context, bear the same meaning in these Articles
- 2.7 The headings are inserted for convenience only and shall not affect the interpretation of these Articles.
- 2.8 Where the provisions of the Articles or any part thereof conflict with a provision of the Governance Deed, the provisions of the Governance Deed shall prevail.

3 STANDARD ARTICLES NOT TO APPLY

The standard articles of incorporation prescribed by the States of Guernsey Commerce and Employment Department (the “**Department**”) pursuant to section 16(2) of the Law do not apply to the Company.

4 POWER OF THE BOARD TO ISSUE SHARES

4.1 Subject to the provisions of the Law and the Governance Deed, on such terms and conditions as they see fit, the Directors may:

4.1.1 exercise the power of the Company to issue shares or grant rights to subscribe for, or convert any security into shares, in accordance with the Law;

4.1.2 issue shares of different types or shares of different classes including but not limited to shares which:

- (a) are redeemable shares,
- (b) confer preferential rights to distribution of capital or income,
- (c) do not entitle the holder to voting rights,
- (d) entitle the holder to restricted voting rights,

and the creation or issuance of any such shares or any additional shares ranking equally with an existing type or class of share is deemed not to vary the rights of any existing Member;

4.1.3 subject to Article 6, convert all or any classes of the Company's shares into redeemable shares;

4.1.4 issue shares which have a nominal or par value;

4.1.5 issue shares of no par value,

4.1.6 issue any number of shares they see fit;

4.1.7 issue fractions of a share;

4.1.8 make arrangements on the issue of shares to distinguish between Members as to the amounts and times of payments of calls on their shares; and

4.1.9 pay Dividends and Distributions in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

4.2 Subject to Article 4.1, where the Company has issued only a single class of shares the Directors may issue shares of that class or grant rights to subscribe for or to convert any security into such shares.

4.3 Where the Directors have resolved to issue different classes of shares in accordance with these Articles, the Directors have the authority to issue an unlimited number of shares and, where required by the Law, such authority shall expire on the date which is five years from the date of the adoption of these Articles (unless previously renewed, revoked or varied by Ordinary Resolution of the Company) save that the Directors may issue shares or grant rights to subscribe for or to convert any security into shares after authorisation has expired if the shares are issued or the rights are granted, in pursuance of an offer or agreement made by the Company before the authorisation expired and the authorisation allowed the Company to make an offer or agreement which would or might require shares to be issued, or rights to be granted, after the authorisation had expired.

4.4 The Company may acquire its own shares (including any redeemable shares). Any shares so acquired by the Company may be cancelled or held as treasury shares provided that the number of

shares of any class held as treasury shares must not at any time exceed ten per cent. (or such other percentage as may be prescribed from time to time by the Department) of the total number of issued shares of that class. Any shares acquired in excess of this limit shall be treated as cancelled.

- 4.5** The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

5 COMPANY NOT OBLIGED TO RECOGNISE ANY TRUST

No person shall be recognised by the Company as holding any share upon any trust, and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share or (except only as by these Articles or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

6 VARIATION OF CLASS RIGHTS

- 6.1** All or any of the rights, privileges, or conditions for the time being attached to any class or group of shares may only be varied:

6.1.1 with the consent in writing from the holders of seventy five per cent. in value of the issued shares of that class (excluding any treasury shares); or

6.1.2 with the sanction of a Special Resolution passed at a separate general meeting of the shareholders of that class sanctioning the variation. To any such meeting all the provisions of these Articles shall *mutatis mutandis* apply, but so that the necessary quorum shall be Members of the class or group affected, holding or representing by proxy one-third of the capital paid on the issued shares of the class or group affected (but so that if at any adjourned meeting of such holders a quorum as above defined is not present, those Members who are present shall be a quorum) provided that this paragraph is not to derogate from any power the Company would have had if this paragraph were omitted.

7 CALLS ON SHARES

- 7.1** Subject to the terms of issue of the shares, the Directors may make calls upon the Members in respect of any moneys unpaid on their shares and each Member shall (subject to receiving at least fourteen Clear Days' notice specifying when and where payment is to be made) pay the Company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of any sum due thereunder, be revoked in whole or part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect whereof the call was made.

- 7.2** A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.

- 7.3** The Directors may, on issue of shares, differentiate between holders as to the amounts and times of payment of calls on their shares. Joint holders of a share shall be jointly and severally liable for the payment of all calls or other moneys in respect thereof.

- 7.4** Any sum which by the terms of issue of a share is made payable upon issuance or at any fixed date and any instalment of a call shall, for all purposes of this Article, be deemed to be a call duly made and payable on the date fixed for payment, and in case of non-payment the provisions of this Article as to payment of interest and expenses, forfeiture and the like, and all other relevant

provisions of this Article shall apply as if such sum or instalments were a call duly made and notified as hereby provided.

- 7.5** If any Member shall fail to pay on or before the day appointed for payment thereof any call to which he may have become liable, he shall pay interest on the amount in arrear from the day appointed for payment thereof to the time of actual payment, at such rate, to be determined by the Directors from time to time, provided, however, that the Directors may remit the whole or any part of such interest. The Directors may also charge the person obliged to make the call any costs or expenses that have been incurred by the Company due to that non-payment. The Directors may, at their absolute discretion, waive payment of interest or charges under this Article.
- 7.6** No Member shall be entitled to receive any Dividend or Distribution or to receive notice of or attend or vote at any meeting or upon a poll, or to exercise any privileges as a Member until all calls or other sums due by him to the Company, whether alone or Jointly with any other person, together with interest and expenses (if any) shall have been paid. The Directors may, at their absolute discretion, waive any suspension of rights under this Article.
- 7.7** The Directors may, if they think fit, receive from any Member willing to advance the same, all or any part of the moneys payable upon the shares held by him beyond the sums actually called up thereon, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the Member paying such sum in advance and the Directors shall agree upon, but any amount so for the time being paid in advance of calls shall not unless the Directors shall in any particular instance otherwise determine, be included or taken into account in ascertaining the amount of Dividend or Distribution payable upon the share in respect of which such advance has been made.

8 FORFEITURE

- 8.1** If any Member fails to pay the whole or any part of a call on the day it becomes due and payable, the Directors may at any time thereafter during such time as the call or any part thereof, or any interest which shall have accrued thereon, remains unpaid, serve a notice on him requiring him to pay such call or such part thereof as remains unpaid, together with any accrued interest and together with any expenses that may have been incurred by the Company by reason of such non-payment.
- 8.2** The notice shall name a day, not being less than fourteen Clear Days from the date of the notice on or before which the call or such part as aforesaid and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place at which payment is to be made and shall state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.
- 8.3** If the notice is not complied with, any shares in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all unpaid Dividends, Distributions, and interest due and to become due thereon and any moneys paid up in advance of calls.
- 8.4** Where any share has been forfeited in accordance with this Article, notice of the forfeiture shall forthwith be given to the holder of the share or the person entitled to the share by transmission, as the case may be, and an entry of such notice having been given of the forfeiture, with the date thereof, shall forthwith be made in the Register opposite the shares, but no forfeiture shall be in any manner invalidated by any omission or neglect to give such notice or to make such entry as aforesaid.
- 8.5** Notwithstanding any such forfeiture as aforesaid, the Directors may, at any time before the forfeited share has been otherwise disposed of, permit the share so forfeited to be reclaimed upon

payment of all calls and interest due upon and expenses incurred in respect of the share, and upon such further terms (if any) as they shall think fit.

