

**Dated [●] 2010**

**ALMATIS HOLDINGS 3 B.V.**

**arranged by**

**J.P. MORGAN PLC AND MERRILL LYNCH INTERNATIONAL  
as Mandated Lead Arrangers**

**with**

**J.P. MORGAN EUROPE LIMITED  
acting as Agent**

**JPMORGAN CHASE BANK NA  
acting as Issuing Bank**

**and**

**WILMINGTON TRUST (LONDON) LIMITED  
acting as Security Agent**

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**RELATING TO A**

**USD 50,000,000 MULTI-CURRENCY REVOLVING FACILITY**

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**LATHAM & WATKINS**

Latham & Watkins (London) LLP  
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London EC2M 3XF  
United Kingdom

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**THIS AGREEMENT** is dated [●] 2010 and made between:

- (1) **ALMATIS HOLDINGS 3 B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), incorporated under the laws of The Netherlands, having its corporate seat at Rotterdam (address: Theemsweg 30, 3197 KM Botlek Rotterdam, The Netherlands), trade register number 24387315, as parent (the “**Parent**”);
- (2) **ALMATIS HOLDINGS 9 B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), incorporated under the laws of The Netherlands, having its corporate seat at Rotterdam (address: Theemsweg 30, 3197 KM Botlek Rotterdam, The Netherlands), trade register number 24413773, as company (the “**Company**”);
- (3) **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 (*The Original Parties*) as original borrowers (the “**Original Borrowers**”);
- (4) **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 (*The Original Parties*) as original guarantors (together with the Parent, the “**Original Guarantors**”);
- (5) **J.P. MORGAN PLC** and **MERRILL LYNCH INTERNATIONAL** as mandated lead arrangers and bookrunners (whether acting individually or together the “**Arranger**”);
- (6) **THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 (*The Original Parties*) as lenders (the “**Original Lenders**”);
- (7) **J.P. MORGAN EUROPE LIMITED** as agent of the other Finance Parties (the “**Agent**”);
- (8) **WILMINGTON TRUST (LONDON) LIMITED** as security trustee for the Secured Parties (the “**Security Agent**”); and
- (9) **JPMORGAN CHASE BANK NA** as Issuing Bank.

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement:

“**Acceptable Bank**” means:

- (a) any Arranger or Affiliate of an Arranger;
- (b) 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 Standard & Poor’s Rating Services (or any successor to its rating business), F-1 by Fitch Ratings Ltd (or any successor to its rating business) or P-1 or higher by Moody’s Investor Services Limited (or any successor to its rating business) or a comparable rating from an internationally recognised credit rating agency; or
- (c) any other bank or financial institution approved by the Agent.

“**Acceptable Nation**” means any member state of the European Economic Area, any Participating Member State or any member state of the OECD which in each case:

- (a) has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by Standard & Poor's Rating Services (or any successor to its rating business), BBB- by Fitch Ratings Ltd (or any successor to its rating business) or Baa3 or higher by Moody's Investor Services Limited (or any successor to its rating business) or a comparable rating from an internationally recognised credit rating agency; or
- (b) has been approved by the Agent (acting on the instructions of the Majority Lenders).

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

“**Accounting Principles**” means:

- (a) IFRS; and
- (b) for the purposes of the preparation of management accounts (whether consolidated or unconsolidated) of any member of the Group such accounting principles, standards and practices as are (i) consistent with IFRS and (ii) applied to the extent appropriate in the context of preparation of management accounts prepared in accordance with good accounting practice

“**Accounting Reference Date**” means 31 December.

“**Additional Borrower**” means a company which becomes an Additional Borrower in accordance with Clause 31 (*Changes to the Obligors*).

“**Additional Cost Rate**” has the meaning given to it in Schedule 4 (*Mandatory Cost Formula*).

“**Additional Guarantor**” means a company which becomes an Additional Guarantor in accordance with Clause 31 (*Changes to the Obligors*).

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

“**Additional Shareholder Funding**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

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

“**Agent's Spot Rate of Exchange**” means the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11:00 a.m. on a particular day.

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

“**Ancillary Commencement Date**” means, in relation to an Ancillary Facility, the date on which that Ancillary Facility is first made available, which date shall be a Business Day within the Availability Period for the Facility.

“**Ancillary Commitment**” means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum Base Currency Amount which that Ancillary Lender has agreed (whether or not subject to satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorised as such under Clause 9 (*Ancillary Facilities*),

to the extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

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

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

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

“**Ancillary Outstandings**” means, at any time, in relation to an Ancillary Lender and an Ancillary Facility then in force the aggregate of the equivalents (as calculated by that Ancillary Lender) in the Base Currency of the following amounts outstanding under that Ancillary Facility:

- (a) the principal amount under each overdraft facility and on-demand short term loan facility (net of any credit balances on any account of any Borrower of an Ancillary Facility with the Ancillary Lender making available that Ancillary Facility to the extent that the credit balances are freely available to be set-off by that Ancillary Lender against liabilities owed to it by that Borrower under that Ancillary Facility);
- (b) the face amount of each guarantee, bond and letter of credit under that Ancillary Facility; and
- (c) the amount fairly representing the aggregate exposure (excluding interest and similar charges) of that Ancillary Lender under each other type of accommodation provided under that Ancillary Facility,

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

“**Anti-Terrorism Laws**” means the Executive Order, the regulations issued by OFAC, the Bank Secrecy Act as amended, the Money Laundering Control Act of 1986 as amended, the USA PATRIOT Act, any similar law or regulation enacted in the United States after the date of this Agreement and any similar law or regulation enacted in any Relevant Jurisdiction of any Obligor before, on or after the date of this Agreement.

“**Asset Disposition**” has the meaning given to it in Schedule 15 (*Restrictive Covenants*).

“**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/Agent Accession Undertaking as defined in, and for the purposes of, the Intercreditor Agreement.

“**Auditors**” means one of KPMG, Deloitte & Touche, Ernst & Young or PricewaterhouseCoopers (or, in each case, any successor of its audit business) or any other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

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

“**Availability Period**” means the period from and including the Closing Date to and including the date falling one Month prior to the Termination Date.

“**Available Ancillary Commitment**” means in relation to an Ancillary Facility, an Ancillary Lender’s Ancillary Commitment less the Ancillary Outstandings in relation to that Ancillary Facility.

“**Available Commitment**” means a Lender’s Commitment under the Facility minus (subject to Clause 9.8 (*Affiliates of Lenders as Ancillary Lenders*)):

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

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

- (i) that Lender’s participation in any Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
- (ii) that Lender’s (or its Affiliate’s) Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date.

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

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Existing Bankruptcy Cases.

“**Base Case Model**” means the financial model including profit and loss, balance sheet and cashflow projections in the agreed form relating to the Restricted Group (including detailed projections for the Group for the Financial Years 2010 through 2015 and for the quarters beginning with the first quarter of 2010 and through the fourth quarter of 2011), prepared by (or on behalf of) the Parent.

“**Base Currency**” means USD.

“**Base Currency Amount**” means:

- (a) in relation to a Utilisation, the amount specified in the Utilisation Request delivered by a Borrower for that Utilisation (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent’s Spot Rate of Exchange on the date which is three (3) Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request in accordance with the terms of this Agreement) and, in the case of a Letter of Credit, as adjusted under Clause 6.8 (*Revaluation of Letters of Credit*) at six-monthly intervals; and
- (b) in relation to an Ancillary Commitment, the amount specified as such in the notice delivered to the Agent by the Parent pursuant to Clause 9.2 (*Availability*) (or, if the amount specified is not denominated in the Base Currency, that amount converted

into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three (3) Business Days before the Ancillary Commencement Date for that Ancillary Facility or, if later, the date the Agent receives the notice of the Ancillary Commitment in accordance with the terms of this Agreement),

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

“**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:

- (a) in relation to LIBOR, as the rate at which the relevant Base Reference Bank could borrow funds in the London interbank market; or
- (b) in relation to EURIBOR, as the rate at which the relevant Base Reference Bank could borrow funds in the European interbank market,

in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

“**Base Reference Banks**” means, in relation to LIBOR, the principal London offices of JPMorgan Chase Bank, N.A., Bank of America, N.A. and Commerzbank Aktiengesellschaft and, in relation to EURIBOR, the principal office in London of JPMorgan Chase Bank, N.A., Bank of America, N.A. and Commerzbank Aktiengesellschaft or such other banks as may be appointed by the Agent in consultation with the Parent.

“**Borrower**” means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 31 (*Changes to the Obligors*) and, in respect of an Ancillary Facility only, any Affiliate of a Borrower that becomes a borrower of that Ancillary Facility with the approval of the relevant Lender pursuant to the provisions of Clause 9.9 (*Affiliates of Borrowers*).

“**Borrowings**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

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

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

exceeds:

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

“**Budget**” means:

- (a) the Base Case Model to be delivered by the Parent to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*); and
- (b) in relation to any other period after the Closing Date, any budget delivered by the Parent to the Agent in respect of that period pursuant to Clause 25.4 (*Budget*).



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

- (a) (in relation to any date for payment or purchase of a currency other than Euro) the principal financial centre of the country of that currency; or
- (b) (in relation to any date for payment or purchase of Euro) any TARGET Day.

**“Capital Expenditure”** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**“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 a member of the Restricted Group is alone (or together with other members of the Restricted Group) beneficially entitled and for so long as:

- (a) that cash is repayable on demand;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Restricted Group or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Security over that cash except for Transaction Security or any Permitted Lien constituted by a netting or set-off arrangement entered into by members of the Restricted Group in the ordinary course of their banking arrangements; and
- (d) the cash is freely and (except as mentioned in paragraph (a) 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 States of America, the United Kingdom, any Acceptable Nation 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 States of America, the United Kingdom, any member state of the European Economic Area, any Participating Member State or any member state of the OECD;
  - (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 Standard & Poor’s Rating Services or F1 or higher by Fitch Ratings Ltd 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 Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd 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, to which any member of the Restricted Group is alone (or together with other members of the Restricted Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents or any Permitted Lien constituted by a netting or set-off arrangement entered into by members of the Restricted Group in the ordinary course of their banking arrangements).

**“Change of Control”** means:

- (a) DIC and the Mezzanine Investors together ceasing to:
  - (i) be the beneficial holder of (directly or indirectly) more than 50% of the issued and outstanding voting shares of the Parent; or
  - (ii) control the ability to appoint at least half of the board (excluding for such purposes the two board seats occupied by representatives of the Notes); or
- (b) DIC ceasing to be the beneficial holder of (directly or indirectly) at least 35% of the issued and outstanding voting shares of the Parent; or
- (c) any person or group of persons acting in concert at any time beneficially owning or obtaining (directly or indirectly) voting shares or voting power of the Parent in an amount greater than that beneficially held (directly or indirectly) by DIC.

**“acting in concert”** means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Parent by any of them, either directly or indirectly, to obtain or consolidate control of the Parent.

For the purposes of the definition of Change of Control only, **“DIC”** means DIC, its Affiliates and any trust, fund, company or partnership owned by it.<sup>1</sup>

**“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.

**“Chinese Security Documents”** means each of the security documents listed in Section 5 (*Chinese Security Documents*) of Part III (*Transaction Security Documents*) of Schedule 2 (*Conditions Precedent*).

**“Closing Date”** means the date on which the Agent notifies the Parent and the Lenders as required under Clause 4.1 (*Initial conditions precedent*).

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<sup>1</sup> Under discussion- DIC to confirm.

“**Code**” means the United States Internal Revenue Code of 1986 as amended from time to time, and the applicable regulations promulgated thereunder.

“**COMI**” has the meaning given to it in Clause 24.29 (*Centre of main interests and establishments*).

“**Commitment**” means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading “Facility Commitment” in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and
- (b) in relation to any other Lender, the amount in the Base Currency of any Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

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

“**Commitment Letter**” means the commitment letter in respect of the Facility from the Arrangers to the Parent and the Original Borrowers, executed by the Arrangers on 23 July 2010 and executed by the Parent, the Original Borrowers and the Debtors on 5 August 2010.

“**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 Parent, any Obligor, the Group, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its 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 42 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential or non-public by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 10 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Parent and the Agent.

“**Confirmation Order**” means the order, in the form delivered to the Agent on September [●], 2010, with such changes that either (a) do not, in the sole judgement of the Agent, adversely affect the rights or interests of any or all of the Finance Parties or (b) to which the Agent in its sole judgement has consented.

“**Constitutional Documents**” means constitutional documents (deed of incorporation (*akte van oprichting*) and articles of association (*statuten*) of the Parent.

“**Consolidated EBIT**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

“**Consolidated EBITDA**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

“**Contribution Notice**” means a contribution notice issued under Section 38 of the Pensions Act 2004.

“**Debtors**” means Almatris B.V., Almatris Holdings 7 B.V., Almatris Holdings 9 B.V., Almatris Holdings 3 B.V., DIC Almatris Bidco B.V., DIC Almatris Midco B.V., DIC Almatris Holdco B.V., Almatris US Holding, Inc., Almatris, Inc., Almatris Asset Holding, LLC, Blitz F07-neunhundert-sechzig-drei GmbH, Almatris Holdings GmbH and Almatris GmbH.

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

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

any Commitment or amount outstanding under this Agreement.

“**Default**” means an Event of Default or any event or circumstance specified in Clause 28 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

“**Defaulting Lender**” means any Lender (other than a Lender which is a Sponsor Affiliate):

- (a) which has failed to make its participation in a Loan available or has notified the Agent that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders' participation*) or has failed to provide cash collateral (or has notified the Issuing Bank that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

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

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or

(B) a Disruption Event; and

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

- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

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

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

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

“**Designated Person**” means a person or entity:

- (a) listed in the annex to, or otherwise subject to the provisions of, the Executive Order; or
- (b) named as a “Specially Designated National and Blocked Person” on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list.

“**DIC**” means Dubai International Capital LLC.

“**Disclosure Statement**” means that certain “Disclosure Statement in support of the First Amended Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code”, dated August 23, 2010, including all exhibits attached thereto or referenced therein, as submitted by the Debtors pursuant to section 1125 of the Bankruptcy Code and approved by the Bankruptcy Court by an order entered on August 24, 2010, (Docket No. 403) in the Existing Bankruptcy Cases.

“**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.

**“Dormant Subsidiary”** means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it).

**“Dutch Security Documents”** means each of the security documents listed in Section 1 (*Dutch Security Documents*) of Part III (*Transaction Security Documents*) of Schedule 2 (*Conditions Precedent*).

**“English Security Document”** means the security document listed in Section 6 (*English Security Document*) of Part III (*Transaction Security Documents*) of Schedule 2 (*Conditions Precedent*).

**“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 Restricted Group conducted on or from the properties owned or used by any member of the Restricted Group.

**“Equity Commitment Agreement”** has the meaning given to that term in Part I of Schedule 2 (*Conditions precedent to initial utilisation*).

**“ERISA”** means the Employee Retirement Income Security Act of 1974 of the United States of America, as amended from time to time, and the applicable regulations promulgated thereunder.

**“ERISA Affiliate”** means, with respect to any Obligor, any person that for purposes of Title IV of ERISA is from time to time a member of a controlled group of any Obligor, or under common control with any Obligor within the meaning of Section 414 of the Code.

**“ERISA Event”** means:

- (a) with respect to any Single Employer Plan, the occurrence of a reportable event, within the meaning of Section 4043(c) of ERISA, as to which the 30-day notice

requirement has not been waived by the PBGC under regulations under Section 4043 of ERISA;

- (b) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Single Employer Plan;
- (c) the failure to meet the minimum funding standard of Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA (whether or not waived in accordance with Section 412(c) of the Code or Section 302(c) of ERISA) with respect to a Single Employer Plan;
- (d) the provision by the administrator of any Plan of a notice of intent to terminate such Plan, pursuant to Section 4041(c) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA);
- (e) the cessation of operations at a facility of any Obligor or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA;
- (f) the withdrawal by an Obligor or any ERISA Affiliate from a Multiemployer Plan or a multiple employer plan during a plan year for which it was a substantial employer as defined in Section 4002(a)(2) of ERISA;
- (g) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Single Employer Plan or, to the knowledge of any Obligor, any Multiemployer Plan;
- (h) the institution by the PBGC of proceedings to terminate a Single Employer Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, such Single Employer Plan;
- (i) notice of reorganisation or insolvency of a Multiemployer Plan or a determination that a Multiemployer Plan is, or is expected to be, in “critical” or “endangered” status, within the meaning of Section 305 of ERISA;
- (j) a material liability has been incurred or is reasonably likely to be incurred by any Obligor or any ERISA Affiliate with respect to a Plan under Section 4062, 4063, 4064, 4069, 4201, 4204 or 4212(c) of ERISA;
- (k) the occurrence of a “default”, within the meaning of Section 4219(c)(5) of ERISA, with respect to any Multiemployer Plan;
- (l) engagement in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA;
- (m) determination that any Single Employer Plan is in at-risk status (within the meaning of Section 303 of ERISA); or
- (n) any Foreign Plan Event.

“**Escrow Agreement**” means the escrow agreement dated 20 July 2010 and made between DIC, Almatix B.V. and JPMorgan Chase Bank, National Association.

“**EURIBOR**” means, in relation to any Loan in Euro:

- (a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for the Interest Period of that Loan) the Base Reference Bank Rate,

as of the Specified Time on the Quotation Day for Euro and for a period comparable to the Interest Period of that Loan.

“**Euro**”, “**EUR**” or “**€**” means the single currency of a Participating Member State.

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

“**Exceptional Items**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

“**Executive Order**” means US Executive Order No. 13224 on Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, which came into effect on 24 September 2001, as amended by Order 13268.

“**Existing Bankruptcy Cases**” means (i) when used with reference to a particular Debtor, the bankruptcy case for that Debtor commenced under Chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York on April 30, 2010 and (ii) when used with reference to all Debtors, the procedurally consolidated Chapter 11 cases pending for the Debtors in the United States Bankruptcy Court for the Southern District of New York, which cases are being jointly administered under the following caption, In re Almatris B.V., et al., Case No. 10-12308 (MG).

“**Existing Facilities**” means the facilities made to the original borrowers documented by the Existing Facilities Agreements and any ancillary facility granted in connection therewith.

“**Existing Facilities Agreements**” means (i) the senior and second lien facilities agreement dated 31 October 2007 (as amended and/or restated from time to time) between, amongst others, DIC Almatris Bidco B.V. as parent, the subsidiaries of the parent named therein as borrowers, the subsidiaries named therein as guarantors, the financial institutions named therein as lenders and the entities named therein as arranger, issuing bank, facility agent and security trustee, dated, (ii) the mezzanine facility agreement dated 31 October 2007 (as amended and/or restated from time to time) between, amongst others, DIC Almatris Bidco B.V. as parent, the subsidiaries of the parent named therein as borrowers, the subsidiaries named therein as guarantors, the financial institutions named therein as lenders and the entities named therein as arranger, facility agent and security trustee, and (iii) the junior mezzanine facility agreement dated 11 November 2007 (as amended and/or restated from time to time) between, amongst others DIC Almatris Midco B.V. as the parent, the subsidiaries of the parent named therein as borrowers, the subsidiaries named therein as guarantors, the financial institutions named therein as lenders and the entities named therein as arranger, facility agent and security trustee.

“**Existing PRC Equity Pledge**” means the existing equity pledge agreements among UBS Limited as the pledgee and security trustee, Almatris B.V. as pledgor and each of the PRC WFOE and dated December 20, 2007 in relation to the pledge on the ownership rights in each of the PRC WFOE.

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

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



**“Facility Office”** means:

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

**“Fee Letter”** means:

- (a) the fee letter dated 23 July 2010 and any other letter or letters dated on or about the date of this Agreement between the Arranger and the Parent (or the Agent and the Parent or the Security Agent and the Parent) setting out any of the fees referred to in Clause 17 (*Fees*); and
- (b) any agreement setting out fees payable to a Finance Party referred to in Clause 2.2 (*Increase*), Clause 17.5 (*Fees payable in respect of Letters of Credit*) or Clause 17.6 (*Interest, commission and fees on Ancillary Facilities*) of this Agreement or under any other Finance Document.

**“Finance Charges”** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**“Finance Document”** means this Agreement, any Accession Deed, any Ancillary Document, any Compliance Certificate, any Fee Letter, any Hedging Agreement, the Intercreditor Agreement, any Resignation Letter, any Transaction Security Document, any Utilisation Request and any other document designated as a “Finance Document” by the Agent and the Parent **provided that** where the term “Finance Document” is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedging Agreement shall be a Finance Document only for the purposes of:

- (a) the definition of “Material Adverse Effect”;
- (b) the definition of “Transaction Document”;
- (c) the definition of “Transaction Security Document”;
- (d) paragraph (a)(iv) of Clause 1.2 (*Construction*);
- (e) Clause 23 (*Guarantee and Indemnity*); and
- (f) Clause 28 (*Events of Default*) (other than paragraph (b) of Clause 28.17 (*Repudiation and rescission of agreements*) and Clause 28.23 (*Acceleration*)).

**“Finance Lease”** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**“Finance Party”** means the Agent, the Arranger, the Security Agent, a Lender, a Hedge Counterparty, the Issuing Bank or any Ancillary Lender **provided that** where the term “Finance Party” is used in, and construed for the purposes of, this Agreement or the Intercreditor Agreement, a Hedge Counterparty shall be a Finance Party only for the purposes of:

- (a) the definition of “Secured Parties”;
- (b) paragraph (a)(i) of Clause 1.2 (*Construction*);

- (c) paragraph (c) of the definition of “Material Adverse Effect”;
- (d) Clause 23 (*Guarantee and Indemnity*); and
- (e) Clause 33 (*Conduct of business by the Finance Parties*).

“**Financial Indebtedness**” means any indebtedness for or in respect of, and without double counting:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any amount raised by acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any amount raised pursuant to any note purchase facility or the issue of notes, debentures, loan stock or any similar instrument (but not Trade Instruments);
- (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 or discounted on a non-recourse basis and meet any requirement for de-recognition under the Accounting Principles);
- (f) for the purposes of Clause 28.6 (*Cross default*) only, 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), provided that where the Treasury Transaction provides for netting arrangements, the net amount of payment obligations after such netting has occurred 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 (but not, in any case, Trade Instruments) issued by a bank or financial institution in respect of an underlying liability 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 shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under the Accounting Principles;
- (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 otherwise 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,

but excluding any indebtedness owed by a member of the Restricted Group to another member of the Restricted Group.

“**Financial Quarter**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

“**Financial Support Direction**” means a financial support direction issued under Section 43 or 47 of the Pensions Act 2004.

“**Financial Year**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

“**Foreign Plan**” shall mean any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by any Obligor or any of their respective Subsidiaries with respect to employees employed outside the United States.

“**Foreign Plan Event**” shall mean, with respect to any Foreign Plan, (a) the existence of unfunded liabilities in excess of the amount permitted under any applicable law, or in excess of the amount that would be permitted absent a waiver from a governmental authority, (b) the failure to make the required contributions or payments, under any applicable law, on or before the due date for such contributions or payments, (c) the receipt of a notice from a governmental authority relating to the intention to terminate any such Foreign Plan or to appoint a trustee or similar official to administer any such Foreign Plan, or alleging the insolvency of any such Foreign Plan, in each case which is reasonably likely to result, directly or indirectly, in material liability to an Obligor, (d) the incurrence of any material liability by any Obligor or any their respective Subsidiaries under applicable law on account of the complete or partial termination of such Foreign Plan or the complete or partial withdrawal of any participating employer therein, or (e) the occurrence of any transaction that is prohibited under any applicable law and that would reasonably be expected to result in the incurrence of any liability by any Obligor or any of their respective Subsidiaries, or the imposition on any Obligor or any of their respective Subsidiaries of any fine, excise tax or penalty resulting from any noncompliance with any applicable law.

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

“**German Guarantor**” means any Guarantor incorporated in Germany in the form of a GmbH (*Gesellschaft mit beschränkter Haftung*) or established in Germany as a limited partnership (*Kommanditgesellschaft*) with a GmbH as general partner (a “**GmbH & Co. KG Guarantor**”).

“**German Obligor**” means an Obligor that is subject to corporation income tax or income tax in and/or that is incorporated under the laws of the Federal Republic of Germany.

“**German Security Documents**” means each of the security documents listed in Section 2 (*German Security Documents*) of Part III (*Transaction Security Documents*) of Schedule 2 (*Conditions Precedent*).

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

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

“**Guarantor**” means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 31 (*Changes to the Obligors*).