- 8.6** Every share which shall be forfeited shall thereupon become the property of the Company and may be either cancelled, sold, re-allotted, re-issued, held as a treasury share or otherwise disposed of by the Directors, either to the person who was before forfeiture the holder thereof or entitled thereto, or to any other person, upon such terms and in such manner as the Directors shall think fit. The Directors may annul any forfeiture upon such terms as they shall think fit.
- 8.7** A Member whose shares have been forfeited shall, notwithstanding, be liable to pay to the Company all calls made or payable and not paid on such shares at the time of forfeiture, and interest thereon to the date of payment, and all expenses (whether then payable or not) in the same manner in all respects as if the shares had not been forfeited, and to satisfy all (if any) of the claims and demands which the Company might have enforced in respect of the shares at the time of the forfeiture, without any deduction or allowance for the value of the shares at the time of forfeiture
- 8.8** The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share, and all other rights and liabilities incidental to the share, as between the Member whose share is forfeited and the Company.
- 8.9** A declaration in writing that the deponent is a Director of the Company and that a share has been duly forfeited in pursuance of this Article, and stating the time when it was forfeited, shall, as against all persons claiming to be entitled to the share adversely to the forfeiture thereof, be conclusive evidence of the facts therein stated, and such declaration shall, together with a certificate of proprietorship of the share delivered to a purchaser or allottee thereof, constitute a good title to the share and the new holder thereof shall be discharged from all calls made and other moneys payable prior to such purchase or allotment.
- 8.10** Upon any sale after forfeiture, or for enforcing a lien in purported exercise of the powers herein given, the Directors may nominate some person to execute a transfer of the share sold in the name and on behalf of the registered holder or his legal personal representative and on such transfer being executed by the purchaser may cause the purchaser's name to be entered in the Register in respect of the shares sold and the purchaser shall not be bound to see to the regularity of the proceedings or to the application of the purchase money, and after his name has been entered in the Register in respect of such shares the validity of the sale shall not be impeached by any person and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively. The holder of a share that has been forfeited ceases to be a Member in respect of that share and the Member's name is deemed to have been removed from the Register on the date of forfeiture.

9 LIEN

- 9.1** Subject always to the provisions of Article 9.4, the Company shall have a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Company shall have a first lien on all shares (other than fully paid shares) standing registered in the name of a single person for all money payable by him or his estate to the Company. The Company's lien on a share shall extend to all Dividends and Distributions payable thereon.
- 9.2** Subject to the provisions of the Law with respect to Dividends and Distributions, the Directors may at any time, either generally or in a particular case, waive any lien that has arisen or declare any share to be wholly or in part exempt from the provisions of Article 9.1.
- 9.3** For the purpose of enforcing such lien the Directors may sell the shares subject thereto in such manner as they think fit, but no sale shall be made until such time as the moneys are presently

payable and notice in writing stating the amount due, and giving notice of intention to sell in default shall have been served on such Member or the person (if any) entitled by transmission to the shares and default shall have been made for fourteen Clear Days after such notice. The net proceeds of any such sale shall be applied in or towards satisfaction of the debts, liabilities and engagements aforesaid, the residue (if any) shall be paid to the Member or the person (if any) entitled by transmission to the shares or who would be so entitled but for such sale.

- 9.4** Notwithstanding any other provision of these Articles, the Company shall not have a lien in any case over any share which is subject to a security interest pursuant to a Guernsey Security Interest Agreement and which is to be transferred to or by the person (or its nominees) in whose favour the security interest exists.

10 TRANSFER OF SHARES

- 10.1** Any Member may transfer all or any of his shares by instrument in writing in the usual or common form or in any other form which the Directors may approve. The instrument of transfer shall be executed by the transferor (and in the case of partly paid shares by the transferee) and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof. Shares of different classes shall not be transferred by the same instrument of transfer

- 10.2** Every instrument of transfer shall be left at the Office, or such other place as the Directors may prescribe, with the certificate of every share to be thereby transferred and such other evidence as the Directors may reasonably require to prove the title of the transferor or his right to transfer the shares; and the transfer and certificate shall remain in the custody of the Directors but shall be at all reasonable times produced at the request and expense of the transferor or transferee and their respective representatives or any of them. A new certificate shall be delivered to the transferee after the transfer is completed and registered on his application for the same and when necessary a balance certificate shall be delivered to the transferor if required by him in writing. Notwithstanding the foregoing, no fee shall be payable and the Directors shall not require evidence to prove the title of a transferor or his right to transfer any share in any case where the proposed transfer of a share pursuant to, or in connection with, a Guernsey Security Interest Agreement relating to the shares in the Company or made between, as the case may be, any legal or beneficial shareholder in the Company and any lender, security trustee, security agent, or other secured party under financing made or to be made available to the Company or to any other member of the group of companies of which the Company is a member or to any partnership of which the Company is a partner.

- 10.3** The Directors may, in their discretion and without assigning any reasons therefor, refuse to register a transfer of any share to any person of whom they shall not approve as transferee, provided that:

10.3.1 a transfer of any share that has not been made in accordance with the Side Deed shall not be registered; and

10.3.2 notwithstanding Article 10.3.1, where any shares are the subject of a security interest created by a Guernsey Security Interest Agreement in favour of a secured party, the Directors shall not be entitled to refuse to register any transfer of shares to or by that secured party (including any transfer to the secured party's nominee(s)) or made pursuant to or in connection with such Guernsey Security Interest Agreement.

If the Directors refuse to register a transfer of any share (not being a transfer to or by a secured party as aforesaid or made pursuant to or in connection with such Guernsey Security Interest Agreement) they shall within one month after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.

- 10.4** These Articles are subject to, and do not limit or restrict the Company's powers to transfer shares in accordance with, the Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005.
- 10.5** Notwithstanding anything to the contrary contained in these Articles, Articles 10.1 to 10.4 inclusive shall not apply and there shall be no restriction on the transfer of any share where such transfer is made pursuant to, or in connection with, a Guernsey Security Interest Agreement relating to shares in the Company or made between, as the case may be, any legal and/or beneficial shareholder in the Company and any lender, security trustee, security agent or other secured party under financing made or to be made available to the Company or to any other member of the group of companies of which the Company is a member or to any partnership of which the Company is a partner.

11 DISCLOSURE OF OWNERSHIP

- 11.1** The Directors shall have power by notice in writing to require any Member to disclose to the Company the identity of any person other than the Member (an "**Interested Party**") who has any interest (whether direct or indirect) in the shares held by the Member and the nature of such interest or have been so interested at any time during the three years immediately preceding the date on which the notice is issued. For these purposes, a person shall be treated as having an interest in shares if they have any interest in them whatsoever, including but not limited to any interest acquired by any person as a result of:

11.1.1 entering into a contract to acquire them;

11.1.2 being entitled to exercise, or control the exercise of, any right conferred by the holding of the shares;

11.1.3 having the right to call for delivery of the shares; or

11.1.4 having the right to acquire an interest in shares or having the obligation to acquire such an interest.

- 11.2** Any such notice shall require any information in response to such notice to be given in writing within such reasonable time as the Directors shall determine subject to Article 11.10.2.

- 11.3** The Company shall maintain a register of Interested Parties and whenever in pursuance of a requirement imposed on a Member as aforesaid the Company is informed of an Interested Party the identity of the Interested Party and the nature of the interest shall be promptly inscribed therein together with the date of the request. At no time shall the Company permit the register of Interested Parties:

11.3.1 to be kept or maintained in the United Kingdom; or

11.3.2 to be inspected by anyone other than a director of the Company.

- 11.4** If any Member has been duly served with a notice given by the Directors in accordance with Article 11.1 and is in default after the prescribed deadline (as determined by the Directors in accordance with Article 11.2) in supplying to the Company the information thereby required, then the Directors may in their absolute discretion at any time thereafter serve a notice (a "**Direction Notice**") upon such Member.

- 11.5** A Direction Notice may direct that, in respect of:

11.5.1 any shares in relation to which the default occurred (all or the relevant number as appropriate of such shares being the "**Default Interests**"); and

11.5.2 any other shares held by the Member,

the Member shall not be entitled to vote at a general meeting or meeting of the holders of any class of shares of the Company either personally or by proxy or exercise any other right conferred by membership in relation to meetings of the Company or of the holders of any class of share of the Company

11.6 Where the Default Interests represent at least one quarter of one per cent. (0.25%) of the number of shares in issue of the class of shares concerned, the Direction Notice may additionally direct that in respect of the Default Interests:

11.6.1 any Dividend or Distribution or the proceeds of any repurchase or repayment on the Default Interests or part thereof which would otherwise be payable on such shares shall be retained by the Company without any liability to pay interest thereon when such money is finally paid to the Member; and

11.6.2 no transfer of the Default Interests held by such Member shall be registered unless:

(a) the Member is not himself in default as regards supplying the information requested; and

(b) when presented for registration the transfer is accompanied by a certificate by the Member in a form satisfactory to the Directors to the effect that after due and careful enquiry the Member is satisfied that no person who is in default as regards supplying such information is interested in any of the shares the subject of the transfer.

11.7 The Company shall send to each other person appearing to be interested in the shares the subject of any Direction Notice a copy of the notice, but failure or omission by the Company to do so shall not invalidate such notice.

11.8 If shares are issued to a Member as a result of that Member holding other shares in the Company and if the shares in respect of which the new shares are issued are Default Interests in respect of which the Member is for the time being subject to particular restrictions, the new shares shall on issue become subject to the same restrictions whilst held by that Member as such Default Interests. For this purpose, shares which the Company procures to be offered to Members pro rata (or pro rata ignoring fractional entitlements and shares not offered to certain Members by reason of legal or practical problems associated with offering shares outside the United Kingdom or Guernsey) shall be treated as shares issued as a result of a Member holding other shares in the Company.

11.9 Any Direction Notice shall have effect in accordance with its terms for as long as the default, in respect of which the Direction Notice was issued, continues. As soon as practicable after the Direction Notice has ceased to have effect (and in any event within five working days thereafter) the Directors shall procure that the restrictions imposed by Articles 11.5 and 11.6 shall be removed and that any sums withheld pursuant to Article 11.6.1 are paid to the relevant Member.

11.10 For the purpose of this Article:

11.10.1 a person shall be treated as appearing to be interested in any shares if the Member holding such shares has given to the Company a notification which either (a) names such person as being so interested or (b) fails to establish the identities of those interested in the shares and (after taking into account the said notification and any other relevant notification) the Company knows or has reasonable cause to believe that the person in question is or may be interested in the shares; and

11.10.2 the prescribed deadline in respect of any particular Member is twenty eight days from the date of service of the said notice in accordance with Article 11.1 except where the Default Interests represent at least one quarter of one per cent. (0.25%) of the number of shares in issue of the class of shares concerned in which case such deadline shall be fourteen days

11.11 Any Member who has been given notice of an Interested Party in accordance with Article 11.1 who subsequently ceases to have any party interested in his shares or has any other person interested in his shares, shall notify the Company in writing of the cessation or change in such interest and the Directors shall promptly amend the register of Interested Parties accordingly.

12 THE REGISTER

12.1 The Company shall keep a Register in accordance with the Law. The registration of transfers of shares may be suspended at such times and for such a period (not exceeding in aggregate thirty days in any calendar year) as the Directors may determine

12.2 In the case of the death of a Member, the survivor or survivors where the deceased was a joint holder, and the executors or administrators of the deceased where he was a sole holder, shall be the only person or persons recognised by the Company as having any title to or interest in his shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.

12.3 A person entitled to shares in consequence of the death or bankruptcy of a Member shall not be entitled to receive notice of or attend or vote at any meeting, or, save as aforesaid and save as regards the receipt of such Dividends or Distributions as the Directors shall not elect to retain, to exercise any of the rights and privileges of a Member, unless and until he shall have been registered as the holder of the shares.

13 CERTIFICATES

13.1 If the Company elects to issue share certificates, every Member shall be entitled to receive within one month after issue or lodgement of transfer (or within such other period as the conditions of issue shall provide) one certificate for all his shares or if the Member shall so request several certificates each for one or more of his shares.

13.2 Every certificate shall be signed in accordance with the common signature of the Company, shall specify the shares to which it relates and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

13.3 If a share certificate is defaced, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company in connection with the matter and generally upon such terms as the Directors shall think fit.

14 ALTERATION OF CAPITAL

14.1 The Company may by Ordinary Resolution:

14.1.1 consolidate and divide all or any of its shares into shares of larger amounts than its existing shares;

14.1.2 sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum or Articles or Ordinary Resolution, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

14.1.3 cancel any shares which, at the date of the passing of the resolution have not been taken or agreed to be taken by any person, and diminish the amount of its shares by the amount of the shares so cancelled;

- 14.1.4** redesignate the whole, or any particular class, of its shares into shares of another class;
- 14.1.5** convert all or any of its shares the nominal amount of which is expressed in a particular currency or former currency into shares of a nominal amount of a different currency, the conversion being effected at the rate of exchange (calculated to not less than three significant figures) current on the date of the resolution or on such other date as may be specified therein;
- 14.1.6** where its shares are expressed in a particular currency or former currency, denominate or redenominate it, whether expressing its amount in units or subdivisions of that currency or former currency, or otherwise.