“**Guarantor Group**” means the Restricted Group other than (i) those members of the Restricted Group incorporated in China and India and (ii) the Japanese Joint Venture.

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

**“Hedging Agreement”** means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by a Borrower and a Hedge Counterparty for any purpose permitted under Clause 27.20 (*Treasury Transactions*).

**“Holding Account”** means an account:

- (a) held in London by a member of the Restricted Group with the Agent or its Affiliates;
- (b) identified in a letter between the Parent and the Agent as a Holding Account; and
- (c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Agent,

(as the same may be redesignated, substituted or replaced from time to time).

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

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

**“Impaired Agent”** means the Agent at any time when:

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

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

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

**“Increase Confirmation”** means a confirmation substantially in the form set out in Schedule 16 (*Form of increase confirmation*).

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

**“Information Memorandum”** means the document in the form approved by the Parent concerning the Original Obligors which, at the request of the Original Obligors and on their behalf is to be prepared in relation to this transaction, approved by the Parent and distributed by the Arranger to selected financial institutions prior to the Syndication Date in connection with the syndication of the Facility.

**“Information Package”** means the Disclosure Statement, the Structure Memorandum and the Base Case Model.

**“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 on or about the date of this Agreement and made between, among others, the Parent, the Debtors (as defined in the Intercreditor Agreement), the Security Agent, the Agent, the Lenders, the Arrangers, the Ancillary Lenders, the Hedge Counterparties, the Senior Notes Trustee (each as defined in the Intercreditor Agreement) and the Intra-Group Lenders (each as defined in the Intercreditor Agreement).

**“Interest Cover”** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

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

**“Investors”** means DIC and/or its Affiliates outside the Group.

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

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

**“Intra-Group Loan Agreement”** means any document or agreement evidencing the terms of any Intra-Group Loan.

**“Japanese Joint Venture”** means Almatris Limited, a company incorporated under the laws of Japan, under corporate identification number 2503-01-002316.

**“Japanese Security Document”** means the security document listed in Section 4 (*Japanese Security Documents*) of Part III (*Transaction Security Documents*) of Schedule 2 (*Conditions Precedent*).

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

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

**“Legal Opinion”** means any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 31 (*Changes to the Obligors*).

**“Legal Reservations”** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in the Legal Opinions.

**“Lender”** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.2 (*Increase*) or Clause 29 (*Changes to the Lenders*),

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

**“Letter of Credit”** means:

- (a) a letter of credit substantially in the form set out in Schedule 12 (*Form of Letter of Credit*) or in any other form requested by the Parent and agreed by the Agent with the prior consent of the Majority Lenders and the Issuing Bank; or
- (b) any guarantee, indemnity or other instrument in a form requested by a Borrower (or the Parent on its behalf) and agreed by the Agent with the prior consent of the Majority Lenders and the Issuing Bank.

**“Leverage”** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

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

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the currency or Interest Period of that Loan) the Base Reference Bank Rate,

as of the Specified Time on the Quotation Day for the currency of that Loan and a period comparable to the Interest Period of that Loan.

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

**“LMA”** means the Loan Market Association.

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

“**LTM EBITDA**” means earnings calculated in a manner consistent in all substantive respects with the calculation of “Recurring EBITDA” for “December 2009 YTD Actual” as set out in Annex F of the Commitment Letter, provided that the “Nonrecurring Adjustments” line item thereof shall be limited to fees, expenses, commissions and other charges related to the Existing Bankruptcy Cases, the Revised Plan and the Recapitalisation).

“**Majority Lenders**” means a Lender or Lenders whose Commitments aggregate more than 66 2/3 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 2/3 per cent. of the Total Commitments immediately prior to that reduction).

“**Mandatory Cost**” means the percentage rate per annum calculated by the Agent in accordance with Schedule 4 (*Mandatory Cost formula*).

“**Mandatory Prepayment Account**” means an interest-bearing account:

- (a) held in London by a Borrower with the Agent;
- (b) identified in a letter between the Parent and the Agent as a Mandatory Prepayment Account;
- (c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Agent; and
- (d) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

as the same may be redesignated, substituted or replaced from time to time.

“**Margin**” means in relation to any Loan or Unpaid Sum 5.5 per cent. per annum.

“**Margin Stock**” means “margin stock” or “margin security” within the meaning of Regulation U or X.

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

- (a) the business, operations, property or condition (financial or otherwise) of the Group (taken as a whole); or
- (b) the ability of an Obligor to perform any of its material obligations under the Finance Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any guarantees and/or Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

“**Material Company**” means, at any time:

- (a) an Obligor; or
- (b) a wholly-owned member of the Group that holds shares in an Obligor; or
- (c) a member of the Group which:



- (i) is listed in Schedule 17 (*Material Companies*);
- (ii) has earnings before interest, tax, depreciation and amortisation calculated on the same basis as Consolidated EBITDA (excluding intra-Group items and investments in Subsidiaries of any member of the Group) representing two and a half (2.5) per cent. or more of Consolidated EBITDA of the Group calculated on a consolidated basis;
- (iii) has gross assets (excluding intra-Group items and investments in Subsidiaries of any member of the Group) representing two and a half (2.5) per cent. or more of the gross assets of the Group calculated on a consolidated basis; or
- (iv) has turnover (excluding intra-Group items and investments in Subsidiaries of any member of the Group) representing two and a half (2.5) per cent. or more of the turnover of the Group calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (c)(ii) shall be determined by reference to the most recent Compliance Certificate supplied by the Parent with respect to its most recent Annual Financial Statements or Quarterly Financial Statements supplied under paragraphs (a)(i) or (b) of Clause 25.1 (*Financial statements*) and/or the latest annual or quarterly financial statements of that Subsidiary (audited to the extent required by law) and the latest audited consolidated financial statements of the Group. However, if a Subsidiary has been acquired since the date as at which the latest Annual Financial Statements were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary (that adjustment being certified by two directors of the Parent as representing an accurate reflection of the revised Consolidated EBITDA (as defined in Clause 26.1 (*Financial definitions*) or gross assets of the Group).

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

“**Mezzanine Investors**” means [●].

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

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

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

“**Multiemployer Plan**” means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Obligor or any ERISA Affiliate is making or accruing an obligation to make contributions (or to which there is an obligation to contribute to), or has within any of the preceding five years made or accrued an obligation to make contributions.

“**Net Finance Charges**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

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

- (a) is not an Acceptable Bank within the meaning of paragraph (b) of the definition of “Acceptable Bank” (other than a Lender which each Issuing Bank has agreed is acceptable to it notwithstanding that fact);
- (b) is a Defaulting Lender;
- (c) is determined or declared as such by the Issuing Bank from time to time (acting in good faith); or
- (d) has failed to make (or has notified the Agent that it will not make) a payment to be made by it under Clause 7.3 (*Indemnities*) or Clause 32.10 (*Lenders’ indemnity to the Agent*) or any other payment to be made by it under the Finance Documents to or for the account of any other Finance Party in its capacity as Lender by the due date for payment unless the failure to pay falls within the description of any of those items set out at paragraphs (i) and (ii) of the definition of Defaulting Lender.

“**Non-Restricted-Group Entity**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

“**Note Documents**” means:

- (a) the Note Indenture;
- (b) the Notes;
- (c) the Intercreditor Agreement;
- (d) the Note Guarantees; and
- (e) the Transaction Security Documents.

“**Note Guarantees**” means the “Note Guarantees” as defined in the Note Indenture.

“**Note Indenture**” the senior secured note indenture dated [●] between, among others, the Note Issuer and the Note Trustee, as amended from time to time.

“**Note Issuer**” means the Company, being the issuer of the Notes.

“**Notes**” means the USD [400,000,000] aggregate principal amount of Senior Secured Dollar Floating Rate Notes due 2018 and the EUR 110,000,000 aggregate principal amount of Senior Secured Euro Floating Rate Notes due 2018 issued by the Note Issuer pursuant to the terms of the Note Indenture and any additional notes issued from time to time under the Note Indenture, together with any Additional Liabilities (as such term is defined in the Intercreditor Agreement).

“**Note Trustee**” means Wilmington Trust (London) Limited, or any successor trustee appointed in accordance with the Note Indenture.

“**Notifiable Debt Purchase Transaction**” has the meaning given to that term in paragraph (b) of Clause 30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*).

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

“**Obligors’ Agent**” means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.4 (*Obligors’ Agent*).

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

“**Optional Currency**” means a currency (other than the Base Currency) which complies with the conditions set out in Clause 4.3 (*Conditions relating to Optional Currencies*).

“**Original Financial Statements**” means in relation to the Parent:

- (a) the consolidated audited financial statements of DIC Almatis Equityco Cooperatief U.A. for Financial Years ended 31 December 2008 and 31 December 2009, with an audit opinion and without any going concern or other qualification; and
- (b) the consolidated unaudited quarterly and monthly financial statements of DIC Almatis Equityco Cooperatief U.A. for any subsequent fiscal quarter (and the portion of the fiscal year then elapsed) and month, in each case ended 30 days or more prior to the Closing Date.

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

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

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

“**PBGC**” means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

“**Pension Items**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

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

“**Perfection Requirements**” means the making or the procuring of the appropriate registrations, filings, endorsements, notarisations, stampings and/or notifications required in order to perfect the Transaction Security.

“**Permitted Affiliate Transaction**” means a transaction with an Affiliate of an Obligor that is not a member of the Restricted Group where:

- (a) the transaction is conducted on arms’ length terms;
- (b) the value of such transaction, when aggregated with all other transactions conducted with Affiliates of any Obligor that are non members of the Restricted Group in that Financial Year of the parent, does not exceed USD 5,000,000 (or its equivalent) in any Financial Year of the Parent; and
- (c) the transaction complies with the provisions [*Insert relevant cross reference to covenant relating to Affiliate Transactions*] of Schedule 15 (*Restrictive Covenants*).

“**Permitted Refinancing Indebtedness**” has the meaning given to it in Schedule 15 (*Restrictive Covenants*).

“**Permitted Lien**” has the meaning given to it in Schedule 15 (*Restrictive Covenants*).

“**Plan**” means a Single Employer Plan or a Multiemployer Plan.

“**Plan Documents**” has the meaning given to that term in Part I of Schedule 2 (*Conditions precedent to initial utilisation*).

“**Plan Funding Condition**” has the meaning given to that term in Part I of Schedule 2 (*Conditions precedent to initial utilisation*).

“**Plan Support Agreement**” means the plan support agreement between, amongst others, the Group, DIC and the Debtors dated 5 August 2010.

“**PRC WFOE**” means Qingdao Almatris Co., Ltd.(安迈铝业(青岛)有限公司) and Qingdao Almatris Trading Co., Ltd.(安迈铝业贸易(青岛)有限公司) or each one of them.

“**Prohibited List**” means in the list of prohibited lenders agreed between the Arrangers and the Parent on the Closing Date

“**Public Offering**” means an initial public offering on any recognised investment exchange of the shares of the Parent or any Holding Company of the Parent (but excluding, for the avoidance of doubt, an Investor or any Mezzanine Investor) or any member of Group.

“**Quarter Date**” means the last day of a Financial Quarter.

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

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

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

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

- (a) (if the currency is USD) two (2) Business Days before the first day of that period;
- (b) (if the currency is Euro) two (2) TARGET Days before the first day of that period; or
- (c) (for any other currency) two (2) Business Days before the first day of that period,

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

**“Real Property”** means:

- (a) any freehold, leasehold or immovable property; and
- (b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.

**“Recapitalisation”** means the proposed recapitalisation by the Investors of DIC Almaty Equityco Coopertief UA in connection with the emergence from bankruptcy of the Debtors.

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

**“Regulation T”**, **“Regulation U”** or **“Regulation X”** means Regulation T, U or X, as the case may be, of the Board of Governors of the Federal Reserve System (or any successor thereto) of the United States of America, as from time to time in effect and all official rulings and interpretations thereunder or thereof.

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

**“Relevant Interbank Market”** means in relation to euro, the European interbank market and, in relation to any other currency, the London interbank market.

**“Relevant Jurisdiction”** means, in relation to a member of the Restricted Group:

- (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 its business; and
- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

**“Relevant Equity”** has the meaning given to that term in Schedule 15 (*Restrictive Covenants*).

**“Relevant Period”** has the meaning given to that term in Clause 26.1 (*Financial definitions*).

**“Reliance Parties”** means the Agent, the Arranger, the Security Agent, the Issuing Bank, each Ancillary Lender, each Original Lender and each person which becomes a Lender as part of the primary syndication of the Facility on or before the Syndication Date.

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

**“Repayment Date”** means the last day of an Interest Period for a Loan.

**“Repeating Representations”** means each of the representations set out in Clause 24.1 (*Status*) to Clause 24.7 (*Governing law and enforcement*), Clause 24.11 (*No default*), paragraph (f) of Clause 24.12 (*No misleading information*), paragraphs (e) and (f) of Clause 24.13 (*Financial Statements*) (in respect of the most recent financial statements prepared and delivered only), Clause 24.19 (*Security and Financial Indebtedness*), Clause 24.21 (*Ranking*)

to Clause 24.23 (*Legal and beneficial ownership*), Clause 24.24 (*Shares*), Clause 24.29 (*Centre of main interests and establishments*), Clause 24.33 (*Anti-Terrorism Laws*) and Clause 24.36 (*Money Laundering Act*).

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

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

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

“**Restricted Group**” means the Parent and the Restricted Subsidiaries.

“**Restricted Payments Basket**” has the meaning given to it in Schedule 15 (*Restrictive Covenants*).

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

“**Revised Plan**” means the First Amended Joint Plan of Reorganisation for the Debtors Under chapter 11 of the Bankruptcy Code together with all exhibits, supplements, annexes, schedules and any other attachments thereto, in each case, in the form attached to the Plan Support Agreement or as amended, restated, supplemented or otherwise modified from time to time in any manner that either (x) is not inconsistent with, or does not conflict with, the terms of the Commitment Letter and in the reasonable judgment of the Agent is not adverse to the rights or interests of the any or all of the Finance Parties, or (y) is acceptable to the Agent in its sole discretion.

“**Rollover Loan**” means one or more Loans:

- (a) made or to be made on the same day that:
  - (i) a maturing Loan is due to be repaid; or
  - (ii) a demand by the Agent pursuant to a drawing in respect of a Letter of Credit is due to be met;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Loan or the relevant claim in respect of that Letter of Credit;
- (c) in the same currency as the maturing Loan (unless it arose as a result of the operation of Clause 8.2 (*Unavailability of a currency*)) or the relevant claim in respect of that Letter of Credit; and
- (d) made or to be made to the same Borrower for the purpose of:
  - (i) refinancing that maturing Loan; or
  - (ii) satisfying the relevant claim in respect of that Letter of Credit.

“**Screen Rate**” means:

- (a) in relation to LIBOR, the British Bankers’ Association Interest Settlement Rate for the relevant currency and period; and
- (b) in relation to EURIBOR, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period,

displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Parent and the Lenders.

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

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

“**Security Agent Conditions**” means the conditions set out in Part I of Schedule 2 (*Conditions precedent to initial utilisation*) that relate to the payment of the fees and expenses of the Security Agent, the Fee Letter entered into with the Security Agent and the “know your client” procedures of the Security Agent.

“**Security Release Agreements**” means each of the security release agreements listed in Schedule 19 (*Security Release Agreements*) and any other security release agreements required for the release of security documents in connection with the Existing Facilities (which is not already listed in Schedule 19 (*Security Release Agreements*)).

“**Senior Management**” means each and all of Remco de Jong and Charles Herlinger.

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

“**Service Contract**” means a service contract of each member of Senior Management (or any replacement thereof).

“**Shareholders’ Agreement**” means the subscription and shareholders agreement dated [●] between, among others, [●].

“**Significant Subsidiary**” means any member of the Restricted Group that would be a “Significant Subsidiary” of the Parent within the meaning of Rule 1 02 under Regulation S X promulgated by the United States Securities and Exchange Commission.

“**Single Employer Plan**” means a single employer plan, as defined in Section 4001(a)(15) of ERISA (subject to Title IV of ERISA) and any other Plan subject to the minimum funding standards of Section 302 or 303 of ERISA or Section 412 or 430 of the Code, that:

- a) is maintained for employees of any Obligor or any ERISA Affiliate; or
- b) was so maintained and in respect of which any Obligor or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

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

“**Sponsor Affiliate**” means DIC and each of its Affiliates (“**DICCo**”), any trust of which DICCo or any of its Affiliates is a trustee, any partnership of which DICCo 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, DICCo or any of its Affiliates provided that any such trust, fund or other entity

which has been established for at least 6 Months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by DICCo or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies shall not constitute a Sponsor Affiliate.

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

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

“**Structure Memorandum**” means the structure paper entitled “[●]” and dated [●] 2010 describing the Group and the transaction and prepared by Ernst & Young Belastingadviseurs LLP in the agreed form and addressed to, and/or capable of being relied upon by, the Reliance Parties.

“**Subordinated Liabilities**” has the meaning given to that term in the Intercreditor Agreement.

“**Subsidiary**” means a subsidiary within the meaning of Section 1159 of the Companies Act 2006.

“**Syndication Date**” means the day which is 6 Months after the Closing Date or such earlier date specified by the relevant Arranger.

“**TARGET2**” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

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

“**Tax**” or “**Taxes**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty, interest or other additional amount payable in connection with such Tax).

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

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

“**Termination Date**” means the date falling five years after the Closing Date.

“**Total Commitments**” means the aggregate of the Commitments, being USD 50,000,000 at the date of this Agreement.

“**Total Net Debt**” has the meaning given to that term in Clause 26.1 (*Financial definitions*).

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

“**Transaction Costs**” means all fees, costs and expenses and Taxes incurred by the Group in connection with the negotiation, preparation, execution, notarisation and registration of the



Transaction Documents and the Revised Plan and otherwise in connection therewith including hedging costs incurred by way of one-off payments.

“**Transaction Documents**” means the Finance Documents, the Shareholders’ Agreement, the Note Documents, the Structural Debt Documents and the Constitutional Documents.

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

“**Transaction Security Documents**” means the Dutch Security Documents, the English Security Document, the German Security Documents, the Chinese Security Documents, the US Security Documents, the Japanese Security Document and any document required to be delivered to the Agent under paragraph 15 of Part II of Schedule 2 (*Conditions Precedent*).

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

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

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

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

“**Unfunded Current Liability**” of any Single Employer Plan means the amount, if any, by which the value of the accumulated plan benefits under the Plan exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued or unpaid contributions).

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

“**Unrestricted Subsidiary**” has the meaning given to it in Schedule 15 (*Restrictive Covenants*).

“**US**” or “**United States**” means the United States of America, its territories, possessions and other areas subject to the jurisdiction of the United States of America.

“**USA PATRIOT Act**” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) of the United States, as amended.

“**US Bankruptcy Law**” means the title 11 of the United States Code or any other United States federal or state bankruptcy, insolvency or similar law.

“**US Borrower**” means a Borrower that is a US Person.

“**USD**” or “**\$**” means the lawful currency for the time being of the United States.

“**US Guarantor**” means a Guarantor that is a US Person.

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

“**US Person**” means a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**US Security Documents**” means each of the security documents listed in Section 3 (*US Security Documents*) of Part III (*Transaction Security Documents*) of Schedule 2 (*Conditions Precedent*)

“**Utilisation**” means a Loan or a Letter of Credit.

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

“**Utilisation Request**” means a notice substantially in the relevant form set out in Part I of Schedule 3 (*Requests and Notices*).

“**VAT**” means value added tax as provided for in Council Directive 2006/112/EC on the common system of value added tax and any other tax of a similar nature wherever imposed.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) the “**Agent**”, the “**Arranger**”, any “**Finance Party**”, any “**Issuing Bank**”, any “**Lender**”, any “**Hedge Counterparty**”, any “**Obligor**”, any “**Party**”, any “**Secured Party**”, the “**Security Agent**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
  - (ii) a document in “**agreed form**” is a document which is previously agreed in writing by or on behalf of the Parent and the Agent 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 a “**Transaction Document**” or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (v) “**guarantee**” means (other than in Clause 23 (*Guarantee and Indemnity*)) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (vi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vii) a Lender’s “**participation**” in relation to a Letter of Credit, shall be construed as a reference to the relevant amount that is or may be payable by a Lender in relation to that Letter of Credit;

- (viii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - (ix) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law, but if not having the force of law, which is generally complied with by those to whom it is addressed) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (x) a provision of law is a reference to that provision as amended or re-enacted; 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) A Borrower providing “**cash cover**” for a Letter of Credit or an Ancillary Facility means a Borrower paying an amount in the currency of the Letter of Credit (or, as the case may be, Ancillary Facility) to an interest-bearing account in the name of the Borrower and the following conditions being met:
    - (i) the account is with the Agent or with the Issuing Bank or Ancillary Lender for which that cash cover is to be provided;
    - (ii) subject to paragraph (b) of Clause 7.5 (*Cash Cover by Borrower*), until no amount is or may be outstanding under that Letter of Credit or Ancillary Facility, withdrawals from the account may only be made to pay a Finance Party amounts due and payable to it under this Agreement in respect of that Letter of Credit or Ancillary Facility; and
    - (iii) the Borrower has executed a security document over that account, in form and substance satisfactory to the Agent or the Issuing Bank or Ancillary Lender with which that account is held, creating a first ranking security interest over that account.
  - (e) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and, subject to paragraph (f) below, an Event of Default is “**continuing**” if it has not been remedied or waived unless it is one of the Events of Default listed below (the “**Non Remediable Events of Default**”), in which case it is “**continuing**” if it has not been waived (whether or not if it is subsequently remedied). The Non Remediable Events of Default referred to above means any circumstance constituting an Event of Default under:
    - (i) paragraphs (a) and (b) of Clause 28.1 (*Non-payment*);
    - (ii) paragraph (c) of Clause 28.1 (*Non-payment*) if, during the 25 day period specified in paragraph (c)(i) of Clause 28.1 (*Non-payment*), such Event of Default has not been remedied and no action has been taken by the Agent and/or the Majority Lenders under Clause 28.23 (*Acceleration*);

- (iii) Clause 28.2 (*Financial covenants*);
  - (iv) Clause 28.8 (*Insolvency*);
  - (v) Clause 28.9 (*Insolvency proceedings*);
  - (vi) Clause 28.10 (*Creditors' process*);
  - (vii) Clause 28.11 (*Unlawfulness and invalidity*);
  - (viii) Clause 28.12 (*Intercreditor Agreement*);
  - (ix) Clause 28.13 (*Cessation of business*);
  - (x) Clause 28.15 (*Audit qualification*); and
  - (xi) Clause 28.17 (*Repudiation and rescission of agreements*).
- (f) An Event of Default set out in Clause 28.3 (*Financial statements*) is “**continuing**” if it has not been remedied or waived, provided that if the Parent receives a request from the Agent (acting on the instructions of one or more of the Lenders) to remedy such Event of Default, if that Event of Default is not then remedied within five (5) Business Days of such request it shall be “**continuing**” if it has not been waived (whether or not if it is subsequently remedied).<sup>2</sup>
- (g) A Borrower “**repaying**” or “**prepaying**” a Letter of Credit or Ancillary Outstandings means:
- (i) that Borrower providing cash cover for that Letter of Credit or in respect of the Ancillary Outstandings;
  - (ii) the maximum amount payable under the Letter of Credit or Ancillary Facility being reduced or cancelled in accordance with its terms; or
  - (iii) the Issuing Bank or Ancillary Lender being satisfied that it has no further liability under that Letter of Credit or Ancillary Facility,
- and the amount by which a Letter of Credit is, or Ancillary Outstandings are, repaid or prepaid under paragraphs (f)(i) and (f)(ii) above is the amount of the relevant cash cover or reduction.
- (h) An amount borrowed includes any amount utilised by way of Letter of Credit or under an Ancillary Facility.
  - (i) A Lender funding its participation in a Utilisation includes a Lender participating in a Letter of Credit.
  - (j) An outstanding amount of a Letter of Credit at any time is the maximum amount that is or may be payable by the relevant Borrower in respect of that Letter of Credit at that time.

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<sup>2</sup> Open point- five (5) day remediable time period.

### 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**”) 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 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.

### 1.5 Dutch Terms

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

- (a) a necessary action to authorise, where applicable, includes without limitation:
  - (i) any action required to comply with the Dutch Works Council Act (*Wet op de ondernemingsraden*); and
  - (ii) obtaining unconditional positive advice (*advies*) from each competent works council;
- (b) a winding-up, administration or dissolution includes a Dutch entity being:
  - (i) declared bankrupt (*failliet verklaard*);
  - (ii) dissolved (*ontbonden*);
- (c) a moratorium includes *surseance van betaling* and granted a moratorium includes *surseance verleend*;
- (d) a trustee in bankruptcy includes a *curator*;
- (e) an administrator includes a *bewindvoerder*;
- (f) a receiver or an administrative receiver does not include a *curator* or *bewindvoerder*; and
- (g) an attachment includes a *beslag*.

## 2. THE FACILITY

### 2.1 The Facility

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

## 2.2 Increase

- (a) The Parent may by giving prior notice to the Agent by no later than the date falling 20 Business Days after the effective date of a cancellation of:
- (i) the Available Commitments of a Defaulting Lender in accordance with Clause 11.6 (*Right of cancellation in relation to a Defaulting Lender*); or
  - (ii) the Commitments of a Lender in accordance with Clause 11.1 (*Illegality*),
- request that the Total Commitments be increased (and the Total Commitments shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments so cancelled as follows:
- (iii) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an “**Increase Lender**”) selected by the Parent (each of which shall not be a Sponsor Affiliate or a member of the Group and which is further acceptable to the Agent (acting reasonably)) and each of which confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;
  - (iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;
  - (v) each Increase Lender shall become a Party as a “Lender” and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
  - (vi) the Commitments of the other Lenders shall continue in full force and effect; and
  - (vii) any increase in the Total Commitments shall take effect on the date specified by the Parent in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Total Commitments will only be effective on:
- (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender;
  - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:
    - (A) the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and
    - (B) the performance by the Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that

Increase Lender, the completion of which the Agent shall promptly notify to the Parent, the Increase Lender and the Issuing Bank; and

- (iii) the Issuing Bank consenting to that increase.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
- (d) Unless the Agent otherwise agrees or the increased Commitment is assumed by an existing Lender, the Parent shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee of USD 1,500 and the Parent shall promptly on demand pay the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.
- (e) The Parent may pay to the Increase Lender a fee in the amount and at the times agreed between the Parent and the Increase Lender in a Fee Letter.
- (f) Clause 29.4 (*Limitation of responsibility of Existing Lenders*) shall apply mutatis mutandis in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
  - (i) an “**Existing Lender**” were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the “**New Lender**” were references to that “**Increase Lender**”; and
  - (iii) a “**re-transfer**” and “**re-assignment**” were references to respectively a “transfer” and “assignment”.

### **2.3 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.

### **2.4 Obligors’ Agent**

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

- (i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to execute on its behalf any Accession Deed, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
- (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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

## 2.5 Register

- (a) The Agent, on behalf of the Borrower, shall maintain a register (the "**Register**") in which it shall record (i) the names and addresses of the Lenders, (ii) the amount of each Loan of each Lender made hereunder, (iii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iv) any amount received by the Agent hereunder for the account of the Lenders and each Lender's share thereof.
- (b) The entries made in the accounts maintained pursuant to paragraph (a) of this Clause shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans in accordance with the terms of this Agreement. Each of the Borrowers and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by each Borrower and Lender at any reasonable time and from time to time upon reasonable prior notice.
- (c) Each Lender that sells a participation with respect to a US Obligor shall maintain a register on which it enters the name and address of each participant and the principal amounts of each participant's interest in such Loans (or other rights or obligations) held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such Loan (or other right or obligation) hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary. Any such Participant Register shall be available for



inspection by the Agent at any reasonable time and from time to time upon reasonable prior notice.

### **3. PURPOSE**

#### **3.1 Purpose**

Each Borrower shall apply all amounts borrowed by it under the Facility, any Letter of Credit issued under the Facility and any utilisation of any Ancillary Facility provided under the Facility towards the general corporate and working capital purposes of the Restricted Group (but not towards (i) the prepayment of the Notes, any Replacement Debt, or any other Term Debt, (ii) the payment of any dividend, redemption, repurchase, defeasement, retirement, repayment, premium or any other distribution in respect of share capital, (iii) in the case of any utilisation of any Ancillary Facility, towards prepayment of any Utilisation or (iv) other than to the extent permitted under paragraph (c) of Clause 5.2 (*Completion of a Utilisation Request for Loans*), repayment of the Existing Facilities or the payment of Transaction Costs.

#### **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**

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 (acting on the instructions of the Lenders and, in respect of the Security Agent Conditions only, the Security Agent) has waived receipt of or is satisfied that it will, on or before the first Utilisation Date, receive) all of the documents (in legible form) and other evidence listed in Part I of Schedule 2 (*Conditions precedent*).

#### **4.2 Further conditions precedent**

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

- (a) in the case of a Rollover Loan, notice has been given pursuant to Clause 28.23 (*Acceleration*), and in the case of any other Utilisation, no Default is continuing or would result from the proposed Utilisation; and
- (b) in relation to the initial Utilisation, all the representations and warranties in Clause 24 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations to be made by each Obligor are true in all material respects.

#### **4.3 Conditions relating to Optional Currencies**

A currency will constitute an Optional Currency in relation to a Utilisation if it is EUR.<sup>3</sup>

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<sup>3</sup> Company has requested borrowings in Chinese Reminbi.

#### **4.4 Maximum number of Utilisations**

- (a) A Borrower (or the Parent) may not deliver a Utilisation Request if as a result of the proposed Utilisation more than ten (10) Loans would be outstanding.
- (b) Any Loan made by a single Lender under Clause 8.2 (*Unavailability of a currency*) shall not be taken into account in this Clause 4.4.
- (c) Any Separate Loan shall not be taken into account in this Clause 4.4.
- (d) A Borrower (or the Parent) may not request that a Letter of Credit be issued if as a result of the proposed Utilisation more than seven (7) Letters of Credit would be outstanding.

### **5. UTILISATION - LOANS**

#### **5.1 Delivery of a Utilisation Request**

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

#### **5.2 Completion of a Utilisation Request for Loans**

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
  - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
  - (iii) the proposed Interest Period complies with Clause 15 (*Interest Periods*).
- (b) Only one Utilisation may be requested in each Utilisation Request, however no Utilisation Request for a Loan may be made until the date following the Closing Date other than as provided for in paragraph (c) below.
- (c) A Utilisation Request may be delivered on the Closing Date for a Loan of up to USD 10,000,000 (or its equivalent) to be applied towards the repayment of the Existing Facility and/or the payment of Transaction Costs.

#### **5.3 Currency and amount**

- (a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.
- (b) The amount of the proposed Utilisation must be:
  - (i) if the currency selected is the Base Currency, a minimum of USD 1,000,000 or, if less, the Available Facility;
  - (ii) if the currency selected is EUR, a minimum of EUR 1,000,000 or, if less, the Available Facility.

#### 5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, and subject to Clause 10.1 (*Repayment of Loans*), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Agent shall determine the Base Currency Amount of each Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in cash by the Specified Time.

#### 5.5 Limitations on Utilisations

- (a) The maximum aggregate Base Currency Amount of all Letters of Credit outstanding under the Facility shall not at any time exceed USD 20,000,000.
- (b) The maximum aggregate amount of the Ancillary Commitments of all the Lenders shall not at any time exceed 30% of the Total Commitments.

#### 5.6 Cancellation of Commitment

- (a) The Total Commitments shall be immediately cancelled if the Closing Date has not occurred on or prior to 31 October 2010 or such later date as the Parent and Agent (acting on the instructions of all the Lenders) agree.
- (b) The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

#### 5.7 Clean down

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

- (a) all Loans;
- (b) any cash loan element of the Ancillary Outstandings under all the Ancillary Facilities; and
- (c) (to the extent not included within paragraphs (a) and (b) above), any cash loans of a member of the Restricted Group covered by a Letter of Credit or a letter of credit or guarantee issued under the Facility or an Ancillary Facility; LESS
- (d) any amount of Cash or Cash Equivalent Investments held by members of the Restricted Group,

(as confirmed in a certificate signed by two authorised signatories of the Parent provided to the Agent within 15 Business Days after the end of each Financial Year, commencing with the Financial Year ending 31 December 2011) shall not exceed USD 0 (or, in respect of the Financial Year ending 31 December 2011, USD 15,000,000) for a period of not less than five (5) successive days (a "**Clean Down Period**") in each of its Financial Years. Not less than three (3) Months shall elapse between Clean Down Periods. The first Clean Down Period shall occur by 31 December 2011.

For the avoidance of doubt and for the purposes of paragraph (d) of the definition of “Cash”, the Parties acknowledge that the laws of the Relevant Jurisdictions of the members of the Restricted Group (as at the date of this Agreement) as in force on the date of this Agreement do not render cash held by such members of the Restricted Group as not freely and immediately available to be applied in repayment or prepayment of the Facility.

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

### **6.1 The Facility**

- (a) The Facility may be utilised by way of Letters of Credit.
- (b) Other than Clause 5.5 (*Limitations on Utilisations*) and Clause 5.7 (*Clean down*), Clause 5 (*Utilisation - Loans*) does not apply to utilisations by way of Letters of Credit.

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

A Borrower (or the Parent on its behalf) may request a Letter of Credit to be issued by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time.

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

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

- (a) it specifies that it is for a Letter of Credit;
- (b) it identifies the Borrower of the Letter of Credit;
- (c) it identifies the Issuing Bank which has agreed to issue the Letter of Credit;
- (d) the proposed Utilisation Date is a Business Day within the Availability Period;
- (e) the currency and amount of the Letter of Credit comply with Clause 6.4 (*Currency and amount*);
- (f) the form of Letter of Credit is attached;
- (g) the Expiry Date of the Letter of Credit falls on or before the Termination Date;
- (h) the Term of the Letter of Credit is 12 Months or less;
- (i) the delivery instructions for the Letter of Credit are specified; and
- (j) the beneficiary of the Letter of Credit is identified and approved by the Issuing Bank.

### **6.4 Currency and amount**

- (a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.
- (b) Subject to Clause 5.5 (*Limitations on Utilisations*), the amount of the proposed Letter of Credit must be an amount whose Base Currency Amount is not more than the relevant Available Facility and which is:

- (i) if the currency selected is the Base Currency, a minimum of USD 1,000,000 or, if less, the Available Facility;
- (ii) if the currency selected is EUR, a minimum of EUR 1,000,000 or, if less, the Available Facility;
- (iii) if the currency selected is an Optional Currency other than Euro, the minimum amount specified by the Agent pursuant to paragraph (b)(ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) or, if less, the Available Facility; or
- (iv) any other amount agreed to in writing by the Agent.

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

- (a) If the conditions set out in this Agreement have been met, the Issuing Bank shall issue the Letter of Credit on the Utilisation Date.
- (b) Subject to Clause 4.1 (*Initial Conditions Precedent*), the Issuing Bank will only be obliged to comply with paragraph (a) above in relation to a Letter of Credit, if on the date of the Utilisation Request or Renewal Request and on the proposed Utilisation Date:
  - (i) in the case of a Letter of Credit to be renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*) no notice has been given pursuant to Clause 28.23 (*Acceleration*) and, in the case of any other Utilisation, no Default is continuing or would result from the proposed Utilisation; and
  - (ii) in relation to the initial Utilisation, all the representations and warranties in Clause 24 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations to be made by each Obligor are true in all material respects.
- (c) The amount of each Lender's participation in each Letter of Credit will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to the issue of the Letter of Credit.
- (d) The Agent shall determine the Base Currency Amount of each Letter of Credit which is to be issued in an Optional Currency and shall notify the Issuing Bank and each Lender of the details of the requested Letter of Credit and its participation in that Letter of Credit by the Specified Time.

## **6.6 Renewal of a Letter of Credit**

- (a) A Borrower (or the Parent on its behalf) may request that any Letter of Credit issued on behalf of that Borrower be renewed by delivery to the Agent of a Renewal Request in substantially similar form to a Utilisation Request for a Letter of Credit by the Specified Time.
- (b) The Finance Parties shall treat any Renewal Request in the same way as a Utilisation Request for a Letter of Credit except that the condition set out in paragraph (f) of Clause 6.3 (*Completion of a Utilisation Request for Letters of Credit*) shall not apply.
- (c) The terms of each renewed Letter of Credit shall be the same as those of the relevant Letter of Credit immediately prior to its renewal, except that:

- (i) its amount may be less than the amount of the Letter of Credit immediately prior to its renewal; and
  - (ii) its Term shall start on the date which was the Expiry Date of the Letter of Credit immediately prior to its renewal, and shall end on the proposed Expiry Date specified in the Renewal Request.
- (d) If the conditions set out in this Agreement have been met, the Issuing Bank shall amend and re-issue any Letter of Credit pursuant to a Renewal Request.

#### **6.7 Reduction of a Letter of Credit**

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

the Issuing Bank may reduce the amount of that Letter of Credit by an amount equal to the amount of the participation of that Non-Acceptable L/C Lender in respect of that Letter of Credit and that Non-Acceptable L/C Lender shall be deemed not to have any participation (or obligation to indemnify the Issuing Bank) in respect of that Letter of Credit for the purposes of the Finance Documents.

- (b) The Issuing Bank shall notify the Agent (and the Agent shall notify the Parent) of each reduction made pursuant to this Clause 6.7.
- (c) This Clause 6.7 shall not affect the participation of each other Lender in that Letter of Credit.

#### **6.8 Revaluation of Letters of Credit**

- (a) If any Letters of Credit are denominated in an Optional Currency, the Agent shall at three (3) monthly intervals from the date of this Agreement, recalculate the Base Currency Amount of each outstanding Letter of Credit by notionally converting into the Base Currency the outstanding amount of that Letter of Credit on the basis of the Agent's Spot Rate of Exchange on the date of calculation.
- (b) The Parent shall, if requested by the Agent within three (3) Business Days of any calculation under paragraph (a) above, ensure that within three (3) Business Days of such request sufficient Utilisations are prepaid to prevent the Base Currency Amount of the Facility Utilisations exceeding the Total Commitments (after deducting the total Ancillary Commitments) following any adjustment to a Base Currency Amount under paragraph (a) of this Clause 6.8.

## **7. LETTERS OF CREDIT**

### **7.1 Immediately payable**

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

### **7.2 Claims under a Letter of Credit**

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

### **7.3 Indemnities**

- (a) Each Borrower shall immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank’s gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit requested by (or on behalf of) that Borrower.
- (b) Each Lender shall (according to its L/C Proportion) immediately on demand indemnify the Issuing Bank against any cost, loss or liability incurred by the Issuing Bank (otherwise than by reason of the Issuing Bank’s gross negligence or wilful misconduct) in acting as the Issuing Bank under any Letter of Credit (unless the Issuing Bank has been reimbursed by an Obligor pursuant to a Finance Document).
- (c) If any Lender is not permitted (by its constitutional documents or any applicable law) to comply with paragraph (b) above, then that Lender will not be obliged to comply with paragraph (b) and shall instead be deemed to have taken, on the date the Letter of Credit is issued (or if later, on the date the Lender’s participation in the Letter of Credit is transferred or assigned to the Lender in accordance with the terms of this Agreement), an undivided interest and participation in the Letter of Credit in an amount equal to its L/C Proportion of that Letter of Credit. On receipt of demand

from the Agent, that Lender shall pay to the Agent (for the account of the Issuing Bank) an amount equal to its L/C Proportion of the amount demanded.

- (d) The Borrower which requested (or on behalf of which the Parent requested) a Letter of Credit shall immediately on demand reimburse any Lender for any payment it makes to the Issuing Bank under this Clause 7.3 in respect of that Letter of Credit.
- (e) The obligations of each Lender or Borrower under this Clause are continuing obligations and will extend to the ultimate balance of sums payable by that Lender or Borrower in respect of any Letter of Credit, regardless of any intermediate payment or discharge in whole or in part.
- (f) The obligations of any Lender or Borrower under this Clause will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause (without limitation and whether or not known to it or any other person) including:
  - (i) any time, waiver or consent granted to, or composition with, any Obligor, any beneficiary under a Letter of Credit or any other person;
  - (ii) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor or any member of the Group;
  - (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor, any beneficiary under a Letter of Credit or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
  - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor, any beneficiary under a Letter of Credit or any other person;
  - (v) any amendment (however fundamental) or replacement of a Finance Document, any Letter of Credit or any other document or security;
  - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, any Letter of Credit or any other document or security; or
  - (vii) any insolvency or similar proceedings.
- (g) Without prejudice to this Clause 7.3, if an amount becomes payable under Clause 7.1 (*Immediately payable*) or Clause 7.2 (*Claims under a Letter of Credit*) or the Issuing Bank makes demand under paragraphs (a), (b) or (d) of this Clause 7.3 in respect of any Letter of Credit, the Borrower that requested (or on behalf of which the Parent requested) that Letter of Credit shall one (1) Business Days after such demand issue a Utilisation Notice for the Facility for an amount in the Base Currency equal to the amount (if any) by which the amount so claimed by the Issuing Bank exceeds the amount paid by the Borrower in respect of the claim, and if it fails to do so, it shall automatically be deemed to have issued a Utilisation Notice for such amount.



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

- (a) If, at any time, a Lender is a Non-Acceptable L/C Lender, the Issuing Bank may, by notice to that Lender, request that Lender to pay and that Lender shall pay, on or prior to the date falling three (3) Business Days after the request by the Issuing Bank, an amount equal to that Lender's L/C Proportion of the outstanding amount of a Letter of Credit and in the currency of that Letter of Credit to an interest-bearing account held in the name of that Lender with the Issuing Bank.
- (b) The Non-Acceptable L/C Lender to whom a request has been made in accordance with paragraph (a) above shall enter into a security document or other form of collateral arrangement over the account, in form and substance satisfactory to the Issuing Bank, as collateral for any amounts due and payable under the Finance Documents by that Lender to the Issuing Bank in respect of that Letter of Credit.
- (c) Until no amount is or may be outstanding under that Letter of Credit, withdrawals from the account may only be made to pay to the Issuing Bank amounts due and payable to the Issuing Bank by the Non-Acceptable L/C Lender under the Finance Documents in respect of that Letter of Credit.
- (d) Each Lender shall notify the Agent and the Parent:
  - (i) on the date of this Agreement or on any later date on which it becomes such a Lender in accordance with Clause 2.2 (*Increase*) or Clause 29 (*Changes to the Lenders*) whether it is a Non-Acceptable L/C Lender; and
  - (ii) as soon as practicable upon becoming aware of the same, that it has become a Non-Acceptable L/C Lender,

and an indication in Schedule 1 (*The Original Parties*), in a Transfer Certificate, in an Assignment Agreement or in an Increase Confirmation to that effect will constitute a notice under paragraph (d)(i) to the Agent and, upon delivery in accordance with Clause 29.7 (*Copy of Transfer Certificate, Assignment Agreement to Parent or Increase Confirmation*), to the Parent.

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

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

## **7.5 Cash cover by Borrower**

- (a) If a Lender which is a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender*) and the Issuing Bank notifies the Obligors' Agent (with a copy to the Agent) that it requires the Borrower of the relevant Letter of Credit or proposed Letter of Credit to provide cash cover to an account with the Issuing Bank in an amount equal to that Lender's L/C Proportion of the outstanding amount of that Letter of Credit and in the currency of that Letter of Credit then that Borrower shall do so within three (3) Business Days after the notice is given.
- (b) Notwithstanding paragraph (d) of Clause 1.2 (*Construction*), the Issuing Bank may agree to the withdrawal of amounts up to the level of that cash cover from the account if:
  - (i) it is satisfied that the relevant Lender is no longer a Non-Acceptable L/C Lender; or
  - (ii) the relevant Lender's obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; or
  - (iii) an Increase Lender has agreed to undertake the obligations in respect of the relevant Lender's L/C Proportion of the Letter of Credit.
- (c) To the extent that a Borrower has complied with its obligations to provide cash cover in accordance with this Clause 7.5, the relevant Lender's L/C Proportion in respect of that Letter of Credit will remain (but that Lender's obligations in relation to that Letter of Credit may be satisfied in accordance with paragraph (d)(ii) of Clause 1.2 (*Construction*)). However, the relevant Borrower's obligation to pay any Letter of Credit fee in relation to the relevant Letter of Credit to the Agent (for the account of that Lender) in accordance with paragraph (b) of Clause 17.5 (*Fees payable in respect of Letters of Credit*) will be reduced proportionately as from the date on which it complies with that obligation to provide cash cover (and for so long as the relevant amount of cash cover continues to stand as collateral).
- (d) The relevant Issuing Bank shall promptly notify the Agent of the extent to which a Borrower provides cash cover pursuant to this Clause 7.5 and of any change in the amount of cash cover so provided.

## **7.6 Rights of contribution**

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

## **8. OPTIONAL CURRENCIES**

### **8.1 Selection of currency**

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

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

If before the Specified Time on any Quotation Day:

- (a) a Lender notifies the Agent that the Optional Currency requested is not readily available to it in the amount required; or
- (b) a Lender notifies the Agent that compliance with its obligation to participate in a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Agent will give notice to the relevant Borrower (or the Parent on its behalf) to that effect by the Specified Time on that day. In this event, any Lender that gives notice pursuant to this Clause 8.2 will be required to participate in the Loan in the Base Currency (in an amount equal to that Lender's proportion of the Base Currency Amount, or in respect of a Rollover Loan, an amount equal to that Lender's proportion of the Base Currency Amount of the Rollover Loan that is due to be made) and its participation will be treated as a separate Loan denominated in the Base Currency during that Interest Period.

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

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

## **9. ANCILLARY FACILITIES**

### **9.1 Type of Facility**

An Ancillary Facility may be by way of:

- (a) an overdraft facility;
- (b) a guarantee, bonding, documentary or stand-by letter of credit facility;
- (c) a short term loan facility;
- (d) a derivatives facility;
- (e) a foreign exchange facility; or
- (f) any other facility or accommodation required in connection with the business of the Group and which is agreed by the Parent with an Ancillary Lender.

### **9.2 Availability**

- (a) If the Parent and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide an Ancillary Facility on a bilateral basis in place of all or part of that Lender's unutilised Commitment (which shall (except for the purposes of determining the Majority Lenders and of Clause 41.4 (*Replacement of Lender*)) be reduced by the amount of the Ancillary Commitment under that Ancillary Facility).
- (b) An Ancillary Facility shall not be made available unless, not later than five (5) Business Days prior to the Ancillary Commencement Date for an Ancillary Facility, the Agent has received from the Parent:
  - (i) a notice in writing of the establishment of an Ancillary Facility and specifying:
    - (A) the proposed Borrower(s) (or Affiliate(s) of a Borrower) which may use the Ancillary Facility;

- (B) the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;
  - (C) the proposed type of Ancillary Facility to be provided;
  - (D) the proposed Ancillary Lender;
  - (E) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, if the Ancillary Facility is an overdraft facility comprising more than one account its maximum gross amount (that amount being the “**Designated Gross Amount**”) and its maximum net amount (that amount being the “**Designated Net Amount**”); and
  - (F) the proposed currency of the Ancillary Facility (if not denominated in the Base Currency); and
- (ii) any other information which the Agent may reasonably request in connection with the Ancillary Facility.

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

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

- (c) Subject to compliance with paragraph (b) above:
  - (i) the Lender concerned will become an Ancillary Lender; and
  - (ii) the Ancillary Facility will be available,
 with effect from the date agreed by the Parent and the Ancillary Lender.

### 9.3 Terms of Ancillary Facilities

- (a) Except as provided below, the terms of any Ancillary Facility will be those agreed by the Ancillary Lender and the Parent.
- (b) However, those terms:
  - (i) must be based upon normal commercial terms at that time (except as varied by this Agreement);
  - (ii) may allow only Borrowers (or Affiliates of Borrowers nominated pursuant to Clause 9.9 (*Affiliates of Borrowers*)) to use the Ancillary Facility;
  - (iii) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;
  - (iv) may not allow the Ancillary Commitment of a Lender to exceed the Available Commitment of that Lender (excluding for these purposes any reduction in the Available Commitments attributable to such Ancillary Commitment); and

- (v) must require that the Ancillary Commitment is reduced to nil, and that all Ancillary Outstandings are repaid (or cash cover provided in respect of all the Ancillary Outstandings) not later than the Termination Date (or such earlier date as the Commitment of the relevant Ancillary Lender is reduced to zero).
- (c) If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for (i) Clause 38.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility; (ii) an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail to the extent required to permit the netting of balances on those accounts; and (iii) where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document, in which case that term of this Agreement shall not prevail.
- (d) Interest, commission and fees on Ancillary Facilities are dealt with in Clause 17.6 (*Interest, commission and fees on Ancillary Facilities*).