15 GENERAL MEETINGS

- 15.1** Subject to the Law and these Articles, the first general meeting of the Company shall be held within a period of not more than eighteen months from the day on which the Company was incorporated. Subject to the Law, an annual general meeting shall be held once in every calendar year (provided that no more than fifteen months may elapse between one annual general meeting and the next) at such time and place as the Directors shall appoint, and in default of an annual general meeting any Member may, not less than 14 days after the last date upon which the meeting ought to have been held, apply to the Court to make such order as the Court thinks fit.
- 15.2** Meetings other than annual general meetings shall be called general meetings.
- 15.3** The Directors may whenever they think fit convene a general meeting.
- 15.4** The Directors are required to call a general meeting in accordance with the Law once the Company has received Requisition Requests to do so from Members who hold more than ten per cent. of such of the capital of the Company that carries the right of voting at general meetings of the Company (excluding any capital held as treasury shares).
- 15.5** Where the Directors are required to call a general meeting in accordance with Article 15.4 they must call a general meeting within twenty one days after the date on which they became subject to the requirement and must hold the general meeting on a date not more than twenty eight days after the date of the notice convening the meeting.
- 15.6** Any general meeting may be held in Guernsey, or elsewhere, as the Directors may from time to time determine.
- 15.7** The provisions of this Article 15 are without prejudice to the rights of Members under the Law to rescind the waiver of the requirement to hold an annual general meeting and without prejudice to any powers of the directors to convene a general meeting without a Member's requisition.

16 NOTICE OF GENERAL MEETINGS

- 16.1** Unless special notice is required in accordance with the Law, all general meetings shall be called by not less than ten Clear Days' notice in writing. The notice shall specify the place, the date and the time of the meeting, and in the case of any proposed Special Resolution, Waiver Resolution or Unanimous Resolution, the text of such proposed resolution and notice of the fact that the resolution proposed is proposed as a Special Resolution, Waiver Resolution or Unanimous Resolution (as applicable) and the general nature of the business to be dealt with at the meeting and shall be given to such persons as are, by these Articles or the Law, entitled to receive such notices from the Company, provided that a meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed by all the Members entitled to attend and vote thereat.

- 16.2** The accidental failure to provide notice of a meeting, or to send any other document to a person entitled to receive such notice or document, shall not invalidate the proceedings at that meeting or call into question the validity of any actions, resolutions or decisions taken.
- 16.3** All Members are deemed to have agreed to accept communications from the Company by Electronic Means in accordance with Article 37.6.
- 16.4** A Member present, either in person or by proxy, at any meeting of the Company or of the holders of any class of shares in the Company, is deemed to have received notice of the meeting and, where required, of the purpose for which it was called.
- 16.5** Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the Register, has been duly given to a person from whom he derives his title.

17 ELECTION AND POWERS OF CHAIRMAN

- 17.1** The chairman of any general meeting shall be either:
- 17.1.1** the chairman of the Directors;
 - 17.1.2** in the absence of the chairman of the Directors or if the Directors have no chairman, then the Directors shall nominate one of their number to preside as chairman;
 - 17.1.3** if neither the chairman of the Directors nor the nominated Director are present at the meeting, then the Directors present at the meeting shall elect one of their number to be the chairman;
 - 17.1.4** if only one Director is present at the meeting then he shall be chairman of the general meeting; or
 - 17.1.5** if no Directors are present at the meeting, then the Members present shall elect a chairman for the meeting by an Ordinary Resolution.
- 17.2** The chairman of the general meeting shall conduct the meeting in such a manner as he thinks fit and may adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. In addition, the chairman may limit the time for Members to speak.

18 RIGHT OF DIRECTORS TO SPEAK

A Director of the Company shall be entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of shares in the Company, regardless of whether that Director is a Member of the Company or of the relevant class.

19 PROCEEDINGS AT GENERAL MEETINGS

- 19.1** All business shall be deemed special that is transacted at a general meeting. All business that is transacted at an annual general meeting shall likewise be deemed special, with the exception of declaring a Dividend or Distribution, the consideration of the accounts, balance sheets, and the reports of the Directors and auditors, the election of Directors and the appointment of and the fixing of the remuneration of the auditors.
- 19.2** No business shall be transacted at any general meeting unless a quorum is present. Two Members present in person or by proxy and entitled to vote shall be a quorum. Where the Company has only one Member the quorum shall be one Member present at the meeting in person or by proxy.

- 19.3** Unless the Directors direct otherwise, the rights of a Member to vote at a general meeting are suspended if that Member has failed to pay any sum due and owing on his share, whether that sum is due as a result of a failure to pay a call or otherwise.
- 19.4** If within half an hour after the time appointed for a meeting a quorum is not present, the meeting, if convened by or upon the requisition of Members as hereinbefore provided, shall be dissolved. If otherwise convened, it shall stand adjourned to the same day in the next week (or if that day be a public holiday in the Guernsey to the next working day thereafter) at the same time and place and no notice of such adjournment need be given. At any such adjourned meeting, those Members who are present in person or by proxy shall be a quorum. If no Members are present at the adjourned meeting, the meeting shall be dissolved.
- 19.5** The chairman, with the consent of any meeting at which a quorum is present may (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. When a meeting is adjourned for fourteen days or more, seven Clear Days' notice at the least specifying the place, the date and the time of the adjourned meeting shall be given as in the case of the original meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the adjourned meeting.
- 19.6** Every question submitted to a general meeting shall be determined in the first instance by a show of hands of the Members present in person or by proxy or by attorney and entitled to vote, but a poll may be demanded by no fewer than five Members having the right to vote on the resolution, or one or more of the Members present in person or by proxy representing at least ten per cent. of the total voting rights of all of the Members having the right to vote on the resolution. Unless a poll is duly demanded in accordance with these Articles, a declaration by the chairman that a resolution has been carried or lost or has or has not been carried by any particular majority and an entry to that effect in the minutes of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number, proportion or validity of the votes recorded in favour of or against such resolution.
- 19.7** If a poll is demanded, it shall be taken at the meeting at which the same is demanded or at such other time and place as the chairman shall direct, and the result of such poll shall be deemed the resolution of the meeting. The demand for a poll may be withdrawn.
- 19.8** The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 19.9** If a poll shall be duly demanded upon the election of a chairman or on any question of adjournment, it shall be taken at once.
- 19.10** In case of an equality of votes, either on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is taken, as the case may be, shall have a second vote if he is a Member and a casting vote if he is not a Member.