#### **9.4 Repayment of Ancillary Facility**

- (a) An Ancillary Facility shall cease to be available on the Termination Date or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.
- (b) If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the Ancillary Lender shall be reduced to zero (and its Commitment shall be increased accordingly).
- (c) No Ancillary Lender may demand repayment or prepayment of any amounts or demand cash cover for any liabilities made available or incurred by it under its Ancillary Facility (except where the Ancillary Facility is provided on a net limit basis to the extent required to bring any gross outstandings down to the net limit) unless:
  - (i) the Total Commitments have been cancelled in full, or all outstanding Utilisations have become due and payable in accordance with the terms of this Agreement, or the Agent has declared all outstanding Utilisations immediately due and payable, or the expiry date of the Ancillary Facility occurs; or
  - (ii) it becomes unlawful in any applicable jurisdiction for the Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility; or
  - (iii) the Ancillary Outstandings (if any) under that Ancillary Facility can be refinanced by a Utilisation and the Ancillary Lender gives sufficient notice to enable a Utilisation to be made to refinance those Ancillary Outstandings.
- (d) For the purposes of determining whether or not the Ancillary Outstandings under an Ancillary Facility mentioned in paragraph (c)(iii) above can be refinanced by a Utilisation:
  - (i) the Commitment of the Ancillary Lender will be increased by the amount of its Ancillary Commitment; and

- (ii) the Utilisation may (so long as paragraph (c)(i) above does not apply) be made irrespective of whether a Default is outstanding or any other applicable condition precedent is not satisfied (but only to the extent that the proceeds are applied in refinancing those Ancillary Outstandings) and irrespective of whether Clause 4.4 (*Maximum number of Utilisations*) or paragraph (a)(iii) of Clause 5.2 (*Completion of a Utilisation Request for Loans*) applies.
- (e) On the making of an Utilisation to refinance Ancillary Outstandings:
  - (i) each Lender will participate in that Utilisation in an amount (as determined by the Agent) which will result as nearly as possible in the aggregate amount of its participation in the Utilisations then outstanding bearing the same proportion to the aggregate amount of the Utilisations then outstanding as its Commitment bears to the Total Commitments; and
  - (ii) the relevant Ancillary Facility shall be cancelled.
- (f) In relation to an Ancillary Facility which comprises an overdraft facility where a Designated Net Amount has been established, the Ancillary Lender providing that Ancillary Facility shall only be obliged to take into account for the purposes of calculating compliance with the Designated Net Amount those credit balances which it is permitted to take into account by the then current law and regulations in relation to its reporting of exposures to applicable regulatory authorities as netted for capital adequacy purposes.

## 9.5 Ancillary Outstandings

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

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

## 9.6 Adjustment for Ancillary Facilities upon acceleration

- (a) In this Clause 9.6:

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

“**Total Facility Outstandings**” means the aggregate of all Facility Outstandings.

- (b) If a notice is served under Clause 28.23 (*Acceleration*) (other than a notice declaring Utilisations to be due on demand), each Lender and each Ancillary Lender shall promptly adjust by corresponding transfers (to the extent necessary) their claims in respect of amounts outstanding to them under the Facility and each Ancillary Facility to ensure that after such transfers the Facility Outstandings of each Lender bear the same proportion to the Total Facility Outstandings as such Lender's Commitment bears to the Total Commitments, each as at the date the notice is served under Clause 28.23 (*Acceleration*).
- (c) If an amount outstanding under an Ancillary Facility is a contingent liability and that contingent liability becomes an actual liability or is reduced to zero after the original adjustment is made under paragraph (b) above, then each Lender and Ancillary Lender will make a further adjustment by corresponding transfers (to the extent necessary) to put themselves in the position they would have been in had the original adjustment been determined by reference to the actual liability or, as the case may be, zero liability and not the contingent liability.
- (d) Prior to the application of the provisions of paragraph (b) of this Clause 9.6, an Ancillary Lender that has provided an overdraft comprising more than one account under an Ancillary Facility shall set-off any liabilities owing to it under such overdraft facility against credit balances on any account comprised in such overdraft facility.
- (e) All calculations to be made pursuant to this Clause 9.6 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders.

## **9.7 Information**

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

## **9.8 Affiliates of Lenders as Ancillary Lenders**

- (a) Subject to the terms of this Agreement, an Affiliate of a Lender may become an Ancillary Lender. In such case, the Lender and its Affiliate shall be treated as a single Lender whose Commitment is the amount set out opposite the relevant Lender's name in Part II of Schedule 1 (*The Original Parties*) and/or the amount of any Commitment transferred to or assumed by that Lender under this Agreement, to the extent (in each case) not cancelled, reduced or transferred by it under this Agreement. For the purposes of calculating the Lender's Available Commitment, the Lender's Commitment shall be reduced to the extent of the aggregate of the Ancillary Commitments of its Affiliates.
- (b) The Parent shall specify any relevant Affiliate of a Lender in any notice delivered by the Parent to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (*Availability*).
- (c) An Affiliate of a Lender which becomes an Ancillary Lender shall accede to the Intercreditor Agreement as an Ancillary Lender and any person which so accedes to the Intercreditor Agreement shall, at the same time, become a party to this Agreement as an Ancillary Lender in accordance with Clause 19.12 (*New Ancillary Lender*) of the Intercreditor Agreement.

- (d) If a Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender (as defined in Clause 29 (*Changes to the Lenders*)), its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document.
- (e) Where this Agreement or any other Finance Document imposes an obligation on an Ancillary Lender and the relevant Ancillary Lender is an Affiliate of a Lender which is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.

## **9.9 Affiliates of Borrowers**

- (a) Subject to the terms of this Agreement, an Affiliate (incorporated in the same jurisdiction as a member of the Restricted Group as at the Closing Date) of a Borrower may with the approval of the relevant Ancillary Lender become a borrower with respect to an Ancillary Facility.
- (b) The Parent shall specify any relevant Affiliate of a Borrower in any notice delivered by the Parent to the Agent pursuant to paragraph (b)(i) of Clause 9.2 (*Availability*).
- (c) If a Borrower ceases to be a Borrower under this Agreement in accordance with Clause 31.3 (*Resignation of a Borrower*), its Affiliate shall cease to have any rights under this Agreement or any Ancillary Document.
- (d) Where this Agreement or any other Finance Document imposes an obligation on a Borrower under an Ancillary Facility and the relevant Borrower is an Affiliate of a Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Affiliate. If such Affiliate of a Borrower is not an Obligor, for the purposes of Clause 23 (*Guarantee and Indemnity*), the obligations of such Affiliate shall be deemed to be obligations of such Borrower.
- (e) Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Finance Document or Ancillary Document

## **9.10 Commitment amounts**

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

- (a) its Ancillary Commitment; and
- (b) the Ancillary Commitment of its Affiliate, excluding for these purposes any reduction in such Lender's Commitment attributable to such Ancillary Commitment.

## **10. REPAYMENT**

### **10.1 Repayment of Loans**

- (a) Subject to paragraph (c) below, each Borrower which has drawn a Loan shall repay that Loan on the last day of its Interest Period.
- (b) Without prejudice to each Borrower's obligation under paragraph (a) above, if one or more Loans are to be made available to a Borrower:



- (i) on the same day that a maturing Loan is due to be repaid by that Borrower;
- (ii) in the same currency as the maturing Loan (unless it arose as a result of the operation of Clause 8.2 (*Unavailability of a currency*)); and
- (iii) in whole or in part for the purpose of refinancing the maturing Loan;

the aggregate amount of the new Loans shall be treated as if applied in or towards repayment of the maturing Loan so that:

- (A) if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:
  - (1) the relevant Borrower will only be required to pay an amount in cash in the relevant currency equal to that excess; and
  - (2) each Lender's participation (if any) in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation (if any) in the maturing Loan and that Lender will not be required to make its participation in the new Loans available in cash; and
- (B) if the amount of the maturing Loan is equal to or less than the aggregate amount of the new Loans:
  - (1) the relevant Borrower will not be required to make any payment in cash; and
  - (2) each Lender will be required to make its participation in the new Loans available in cash only to the extent that its participation (if any) in the new Loans exceeds that Lender's participation (if any) in the maturing Loan and the remainder of that Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan.
- (c) At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Loans then outstanding will be automatically extended to the last day of the Availability Period and will be treated as separate Loans (the "**Separate Loans**") denominated in the currency in which the relevant participations are outstanding.
- (d) A Borrower to whom a Separate Loan is outstanding may prepay that Separate Loan by giving five (5) Business Days' prior notice to the Agent. The Agent will forward a copy of a prepayment notice received in accordance with this paragraph (d) to the Defaulting Lender concerned as soon as practicable on receipt.
- (e) Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the Borrower by the time and date specified by the Agent (acting reasonably) and will be payable by that Borrower to the Defaulting Lender on the last day of each Interest Period of that Separate Loan.

- (f) The terms of this Agreement relating to Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (c) to (e) above, in which case those paragraphs shall prevail in respect of any Separate Loan.

## **11. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION**

### **11.1 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) upon the Agent notifying the Parent, the Commitment of that Lender will be immediately cancelled; and
- (c) each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Parent or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

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

If it becomes unlawful for an Issuing Bank to issue or leave outstanding any Letter of Credit, then:

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

### **11.3 Voluntary cancellation**

The Parent may, if it gives the Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of USD 1,000,000 (or its equivalent)) of an Available Facility. Any cancellation under this Clause 11.3 shall reduce the Commitments of the Lenders rateably.

### **11.4 Voluntary prepayment of Loans**

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

## **11.5 Right of cancellation and repayment in relation to a single Lender or Issuing Bank**

- (a) If:
- (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 18.2 (*Tax gross-up*); or
  - (ii) any Lender or Issuing Bank claims indemnification from the Parent or an Obligor under Clause 18.3 (*Tax indemnity*) or Clause 19.1 (*Increased costs*); or
  - (iii) any Lender notifies the Agent of its Additional Cost Rate under paragraph 3 of Schedule 4 (*Mandatory Cost Formula*),

the Parent may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice:

- (A) (if such circumstances relate to a Lender) of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations; or
  - (B) (if such circumstances relate to the Issuing Bank) of repayment of any outstanding Letter of Credit issued by it and cancellation of its appointment as an Issuing Bank under this Agreement in relation to any Letters of Credit to be issued in the future.
- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Parent has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Parent in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents.

## **11.6 Right of cancellation in relation to a Defaulting Lender**

- (a) If any Lender becomes a Defaulting Lender, the Parent may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent five (5) Business Days' notice of cancellation of each Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- (c) The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

## **12. MANDATORY PREPAYMENT**

### **12.1 Exit**

Upon the occurrence of (i) a Change of Control, (ii) a Public Offering or (iii) the sale of all or substantially all of the assets of the Restricted Group whether in a single transaction or a series of related transactions, the Facility will be cancelled and all outstanding Utilisations and Ancillary Outstandings, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

## 12.2 Disposal Proceeds and Insurance Proceeds

- (a) For the purposes of this Clause 12.2, Clause 12.3 (*Application of mandatory prepayments*) and Clause 12.4 (*Mandatory Prepayment Accounts and Holding Accounts*):

“**Disposal**” means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

“**Disposal Proceeds**” means the consideration receivable by any member of the Restricted Group (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Restricted Group except for Excluded Disposal Proceeds and after deducting:

- (i) any reasonable expenses which are incurred by any member of the Restricted Group with respect to that Disposal to persons who are not members of the Restricted Group; and
- (ii) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

“**Excluded Disposal Proceeds**” means:

- (i) any proceeds of a Disposal which the Parent notifies the Agent are, or are to be, applied:
  - (A) in reinvestment in substantially similar assets used in the Restricted Group’s business;
  - (B) subject to Clause 27.24 (*Notes Purchase Condition*), in prepayment, purchase, defeasement or redemption of any Notes,in each case within 364 days, or such longer period as the Majority Lenders may agree, after receipt;
- (ii) the disposal of all or part of the speciality hydrate business of the Group located in Bauxite, Arkansas and Dalton, Georgia; or
- (iii) any proceeds of a Disposal to the extent that such Disposal Proceeds constitute Excluded Mandatory Prepayment Proceeds under paragraph (i) of the definition of Excluded Mandatory Prepayment Proceeds.

“**Excluded Insurance Proceeds**” means:

- (i) any net proceeds of an insurance claim which relate to any insurance for business interruption or third party liability or any insurance proceeds which the Parent notifies the Agent are, or are to be, applied:
  - (A) to meet a third party claim;
  - (B) to cover operating losses in respect of which the relevant insurance claim was made;
  - (C) in the replacement, reinstatement and/or repair of the assets or to the purchase of replacement assets useful to the business or otherwise in

amelioration of the loss in respect of which the relevant insurance claim was made; or

- (D) which are, or are to be, applied or reinvested in substantially similar assets used in the Restricted Group's business,

in each case within 364 days, or such longer period as the Majority Lenders may agree, after receipt; or

- (ii) any proceeds of an insurance claim to the extent that such Insurance Proceeds constitute Excluded Mandatory Prepayment Proceeds under paragraph (ii) of the definition of Excluded Mandatory Prepayment Proceeds.

**“Excluded Mandatory Prepayment Proceeds”** means any or any part of Disposal Proceeds or Insurance Proceeds received in a Financial Year of the Parent, to the extent that where the aggregate of:

- (i) the Disposal Proceeds of all Disposals in such Financial Year of the Parent; and
- (ii) the Insurance Proceeds of all claims in such Financial Year of the Parent,

are no more than (calculated as at the date of receipt of the last, as the case may be, relevant Disposal Proceeds or relevant Insurance Proceeds) USD 10,000,000 (or its equivalent) in such Financial Year.

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

- (b) The Parent shall ensure that the Borrowers offer to cancel Commitments and, if applicable, prepay Utilisations in the following amounts at the times and in the order of application contemplated by Clause 12.3 (*Application of mandatory prepayments*):
  - (i) the amount of the Disposal Proceeds; and
  - (ii) the amount of Insurance Proceeds.

### 12.3 Application of mandatory prepayments

- (a) Subject to paragraph (b) below, a prepayment and cancellation made under Clause 12.2 (*Disposal Proceeds and Insurance Proceeds*) shall be offered in the following order:
  - (i) first, in prepayment of Utilisations (in such order as the Parent may elect **provided that** outstanding Loans will be prepaid before outstanding Letters of Credit) and cancellation of equivalent Commitments;
  - (ii) secondly, in cancellation of Available Commitments (and the Available Commitments of the Lenders will be cancelled rateably);
  - (iii) then, in repayment and cancellation of the Ancillary Outstandings and Ancillary Commitments.

- (b) Unless the Parent makes an election under paragraph (c) below, the Borrowers shall offer to cancel Commitments and, if applicable, to prepay Utilisations at the following times:
- (i) in the case of any prepayment relating to Insurance Proceeds, promptly upon receipt of those proceeds; and
  - (ii) in the case of Disposal Proceeds, promptly upon receipt of those proceeds,
- and the prepayment and cancellation will be made on the day falling five (5) Business Days after the date of such offer, provided that in any event such prepayment and cancellation is no later than the 364th day after the date of receipt of the relevant Disposal Proceeds or Insurance Proceeds.
- (c) Subject to paragraph (d) below, the Parent may, by giving the Agent not less than two (2) Business Days' (or such shorter period as the Majority Lenders may agree) prior written notice, elect that any cancellation and, if applicable, prepayment (and corresponding cancellation) due under Clause 12.2 (*Disposal Proceeds and Insurance Proceeds*) will be made on the last day of the Interest Period relating to the Utilisation. If the Parent makes that election then an amount of the Utilisation equal to the amount of the relevant prepayment will be cancelled and, if applicable, be due and payable on the last day of its Interest Period.
- (d) If the Parent has made an election under paragraph (c) above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Utilisation in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

#### **12.4 Mandatory Prepayment Accounts and Holding Accounts**

- (a) The Parent shall ensure that Disposal Proceeds and Insurance Proceeds in respect of which the Parent has made an election under paragraph (c) of Clause 12.3 (*Application of mandatory prepayments*) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Restricted Group.
- (b) The Parent shall ensure that Excluded Disposal Proceeds and Excluded Insurance Proceeds other than the Excluded Mandatory Prepayment Proceeds are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Restricted Group.
- (c) The Parent and each Borrower irrevocably authorise the Agent to apply:
- (i) amounts credited to the Mandatory Prepayment Account; and
  - (ii) amounts credited to the Holding Account which have not been applied as permitted under the definition of, as the case may be, Excluded Disposal Proceeds or Excluded Insurance Proceeds within 364 days of receipt of the relevant proceeds (or such longer time period as the Majority Lenders may agree),

to pay amounts due and payable under Clause 12.3 (*Application of mandatory prepayments*) and otherwise under the Finance Documents. The Parent and each Borrower further irrevocably authorise the Agent to so apply amounts credited to the

Holding Account whether or not 364 days have elapsed since receipt of those proceeds if a Default has occurred and is continuing.

The Parent and each Borrower also irrevocably authorise the Agent to transfer any amounts credited to the Holding Account referred to in this paragraph (b) to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Holding Account).

- (d) A Lender or Agent (or its Affiliates) with which a Mandatory Prepayment Account or Holding Account is held acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) each such account is subject to the Transaction Security.

## **12.5 Excluded proceeds**

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

## **13. RESTRICTIONS**

### **13.1 Notices of Cancellation or Prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 11 (*Illegality, voluntary prepayment and cancellation*) shall (subject to the terms of that Clause) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

### **13.2 Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

### **13.3 Reborrowing of the Facility**

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

### **13.4 Prepayment in accordance with Agreement**

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

### **13.5 No reinstatement of Commitments**

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

### **13.6 Agent's receipt of Notices**

If the Agent receives a notice under Clause 11 (*Illegality, voluntary prepayment and cancellation*), it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender or Issuing Bank, as appropriate.

## **14. INTEREST**

### **14.1 Calculation of interest**

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

- (a) Margin;
- (b) LIBOR or, in relation to any Loan in euro, EURIBOR; and
- (c) Mandatory Cost, if any.

### **14.2 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 six (6) Months, on the dates falling at 6 Monthly intervals after the first day of the Interest Period).

### **14.3 Default interest**

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is one (1) per cent. higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 14.3 shall be immediately payable by the Obligor on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be one (1) per cent. higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

### **14.4 Notification of rates of interest**

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



## **15. INTEREST PERIODS**

### **15.1 Selection of Interest Periods and Terms**

- (a) A Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan.
- (b) Subject to this Clause 15, a Borrower (or the Parent) may select an Interest Period of one (1), two (2), three (3) or six (6) Months or any other period agreed between the Parent and the Agent (if less than six (6) Months) or the Lenders (if more than 6 Months).
- (c) An Interest Period for a Loan shall not extend beyond the Termination Date. A Borrower (or the Parent) may select an Interest Period of less than one (1) Month ending on the Termination Date.
- (d) A Loan has one Interest Period only.
- (e) Prior to the Syndication Date, Interest Periods shall be 1 Month or such other period as the Agent and the Parent may agree and any Interest Period which would otherwise end during the Month preceding or extend beyond the Syndication Date shall end on the Syndication Date.

### **15.2 Non-Business Days**

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

## **16. CHANGES TO THE CALCULATION OF INTEREST**

### **16.1 Absence of quotations**

Subject to Clause 16.2 (*Market disruption*), if LIBOR or, if applicable, EURIBOR 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 or EURIBOR shall be determined on the basis of the quotations of the remaining Base Reference Banks.

### **16.2 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;
  - (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 three (3) Business Days after the Quotation Day (or, if earlier, on the date falling three (3) Business Days prior to the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
  - (iii) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

- (b) If:
  - (i) the percentage rate per annum notified by a Lender pursuant to paragraph (a)(ii) above is less than LIBOR or, in relation to any Loan in Euro, EURIBOR; or
  - (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 or in relation to a loan in Euro, EURIBOR.

- (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 of the Base Reference Banks supplies a rate to the Agent to determine LIBOR or, if applicable, EURIBOR for the relevant currency and 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 or, if applicable, EURIBOR.

### **16.3 Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs and the Agent or the Parent so requires, the Agent and the Parent shall enter into negotiations (for a period of not more than 30 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 all the Lenders and the Parent, be binding on all Parties.

### **16.4 Break Costs**

- (a) Each Borrower shall, within three (3) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall together with its demand by the Agent, provide a certificate confirming the amount and basis of calculation (in reasonable detail) of its Break Costs for any Interest Period in which they accrue.

## **17. FEES**

### **17.1 Commitment fee**

- (a) The Parent shall pay (or procure the payment) to the Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of 45 per cent. of the Margin applicable to the Facility on that Lender’s Available Commitment from the date of this Agreement to the last day of the Availability Period.

- (b) Subject to paragraph (d) below, the accrued commitment fee is payable on the Closing Date and thereafter on the last day of each successive Financial Quarter which ends during the Availability Period, on the last day of the Availability Period and on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.
- (d) If the Closing Date does not occur on or before the date specified in paragraph (a) of Clause 5.6 (*Cancellation of Commitment*), no commitment fee shall be payable under this Agreement.

#### **17.2 Arrangement fee**

The Parent shall pay (or procure the payment) to the Arranger an arrangement and underwriting fee in the amount and at the times agreed in a Fee Letter.

#### **17.3 Agency fee**

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

#### **17.4 Security Agent fee**

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

#### **17.5 Fees payable in respect of Letters of Credit**

- (a) The Parent or the relevant Borrower shall pay to the Agent for the Issuing Bank a fronting fee at a percentage rate per annum agreed between the relevant Borrower (or the Parent) and the Issuing Bank (and notified to the Agent) (the "**Fronting Fee**") on the outstanding amount which is counter-indemnified by the other Lenders (excluding, for the avoidance of doubt, the amount which is counter-indemnified by the Issuing Bank in its capacity as a Lender) of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date.
- (b) The Parent or the relevant Borrower shall pay to the Agent for the account of each Lender, a Letter of Credit fee in the Base Currency (computed at the rate equal to the Margin applicable to a Loan on the outstanding amount of each Letter of Credit requested by it for the period from the issue of that Letter of Credit until its Expiry Date), such fee being a "**Letter of Credit Fee**". Each Letter of Credit Fee shall be distributed according to each Lender's L/C Proportion of that Letter of Credit.
- (c) The accrued Fronting Fee and each Letter of Credit Fee shall be payable on the last day of each financial quarter (or such shorter period as shall end on the Expiry Date for that Letter of Credit) starting on the date of issue of that Letter of Credit. The accrued Fronting Fee and Letter of Credit Fee applicable under the Facility is also payable to the Agent on the cancelled amount of any Lender's Commitment at the time the cancellation is effective if that Commitment is cancelled in full and the Letter of Credit is prepaid or repaid in full.

- (d) The Parent or the relevant Borrower shall pay to the Issuing Bank (for its own account) an issuance/administration fee in the amount and at the times specified in a Fee Letter.

## 17.6 Interest, commission and fees on Ancillary Facilities

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

## 18. TAX GROSS UP AND INDEMNITIES

### 18.1 Definitions

- (a) In this Agreement:

“**German Exempt Lender**” means, in relation to a German Obligor, a Lender which is (otherwise than by reason of being a Treaty Lender) able to receive interest from that German Obligor without a Tax Deduction in respect of Tax imposed by Germany.

“**German Treaty Lender**” means a Lender which is beneficially entitled to interest payable from a German Obligor to that Lender and:

- (a) is treated (for purposes of the relevant Treaty) as a resident of a German Treaty State;
- (b) is entitled under the provisions of the relevant Treaty to receive payments of interest from a person resident in Germany without a Tax Deduction (subject to the completion of any necessary procedural formalities); and
- (c) does not carry on a business in Germany through a permanent establishment with which the Lender’s participation in that Loan is effectively connected.

“**German Treaty State**” means a jurisdiction having a double taxation agreement (a “**Treaty**”) with Germany which makes provision for full exemption for Tax imposed by Germany on interest.

“**German Qualifying Lender**” means a Lender which is beneficially entitled to interest payable from a German Obligor to that Lender and which is:

- (a) lending through a Facility Office located in Germany;
- (b) a German Treaty Lender; and/or
- (c) a German Exempt Lender.

“**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.

“**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.

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 18.2 (*Tax gross-up*) or a payment under Clause 18.3 (*Tax indemnity*).

Unless a contrary indication appears, in this Clause 18 a reference to “**determines**” or “**determined**” means a determination made in the discretion of the person making the determination.

## 18.2 Tax gross-up

- (a) Each Obligor shall, and shall cause each other person making payments on behalf of such Obligor to, make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Parent shall promptly upon becoming aware that an Obligor (or any other person acting as a paying agent on behalf of an Obligor under applicable law) 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. Each Lender shall promptly upon becoming aware that it is not, or has ceased to be a German Qualifying Lender, notify the Parent. Similarly, a Lender or Issuing Bank shall notify the Agent on becoming so aware in respect of a payment payable to that Lender or Issuing Bank. If the Agent receives any such notification from a Lender or Issuing Bank it shall promptly notify the Parent and the relevant Obligor.
- (c) Subject to Clause 18.8 (*US tax forms*) below, if a Tax Deduction is required by law to be made by or on behalf of an Obligor or other person making payments on behalf of an Obligor, the amount of the payment due from that Obligor or other person shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal (on a net after-Tax basis) to the payment which would have been due if no Tax Deduction had been required.
- (d) A German Obligor is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of Tax imposed by Germany on a payment by such German Obligor of interest on a Loan 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 it was a German Qualifying Lender, but on that date that Lender is not or has ceased to be a German 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 concession of any relevant taxing authority; or
  - (ii) the relevant Lender is a German Treaty Lender and the German Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (h) below.
- (e) An Obligor is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of Tax imposed by the US on any payment on a Utilisation as a result of the relevant Lender’s failure to comply with Sections 1471 to 1474 (inclusive) of the Code (as of the date of this Agreement), any regulations promulgated thereunder or any published administrative guidance implementing such provisions to establish relief or exemption from the Tax imposed by such provisions.

- (f) If an Obligor or other person is required to make a Tax Deduction, that Obligor shall, and shall cause each other person making payments on behalf of such Obligor to, 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 relevant Obligor shall, or shall procure that each other person making payment on behalf of such Obligor shall, deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (h) A Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

### 18.3 Tax indemnity

- (a) Subject to Clause 18.8 (*US tax forms*) below, the Parent shall or shall procure that an Obligor will (within 3 Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office or other permanent establishment with which its participation in the Loan is effectively connected is located in respect of amounts received or receivable in that jurisdiction,
 

if that Tax is imposed on or calculated by reference to the overall net income received or receivable (but not any sum deemed to be received or receivable such as a Tax Deduction) by that Finance Party (which, for this purpose, shall include the branch profits tax imposed by Section 884 of the Code or franchise or similar Taxes imposed in lieu of taxes imposed on overall net income); or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 18.2 (*Tax gross-up*); or
    - (B) would have been compensated for by an increased payment under Clause 18.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 18.2 (*Tax gross-up*) applied or because the Finance Party failed to comply with its obligations under Clause 18.8 (*US tax forms*); or

- (iii) with respect to any Tax imposed as a result of the relevant Protected Party's failure to comply with Sections 1471 through 1474 of the Code (as of the date hereof), any regulations promulgated thereunder or any published administrative guidance implementing such provisions to establish relief or exemption from the Tax imposed by such provisions.
- (c) A Protected Party making or intending to make a claim under paragraph (a) above shall notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Parent.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 18.3, notify the Agent.

#### **18.4 Tax Credit**

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

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and
- (b) that Finance Party (or any Affiliate of a 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.

#### **18.5 Lender Status Confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate, Assignment Agreement or Increase Confirmation 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:

- (a) a German Qualifying Lender that is not a German Treaty Lender;
- (b) a German Exempt Lender;
- (c) a German Treaty Lender; or
- (d) neither a German Qualifying Lender nor a German Exempt Lender.

If a New Lender fails to indicate its status in accordance with this Clause 18.5 then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a German 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 or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this Clause 18.5.

## 18.6 Stamp taxes

The Parent shall (or shall procure that an Obligor will) pay and, within 3 Business Days of demand, shall (or shall procure that an Obligor will) indemnify each Finance Party against any cost, loss or liability that such Finance Party incurs in relation to all stamp duty, documentary, excise, property, registration and other similar Taxes payable in respect of any Finance Document.

## 18.7 VAT

- (a) All amounts expressed in a Finance Document to be payable by any Party to a Finance Party shall be deemed to be exclusive of any VAT. Subject to paragraph (b) below, if VAT is chargeable on any supply made by any Finance Party to any Party under a Finance Document, that Party shall pay to the Finance Party (in addition and at the same time as paying the consideration) an amount equal to the amount of such VAT (subject to such Finance Party promptly providing an appropriate invoice to such Party) provided that the reverse charge mechanism is not applicable (in which case such Party shall pay the VAT directly to the competent tax authorities).
- (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 such supply to the Supplier, such Relevant Party shall also pay to the Supplier (in addition to and at the same time as paying such amount) an amount equal to the amount of such VAT. The Recipient will promptly pay to the Relevant Party an amount equal to any credit or repayment obtained by the Recipient from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall at the same time reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 18.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “representative member” to have the same meaning as in the United Kingdom Value Added Tax Act 1994 or in the equivalent legislation of any other jurisdiction that has implemented Council Directive 2006/112/EC on the common system of value added tax).
- (e) If any supply made by a Finance Party to any Party under a Finance Document is deemed to take place where that Party has established its business then if reasonably requested by such Finance Party, the relevant Party must promptly provide such Finance Party with details of its VAT registration number and any other relevant information in connection with the Finance Party's administrative obligations and reporting requirements in connection with the supply.

## 18.8 US tax forms

The following provisions under this Clause 18.8 shall apply if the relevant Obligor with respect to a Lender is US Borrower.



- (a) The Agent and each Lender that is a US Person shall, on or prior to the date of the execution and delivery of this Agreement in the case of an Original Lender and on the date of the Transfer Certificate or Assignment Agreement (as applicable) pursuant to which it becomes a Lender in the case of any Lender other than an Original Lender, and from time to time thereafter as reasonably requested in writing by the Agent or the relevant Obligor (but only so long as such Lender remains lawfully able to do so), provide the Agent and the relevant Obligor with two properly completed and duly executed Internal Revenue Service Forms W-9, as appropriate, or any successor or other form prescribed by the Internal Revenue Service, certifying that such Lender is a US Person and is not subject to United States backup withholding tax on payments made by a US Obligor pursuant to this Agreement.
- (b) Each Lender that is not a US Person shall, on or prior to the date of the execution and delivery of this Agreement in the case of an Original Lender and on the date of the Transfer Certificate or Assignment Agreement (as applicable) pursuant to which it becomes a Lender in the case of any other Lender, and from time to time thereafter as reasonably requested in writing by the Agent or the relevant Obligor (but only so long thereafter as such Lender remains lawfully able to do so):
  - (i) in the case of a Lender claiming the benefits of an exemption from or reduction in United States federal withholding tax pursuant to a double taxation agreement between the United States and the jurisdiction of which such Lender is or is treated as a resident for relevant Tax purposes, provide the Agent and the relevant Obligor with two properly completed and duly executed Internal Revenue Service Forms W-8BEN, or any successor or other form prescribed by the Internal Revenue Service, certifying that such Lender is exempt from or entitled to a reduced rate of United States federal withholding tax under an applicable double taxation agreement on payments made by a US Obligor pursuant to this Agreement; or
  - (ii) in the case of a Lender claiming the benefits of an exemption from United States federal withholding tax because the payments otherwise subject to such withholding tax are effectively connected with the Lender's conduct of a trade or business within the United States, provide the Agent and the relevant Obligor with two properly completed and duly executed Internal Revenue Service Forms W-8ECI, or any successor or other form prescribed by the Internal Revenue Service, certifying that such payments are effectively connected with the conduct of a trade or business within the United States; or
  - (iii) in the case of a Lender claiming the benefits of the exemption from United States federal withholding tax pursuant to Section 881(c) of the Code with respect to payments of portfolio interest made by a US Obligor pursuant to this Agreement, provide the Agent and the relevant Obligor with (x) a certificate in the form of Schedule 18 (*Form of Exception Certificate*) and to the effect that such Lender is neither (i) a “bank” (within the meaning of Section 881(c)(3)(A) of the Code), (ii) a 10-percent shareholder of the relevant Obligor (within the meaning of Section 881(c)(3)(B) of the Code) nor (iii) a controlled foreign corporation related to the relevant Obligor (as such term is described in Section 881(c)(3)(C) of the Code), and (y) two properly completed and duly executed copies of Internal Revenue Service Forms W-8BEN or any successor or other form prescribed by the Internal Revenue Service, certifying that the Lender is not a US Person; or

- (iv) in the case of a Lender that is a foreign intermediary or foreign flow-through entity for United States federal income tax purposes and that is also a withholding foreign partnership within the meaning of Treasury Regulation Section 1.1441-5(c)(2) (a “Withholding Foreign Partnership”), provide the Agent and the relevant Obligor with respect to such Lender two properly completed and duly executed Internal Revenue Service Forms W-8IMY or any successor or other form prescribed by the Internal Revenue Service, as a basis for claiming exemption from United States federal withholding tax on payments made pursuant to this Agreement by a US Obligor, together with any supplementary information such Lender is required to transmit with such form; or
  - (v) in the case of a Lender that is not a Withholding Foreign Partnership but that is a nonqualified intermediary or a non-withholding foreign flow-through entity, provide the Agent and the Obligor with respect to such Lender two properly completed and duly executed Internal Revenue Service Forms W-8IMY or any successor or other form prescribed by the Internal Revenue Service, as a basis for claiming exemption from or reduction in United States federal withholding tax on payments made pursuant to this Agreement by a US Obligor, together with any supplementary information such Lender is required to transmit with such form, including with respect to each beneficiary or member of such Lender, two forms or certificates described in sub-clause (i), (ii) or (iii) above of this paragraph (b) of Clause 18.8, as applicable.
- (c) If the Agent or a Lender fails to provide the Agent or the relevant Obligor with the appropriate Internal Revenue Service form or, if applicable, the certificate, each as described above and each being properly completed and duly executed, or to update them as reasonably requested in writing by the Agent or the relevant Obligor, in each case when it is legally able to do so (other than (i) if the failure to furnish such form or certificate is due to a change in law, or in the interpretation or application thereof, or (ii) if such form, certificate or other document otherwise is not required under paragraph (a) or (b) of this Clause 18.8), United States backup withholding tax or United States federal withholding tax or any loss, liability or cost suffered for or on account of such Tax, in each case, imposed on any amount paid by US Obligor under this Agreement, shall be excluded from the gross-up at Clause 18.2 (*Tax gross-up*) and the indemnity at Clause 18.3 (*Tax indemnity*) under this Agreement by reason of such failure unless and until the Agent or the Lender, as appropriate, provides the appropriate Internal Revenue Service form or certificate that is properly completed and duly executed and establishing (x) an exemption from United States backup withholding tax and (y) a complete exemption from, or a reduction of, United States federal withholding tax on any amount paid by the relevant Obligor under this Agreement, whereupon United States federal withholding tax at such reduced rate only (to the extent a complete exemption is not available to such Lender) shall be excluded from such gross-up and indemnity for periods governed by such form and certificate. If any Internal Revenue Service form provided by a Lender pursuant to this Clause 18.8 at the time such Lender first becomes a Lender hereunder or when it first provides such form indicates a United States federal withholding tax rate in excess of zero in respect of amounts paid by the relevant Obligor under this Agreement, United States federal withholding tax at such rate shall be excluded from the gross-up at Clause 18.2 (*Tax gross-up*) and the indemnity at Clause 18.3 (*Tax indemnity*) under this Agreement unless and until the Lender provides the appropriate form certifying that a lesser rate applies, whereupon United States federal withholding tax at the lesser rate only shall be excluded from the gross-up and indemnity for periods governed by such form; provided, however, that

if at the date a Lender transferee or a Lender assignee under a Transfer Certificate or an Assignment Agreement becomes a party to this Agreement, the Lender transferor or the Lender assignor was entitled to payments under Clauses 18.2 (*Tax gross-up*) or 18.3 (*Tax indemnity*) in respect of United States federal withholding tax in connection with payments paid at such date, then, to that extent, the payments under Clause 18.2 (*Tax gross-up*) or the indemnity under Clause 18.3 (*Tax indemnity*) shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise included therein) an amount of United States federal withholding tax applicable with respect to the Lender transferor or the Lender assignor on such date; provided, further, that, for avoidance of doubt, if the properly completed Internal Revenue Service form provided by a Lender pursuant to this Clause 18.8 at the time such Lender first becomes a Lender hereunder indicates a United States withholding tax rate at zero in respect of amounts paid by the relevant Obligor under this Agreement, any increase in the United States withholding tax rate caused by any change in law thereafter shall be subject to the gross-up at Clause 18.2 (*Tax gross-up*) and the indemnity at Clause 18.3 (*Tax indemnity*) under this Agreement (except to the extent otherwise provided in Clauses 18.2(e) and 18.3(b)(iii)).

- (d) Without prejudice to the survival of any other agreement of the Obligors hereunder, the agreements and obligations of US Obligors contained in this Clause 18.8 shall survive the payment in full of principal, interest and all other amounts payable hereunder and the termination of this Agreement.

## **19. INCREASED COSTS**

### **19.1 Increased costs**

- (a) Subject to Clause 19.3 (*Exceptions*) the Parent shall (or shall procure that an Obligor will), within three (3) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation, in each case, 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 an Ancillary Commitment or funding or performing its obligations under any Finance Document or Letter of Credit.

### **19.2 Increased cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 19.1 (*Increased Costs*) shall promptly on becoming aware of the same notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.

- (b) Each Finance Party shall, together with its demand, provide a certificate confirming the amount and basis of calculation (in reasonable detail) of its Increased Costs.

### 19.3 Exceptions

- (a) Clause 19.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) compensated for by Clause 18.3 (*Tax indemnity*) (or would have been compensated for under Clause 18.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 18.3 (*Tax indemnity*) applied);
  - (iii) compensated for by the payment of the Mandatory Cost;
  - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; 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 ("**Basel II**") or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates).
- (b) In this Clause 19.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 18.1 (*Definitions*).

## 20. OTHER INDEMNITIES

### 20.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
  - (i) making or filing a claim or proof against that Obligor; or
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three (3) Business Days of demand, indemnify the Arranger and each other Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

## 20.2 Other indemnities

The Parent shall (or shall procure that an Obligor will), within three (3) Business Days of demand, indemnify the Arranger and each other Secured Party against any cost, loss or liability 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 34 (*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);
- (d) issuing or making arrangements to issue a Letter of Credit requested by the Parent or a Borrower in a Utilisation Request but not issued by reason of the operation of any one or more of the provisions of this Agreement; or
- (e) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.

## 20.3 Indemnity to the Agent

The Parent shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

## 20.4 Indemnity to the Security Agent

- (a) Each Obligor shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
  - (i) the taking, holding, protection or enforcement of the Transaction Security,
  - (ii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law; or
  - (iii) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.
- (b) The Security Agent may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 20.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

## **21. MITIGATION BY THE LENDERS**

### **21.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Parent, take all commercially reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 11.1 (*Illegality*) (or, in respect of the Issuing Bank, Clause 11.2 (*Illegality in relation to Issuing Bank*)), Clause 18 (*Tax gross-up and indemnities*) or Clause 19 (*Increased Costs*) or paragraph 3 of Schedule 4 (*Mandatory Cost formula*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

### **21.2 Limitation of liability**

- (a) The Parent shall (or shall procure than an Obligor will) promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 21.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 21.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **22. COSTS AND EXPENSES**

### **22.1 Transaction expenses**

The Parent shall (or shall procure that an Obligor will) promptly on demand (and in any case within three (3) Business Days of demand) pay to the Agent, the Arranger, the Issuing Bank, the Original Lenders and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security (subject to, other than in the case of the Security Agent, the cap agreed in the Commitment Letter);
- (b) any other Finance Documents executed after the Closing Date; and
- (c) in the case of the Security Agent, subject to any cap (if any), agreed between the Parent and the Security Agent in the Fee Letter.

### **22.2 Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 35.10 (*Change of currency*), the Parent shall, within three (3) Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

### **22.3 Enforcement and preservation costs**

The Parent shall (or shall procure than an Obligor will), within three (3) Business Days of demand, pay to the Arranger and each other Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

## **23. GUARANTEE AND INDEMNITY**

### **23.1 Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally, jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand (whether as stated maturity, upon acceleration or otherwise, and at all times thereafter) 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 23 if the amount claimed had been recoverable on the basis of a guarantee,

(the "Guarantee").

### **23.2 Continuing Guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

### **23.3 Reinstatement; Stay of Acceleration**

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 or returned in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 23 will continue or be reinstated as if the discharge, release or arrangement had not occurred. If acceleration of the time of payment of any of the guaranteed obligations is stayed upon the moratorium, insolvency, bankruptcy or reorganisation of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the guaranteed obligations shall nonetheless be payable by the Guarantors forthwith on demand by a Finance Party.

#### **23.4 Waiver of defences**

The obligations of each Guarantor under this Clause 23 will not be affected by an act, omission, matter or thing which, but for this Clause 23, would reduce, release or prejudice any of its obligations under this Clause 23 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
- (g) any insolvency or similar proceedings; or
- (h) with respect to any US Guarantor, any defence to its obligations hereunder that it is not a surety under any US state law.

#### **23.5 Guarantor Intent**

Without prejudice to the generality of Clause 23.4 (*Waiver of Defences*), each Guarantor expressly confirms that it intends that this Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing 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.

#### **23.6 Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 23. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.



### 23.7 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 (bearing interest at commercial rates) any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 23.

### 23.8 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 23:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 23.1 (*Guarantee and Indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 35 (*Payment mechanics*).

### 23.9 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.

### **23.10 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.

### **23.11 Guarantee limitations in respect of German Guarantors<sup>4</sup>**

- (a) Each Finance Party agrees that the enforcement of the Guarantee and indemnity pursuant to this Clause 23, other than in respect of Loans (including, for the avoidance of doubt, any loans under any Ancillary Facility) or Letters of Credit made available to such German Guarantor or to a Subsidiary of such German Guarantor by a Lender, shall be limited, in relation to any German Guarantor, to the extent that payment under that guarantee and indemnity would cause the German Guarantor's (or in case the German Guarantor is a GmbH & Co. KG, its general partner's) Net Assets as per the date of enforcement of this guarantee and indemnity to fall below its registered share capital (*Stammkapital*) or where such German Guarantor's Net Assets already are below the amount of its registered share capital (*Unterbilanz*), cause such amount to be further reduced and, as a result, cause a violation of Sections 30, 31 of the German Limited Liability Companies Act ("**GmbHG**") in accordance with the jurisprudence from time to time of the German Federal Supreme Court (Bundesgerichtshof).

(For purposes of this Clause 23.11, "Net Assets" shall mean the assets pursuant to section 266 (2) (A), (B), (C), (D) and (E) of the German Commercial Code (*Handelsgesetzbuch*) less the sum of the non-subordinated liabilities pursuant to section 266 (3) (B), (C), (D) and (E) of German Commercial Code (*Handelsgesetzbuch*).

- (b) For the purposes of the calculation of the amounts to be released and/or of which enforcement is limited, the following balance sheet items shall be adjusted as follows:
  - (i) the amount of any increase of the stated share capital (*Stammkapital*) of the German Guarantor or, in case the German Guarantor is a GmbH & Co. KG, its general partner (*Komplementär*), effected after the date of this Agreement without the prior written consent of the Agent shall be deducted from the relevant stated share capital;
  - (ii) loans provided to the Affected German Guarantor by a member of the Group shall be disregarded if such loans would be considered subordinated in accordance with Section 39 para. 1 No. 1 to 5 of the German Insolvency Act when preparing a balance sheet in accordance with Section 19 paragraph 2 of the German Insolvency Act; and

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<sup>4</sup> German Guarantor limitation language being finalised.

- (iii) loans and other liabilities incurred in violation of the provisions of this Agreement shall be disregarded when calculating the Net Assets.
- (c) The relevant German Guarantor shall realise, to the extent legally permitted and commercially reasonable, in a situation where it does not have sufficient Net Assets to maintain its (or its general partner's) stated share capital, any and all of its assets that are shown in its balance sheet with a book value (*Buchwert*) that is significantly lower than the market value of the assets if the relevant asset is not necessary for its business (*betriebsnotwendig*).
- (d) The limitations set out in this Clause 23.11 shall not apply:
  - (i) to any amounts due and payable under the Guarantee and indemnity pursuant to this Clause 23 which relate to funds which have been on-lent or otherwise passed on to the German Guarantor or to any of its Subsidiaries and are still outstanding at the time the notification by a Finance Party of claims raised under Guarantee is made (provided that the German Guarantor must prove (*Beweislast*) that or to which extent no such amounts have been thus lent, on-lent or otherwise passed on); or
  - (ii) to the extent the German Guarantor is a party to a domination agreement (*Beherrschungsvertrag*) as dominated entity (*beherrschtes Unternehmen*) with the Obligors whose obligations under this Agreement (other than under this Clause 23) are enforced as dominating entity (*herrschendes Unternehmen*).
- (e) The enforcement of the Guarantee shall initially be excluded if no later than ten (10) Business Days following a demand by the Agent directly to the German Guarantor to make an according payment, the managing directors on behalf of the German Guarantor have confirmed in writing to the Agent:
  - (i) to what extent the Guarantee granted hereunder is an up-stream or crossstream guarantee as described in Clause 23.11 (a) above; and
  - (ii) which amount of such cross-stream and/or up-stream guarantee cannot be enforced as it would cause the Net Assets of the German Guarantor, or, where the guarantor is a German GmbH & Co. KG Guarantor, its general partner to be less than its respective registered share capital (taking into account the adjustments and the realisation duties set out above),
- (f) (the “**Management Determination**”) and such confirmation is supported by a reasonably satisfactory calculation provided that the Agent shall in any event be entitled to enforce the guarantee for any amounts where such enforcement would, in accordance with the Management Determination, not cause the German Guarantor's, or, where the guarantor is a German GmbH & Co. KG Guarantor, its general partner's Net Assets to be less than (or to fall further below) the amount of its respective registered share capital (in each case as calculated and adjusted as set out above). If the German Guarantor fails to deliver a Management Determination within ten (10) Business Days after receipt of the payment demand from the Security Agent, the Security Agent shall be entitled to enforce the Guarantee without any limitation or restriction.
- (g) Following the Agent's receipt of a Management Determination, any further enforcement of the Guarantee (i.e. any enforcement to which the Facility Agent is not already entitled to pursuant to Clause 23.11 (e)) shall be excluded pursuant to Clause 23.11 (a) above for a period of no more than 30 Business Days. If the Agent

receives within such 30 Business Day period (i) an up-to date balance sheet together with (ii) a determination in each case prepared by auditors of international standard and reputation appointed by the relevant German Guarantor either confirming the Management Determination or setting out deviations from the Management Determination (the “**Auditor's Determination**”), the further enforcement of the Guarantee shall be limited, if and to the extent such enforcement would, in accordance with the Auditor's Determination cause the German Guarantor's, or, where the guarantor is a German GmbH & Co. KG Guarantor, its general partner's Net Assets to be less than (or to fall further below) the amount of its respective registered share capital in each case as calculated and adjusted in accordance with Clause 23.11 (b) above. If the German Guarantor fails to deliver an Auditor's Determination within 20 Business Days after receipt of the Management Determination, the Agent shall be entitled to enforce the Guarantee without any limitation or restriction.

- (h) If, after it has been provided with an Auditors' Determination which prevented it from demanding any or only partial payment under this Guarantee, the Agent ascertains in good faith that the financial condition of the relevant German Guarantor as set out in the Auditors' Determination has substantially improved, the Agent may, at the relevant German Guarantor's cost and expense, arrange for the preparation of an updated balance sheet of the relevant German Guarantor by applying the same principles that were used for the preparation of the Auditors' Determination by the Auditors who prepared the Auditors' Determination pursuant to paragraph (g) above in order for such auditors to determine whether (and, if so, to what extent) the impairment of the registered share capital of such German Guarantor has been cured as a result of the improvement of the financial condition of the relevant German Guarantor. The Agent shall be entitled to enforce the Guarantee to the extent that the Auditors determine that the impairment of the registered share capital of such German Guarantor has been cured.
- (i) The agreement of the Agent to abstain from demanding any or part of the payment under this Guarantee in accordance with the provisions above shall not constitute a waiver (*Verzicht*) of any right granted under this Agreement or any other Finance Document to the Agent or any Finance Party. No reduction of the amount enforceable under this guarantee and indemnity in accordance with the above limitations will prejudice the rights of the Finance Parties to continue enforcing the guarantee and indemnity (subject always to the operation of the limitation set out above at the time of such enforcement) until full satisfaction of the guaranteed claims or prevent the Security Agent from claiming in court that the provision of this Guarantee and/or making payments under this Guarantee by the relevant German Guarantor does not fall within the scope of Sections 30 and/or 31 of the GmbHG with the aim that the Security Agent shall be entitled to enforce the Guarantee without any limitation or restriction.