20 VOTES OF MEMBERS

- 20.1** Subject to any rights or restrictions attached to any shares, on a show of hands, every Member present in person or by proxy and entitled to vote shall have one vote, and on a poll every member present in person or by proxy shall have one vote for each share held by him, but this provision shall be subject to the conditions with respect to any special voting powers or restrictions for the time being attached to any shares which may be subject to special conditions.
- 20.2** Where there are joint registered holders of any share any one of such persons may vote at any meeting, either personally or by proxy, in respect of such share as if he were solely entitled thereto; and if more than one of such joint holders be present at any meeting personally or by

proxy that one of the said persons so present in person or by proxy whose name stands first in the Register in respect of such share shall alone be entitled to vote in respect thereof.

- 20.3** Any Member being under any legal disability may vote by his guardian or other legal representative. Any one of such persons may vote either personally or by proxy or by attorney
- 20.4** Upon a poll votes may be given personally or by proxy or by attorney and it shall not be necessary for a proxy or attorney to be entitled to attend the meeting in his own right. Deposit of an instrument of proxy shall not preclude a Member from attending and voting at the meeting or any adjournment thereof.
- 20.5** Subject to the provisions of the Law, the instrument appointing a proxy shall be in any common form or in such other form as the Directors may approve and whether sent to the Company in writing or in electronic form it shall be made under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a corporation under its common seal or under the hand of an officer or attorney duly authorised in that behalf.
- 20.6** The appointment of a proxy and the power of attorney or other authority (if any) under which it is authenticated, or a copy of such authority certified notarially or in some other way approved by the Directors, shall:

20.6.1 in the case of an instrument in writing (including, whether or not the appointment of proxy is by Electronic Means, any such power of attorney or other authority) be deposited at the Office, or at such other place or places as determined by the Directors or as is specified in the notice convening the meeting or in any notice of any adjourned meeting or in any appointment of proxy sent out by the Company in relation to the meeting, not less than forty eight hours before the time of the holding of the meeting or adjourned meeting at which the person named in the appointment proposes to vote, or

20.6.2 in the case of an appointment by Electronic Means, where an address has been specified for the purpose of receiving documents or information in electronic form (in the notice convening the meeting, or in any instrument of proxy sent out by the Company in relation to the meeting or in any invitation in electronic form to appoint a proxy issued by the Company in relation to the meeting) be received at such address not less than forty eight hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote,

in default of which the proxy shall not be treated as valid unless the Directors otherwise determine in their discretion.

- 20.7** Any Member shall be entitled to appoint by power of attorney some person, whether a Member or not, to act as his attorney for the purposes of receiving notices of general meetings and attending general meetings and voting thereat, and upon such power of attorney being deposited at the Office together with a notice from the attorney giving his address, an entry thereof shall be made in the Register and all notices of meetings held during the continuance in force of such power of attorney shall be served upon the attorney thereby appointed as if such attorney were a Member of the Company and registered owner of the shares, and all notices, except where otherwise herein expressly provided, shall be deemed duly served if served upon such attorney in accordance with these Articles, and the attorney shall be entitled to attend any general meetings held during the continuance of his appointment and to vote thereat in respect of the shares of any Member appointing him, such vote to be exercised either personally or by proxy appointed by the attorney in accordance with these Articles. Every such power shall remain in full force notwithstanding the death of or its revocation by other means by the grantor, unless and until express notice in writing of such death or revocation shall have been given to the Company.
- 20.8** A vote given or poll demanded in accordance with the terms of an instrument of proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous

determination of the authority of the person voting or demanding a poll, unless a notice of the determination of the proxy, or of the authority under which the proxy was executed, shall have been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used.

- 20.9** Subject to the Law, a Written Resolution to which the requisite majority of eligible Members have, within twenty eight days of the date on which circulation of such Written Resolution, signified their agreement shall be as effective as if the same had been duly passed at a general meeting.

21 CORPORATIONS ACTING BY REPRESENTATIVES AT MEETINGS

Any corporation which is a Member may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual Member.

22 APPOINTMENT OF DIRECTORS

- 22.1** The board of Directors shall consist of five Directors comprising two Appointor Directors, one Mutual Director and two Incumbent Directors, to be appointed, removed and replaced as set out in the Governance Deed.
- 22.2** A person must not be appointed as a Director unless he has, in writing, consented to being a Director and declared that he is not ineligible to be a Director under the Statutes.
- 22.3** A Director need not be a Member but shall be entitled to receive notice of and attend all general meetings of the Company.
- 22.4** The Directors shall have power at any time and from time to time to appoint any person to be a Director (either to fill a casual vacancy or as an addition to the existing Directors) provided that such person is nominated and/or appointed in accordance with the Governance Deed.

23 REMUNERATION OF DIRECTORS

- 23.1** The remuneration of the Directors shall be determined by the Directors in their absolute discretion on or after the incorporation of the Company. Such remuneration shall be deemed to accrue from day to day.
- 23.2** The Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or general meetings of the Company or in connection with the business of the Company.
- 23.3** If any Director, being willing, shall be called upon to render or to perform and shall render or perform extra or special services of any kind or shall travel or go or reside in any country not his usual place of residence for any business or purposes of the Company, he shall be entitled to receive such sum as the Directors may think fit for expenses and also such remuneration as the Directors may think fit, either as a fixed sum or as a percentage of profits or otherwise, and such remuneration may, as the Directors shall determine, be either in addition to or in substitution for any other remuneration he may be entitled to receive, and the same shall be charged as part of the ordinary working expenses
- 23.4** The Company may pay a gratuity or pension or allowance on retirement to any Director who has held any other salaried office or place of profit with the Company or to his widow or dependants and make contributions to any fund and pay premiums for the purchase or provision of any such gratuity pension or allowance.

23.5 Notwithstanding Articles 23.1 to 23.4, the terms in respect of remuneration of a Director contained in any written arrangement between the Company and a Director shall prevail.

24 DIRECTORS' INTERESTS

24.1 A Director must, immediately after becoming aware of the fact that he is interested in a transaction or proposed transaction with the Company, disclose to the Directors (i) if the monetary value of the Director's interest is quantifiable, the nature and monetary value of that interest, or (ii) if the monetary value of the Director's interest is not quantifiable, the nature and extent of that interest, in each case unless the transaction or proposed transaction is between the Director and the Company, and is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.

24.2 Subject to the provisions of the Law, and provided that he has disclosed to the other Directors in accordance with the Law the nature and extent of any material interest of his, a Director notwithstanding his office:

24.2.1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company, or in which the Company is otherwise interested;

24.2.2 may act by himself or through his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a Director;

24.2.3 may be a Director or other officer of, or employed by, or a party to any transaction or arrangement with, a shareholder of or otherwise directly or indirectly interested in, any body corporate promoted by the Company, or with which the Company has entered into any transaction, arrangement or agreement or in which the Company is otherwise interested; and

24.2.4 shall not by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

24.3 For the purposes of this Article:

24.3.1 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified; and

24.3.2 an interest of which a Director is unaware shall not be treated as an interest of his.