### **23.12 Guarantee Limitations in respect of Dutch Guarantors**

Notwithstanding any other provision of this Clause 23 (*Guarantee and Indemnity*) the guarantee, indemnity and other obligations of any Guarantor incorporated in the Netherlands expressed to be assumed in this Clause 23 (*Guarantee and Indemnity*) shall be deemed not to be assumed by such Guarantor to the extent that the same would constitute unlawful financial assistance within the meaning of Article 2:207c or 2:98c Dutch Civil Code (*Burgerlijk Wetboek*) or any other applicable financial assistance rules under any relevant jurisdiction (the “**Prohibition**”) and the provisions of this Agreement and the other Finance Documents shall be construed accordingly. For the avoidance of doubt it is expressly acknowledged that the

relevant Dutch Guarantors will continue to guarantee all such obligations which, if included, do not constitute a violation of the Prohibition.

### **23.13 Other Limitations**

The guarantee created under this Clause 23 does not apply to any liability to the extent that it would result in the guarantee being avoidable, invalid, unenforceable or illegal and with respect to any Additional Guarantor is subject to the limitations set out in the Accession Deed applicable to such Additional Guarantor.

## **24. REPRESENTATIONS**

Save as expressly stated to the contrary, each Obligor makes the representations and warranties set out in this Clause 24 to each Finance Party at the times specified in Clause 24.37 (*Times at which representations are made*) and the Parent acknowledges that the Finance Parties have entered into this Agreement in reliance on these representations and warranties.

### **24.1 Status**

- (a) It and each of its Restricted Subsidiaries is a limited liability company or, as the case may be, limited partnership, duly incorporated or organised (as applicable), validly existing and in good standing (as applicable) under the law of its jurisdiction of incorporation or organisation.
- (b) It and each of its Restricted Subsidiaries has the power and authority to own its assets and carry on its business as it is being conducted and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

### **24.2 Binding obligations**

Subject to the Legal Reservations and the entry of the Confirmation Order by the Bankruptcy Court:

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

### **24.3 Non-UK Obligors**

Any Obligor which is not registered in the United Kingdom has not registered one or more “establishments” (as that term is defined in Part 1 of the Overseas Companies Regulations 2009) with the Registrar of Companies or, if it has so registered, it has provided to the Agent sufficient details to enable an accurate search against it to be undertaken by the Lenders at the Companies Registry.

### **24.4 Non-conflict with other obligations**

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

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

**24.5 Power and authority**

- (a) Subject to the entry of the Confirmation Order by the Bankruptcy Court, it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

**24.6 Validity and admissibility in evidence**

- (a) Subject to the Perfection Requirements and the entry of the Confirmation Order by the Bankruptcy Court, all authorisations required:
  - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
  - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,
 have been obtained or effected and are in full force and effect (or will be when required).
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Restricted Group have been obtained or effected and are in full force and effect except to the extent that the failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

**24.7 Governing law and enforcement**

Subject to any Legal Reservations:

- (a) the choice of the governing law of the Finance Documents to which it is a party will be recognised and enforced in its Relevant Jurisdictions; and
- (b) 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 and in the jurisdiction of its governing law.

**24.8 Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 28.9 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 28.10 (*Creditors' process*),

has been taken or, to the knowledge of the Parent, threatened in relation to a member of the Restricted Group and none of the circumstances described in Clause 28.8 (*Insolvency*) applies to a member of the Restricted Group, in each case, other than the Existing Bankruptcy Cases.

#### **24.9 No filing or stamp taxes**

Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except any filing, registration, recording or enrolling or any tax or fee payable in connection with the Transaction Security or notified to the Agent prior to the date of this Agreement or in the case of an Additional Obligor prior to its accession to such Finance Documents.

#### **24.10 Deduction of Tax**

No deduction for or on account of Tax is required to be made from any payment made by or on behalf of any Obligor under any Finance Document.

#### **24.11 No default**

- (a) No Event of Default and, on the date of this Agreement and 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 Transaction Document.
- (b) 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.

#### **24.12 No misleading information**

Save as disclosed in writing to the Agent and the Arranger prior to the date of this Agreement (or, in relation to the Information Memorandum, prior to the date of the Information Memorandum), the Parent makes the following representations and warranties:

- (a) any factual information contained in the Information Memorandum or the Information Package was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;
- (b) the Base Case Model has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and the financial projections contained in the Base Case Model have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions and have been approved by the board of directors of the Parent;

- (c) any financial projection or forecast contained in the Information Memorandum or the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration and have been approved by the board of directors of the Parent;
- (d) the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum or the Information Package were made in good faith after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds believed to be reasonable at the time expressed;
- (e) no event or circumstance has occurred or arisen and no information has been omitted from the Information Memorandum or the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Memorandum or the Information Package being untrue or misleading in any material respect;
- (f) all material information provided to a Finance Party by or on behalf the Parent or the Company on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time they were prepared and supplied;
- (g) all material information provided to the Investors by or on behalf the Parent on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is, to the best of its knowledge and belief, accurate and not misleading in any material respect and all projections provided to the Investors by or on behalf of the Parent 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 they were prepared and supplied; and
- (h) all other written information provided pursuant to the Finance Documents (including any amendment or waiver thereof) by any member of the Restricted Group to the Agent in its capacity as such was, to the best of its knowledge and belief after due and careful enquiry, as at the date of that written information true, complete and accurate in all material respects and not misleading in any material respect.

The representations and warranties made with respect to the Structure Memorandum are made by the Parent in this Clause 24.12 only so far as it is aware after making due and careful enquiries.

### **24.13 Financial Statements**

The representations and warranties in this Clause 24.13 are made by the Parent only:

- (a) The Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied unless expressly disclosed to the Agent in writing to the contrary.
- (b) The unaudited Original Financial Statements fairly represent its financial condition and results of operations (consolidated with DIC Almatris Equityco Cooperatief



U.A.) during the relevant financial reporting period unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement.

- (c) The audited Original Financial Statements give a true and fair view of its financial condition and results of operations (consolidated with DIC Almatys Equityco Cooperatief U.A.) during the relevant financial year unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement.
- (d) Save as disclosed to the Agent and the Arrangers in the memorandum dated [●] and from [●], there has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Parent) since the date of the most recent Original Financial Statements delivered to the Agent under paragraph (b) of the definition of Original Financial Statements.
- (e) Its most recent financial statements delivered pursuant to Clause 25.1(a) (*Financial Statements*):
  - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and the Base Case Model; 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.
- (f) The budgets and forecasts prepared in April 2010 and each other budget and forecast 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 fair and reasonable as at the date they were prepared and supplied.

#### **24.14 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which is not frivolous or vexatious and which, if adversely determined, are reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any of its Restricted Subsidiaries.

#### **24.15 No breach of laws**

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.

#### **24.16 No labour dispute**

No labour disputes are currently or (to the best of its knowledge and belief) have been threatened or are pending against it or any member of the Restricted Group which is not frivolous or vexatious and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

#### **24.17 Environmental laws**

- (a) It and each member of the Restricted Group is in compliance with Clause 27.4 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would

prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Restricted Group which is not frivolous or vexatious where that claim has or is reasonably likely, if determined against that member of the Restricted Group, to have a Material Adverse Effect.
- (c) The cost to the Restricted Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for in the Base Case Model.

#### **24.18 Taxation**

- (a) Save as disclosed to the Agent and the Arrangers in the memorandum dated [●] and from [●], it is not (and no member of the Restricted Group is) materially overdue in the filing of any Tax returns and it is not (and no member of the Restricted Group is) overdue in the payment of any amount in respect of Tax to an extent which is reasonably likely to have a Material Adverse Effect.
- (b) Save as disclosed to the Agent and the Arrangers in the memorandum dated [●] and from [●], no claims or investigations are being, or are reasonably likely to be, made or conducted against it (or against any member of the Restricted Group) with respect to Taxes such that a liability of, or claim against, any member of the Restricted Group which would have a Material Adverse Effect is reasonably likely to arise.
- (c) It is (and each member of the Restricted Group is) resident for Tax purposes only in the jurisdiction of its incorporation.

#### **24.19 Security and Financial Indebtedness**

- (a) No Security or Quasi Security exists over all or any of the present or future assets of any member of the Restricted Group other than:
  - (i) any Security or Quasi Security permitted by this Agreement; and
  - (ii) on or prior to the Closing Date, Security securing the Existing Facilities.
- (b) No member of the Restricted Group has any Financial Indebtedness outstanding other than:
  - (i) any Financial Indebtedness permitted by this Agreement; and
  - (ii) on or prior to the Closing Date, Financial Indebtedness under the Existing Facilities.

#### **24.20 Transaction Security**

Subject to the Legal Reservations and due evidencing, notification, registration, stamping, entry and filing with any applicable land, mortgage and other registry, each Transaction Security Document to which it is a party validly creates the Security which is expressed to be created by that Transaction Security Document.

#### **24.21 Ranking**

Subject to the Legal Reservations, the Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or pari passu ranking Security.

#### **24.22 Good title to assets**

To the best of its knowledge, 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 as presently conducted.

#### **24.23 Legal and beneficial ownership**

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

#### **24.24 Shares**

- (a) The shares of any member of the Restricted Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights.
- (b) The constitutional documents of companies whose shares are subject to the Transaction Security (other than the Japanese Joint Venture) do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security.
- (c) Other than as set out in the Structure Memorandum, there are no agreements in force which provide for, or corporate resolutions passed which require, the issue or allotment of, or grant any person the right (whether conditional or otherwise) to call for the issue or allotment of, any share or loan capital of any member of the Restricted Group (other than the Japanese Joint Venture) (including any option or right of pre-emption or conversion).

#### **24.25 Intellectual Property**

It and each of its Restricted Subsidiaries:

- (a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is required in the context of its business and which is required by it in order to carry on its business as it is being conducted and as contemplated in the Base Case Model;
- (b) does not (nor does any of its Restricted Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any respect; and
- (c) has taken all formal or procedural actions (including payment of fees) required to maintain any Intellectual Property owned by it,

in the case of paragraphs (a) and (c) in a manner where failure has or is reasonably likely to have, and in the case of (b) which has or is reasonably likely to have, a Material Adverse Effect.

#### 24.26 Group Structure Chart

- (a) Assuming the Closing Date occurs, the Group Structure Chart is true, complete and accurate in all material respects and shows the following information:
  - (i) each member of the Group, including current name and company registration number, its jurisdiction of incorporation and/or establishment, its shareholders and indicating whether a company is a Dormant Subsidiary or is not a company with limited liability; and
  - (ii) all minority interests in any member of the Group and any person in which any member of the Group holds shares in its issued share capital or equivalent ownership interest of such person.
- (b) All necessary transfers, share exchanges and other steps resulting in the final Group structure are set out in the Structure Memorandum and have been or will be taken in compliance with all relevant laws and regulations and all requirements of relevant regulatory authorities.
- (c) All intra-Group loan balances are as set out in the schedule annexed to the Group Structure Chart.

#### 24.27 Obligors

- (a) All Material Companies which are members of the Guarantor Group are Guarantors.
- (b) The aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA (as defined in Clause 26 (*Financial Covenants*)), the aggregate gross assets and the aggregate turnover of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Restricted Group items and investments in Restricted Subsidiaries of any member of the Restricted Group) exceeds on the Closing Date, 90 per cent. of Consolidated EBITDA, consolidated gross assets or turnover of the Guarantor Group.

#### 24.28 Accounting reference date

The Accounting Reference Date of each member of the Restricted Group other than Almatris Alumina Private Ltd. (incorporated in India) is 31 December, and the Accounting Reference Date of Almatris Alumina Private Ltd. is 31 March.

#### 24.29 Centre of main interests and establishments

- (a) Subject to paragraph (b) below, 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, the “**COMI**”) is situated in its jurisdiction of incorporation.
- (b) Each Finance Party acknowledges and agrees that, subject to delivery of a structure paper describing the tax risks and the tax consequences, in form and substance satisfactory to the Majority Lenders and which is capable of being relied upon by the Finance Parties, the COMI (including in the meaning of section 3 paragraph 1, sentence 2 of the German Insolvency Code (*Insolvenzordnung*)) of Blitz F07-neunhundert-sechzig-drei GmbH and Almatris Holdings GmbH, may but is not required to, be shifted to the U.S.

### **24.30 Employee Benefit Plans**

To the best knowledge and belief of each Obligor, having made due enquiry:

- (a) except as would not be reasonably expected to result in a Material Adverse Effect, no ERISA Event has occurred or is reasonably expected to occur;
- (b) each Plan has been administered in material compliance with all applicable provisions and requirements of ERISA and the Code;
- (c) with respect to a Single Employer Plan, there exists no Unfunded Current Liability that could reasonably be expected to result in material liability to any Obligor or any of their respective ERISA Affiliates; and
- (d) none of the Obligors have any material contingent liability with respect to any post-retirement benefit under any “welfare plan” (as defined in Section 3(1) of ERISA), other than liability for continuation coverage under Part 6 Title I or ERISA.

### **24.31 No adverse consequences**

- (a) To its knowledge, it is not necessary under the laws of its Relevant Jurisdictions:
  - (i) in order to enable any Finance Party to enforce its rights under any Finance Document; or
  - (ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.
- (b) To its knowledge, no Finance Party is or will be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.

### **24.32 Holding companies**

Except:

- (a) as may arise under the Transaction Documents;
- (b) as required to give effect to the transactions contemplated in the Structure Memorandum;
- (c) as may be required in connection with its continuing corporate existence; or
- (d) arising under the Transaction Documents or as permitted under Clause 27.8 (*Holding Companies*),

on the Closing Date, the Parent and the Company have not traded or incurred any liabilities or commitments (actual or contingent, present or future) other than, in respect of the Parent in acting as the Holding Company of the Company, and in respect of the Company, in acting as the Holding Company of Almatris B.V.

### **24.33 Anti-Terrorism Laws**

- (a) To its knowledge, neither it nor any of its Restricted Subsidiaries:

- (i) is, to the extent applicable to it, in violation of any Anti-Terrorism Law;
  - (ii) is a Designated Person; or
  - (iii) deals in any property or interest in property blocked pursuant to any Anti-Terrorism Law.
- (b) It and each of its Affiliates, to its knowledge and, to the extent applicable to it, have taken reasonable measures to ensure compliance with Anti-Terrorism Laws.

**24.34 US Regulation**

- (a) It is not a “public utility” within the meaning of, or subject to regulation under, the United States Federal Power Act of 1920, as amended.
- (b) It is not an “investment company” or a company “controlled” by an “investment company” within the meaning of the United States Investment Company Act of 1940, as amended.
- (c) It is not in violation of the Foreign Corrupt Practices Act 1977, as amended.
- (d) Neither the making of any Utilisation nor the use of the proceeds thereof will violate or be inconsistent with the provisions of any of the foregoing Acts or any, rule, regulation or order of the SEC promulgated thereunder.

**24.35 Margin regulations**

- (a) No Obligor is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.
- (b) The proceeds of the Utilisations will not be used, directly or indirectly, in whole or in part, for “purchasing” or “carrying” Margin Stock in contravention of Regulation U or Regulation X.
- (c) Neither the making of any Utilisation nor the use of the proceeds thereof will violate or be inconsistent with the provisions of Regulation T, Regulation U or Regulation X.

**24.36 Money Laundering Act**

Each Borrower hereby confirms to each Lender that all Utilisations made by it under this Agreement will be made solely for its own account or for the account of the Restricted Group.

**24.37 Times when representations made**

- (a) All the representations and warranties in this Clause 24 are made by each Original Obligor on the date of this Agreement.
- (b) All the representations and warranties in this Clause 24 are deemed to be made by each Obligor on the Closing Date except for the representations and warranties set out in Clause 24.12 (*No misleading information*) which are deemed to be made by the Parent (i) with respect to the Information Memorandum, on the date the Information Memorandum is approved by the Parent, (ii) with respect to the Base Case Model, on the date of this Agreement and on the Closing Date and (iii) with respect to the Information Package (other than the Base Case Model), on the date of this Agreement and on any later date (agreed with the Parent if later than the

Syndication Date) on which the Information Package (or part of it) is released to the Arranger for distribution in connection with syndication.

- (c) The representations and warranties in Clause 24.12 (*No misleading information*) are deemed to be made on the Syndication Date.
- (d) 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.
- (e) All the representations and warranties in this Clause 24 (except Clause 24.12 (*No misleading information*), Clause 24.26 (*Group Structure Chart*), and Clause 24.32 (*Holding Companies*)) are deemed to be made by each Additional Obligor on the day on which it becomes an Additional Obligor, provided that in respect of Clause 24.13 (*Financial Statements*) such Additional Obligor shall only be deemed to make a representation and warranty in respect of paragraph (d) of that Clause and only in respect of its most recent financial statements.
- (f) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## 25. INFORMATION UNDERTAKINGS

The undertakings in this Clause 25 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 25:

“**Annual Financial Statements**” means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 25.1 (*Financial statements*).

“**Monthly Financial Statements**” means the financial statements delivered pursuant to paragraph (c) of Clause 25.1 (*Financial statements*).

“**Quarterly Financial Statements**” means the financial statements delivered pursuant to paragraph (b) of Clause 25.1 (*Financial statements*).

### 25.1 Financial statements

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

- (a) as soon as they are available, but in any event within 120 days (in the case of (i) below) or 180 days, or earlier if unaudited, (in the case of (ii) and (iii) below) after the end of each of its Financial Years:
  - (i) its audited consolidated financial statements for that Financial Year;
  - (ii) if requested by the Agent (acting on the instructions of any Lender), the financial statements of any Obligor which is legally obliged to produce annual financial statements for that Financial Year, audited if required by law; and
  - (iii) if requested by the Agent, the financial statements of each member of the Group (other than an Obligor) which is legally obliged to produce annual financial statements for that Financial Year, audited if required by law;

- (b) as soon as they are available, but in any event within 45 days after the end of each Financial Quarter of each of its Financial Years its consolidated financial statements for that Financial Quarter;
- (c) as soon as they become available, but in any event within 30 days after the end of each Month of each of its Financial Years (or 45 days after the end of January in respect of each January of each of its Financial Years) its consolidated financial statements for that Month (to include cumulative management accounts for the Financial Year to date); and
- (d) If the members of the Restricted Group that are not members of the Guarantor Group and the Unrestricted Subsidiaries, if any, taken together as a group (collectively, “**Excluded Subsidiaries**”) constitute Significant Subsidiaries of the Parent, then concurrently with the delivery of the annual and quarterly information required by paragraphs (a) and (b) of this Clause 25.1, the Parent shall deliver a statement setting forth the revenue, total assets, income and EBITDA for the Excluded Subsidiaries, taken as a group, as of such balance sheet date and for such period.

## 25.2 Provision and contents of Compliance Certificate

- (a) The Parent shall supply a Compliance Certificate to the Agent with each set of its audited consolidated Annual Financial Statements and each set of its consolidated Quarterly Financial Statements.
- (b) The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 26 (*Financial Covenants*), identifying which members of the Group are Material Companies and confirming compliance with Clause 27.21 (*Guarantors*).
- (c) Each Compliance Certificate shall be signed by two directors of the Parent (one of which being the chief financial officer of the Parent) and, if required to be delivered with the consolidated Annual Financial Statements of the Parent, shall be reported on by the Parent’s Auditors.

## 25.3 Requirements as to financial statements<sup>5</sup>

- (a) The Parent shall procure that each set of Annual Financial Statements, Quarterly Financial Statements and Monthly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Parent shall procure that:
  - (i) each set of Annual Financial Statements shall be audited by the Auditors; and
  - (ii) each set of Quarterly Financial Statements is accompanied by a statement by the Senior Management (or the replacements thereof) commenting on the performance of the Group for the Financial Quarter to which the financial statements relate and any material developments or proposals affecting the Group or its business.
- (b) Each set of financial statements delivered pursuant to Clause 25.1 (*Financial statements*):

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<sup>5</sup> Requirement with regard to monthly statements- open point.



- (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 other cases), its (or, as the case may be, its consolidated) financial condition and operations as at the date as at which those financial statements were drawn up and, in the case of the Annual Financial Statements, shall be accompanied by any letter addressed to the management of the relevant company by the Auditors and accompanying those Annual Financial Statements;
- (ii) in the case of the Quarterly Financial Statements, shall be accompanied by a statement by the directors of the Parent comparing actual performance for the period to which the financial statements relate to:
  - (A) the projected performance for that period set out in the Budget; and
  - (B) the actual performance for the corresponding period in the preceding Financial Year of the Group; and
- (iii) shall be prepared in accordance with the Accounting Principles unless, in relation to any set of financial statements, the Parent notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) 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 Base Case Model or, in the case of the Parent, 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 whether Clause 26 (*Financial covenants*) has been complied with and to make an accurate comparison between the financial position indicated in those financial statements and the Base Case Model and in the case of the Parent, 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 Base Case Model or, as the case may be, the Original Financial Statements were prepared.

- (c) If the Parent notifies the Agent of a change in accordance with paragraph (b)(iii) above, the Parent and the Agent shall enter into negotiations in good faith with a view to agreeing any amendments to this Agreement which are necessary as a result of the change. These amendments will be such as to ensure that the change does not result in any material alteration in the commercial effect of the obligations contained in this Agreement. If any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms (subject to the Agent receiving the prior consent of the Majority Lenders).
- (d) Upon a Default or suspected Default, if the Agent wishes to discuss the financial position of any member of the Group with the Auditors, the Agent may notify the Parent, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Parent must ensure that the Auditors are authorised (at the expense of the Parent except, in the case of a suspected Default only, where the

result of such investigation reveals no Default to have had occurred which such case shall be at the expense of the Lenders):

- (i) to discuss the financial position of each member of the Group with the Agent on request from the Agent; and
  - (ii) to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.
- (e) Where this Agreement requires the Parent to supply the consolidated financial statements of itself or the Group, the Parent may supply financial statements consolidated at the level of DIC Almatix Equityco Cooperratief U.A. in respect of any period ending on or before 31 January 2011.

#### **25.4 Budget**

- (a) The Parent shall supply to the Agent in sufficient copies for all the Lenders:
- (i) in respect of the 2011 Financial Year, as soon as the same becomes available but in any event before 31 March 2011; and
  - (ii) in respect of each Financial Year thereafter, as soon as the same become available but in any event before the start of each of its Financial Years,
- an annual Budget for that financial year.
- (b) The Parent shall ensure that each Budget:
- (i) is in a form reasonably acceptable to the Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Group, projected financial covenant calculations, relevant key performance indicators and a capital expenditure plan (broken down by maintenance and discretionary capital expenditure, broken down by jurisdiction of such capital expenditure and further details of any capital expenditure project in excess of USD 5,000,000) and together with commentary;
  - (ii) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 25.1 (*Financial statements*) and is broken down on a monthly basis; and
  - (iii) has been approved by the board of directors of the Parent.
- (c) If the Parent updates or changes the Budget in any material respect, it shall promptly following (but in any event not later than ten (10) Business Days of) the update or change being made deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

#### **25.5 Group companies**

At the same time as providing the Compliance Certificate supplied with its Annual Financial Statements, the Parent shall supply to the Agent a report issued by its Auditors stating which of its Restricted Subsidiaries are Material Companies and confirming that the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA, as defined in Clause 26 (*Financial Covenants*)), aggregate gross assets and aggregate turnover of the Guarantors (calculated on an unconsolidated basis and

excluding all intra-Group items and investments in Restricted Subsidiaries of any member of the Group) exceeds 90 per cent. of Consolidated EBITDA (as defined in Clause 26 (*Financial Covenants*)), gross assets and turnover of the Guarantor Group.

## **25.6 Presentations**

- (a) If requested by the Agent, at least two directors of the Parent (one of whom shall be the chief financial officer) will give a presentation to the Finance Parties in every Financial Year (or more often if a Default may have occurred or if the Agent so requests on instructions from the Majority Lenders if facts or circumstances are likely to occur that is reasonably likely to give rise to a Default) about the on-going business and financial performance of the Group.
- (b) The Parent will invite the Lenders to the quarterly and all other public calls held for holders of any of the Notes and give the Lenders reasonable notice of such calls.