24.4 A Director shall be counted in the Quorum at any meeting in relation to any resolution in respect of which he has declared an interest and may vote thereon.

24.5 A Director may continue to be or become a director, managing director, manager or other officer, employee or member of any company promoted by the Company or in which the Company may be interested or with which the Company has entered into any transaction, arrangement or agreement, and no such Director shall be accountable for any remuneration or other benefits received by him as a director, managing director, manager, or other officer or member of any such other company. The Directors may exercise the voting power conferred by the shares in any other company held or owned by the Company or exercisable by them as directors of such other company, in such manner in all respects as they think fit (including the exercise thereof in favour of any resolution appointing themselves or any of them directors, managing directors, managers or

other officers of such company, or voting or providing for the payment of remuneration to the directors, managing directors, managers or other officers of such company)

- 24.6** Any Director who, by virtue of office held or employment with any other body corporate, may from time to time receive information that is confidential to that other body corporate (or in respect of which he owes duties of secrecy or confidentiality to that other body corporate) shall be under no duty to the Company by reason of his being a Director to pass such information to the Company or to use that information for the benefit of the Company, in either case where the same would amount to breach of confidence or other duty owed to that other body corporate.

25 BORROWING POWERS

- 25.1** The Directors may exercise all the powers of the Company to borrow money, and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue securities whether outright or as security for any debt, liability or obligation of the Company or of any third party.

- 25.2** The Directors may cause a proper register to be kept of all mortgages, charges and/or security interests specifically affecting the Company.

26 POWERS AND DUTIES OF DIRECTORS

- 26.1** The business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and registering the Company, and may exercise all such powers of the Company as are not, by the Statutes or by these Articles, required to be exercised by the Company in general meeting, subject, nevertheless, to any of these Articles, to the provisions of the Statutes and to such regulations, being not inconsistent with these Articles or the Statutes as may be prescribed by the Company by Ordinary Resolution; but no regulation made by the Company shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

- 26.2** Subject to any restriction thereon contained in the Statutes, the Directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purpose and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretion vested in him.

- 26.3** A power of attorney given by the Company shall be valid if executed by the Company under the common signature of the Company.

- 26.4** The Directors shall cause minutes to be made in books provided for the purpose:

26.4.1 of all appointments of officers;

26.4.2 of the names of the Directors present at all meetings of the Company and of the Directors;
and

26.4.3 of all resolutions and proceedings at all meetings of the Company, of the Directors.

27 DIRECTORS' INSURANCE

To the fullest extent permitted by the Law and without prejudice to the provisions of Article 39, the Directors shall have the power to purchase and maintain insurance for or for the benefit of any

persons who are or were at any time Directors, officers or employees of the Company, or of any other company which is its holding company or in which the Company or such holding company or any of the predecessors of the Company or of such holding company has any interest whether direct or indirect or which is in any way allied to or associated with the Company, or of any subsidiary undertaking of the Company or of any such other company, including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or the exercise or purported exercise of their powers and/or otherwise in relation to or in connection with their duties, powers or offices in relation to the Company or any other such company or subsidiary undertaking.

28 RETIREMENT AND REMOVAL OF DIRECTORS

28.1 The office of Director shall, ipso facto, be vacated:

28.1.1 if he resigns his office by writing under his hand deposited at the Office, provided that the Company may agree to accept the resignation to take effect on a later date as specified by the resigning Director;

28.1.2 if he shall have absented himself (such absence not being absence with leave or by arrangement with the Directors on the affairs of the Company) from meetings of the Directors for six months in succession and the other Directors shall have resolved that his office shall be vacated;

28.1.3 if he becomes bankrupt, suspends payment or compounds with his creditors, or is adjudged insolvent or has his affairs declared en desastre or has a preliminary vesting order made against his Guernsey realty;

28.1.4 if he dies;

28.1.5 if he has been convicted of an indictable offence;

28.1.6 if he is removed from office by the board of Directors;

28.1.7 if he becomes ineligible to be a Director in accordance with the Statutes;

provided that until an entry of his office having been so vacated be made in the minutes of the Directors, his acts as a Director shall be as effectual as if his office were not vacated.

28.2 Notwithstanding Article 28.1.6, Directors shall only be removed in accordance with the Governance Deed.

29 PROCEEDINGS OF DIRECTORS

29.1 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit.

29.2 Questions arising at any meeting shall be decided by a majority of votes or as otherwise prescribed in the Governance Deed. Every Director present at a meeting of the Directors shall have one vote. In the case of an equality of votes, no Director shall have a second or casting vote.

29.3 A Director may, and the Secretary on the requisition of a Director shall, summon a meeting of the Directors by giving no less than 3 Business Days' notice of such meeting to all Directors, provided that the Directors may unanimously agree to a shorter period.

29.4 Notice of a Directors' meeting must be given to each Director, but need not be in writing.

- 29.5** Notice of any Directors' meeting must indicate:
- 29.5.1** its proposed date and time;
 - 29.5.2** where it is to take place; and
 - 29.5.3** if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

29.6 Subject to the provisions hereof, a meeting of Directors may be validly held notwithstanding that such Directors may not be in the same place provided that:

29.6.1 they are in constant communication with each other throughout by telephone, television or some other form of communication; and

29.6.2 all Directors entitled to attend such meeting so agree.

A person so participating in the meeting shall be deemed to be present in person and shall accordingly be counted in the Quorum and be entitled to vote.

29.7 A Quorum must be present for transaction of the business of Directors. A duly appointed alternate director shall be counted in the Quorum at which the Director appointing him is not present.

29.8 Subject to the provisions of the Governance Deed, if and so long as the number of Directors is reduced below the number fixed by or pursuant to these Articles as the necessary Quorum of the Directors, the continuing Directors or sole Director may only act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company for the purpose of increasing the number of Directors to that number, but for no other purpose.

29.9 The Directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes of the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting (the chairman shall not have a casting vote).

29.10 All acts done by any meeting of the Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any of the Directors or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

29.11 A resolution in writing, signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held, and may consist of several documents in the like form signed by any one or more of the Directors.

30 ALTERNATE DIRECTORS

30.1 Subject to the provisions of the Governance Deed to the contrary, any Director may at any time by writing under his hand and deposited at the Office, or delivered at a meeting of the Directors, appoint any person (including another Director) to be his alternate Director (provided that such appointment is accompanied by a consent to act signed by such person and that such person is eligible to be a Director of the Company under the Statutes) and may in like manner at any time terminate such appointment.

30.2 Subject to the provisions of the Governance Deed to the contrary, the appointment of an alternate Director shall terminate on the happening of any event which if he were a Director would cause him to vacate such office or if his appointor ceases to be a Director.

30.3 An alternate Director shall be entitled to receive notices of meetings of the Directors and shall be entitled to attend and vote as a Director at any such meeting at which the Director appointing him is not personally present and generally at such meeting to perform all functions of his appointor as a Director and for the purposes of the proceedings at such meeting the provisions of these presents shall apply as if he (instead of his appointor) were a Director. If he shall be himself a Director, or shall attend any such meeting as an alternate for more than one Director, his voting rights shall be cumulative. If his appointor is unable to act his signature to any resolution in writing of the Directors shall be as effective as the signature of his appointor.

30.4 An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent mutatis mutandis as if he were a Director but he shall not be entitled to receive from the Company in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct.

31 SECRETARY

31.1 The Directors may at their discretion appoint such person to be Secretary on such terms as they see fit (including as to remuneration) and for the avoidance of doubt may (but are not obliged to) appoint one of their number to act as both Director and Secretary.

31.2 To the extent required by the Law where the Company has appointed a Secretary, and without prejudice to the responsibility of any other person or to any other responsibilities he may hold, the Secretary shall take reasonable steps to ensure:

31.2.1 that all registers and indexes are maintained in accordance with the provisions of the Statutes;

31.2.2 that all notices and documents required to be filed or served upon the Registrar or other persons are duly so filed or served;

31.2.3 that all resolutions, records and minutes of the Company are properly kept;

31.2.4 that copies of the Memorandum and Articles are kept fully up to date, and

31.2.5 that the Directors are aware of any obligations imposed by

(a) the Memorandum and Articles; and

(b) (if applicable) the rules of any stock exchange that the Company is listed on.

31.3 The Secretary may be removed in accordance with Article 28 as if the Secretary were a Director.

32 THE SEAL

32.1 The Company may have a common seal (the “Seal”) and if the Directors resolve to adopt a Seal the following provisions shall apply.

32.2 The Seal shall have the Company’s name engraved on it in legible letters.

32.3 The Directors shall provide for the safe custody of the Seal, which shall only be used pursuant to a resolution passed at a meeting of the Directors authorised to use the Seal, and in the presence of two Directors or of one Director and the Secretary or of such person or persons as the Directors may from time to time appoint, and such person or persons, as the case may be, shall sign every instrument to which the Seal is affixed.

33 RECORD DATES

Notwithstanding any other provision of these Articles, the Directors may fix a date as the record date for any notice of any general meeting, Dividend, Distribution, or issuance of share(s) and such record date may be on or at any time within six months before or after any date on which such notice, Dividend, Distribution, or issuance is given, made or paid (as appropriate).

34 DIVIDENDS, DISTRIBUTIONS AND RESERVES

34.1 The Directors may from time to time authorise Dividends and Distributions to be paid to the Members in accordance with the procedure set out in the Law and subject to any Member's rights attaching to their shares. The declaration of the Directors as to the amount of the Dividend or Distribution available shall be final and conclusive.

34.2 All Dividends and Distributions shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the Dividend or Distribution is paid; but if any share is issued on terms providing that it shall rank for Dividend or Distribution as from a particular date such share shall rank for Dividend or Distribution accordingly.

34.3 The Directors may, in relation to any Dividend or Distribution, direct that the Dividend or Distribution shall be satisfied wholly or partly by the distribution of assets, and in particular of paid up shares, debentures, or other securities of any other company, and where any difficulty arises in regard to the Dividend or Distribution the Directors may settle it as they think expedient, and in particular may authorise any person to sell and transfer any fractions or may ignore fractions altogether, and may fix the value for Dividend and Distribution purposes of any assets or any part thereof and may determine that cash shall be paid to any Members upon the footing of the value so fixed in order to secure equality of Dividend or Distribution and may vest any assets the subject of a Dividend or Distribution in trustees as may seem expedient to the Directors

34.4 The Directors may deduct from the Dividends or Distributions payable to any Member all such sums of money as may be due from him to the Company on account of calls or otherwise.

34.5 No Dividend or Distribution shall bear interest against the Company.

34.6 The receipt of the person appearing by the Register to be the holder of any shares shall be a sufficient discharge to the Company for any Dividend or Distribution or other moneys payable in respect of such shares; and where several persons are the Joint holders of a share the receipts of any one of them shall be a good discharge to the Company for any Dividends or Distributions or other moneys payable thereon.

34.7 A transfer of shares shall not pass the right to any Dividend or Distribution declared thereon before the registration of the transfer.

34.8 Unless otherwise directed, any Dividend or Distribution may be paid by way of electronic transfer in such manner as agreed between the Member and the Company or by cheque or warrant sent through the post to the registered address of the Member entitled thereto, or in the case of joint holders to that one whose name stands first on the Register in respect of the joint holding and every cheque or warrant so sent shall be payable to the order of the person to whom it is sent, and the payment of any such electronic transfer, cheque or warrant shall operate as a good discharge to the Company in respect of the Dividend or Distribution represented thereby, notwithstanding that it may subsequently appear that the same has been stolen or that the endorsement thereon has been forged.

34.9 All Dividends and Distributions unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed.

34.10 Any Dividend or Distribution which has remained unclaimed for a period of six years from the date of declaration thereof shall, if the Directors so resolve, be forfeited and cease to remain owing by the Company and shall thenceforth belong to the Company absolutely.

35 ACCOUNTS

35.1 The Directors shall keep proper books of account with respect to all the transactions, assets and liabilities of the Company in accordance with the Statutes

35.2 Subject to the Statutes, the books of account shall be kept at the Office, or at such other place or places as the Directors shall think fit and shall at all times be open to the inspection of the Directors and the Secretary

35.3 Accounts complying with the provisions of the Law (which for the avoidance of doubt include a profit and loss account and a balance sheet) shall be prepared by the Company. The accounts shall be accompanied by a report of the Directors stating the principal activities and the state and condition of the Company. The accounts and Directors' report shall be signed on behalf of the Directors by at least one of them.

35.4 Where the Company holds an annual general meeting:

35.4.1 a copy of the accounts and Directors' report with the auditor's report (if any) attached thereto shall be laid before that meeting; and

35.4.2 a copy of the accounts and Directors' report with the auditor's report (if any) attached thereto shall be delivered or sent by post to the registered address of the Members or sent by Electronic Means within twelve months of the end of the financial period to which such accounts and reports relate.

35.5 Where the Company is authorised not to hold an annual general meeting and does not do so, a copy of the accounts and Directors' report with the auditor's report (if any) attached thereto shall be delivered or sent by post to the registered address of the Members or sent by Electronic Means within twelve months of the end of the financial period to which such accounts and reports relate.

36 AUDIT

Unless the Company is eligible pursuant to the Statutes and the Members pass a Waiver Resolution exempting the Company from the requirement under the Law to have the Company's accounts audited, the Company shall appoint an auditor and the Company's accounts shall be audited in accordance with the Law.