## **25.7 Unrestricted Subsidiaries**

If any Subsidiaries of the Parent have been designated as Unrestricted Subsidiaries, the information delivered under Clauses 25.1 (*Financial statements*), 25.2 (*Provision and contents or Compliance Certificate*) and 25.4 (*Budget*) will include reasonably detailed information as to the financial condition of the Restricted Group separate from that of the Unrestricted Subsidiaries.

## **25.8 Information: miscellaneous**

The Parent 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 required by law to be dispatched by the Parent to its shareholders generally (or any class of them) or dispatched by the Parent or any Obligor to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings that are not frivolous or vexatious which are current, threatened or pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any labour dispute that are not frivolous or vexatious which are current, threatened or pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect.
- (d) promptly upon becoming aware, details of any disposal or insurance claim which will require a prepayment under Clause 12.2 (*Disposal Proceeds and Insurance Claims*);
- (e) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligor with the terms of any Transaction Security Documents;
- (f) promptly, details of any material acquisition, disposal, merger or voluntary liquidation of any member of the Group, save to the extent set out in the Structure Memorandum;

- (g) promptly upon becoming aware of them, the details of any Environmental Claim which is current, threatened or pending against any member of the Group, together with copies of all environmental reports and investigations in relation to such Environmental Claim, which has or is reasonably likely to have a Material Adverse Effect;
- (h) promptly, details upon any member of Senior Management (or any replacement thereof) resigning or terminating his or her office or ceasing to be employed by the Parent or one of its Subsidiaries or abandoning his or her duties to the Group or ceasing to perform the functions required under his or her Service Contracts; and
- (i) promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements or budgets or other material provided by any Obligor under this Agreement and any changes to the Senior Management (or any replacement thereof) of the Group and details of their replacement and an up to date copy of the shareholders' register (or equivalent in its jurisdiction of incorporation) as any Finance Party through the Agent may reasonably request, except to the extent that disclosure of that information would breach any law, regulation or duty of confidentiality.

#### **25.9 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 Parent shall supply to the Agent a certificate signed by two of its directors 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).

#### **25.10 "Know your customer" checks**

- (a) If:
  - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
  - (ii) any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

be satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations, including the US PATRIOT Act, pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) The Parent shall, by not less than ten (10) Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Restricted Subsidiaries becomes an Additional Obligor pursuant to Clause 31 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with know your customer or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary know your customer or other similar checks under all applicable laws and regulations pursuant to the accession of such Restricted Subsidiary to this Agreement as an Additional Obligor.

#### **25.11 Information Determination**

- (a) The Parent shall be 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.
- (b) In the absence of any express determination by the Parent under paragraph (a) above, information provided or to be provided to any Finance Party will be deemed to have been designated as non-public by the Parent.
- (c) The Parent represents and warrants to each Finance Party, on each date that any information is provided to a Finance Party, that any information provided or to be provided to any Finance Party which has been determined as public information, does not contain any non-public information.

#### **25.12 ERISA-Related Information**

Upon the reasonable request of the Agent, the Parent shall supply to the Agent, with reasonable promptness, in sufficient copies for all the Lenders:

- (a) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Obligor or any of their respective ERISA Affiliates with the Internal Revenue Service of the United States with respect to a Single Employer Plan;
- (b) all notices received by any Obligor or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and

- (c) copies of such other documents or governmental reports or filings relating to any Plan.

## 26. FINANCIAL COVENANTS

### 26.1 Financial definitions

**[SUBJECT TO FURTHER REVIEW BY THE BANKS AND REVIEW OF BASE CASE MODEL]**

In this Agreement:

**“Additional Shareholder Funding”** means the net cash proceeds received by the Parent after the Closing Date from any subscription in cash for shares of the Parent or capital contribution to the Parent that does not result in the occurrence of a Change of Control or any subordinated debt advanced to the Parent that is funded, directly or indirectly, by the Investors or the Mezzanine Investors, in each case on subordination terms equivalent to any Structural Liabilities (in accordance with the Intercreditor Agreement) of the Parent or otherwise acceptable to the Majority Lenders.

**“Borrowings”** means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of members of the Restricted Group (including, for the avoidance of doubt, any capitalised interest) for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) the amount raised by acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument (but not Trade Instruments);
- (d) any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold or discounted on a non-recourse basis and meet any requirements for de-recognition under the Accounting Principles);
- (f) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument (but not, in any case, Trade Instruments) issued by a bank or financial institution in respect of (i) an underlying liability 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 or (ii) any liabilities of any member of the Restricted Group relating to any post-retirement benefit scheme;
- (g) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under the Accounting Principles;
- (h) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind the entry 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;

- (i) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and
- (j) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above,

but excluding:

- (k) any interest owed by a member of the Restricted Group to another member of the Restricted Group; and
- (l) any Treasury Transaction.

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

“**Consolidated EBIT**” means, in respect of any Relevant Period, the consolidated operating profit of the Restricted Group before taxation (excluding the results from discontinued operations):

- (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 investment or Non-Restricted-Group Entity in which a member of the Restricted Group has an ownership interest to the extent that the amount of such profit (or such loss) included in the financial statements of the Restricted Group exceeds the amount (net of applicable withholding tax) received in cash by members of the Restricted Group through distributions by such investment or Non-Restricted-Group Entity;
- (e) **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);
- (f) **before taking into account** any gain or loss arising from an upward or downward revaluation of any other asset at any time after the date of the Original Financial Statements;
- (g) **before taking into account** any Pension Items;
- (h) **before deducting** any Transaction Costs;
- (i) **before deducting** any board and directors fees, costs and expenses to the extent actually paid, up to a maximum of USD 500,000 in any Financial Year;

- (j) **after adding back**, to the extent deducted, the non-cash element of any costs or provisions relating to any share option or management incentive schemes of the Group,

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.

“**Consolidated EBITDA**” means, in respect of any Relevant Period, Consolidated 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).

“**Exceptional Items**” means any exceptional, one off, non-recurring or extraordinary items.

“**Finance Charges**” means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Borrowings whether paid, payable or capitalised by any member of the Restricted Group (calculated on a consolidated basis) in respect of that Relevant Period:

- (a) including any upfront fees or costs;
- (b) including the interest (but not the capital) element of payments in respect of Finance Leases;
- (c) including any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the Restricted Group under any interest rate hedging arrangement;
- (d) excluding any Transaction Costs;
- (e) excluding any capitalised interest under any Structural Liabilities;
- (f) excluding any discount in connection with any invoice discounting arrangements undertaken in the ordinary course of business in China and on a non-recourse basis; and
- (g) taking no account of any unrealised gains or losses on any derivative instruments other than any derivative instruments which are accounted for on a hedge accounting basis;

together with the amount of any cash dividends or distributions paid or made by the Parent in respect of that Relevant Period and so that no amount shall be added (or deducted) more than once.

“**Finance Lease**” means any lease or hire purchase contract (but excluding, for the avoidance of doubt any operating lease) which would, in accordance with the Accounting Principles, be treated as a finance or capital lease.

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

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

“**Interest Cover**” means the ratio of Consolidated EBITDA to Net Finance Charges in respect of any Relevant Period.



“**Leverage**” means, in respect of any Relevant Period, the ratio of Total Net Debt on the last day of that Relevant Period to Consolidated EBITDA in respect of that Relevant Period.

“**Net Finance Charges**” means, for any Relevant Period, the Finance Charges for that Relevant Period after deducting any interest payable in that Relevant Period to any member of the Restricted Group on any Cash or Cash Equivalent Investment

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

“**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.

“**Quarter Date**” means each of 31 March, 30 June, 30 September and 31 December.

“**Relevant Period**” means each period of twelve Months, or such shorter period commencing on the Closing Date, ending on or about the last day of the Financial Year and each period of twelve Months ending on or about the last day of each Financial Quarter.

“**Total Net Debt**” means, at any time, the aggregate amount of all obligations of members of the Restricted Group for or in respect of Borrowings at that time but:

- (a) **excluding** any such obligations to any other member of the Restricted Group;
- (b) **excluding** to the extent they constitute Borrowings, any Structural Liabilities;
- (c) **excluding** any pension liabilities;
- (d) **including**, in the case of Finance Leases only, their capitalised value; and
- (e) **deducting** the aggregate amount of Cash and Cash Equivalent Investments held by any member of the Restricted Group at that time,

and so that no amount shall be included or excluded more than once.

## 26.2 Financial condition

The Parent shall ensure that:

- (a) **Interest Cover:** Interest Cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.<sup>6</sup>

<b>Column 1</b>	<b>Column 2</b>
<b>Relevant Period</b>	<b>Ratio</b>
Relevant Period expiring 31 December 2010	1.35:1
Relevant Period expiring 31 March	1.35:1

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<sup>6</sup> Cushion to reflect final sources and uses which we expect may be adjusted to reflect FX rate.

2011	
Relevant Period expiring 31 June 2011	1.30:1
Relevant Period expiring 31 September 2011	1.30:1
Relevant Period expiring 31 December 2011	1.35:1
Relevant Period expiring 31 March 2012	1.35:1
Relevant Period expiring 31 June 2012	1.35:1
Relevant Period expiring 31 September 2012	1.35:1
Relevant Period expiring 31 December 2012	1.35:1
Relevant Period expiring 31 March 2013	1.35:1
Relevant Period expiring 31 June 2013	1.30:1
Relevant Period expiring 31 September 2013	1.30:1
Relevant Period expiring 31 December 2013	1.30:1
Relevant Period expiring 31 March 2014	1.25:1
Relevant Period expiring 31 June 2014	1.25:1
Relevant Period expiring 31 September 2014	1.20:1
Relevant Period expiring 31 December 2014	1.15:1
Relevant Period expiring 31 March 2015	1.15:1
Relevant Period expiring 31 June 2015	1.15:1

Relevant Period expiring 31 September 2015 1.15:1

Relevant Period expiring 31 December 2015 1.15:1

- (b) **Leverage:** Leverage in respect of any Relevant Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Relevant Period.<sup>7</sup>

<b>Column 1</b>	<b>Column 2</b>
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<b>Relevant Period</b>	<b>Ratio</b>
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Relevant Period expiring 31 December 2010	7.95:1
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Relevant Period expiring 31 March 2011	8.70:1
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Relevant Period expiring 31 June 2011	9.0:1
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Relevant Period expiring 31 September 2011	9.0:1
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Relevant Period expiring 31 December 2011	9.0:1
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Relevant Period expiring 31 March 2012	8.70:1
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Relevant Period expiring 31 June 2012	8.55:1
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Relevant Period expiring 31 September 2012	8.40:1
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Relevant Period expiring 31 December 2012	8.25:1
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Relevant Period expiring 31 March 2013	8.20:1
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Relevant Period expiring 31 June 2013	8.10:1
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Relevant Period expiring 31 September 2013	8.05:1
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Relevant Period expiring 31 December 2013	8.0:1
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<sup>7</sup> Cushion to reflect final sources and uses which we expect may be adjusted to reflect FX rate.

Relevant Period expiring 31 March 2014	8.10:1
Relevant Period expiring 31 June 2014	8.20:1
Relevant Period expiring 31 September 2014	8.30:1
Relevant Period expiring 31 December 2014	8.30:1
Relevant Period expiring 31 March 2015	8.30:1
Relevant Period expiring 31 June 2015	8.20:1
Relevant Period expiring 31 September 2015	8.00:1
Relevant Period expiring 31 December 2015	8.00:1

- (c) **Capital Expenditure:** The aggregate Capital Expenditure of the Group (other than Capital Expenditure funded by the retention of the proceeds of Disposals and insurance claims in accordance with Clause 12.5 (*Excluded Proceeds*) in respect of:
- (i) the period beginning on the Closing Date and ending on the expiry of the first Financial Year specified in column 1 below; and
  - (ii) each other Financial Year specified in column 1 below,

shall not exceed the amount set out in column 2 below (or its equivalent) opposite that Financial Year.

<b>Column 1</b>	<b>Column 2</b>
<b>Financial Year Ending</b>	<b>Maximum Expenditure</b>
31 December 2010	USD 30,000,000
31 December 2011	USD 40,000,000
31 December 2012	USD 30,000,000
31 December 2013 and each Financial Year ending 31 December thereafter	USD 20,000,000

If in any Financial Year (the "**Original Financial Year**") the amount of the Capital Expenditure is less than the maximum amount permitted for that Original Financial Year (the difference being referred to below as the "**Unused Amount**"), then the

maximum expenditure amount set out in column 2 above for the immediately following Financial Year (the "**Carry Forward Year**") shall for the purpose of that Carry Forward Year only be increased by an amount (the "**Permitted Carry Forward Amount**") equal to the lower of (1) the Unused Amount and (2) 50% of the maximum amount permitted for the Original Financial Year.

In any Carry Forward Year, the original amount specified in column 2 above shall be treated as having been incurred prior to any Permitted Carry Forward Amount carried forward into that Carry Forward Year and no amount carried forward into that Carry Forward Year may be carried forward into a subsequent Financial Year.

### 26.3 Financial testing<sup>8</sup>

- (a) The financial covenants set out in Clause 26.2 (Financial condition) 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 25.1 (Financial Statements) and/or each Compliance Certificate delivered pursuant to Clause 25.2 (Provision and contents of Compliance Certificate).
- (b) For the purposes of testing compliance of the financial covenant set out in paragraph (a) of Clause 26.2 (*Financial condition*) for any Relevant Period ending less than twelve months after the Closing Date, Net Finance Charges for such Relevant Period shall be determined on an annualised basis by dividing the actual amount of Net Finance Charges for the period beginning on the Closing Date and ending on the last day of that Relevant Period by the number of days of that Relevant Period and multiplying by 365.

### 26.4 Equity Cure

- (a) Subject to the terms of this Clause 26.4, if on the date of the delivery of a Compliance Certificate in accordance with Clause 25.2 (*Provisions and contents of Compliance Certificate*) the Parent is in breach of any of its obligations under one or more of paragraphs (a) and (b) of Clause 26.2 (*Financial condition*) for a Relevant Period, the Parent shall be entitled to remedy such breach by giving notice to the Agent and receiving the proceeds of Additional Shareholder Funding no later than 15 Business Days after the date of delivery to the Agent of the Quarterly Financial Statements (or the Annual Financial Statements, where applicable) and the Compliance Certificate in which such breach was evidenced, provided that the Parent may not apply the proceeds of Additional Shareholder Funding pursuant to this Clause 26.4:
  - (i) more than twice during the life of the Facility;
  - (ii) in respect of consecutive Relevant Periods; or
  - (iii) more than once in any Relevant Period; or
  - (iv) to the extent the amount of the proceeds of Additional Shareholder Funding exceeds the amount necessary to cure the breach of any of its obligations pursuant to Clause 26.2 (*Financial condition*); or
  - (v) towards the Restricted Payments Basket or for any other purpose under the Finance Document or Notes Documents (other than repaying or prepaying the Notes), and

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<sup>8</sup> Open point- basis of calculation of Total Net Debt.

the proceeds of Additional Shareholder Funding shall be applied in prepayment of outstanding indebtedness (the “**Repayment**”) and accordingly reduce Total Net Debt and Net Finance Charges in accordance with this Clause 26.4.

- (b) If such Additional Shareholder Funding is applied in prepayment of the Facility, the amount of the Facility prepaid shall be permanently cancelled.
- (c) Subject to paragraph (a) above:
  - (i) if the net amount of the Additional Shareholder Funding is applied to remedy a breach arising under paragraph (a) of Clause 26.2 (*Financial condition*), such Additional Shareholder Funding shall be taken into account such that the Net Finance Charges shall be calculated as if the net Additional Shareholder Funding had been received and applied to reduce Total Net Debt and such Repayment had been made on the first day of the Relevant Period and the relevant financial covenant had been complied with; and
  - (ii) if the net amount of the Additional Shareholder Funding is applied to remedy a breach arising under paragraph (b) of Clause 26.2 (*Financial condition*), such Additional Shareholder Funding shall be taken into account such that such financial covenant shall be calculated as if the Additional Shareholder Funding had been received and applied to reduce Total Net Debt and such Repayment had been made on the last day of the Relevant Period and the relevant financial covenant had been complied with.
- (d) If the Parent makes an election under paragraph (a) above in the period ending 15 Business Days after delivering the Compliance Certificate relating to the Quarterly Financial Statements (or the Annual Financial Statements, where applicable) for the last Financial Quarter of the Relevant Period (or the Financial Year, where applicable) to which the non-compliance relates, the relevant election notice shall be accompanied by a revised Compliance Certificate indicating compliance with the ratios in Clause 26.2 (*Financial condition*) after taking into account the amounts to be used to remedy the non-compliance.
- (e) If the Parent receives any Additional Shareholder Funding pursuant to this Clause 26.4 then notwithstanding any provisions in Schedule 15 (*Restrictive Covenants*) to the contrary, it will not make any Restricted Payments during any Relevant Period in which the Additional Shareholder Funding is taken account of.

## **27. GENERAL UNDERTAKINGS**

The undertakings in this Clause 27 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### ***Authorisations and compliance with laws***

#### **27.1 Restrictive Covenants**

Each Obligor shall comply with the covenants set out in Schedule 15 (*Restrictive Covenants*).

#### **27.2 Authorisations**

Each Obligor shall promptly:

- (a) do all such things as are necessary to maintain its status as a legal entity;

- (b) obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation:
  - (i) of a Relevant Jurisdiction to enable it to perform its obligations under the Transaction Documents to which it is a party;
  - (ii) of a Relevant Jurisdiction to ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document to which it is a party; and
  - (iii) of a Relevant Jurisdiction or any jurisdiction where it conducts its business to carry on its business except to the extent that failure to obtain or comply with those Authorisations could not reasonably be expected to have a Material Adverse Effect.

### **27.3 Compliance with laws**

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

### **27.4 Environmental compliance**

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will):
  - (i) comply with all Environmental Law;
  - (ii) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
  - (iii) 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.

### **27.5 Environmental claims**

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

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

where the claim (not being frivolous or vexatious), if determined against that member of the Restricted Group, has or is reasonably likely to have a Material Adverse Effect.

### **27.6 Taxation**

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith by appropriate proceedings;
  - (ii) adequate reserves are being maintained for such Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under Clause 25.1 (*Financial statements*); and
  - (iii) such payment can be lawfully withheld and failure to pay those Taxes is not reasonably likely to have a Material Adverse Effect.
- (b) No member of the Restricted Group may change its residence for Tax purposes.

***Restrictions on business focus***

**27.7 Change of business**

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

**27.8 Holding Companies**

Neither the Parent nor the Company shall trade, carry on any business, own any assets or incur any liabilities except for:

- (a) guarantees the Parent is permitted to grant under any Transaction Document;
- (b) the provision of administrative (including, without limitation, management) services (excluding treasury services) to other members of the Restricted Group of a type customarily provided by a holding company to its Subsidiaries;
- (c) 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 (save where no such Transaction Security is required under Clause 27.19 (*Restricted Group bank accounts*));
- (d) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a holding company; and
- (e) any other activity undertaken, or transaction entered into, by the Parent as set out in the Structure Memorandum provided that the Parent remains at all times a non-trading Holding Company of the Group.

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

**27.9 Preservation of assets**

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

**27.10 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.

### *Miscellaneous*

#### **27.11 Insurance**

- (a) Each Obligor shall (and the Parent shall ensure that each member of the Restricted Group will) maintain insurances on and in relation to its 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.

#### **27.12 Change in Accounting Reference Date and/or Auditors**

- (a) No Obligor shall change its Accounting Reference Date and each Financial Year of each member of the Group (other than Almatris Alumina Private Ltd. (incorporated in India)) shall end on 31 December. The Financial Year of Almatris Alumina Private Ltd. shall end on 31 March.
- (b) No Obligor shall [(other than with respect to a PRC WFOE for the year ending 2010)] and the Parent shall procure that no other member of the Restricted Group shall) appoint any auditors other than the Auditors or any amalgamation of the same or their successor.

#### **27.13 Pensions**

The Parent shall procure that all pension schemes operated by or maintained for the benefit of any member of the Restricted Group and/or any of their employees are fully funded to the extent required by their terms and applicable laws based on reasonable actuarial assumptions where, in any case, failure to do so is reasonably likely to have a Material Adverse Effect.

#### **27.14 Access**

- (a) If the Agent reasonably suspects a Default is continuing or if a Default is continuing, each Obligor shall, and the Parent shall ensure that each member of the Restricted Group will, permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent access at all reasonable times and on reasonable notice, at the risk and cost of the Obligor (subject to paragraph (b) below), to inspect the premises and assets, and to take copies and extracts from the books, accounts and records, of each member of the Restricted Group and meet and discuss matters with Senior Management (or any replacement thereof).
- (b) In the case of a suspected Default only, where the result of an investigation undertaken under paragraph (a) above reveal no Default to have had been continuing at the time such investigations were instructed, the reasonable costs of third-party professional advisers and contractors engaged by the Agent in respect of such investigation shall be paid by the Lenders.

#### **27.15 Intellectual Property**

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

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Restricted Group member;
- (b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
- (c) make registrations and pay all registration fees and Taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- (d) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Restricted Group to use such property; and
- (e) not discontinue the use of the Intellectual Property,

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

#### **27.16 Prohibition on Repayment of the Subordinated Liabilities**

Except as permitted under the Intercreditor Agreement, no Obligor shall (and the Parent shall ensure that no member of the Group will):

- (a) repay or prepay any principal amount (or capitalised interest) outstanding in respect of the Subordinated Liabilities;
- (b) pay any interest or any other amounts payable in connection with the Subordinated Liabilities; or
- (c) purchase, redeem, defease or discharge any amount outstanding with respect to the Subordinated Liabilities.

#### **27.17 Amendments**

- (a) No Obligor shall (and the Parent shall ensure that no member of the Restricted Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document (including, in relation to the Note Documents, any amendment which brings forward the maturity or any amortisation of the Notes, increases the interest payable in connection with the Notes then outstanding or reduces the Weighted Average Life to Maturity (as defined in Schedule 15 (*Restrictive Covenants*)) of the Notes) or any other document delivered to the Agent pursuant to Clause 4.1 (*Initial conditions precedent*) or Clause 31 (*Changes to the Obligors*) or enter into any agreement with any shareholders of the Parent (other than as set out in the Shareholders' Agreement) or any of their Affiliates which is not a member of the Restricted Group (other than, in the case of such Affiliates that are not members of the Restricted Group only, a Permitted Affiliate Transaction) except in writing:
  - (i) in accordance with the provisions of Clause 41 (*Amendments and Waivers*);
  - (ii) to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination is permitted by the Intercreditor Agreement;

- (iii) in the case of Ancillary Documents, in any manner, provided that such Ancillary Documents remain in compliance with the other terms of this Agreement and such amendments or variations are carried out in compliance with this Agreement;
  - (iv) prior to or on the Closing Date, with the prior written consent of the Original Lenders; or
  - (v) after the Closing Date, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders.
- (b) Following request by the Agent, the Parent shall promptly supply a copy of any document relating to any of the matters referred to in paragraph (a)(i) to (a)(iv) above.

#### **27.18 Financial assistance**

Each Obligor shall (and the Parent shall procure each member of the Restricted Group will) comply in all respects with Sections 678 and 679 of the Companies Act 2006 and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement.

#### **27.19 Restricted Group bank accounts**

The Parent shall ensure that, all bank accounts of the Guarantor Group shall be opened and maintained with a Finance Party or an Affiliate of a Finance Party and, subject to the Agreed Security Principles, subject to Transaction Security under the Transaction Security Documents.

#### **27.20 Treasury Transactions**

No Obligor shall (and the Parent will procure that no members of the Restricted Group will) enter into any Treasury Transaction, other than:

- (a) the hedging transactions documented by the Hedging Agreements;
- (b) spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and
- (c) any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course trading activities of a member of the Restricted Group's commercial activities and not for speculative purposes.

#### **27.21 Guarantors**

- (a) The Parent shall ensure that at all times:
  - (i) all Material Companies and all Holding Companies of the Material Companies in each case, which are members of the Guarantor Group (subject to paragraph (c) below), the Notes Issuer and any member of the Guarantor Group that is or becomes a guarantor in respect of the Notes, are Guarantors (in the case of any member of the Guarantor Group that is or becomes a guarantor in respect of the Notes, simultaneously with becoming guarantors in respect of the Notes); and
  - (ii) subject to paragraph (c) below, the aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as

Consolidated EBITDA) of the Guarantors for any Relevant Period, the aggregate gross assets and aggregate turnover of the Guarantors (in each case calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) represents not less than 90 per cent. of Consolidated EBITDA for the corresponding Relevant Period, consolidated gross assets and consolidated turnover of all members of the Guarantor Group, respectively, in each case calculated by reference to the most recently delivered set of Annual Financial Statements of the Group delivered under Clause 25.1 (*Financial statements*) and adjusted to give pro forma effect to any acquisition (including through mergers or consolidations) and disposition that have taken place prior to the last day of the Financial Year on which the Relevant Period ends.