37 NOTICES

37.1 A notice may be given by the Company to any Member either personally or by sending it by post in a pre-paid envelope addressed to the Member at his registered address or by Electronic Means in accordance with this Article Unless the Law shall specify otherwise a notice shall, unless the contrary is shown, be deemed to have been received:

37.1.1 in the case of a notice sent by post to an address in the United Kingdom, Channel Islands or the Isle of Man, on the third day after the day of posting;

37.1.2 in the case of a notice sent by post elsewhere by airmail, on the seventh day after posting;

37.1.3 in the case of a notice sent by Electronic Means, at the expiration of twenty four hours after the time it was sent in accordance with Article 37.8,

excluding, in the first two cases, any day which is a Saturday, Sunday, Good Friday, Christmas Day, a bank holiday in Guernsey or a day appointed as a day of public thanksgiving or public mourning in Guernsey.

- 37.2** A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the Register in respect of the share.
- 37.3** A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a Member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 37.4** Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- 37.4.1** every Member who has supplied to the Company a registered address for the giving of notices to him;
 - 37.4.2** every person upon whom the ownership of a share devolves by reason of his being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for his death or bankruptcy would be entitled to receive notice of the meeting;
 - 37.4.3** each Director who is not a Member; and
 - 37.4.4** the Company's auditor (where the Company has one).
- 37.5** The accidental failure to send, or the non-receipt by any person entitled to, any notice of or other document relating to any meeting or other proceeding shall not invalidate the relevant meeting or other proceeding.
- 37.6** Any Member may notify the Company of an address or fax number for the purpose of his receiving communications by Electronic Means from the Company, and having done so shall be deemed to have agreed to receive notices and other documents from the Company by Electronic Means of the kind to which the address or fax number relates. In addition, if a Member notifies the Company of his e-mail address or fax number, the Company may, but is not obliged to, satisfy its obligation to send him any notice or other document by:
- 37.6.1** publishing such notice or document on a web site; and
 - 37.6.2** notifying him by e-mail to that e-mail address or fax to that fax number that such notice or document has been so published, specifying the address of the web site on which it has been published, the place on the web site where it may be accessed, how it may be accessed and (if it is a notice relating to a shareholders' meeting) stating (i) that the notice concerns a notice of a company meeting served in accordance with the Law (ii) the place, date and time of the meeting, (iii) whether the meeting is to be an annual or extraordinary general or class meeting, and (iv) such other information as the Law may prescribe.
- 37.7** For the avoidance of doubt, any address or fax number specified by a Member to the Company prior to the date of adoption of these Articles for the purpose of communicating by Electronic Means will constitute a notification of that address or fax number for the purposes of Article 38.6
- 37.8** Any document or notice which, in accordance with these Articles, may be sent by the Company by Electronic Means shall, if so sent, be deemed to be received at the expiration of twenty four hours after the time it was sent. Proof (in accordance with the formal recommendations of best practice contained in the guidance issued by the United Kingdom Institute of Chartered Secretaries and

Administrators) that a communication was sent by Electronic Means by the Company shall be conclusive evidence of such sending.

- 37.9** A communication by Electronic Means shall not be treated as received by the Company if it is rejected by computer virus protection arrangements.
- 37.10** All information relating to the Company, the group and its affairs to which the Directors are entitled must be made equally available to all Directors at the same time and in the same manner.
- 37.11** The Company shall not provide any information (i) to a Director; and/or (ii) to a direct or indirect shareholder of the Company, unless such information is communicated or made available to all Directors at substantially the same time and in the same manner.
- 37.12** The Company shall promptly provide copies of all notices and/or correspondence received from a direct or indirect shareholder of the Company or a member of the group to all of the Directors at substantially the same time and in the same manner.

38 WINDING UP

- 38.1** The Company may be wound up voluntarily if the Members pass a Special Resolution requiring that the Company be wound up voluntarily. Upon the passing of such Special Resolution, the process of voluntary winding up shall commence and the Company shall cease to carry on business except in so far as it may be expedient for the beneficial winding up of the Company. The Company's corporate state and powers shall be deemed to continue until the Company's dissolution.
- 38.2** If the Company shall be wound up, the surplus assets remaining after payment of all creditors, including the repayment of bank borrowings, shall be divided *pari passu* among the Members pro rata to their holdings of those shares which are subject to the rights of any shares which may be issued with special rights or privileges.
- 38.3** If the Company shall be wound up the liquidator may, with the sanction of a resolution of the Company passed by Special Resolution and any other sanction required by the Statutes, divide amongst the Members in specie or kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no Member shall be compelled to accept any shares or other securities whereon there is any liability.
- 38.4** Where the Company is proposed to be or is in the course of being wound up and the whole or part of its business or property is proposed to be transferred or sold to another company (the "**Transferee Company**") the liquidator may, with the sanction of an Ordinary Resolution, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the Transferee Company for distribution among the Members or may enter into any other arrangement whereby the Members may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefits from the Transferee Company.

39 INDEMNITY

- 39.1** The Directors, Secretary and other officer or employee for the time being of the Company shall be indemnified out of the assets of the Company to the fullest extent permitted by the Law from and against all actions, costs, charges, losses, damages and expenses in respect of which they may

lawfully be indemnified which they or any of them shall or may incur or sustain by reason of any contract entered into or any act done, concurred in, or omitted, in or about the execution of their duty or supposed duty or in relation thereto.

40 INSPECTION OF REGISTERS AND OTHER RECORDS

40.1 A Director shall be entitled at any time to inspect the Register, the minute books, the annual validation, the register of Directors and secretaries and the index, if any, of Members.

40.2 A Member shall be entitled in accordance with the Law, to inspect the Register and the other documents mentioned in 40.1 other than the minutes of proceedings at Directors' meetings.

40.3 Any person who is not a Director or a Member shall be entitled on fulfilling the requirements in the Law to inspect the Register, the register of Directors and secretaries and the index, if any, of Members.

40.4 The rights of inspection herein referred to shall be exercisable between 9 a.m and 5 p.m. on any weekday when banks in Guernsey are open for business.

40.5 Subject to Article 40.1, no Member shall (as such) have any right of inspecting any accounting records or other books or documents of the Company except as conferred by the Statutes or authorised by the Directors or by Ordinary Resolution.

41 COMMON SIGNATURE

The common signature of the Company may be either: "ELLI ACQUISITIONS LIMITED" with the addition of the signature(s) of one or more officer(s) of the Company authorised generally or specifically by the Directors for such purpose, or such other person or persons as the Directors may from time to time appoint; or if the Directors resolve that the Company shall have a common seal, the common seal of the Company affixed in such manner as these Articles may from time to time provide, as the Directors may from time to time determine either generally or in any particular case.

42 AMENDMENT TO THESE ARTICLES

These Articles shall not be amended while the Governance Deed remains in force between the parties thereto. For the avoidance of doubt this article 42 shall be a provision for entrenchment for the purposes of section 44 of the Law.