- (b) The Parent shall not have any obligation to procure that any member of the Guarantor Group becomes an Additional Guarantor pursuant to paragraph (a) of this Clause 27.21 unless the Annual Financial Statements delivered under Clause 25.1 (*Financial statements*) demonstrate that the same would be necessary in order to comply with the requirements of this Clause 27.21.
- (c) The Parent need only perform its obligations under paragraph (a)(i) above to the extent it is required to do so under the Agreed Security Principles and in any event, to the extent it is not unlawful for the relevant person to become a Guarantor and that person becoming a Guarantor would not result in personal liability for that person's directors or other management. Each Obligor must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such unlawfulness or personal liability. This includes agreeing to a limit on the amount guaranteed. The Agent may (but shall not be obliged to) agree to such a limit if, in its opinion, to do so would avoid the relevant unlawfulness or personal liability.
- (d) Subject to the Agreed Security Principles, any member of Guarantor Group that becomes a Material Company and any Material Company that is a member of the Guarantor Group acquired in accordance with this Agreement after the Closing Date shall become a Guarantor and grant Security as the Agent may require (acting reasonably) and shall accede to the Intercreditor Agreement as soon as practicable and in any event within 30 days of delivery of any Quarterly Financial Statements delivered under Clause 25.1 (*Financial Statements*) or within 30 days of its acquisition, as the case may be.

## **27.22 Unrestricted Subsidiaries**

- (a) Nothing in this Agreement shall restrict the Parent from designating any of its Subsidiaries as being Unrestricted Subsidiaries provided that such Subsidiary meets the requirements for such designation set out in Schedule 15 (*Restrictive Covenants*).
- (b) If a member of the Group is designated as an Unrestricted Subsidiary, each Obligor will (i) ensure that the Unrestricted Subsidiary does not (and will, for so long as it is an Unrestricted Subsidiary, not) legally or beneficially own shares in any Restricted Subsidiary; and (ii) use its reasonable endeavours to ensure that no member of the Restricted Group has any material liabilities (including pension, environmental and Tax liabilities) to or in respect of the Unrestricted Subsidiary and if any such material liability arises the Parent will promptly notify the Agent and procure that the Unrestricted Subsidiary becomes a Restricted Subsidiary as soon as reasonably practicable and in any event within 20 Business Days of the first date on which the Parent is aware of the material liability.

### 27.23 Further assurance

- (a) Subject to the Agreed Security Principles, each Obligor shall (and the Parent shall procure that each member of the Restricted Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s):
  - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
  - (ii) upon the reasonable request of the Security Agent and subject to the Agreed Security Principles, to confer on the Security Agent or confer on the Finance Parties the Security intended to be conferred by or pursuant to the Transaction Security Documents but not actually so conferred; 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 Parent shall procure that each member of the Restricted Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.
- (c) Each Obligor shall use, and shall procure that any other member of the Restricted Group that is a potential provider of Transaction Security uses, all reasonable endeavours lawfully available to avoid or mitigate the constraints on the provision of Security provided for in the Agreed Security Principles.

### 27.24 Note Purchase Condition

Save as permitted under Clause 12 (*Mandatory prepayment*), no member of the Restricted Group may prepay, purchase, defease or redeem (or otherwise retire for value) any Notes (excluding, for the avoidance of doubt, any retransching or refinancing of the Notes), Replacement Debt or Term Debt (or offer to do so) unless:

- (a) immediately following such prepayment, purchase, defeasance or redemption (or other retirement for value), the aggregate principal amount of the Notes, Replacement Debt and Term Debt (excluding any Notes, Replacement Debt and Term Debt that is legally or beneficially owned by a member of the Group) would be greater than USD 200,000,000 (or its equivalent);
- (b) Consolidated EBITDA (pro forma for any acquisitions and disposals) for the Relevant Period ending on the most recent Quarter Date in relation to which financial statements have been (or are required to have been) provided by the Parent in accordance with Clause 25.1 (*Financial statements*) was greater than USD 90,000,000 (or its equivalent) and pro forma Consolidated EBITDA calculated by reference to the Consolidated EBITDA (pro forma for any acquisitions and

disposals) for the quarter ending on the most recent Quarter Date in relation to which financial statements have been (or are required to have been) provided by the Parent in accordance with Clause 25.1 (*Financial statements*) multiplied by four is greater than USD 90,000,000 (or its equivalent); and

- (c) no Default is continuing (other than in respect of a repayment, purchase, defeasement or redemption arising under Clause 26.4 (*Equity Cure*)) or would result from the prepayment, purchase, defeasance or redemption (or other retirement for value) of any Notes, Replacement Debt or Term Debt.

#### **27.25 Syndication**

- (a) Until the earlier to occur of (i) the Syndication Date and (ii) the date on which the Arrangers notify the Parent that primary syndication of the Facility has been completed, the Parent shall provide reasonable assistance to the Arranger in the primary syndication of the Facility (including, without limitation, by making members of the Senior Management (or any replacement thereof) available for the purpose of making presentations to, or meeting, potential lending institutions as mutually agreed with the Parent) and shall use all reasonable endeavours to comply with all reasonable requests for information from potential syndicate members prior to completion of syndication.
- (b) Each Arranger shall promptly notify the Parent and the Agent on completion of primary syndication of the Facility.

#### **27.26 US Regulation**

Each Obligor shall ensure that it will not, by act or omission, become subject to any of the regulations described in Clause 24.34 (*US Regulation*).

#### **27.27 Anti-Terrorism Laws**

- (a) No Borrower shall apply the proceeds of any Utilisation for purposes that would constitute a violation of any Anti-Terrorism Law, to the extent applicable to it.
- (b) No Obligor shall knowingly engage in any transaction that violates any of the applicable prohibitions set forth in any Anti-Terrorism Law, to the extent applicable to it.
- (c) To the knowledge of each Obligor (i) none of the funds or assets of such Obligor that are used to repay the Facility shall constitute property of, or shall be beneficially owned directly or indirectly by, any Designated Person and (ii) no Designated Person shall have any direct or indirect interest in such Obligor that would constitute a violation of any Anti-Terrorism Laws, to the extent applicable to it.
- (d) No Obligor shall, and each Obligor shall procure that none of its Restricted Subsidiaries will, knowingly fund all or part of any payment under this Agreement out of proceeds derived from transactions that violate the prohibitions set forth in any Anti-Terrorism Law, to the extent applicable to it.

#### **27.28 Margin Regulations**

- (a) No Obligor may use any Loan, directly or indirectly, to buy or carry Margin Stock or to extend credit to others for the purpose of buying or carrying Margin Stock.

- (b) No Obligor shall be engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

#### **27.29 ERISA**

- (a) The Parent shall ensure that the levels of contributions to the non-U.S. pension schemes for the time being operated by the Group are and continue to be sufficient to comply with all material obligations of the Group whether under such schemes or generally at law;
- (b) Within 20 Business Days of the date the Parent has knowledge of, or could reasonably be expected to know of, any ERISA Event that has occurred or could reasonably be expected to occur, that is reasonably likely to result in a material liability to any Obligor, the Parent shall promptly notify the Agent and provide the Agent with full details as to such occurrence and the action, if any, that any such Obligor or such ERISA Affiliate is required or proposes to take, together with any notices required or proposed to be given or filed by such Obligor, the Plan administrator or such ERISA Affiliate to or with the PBGC or any other government agency or a plan participant and any notices received by such Obligor or ERISA Affiliate from the PBGC or any other government agency or plan participant with respect thereto; and
- (c) The Parent shall, and shall procure that each of the other Obligors shall:
  - (i) deliver to the Agent a copy of each funding waiver request filed with the IRS or any other government agency with respect to any Single Employer Plan, all communications received by any Obligor or any ERISA Affiliate from the IRS or any other government agency with respect to such funding waiver request; and
  - (ii) if, at any time any Obligor or any ERISA Affiliate maintains, or contributes to (or incurs an obligation to contribute to), a new Plan, then the Parent shall deliver to the Agent the name and type of any such Plan as soon as practicable and, in any event, within 20 Business Days after the Obligor or such ERISA Affiliate maintains, or contributes to (or incurs an obligation to contribute to) such Plan.
  - (iii) within 10 days of receipt by it, or, to its knowledge, by any Subsidiary, of a communication from the Pensions Regulator suggesting that the Pensions Regulator is considering issuing a Contribution Notice or Financial Support Direction, deliver a copy of that communication to the Agent.

#### **27.30 Conditions Subsequent**

- (a) The Chinese Security Documents shall be perfected as soon as reasonably practicable, but in any event within 90 days of the date of execution of the Chinese Security Documents.
- (b) Within 30 calendar days of the Closing Date or such later date as the Agent may agree to in its reasonable discretion, Borrower shall deliver to the Agent and the Security Agent duly executed control agreements (which shall be in form and substance reasonably satisfactory to the Agent and the Security Agent) for (a) the Almatris, Inc. and Almatris US Holding Inc. deposit accounts numbered [[●]xxx-0957] and [[●]xxx-3195] and lockbox account numbered 223074, each held with The Bank of New York Mellon and (b) the [Almatris German entity] deposit

account[s] numbered [●] held with Commerzbank Aktiengesellschaft, New York Branch.

## **28. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 28 is an Event of Default (save for Clause 28.23 (*Acceleration*)).

### **28.1 Non-payment**

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

- (a) in respect of any payments of principal, payment is made within three (3) Business Days of its due date;
- (b) in respect of any payments of Interest on the Loans, payment is made within five (5) Business Days of its due date; and
- (c) in respect of any other payments (which do not fall within paragraphs (a) and (b) above), payment is made within five (5) Business Days of its due date (the “**Relevant Grace Period**”), provided that (if payment is not made within the Relevant Grace Period):
  - (i) during the 25 day period (commencing from the end of the Relevant Grace Period) the Agent and/or the Majority Lenders may take action under Clause 28.23 (*Acceleration*) but the Event of Default constituted by such non-payment shall also be capable of remedy (without, for the avoidance of doubt, the requirement of a waiver) prior to any action being taken by the Agent and/or the Majority Lenders under Clause 28.23 (*Acceleration*); and
  - (ii) if, in respect of such non-payment, no action is being taken by the Agent and/or the Majority Lenders under Clause 28.23 (*Acceleration*) and by the end of the 25 day period described in paragraph (i) above and such Event of Default has not been remedied by such time, the Event of Default constituted by such non-payment shall not be capable of remedy and shall be “**continuing**” unless it has been waived.

### **28.2 Financial covenants**

Any requirement of Clause 26 (*Financial covenants*) is not satisfied subject to Clause 26.4 (*Equity Cure*).

### **28.3 Financial statements**

- (a) An Obligor does not comply with the provisions of Clauses 25.1 (*Financial statements*) to 25.4 (*Budget*) (inclusive).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five (5) Business Days of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor and (ii) the Parent or an Obligor becoming aware of the failure to comply.<sup>9</sup>

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<sup>9</sup> Open point- five (5) day grace period.



#### **28.4 Other obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 28.1 (*Non-payment*), Clause 28.2 (*Financial covenants and other obligations*) and Clause 28.3 (*Financial statements*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within ten (10) Business Days of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor and (ii) the Parent or an Obligor becoming aware of the failure to comply.

#### **28.5 Misrepresentation**

- (a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made.
- (b) No Event of Default under paragraph (a) above will occur if the misrepresentation is capable of remedy and is remedied within ten (10) Business Days of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor and (ii) the Parent or an Obligor becoming aware of the misrepresentation.

#### **28.6 Cross default**

- (a) Any Financial Indebtedness of any member of the Restricted Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Restricted Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Restricted Group is cancelled or suspended by a creditor of any member of the Restricted Group as a result of an event of default (however described).
- (d) Any creditor of any member of the Restricted Group becomes entitled to declare any Financial Indebtedness of any member of the Restricted Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 28.6 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than USD 10,000,000 (or its equivalent in any other currency or currencies).
- (f) No Event of Default will occur under this Clause 28.6 as a result of any Treasury Transaction becoming immediately due and payable prior to its specified maturity as a result of an automatic early termination event (however described) of such Treasury Transaction due to the insolvency of the counterparty to such Treasury Transaction or a credit support provider for or specified entity of such the counterparty (rather than, for the avoidance of doubt, due to the insolvency of a member of the Restricted Group).

#### **28.7 Notes Default**

Any event of default (however described) occurs under the Notes Documents.

## 28.8 Insolvency

At any time after the Closing Date, the occurrence of any of the following:

- (a) A Material Company 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 (*Drohende Zahlungsunfähigkeit*), commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any Material Company (other than any Material Company whose COMI is Germany) is less than its liabilities (taking into account contingent and prospective liabilities) to the extent that the laws of the Relevant Jurisdiction of such Material Company provide for an Insolvency Event in circumstances where a company's assets are less than its liabilities or, in respect of a Material Company whose COMI is Germany, such entity is over-indebted (*überschuldet*) pursuant to Sec. 19 paragraph 2 of the German Insolvency Code (*InsO*).

## 28.9 Insolvency proceedings

- (a) Other than the Existing Bankruptcy Cases, any corporate action, legal proceedings or other procedure or step is taken in relation to:
  - (i) the suspension of payments or preliminary suspension of payments (*voorlopige surseance van betaling*), a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Material Company;
  - (ii) a composition, compromise, assignment or arrangement with any creditor of any Material Company;
  - (iii) in respect of any Material Company whose COMI is in Germany, a filing for insolvency (*Antrag auf Eröffnung eines Insolvenzverfahrens*) by a Material Company with the competent court is made;
  - (iv) in respect of any Material Company whose COMI is in Germany, a court uses any of the sanctions provided in section 21 of the German Insolvency Code (*InsO*), unless such sanction is lifted within ten (10) Business Days of commencement of insolvency proceedings;
  - (v) in respect of any Material Company whose COMI is in Germany, a decision to commence insolvency proceedings (*Eröffnung eines Insolvenzverfahrens*) in accordance with section 27 of the German Insolvency Code (*InsO*) is made;
  - (vi) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Material Company or any of its assets;
  - (vii) enforcement of any Security over any assets of any Material Company, or any analogous procedure or step is taken in relation to a Material Company in any jurisdiction.

- (b) Subject to applicable law, paragraph (a) shall not apply to:
  - (i) any winding-up petition or to any analogous procedure or step in any jurisdiction which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement;
  - (ii) the solvent liquidation or reorganisation of any Material Company (other than the Parent, the Company and any Borrower) which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Restricted Group; or
  - (iii) any reorganisation or other step set out in the Structure Memorandum.

#### **28.10 Creditors' process**

Other than the Existing Bankruptcy Cases, any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Material Company having an aggregate value of USD 7,500,000 (or its equivalent in other currencies) and is not discharged within 14 days.

#### **28.11 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for an Obligor or any other member of the Restricted Group that is a party to the Intercreditor Agreement to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective or any subordination created under the Intercreditor Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Obligor under any Finance Documents or any other member of the Restricted Group under the Intercreditor Agreement are not or ceases to be (subject to the Legal Reservations) legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- (c) 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.

#### **28.12 Intercreditor Agreement**

- (a) Any party to the Intercreditor Agreement (other than any Secured Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement in any material respect; 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 failure to perform or circumstances giving rise to the misrepresentation, are capable of remedy, it is not remedied within ten (10) Business Days of the earlier of the Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation.

### **28.13 Cessation of business**

Any Material Company suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

### **28.14 Change of ownership**

- (a)
  - (i) After the Closing Date, an Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent; or
  - (ii) An Obligor ceases to own at least the same percentage of shares in a Material Company as on the Closing Date, except as a result of an Asset Disposition or any other disposal permitted pursuant to paragraph [●] of Schedule 15 (*Restrictive Covenants*).
- (b) Paragraph (a) above shall not apply to any reorganisation or step set out in the Structure Memorandum.

### **28.15 Audit qualification**

The Auditors of the Restricted Group qualify the audited annual consolidated financial statements of the Parent:

- (a) on the grounds that the Auditors are unable to prepare those financial statements on a going concern basis;
- (b) where that qualification is in terms or as to issues which could otherwise reasonably be expected to be materially adverse to the interests of the Finance Parties under the Finance Documents; or
- (c) on the basis of non-disclosure or inaccurate disclosure.

### **28.16 Expropriation**

The authority or ability of any member of the Restricted Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Restricted Group or any of its assets in a manner which has or is reasonably likely to have a Material Adverse Effect.

### **28.17 Repudiation and rescission of agreements**

- (a) An Obligor (or any other relevant 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 Note Documents rescinds or purports to rescind or repudiates or purports to repudiate such agreement or instrument in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents.

## **28.18 Litigation**

- (a) Except for the Existing Bankruptcy Cases, any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any member of the Group or its assets which has or is reasonably likely to have a Material Adverse Effect.
- (b) One or more final judgments for the payment of money aggregating in excess of USD 7,500,000 (or its equivalent) shall be rendered against any member of the Group and such member of the Group fails to discharge the same within 30 days from the date of entry thereof or to appeal therefrom.

## **28.19 Pensions**

The Pensions Regulator issues a Financial Support Direction or a Contribution Notice to any member of the Restricted Group which has or is reasonably likely to have a Material Adverse Effect.

## **28.20 Material adverse change**

Except for the Existing Bankruptcy Cases, any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

## **28.21 ERISA**

- (a) An ERISA Event has occurred with respect to a Plan which has had, or could reasonably be expected to have, a Material Adverse Effect; or
- (b) With respect to a Single Employer Plan, the existence of an Unfunded Current Liability that could reasonably be expected to have a Material Adverse Effect.

## **28.22 Crystallisation of Japanese Transaction Security**

An Obligor that is the shareholder of the Japanese Joint Venture exercises its right to crystallise revolving security (*ne-tanpo kakutei seikyu-ken*) with respect to the Transaction Security created under the Japanese Security Document.

## **28.23 Acceleration**

- (a) On and at any time after the occurrence of an Event of Default (save in the case of any Event of Default referred to in paragraph (b) below, in relation to which acceleration shall be automatic) which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Parent:
  - (i) cancel the Total Commitments and/or Ancillary Commitments at which time they shall immediately be cancelled;
  - (ii) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
  - (iii) declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders;

- (iv) declare that cash cover in respect of each Letter of Credit is immediately due and payable at which time it shall become immediately due and payable;
  - (v) declare that cash cover in respect of each Letter of Credit is payable on demand at which time it shall immediately become due and payable on demand by the Agent on the instructions of the Majority Lenders;
  - (vi) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities to be immediately due and payable, at which time they shall become immediately due and payable;
  - (vii) declare that all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facilities be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
  - (viii) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents
- (b) If an Event of Default occurs under Clause 28.9 (*Insolvency proceedings*) in relation to:
- (i) any US Borrower:
    - (A) the Total Commitments made available to such US Borrower shall immediately be cancelled; and
    - (B) all of the Loans made to such US Borrower, together with accrued interest, and all other amounts accrued under the Finance Documents with respect to such US Borrower shall be immediately due and payable,

in each case automatically and without any direction, notice, declaration or other act; or
  - (ii) any US Guarantor, each amount expressed by Clause 23 (*Guarantee and indemnity*) to be payable by that US Guarantor on demand shall, after that Event of Default has occurred, be immediately due and payable by that US Guarantor without the need for any demand or other claim on that US Guarantor or any other Obligor,

provided that the occurrence of an Event of Default under Clause 28.9 (*Insolvency proceedings*) in relation to such US Obligor shall not result in any contingent obligations owed by any other members of the Restricted Group under any guarantee under Clause 23 (*Guarantee and indemnity*) becoming an actual obligation until the Agent makes the relevant notice to the Parent as directed by the Majority Lenders pursuant to paragraph (a) above.

## **29. CHANGES TO THE LENDERS**

### **29.1 Assignments and transfers by the Lenders**

Subject to this Clause 29 and to Clause 30 (*Restriction on Debt Purchase Transactions*), at any time after the Closing Date a Lender (the “**Existing Lender**”) may:

- (a) assign any of its rights; or

- (b) transfer by novation any of its rights and obligations,

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

## **29.2 Conditions of assignment or transfer**

- (a) The consent of the Parent (such consent not to unreasonably withheld and will be deemed to have been given if the Parent has not objected within three (3) Business Days of receiving notice of the proposed transfer or assignment) shall be required by an Existing Lender before it may make an assignment or transfer in accordance with Clause 29.1 (*Assignments and transfers by the Lenders*) to an entity which is not registered and regulated as a bank unless the assignment or transfer:
  - (i) is to another Lender or an Affiliate of a Lender;
  - (ii) if the Existing Lender is a fund, is to a fund which is a Related Fund of the Existing Lender;
  - (iii) is made at a time when an Event of Default is continuing;
  - (iv) is made to a fund previously identified by the Original Lenders on a list pre-agreed with the Parent; or
  - (v) is made after six (6) months following the Closing Date.
- (b) An Existing Lender proposing to assignment or transfer in accordance with Clause 29.1 (*Assignments and transfers by the Lenders*) at any time after six (6) months following the Closing Date shall consult with the Parent for no more than five (5) days before it makes such assignment or transfer (and the Parent shall have the ability to introduce other potential purchasers of such commitment to the Existing Lender) unless the assignment or transfer:
  - (i) is to another Lender or an Affiliate of a Lender;
  - (ii) if the Existing Lender is a fund, is to a fund which is a Related Fund of the Existing Lender;
  - (iii) is made at a time when an Event of Default is continuing; or
  - (iv) is made to a fund previously identified by the Original Lenders on a list pre-agreed with the Parent.
- (c) The consent of the Issuing Bank is required for any assignment or transfer by an Existing Lender of any of its rights and/or obligations under the Facility.
- (d) Any assignment or transfer by an Existing Lender to a Sponsor Affiliate shall be made to an entity that is an independent financing vehicle of the Investors which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets, and any such Sponsor Affiliate shall at all times hold its participation in such an entity.
- (e) An assignment or transfer of part of a Lender’s participation must be in an amount such that the Base Currency Amount of that Lender’s remaining participation (when aggregated with its Affiliates’ and Related Funds’ participation) in respect of Commitments under the Facility is in a minimum amount of USD 1,000,000.

- (f) 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.
- (g) An assignment or 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, as the case may be, Clause 29.5 (*Procedure for transfer*) or Clause 29.6 (*Procedure for assignment*) is complied with.
- (h) If:
  - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; 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 19 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under that Clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- (i) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.
- (j) Nothing in this Clause 29.2 shall prevent any assignment or transfer (in whole or in part) by the Existing lender of any of its rights and/or obligations under the Facility to any of its Affiliates prior to the Closing Date.
- (k) Notwithstanding any other provision of the Finance Documents, no Lender shall enter into any assignment or transfer in accordance with Clause 29.1 (*Assignments and transfers by the Lenders*) with any entity listed on the Prohibited List.

### **29.3 Assignment or transfer fee**

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, (ii) to a Related Fund or (iii) made in connection with primary syndication of the



Facility, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of USD 1,500.

#### **29.4 Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
  - (ii) the financial condition of any Obligor;
  - (iii) the performance and observance by any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or
  - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
  - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
  - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
  - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 29; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

#### **29.5 Procedure for transfer**

- (a) Subject to the conditions set out in Clause 29.2 (*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 29.8 (*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 Arranger, the Security Agent, the New Lender, the other Lenders, the Issuing Bank and any relevant Ancillary Lender shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger, the Security Agent, any Issuing Bank and any relevant Ancillary Lender and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) the New Lender shall become a Party as a “Lender”.

## 29.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 29.2 (*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 29.8 (*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 29.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 29.5 (*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 29.2 (*Conditions of assignment or transfer*).

### **29.7 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent**

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

### **29.8 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 29.5 (*Procedure for transfer*) or any assignment pursuant to Clause 29.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
  - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
  - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 29.8, have been payable to it on that date, but after deduction of the Accrued Amounts.

### **29.9 Dutch requirements**

If an amount transferred to a New Lender in relation to a Loan/Commitment made to any Borrower of less than EUR 50,000 (or its equivalent in another currency), the New Lender shall confirm in writing to the relevant Borrower that it is a professional market party within the meaning of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*), including any regulations issued pursuant thereto.

### 30. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

#### 30.1 Prohibition on Debt Purchase Transactions by the Group

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

#### 30.2 Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates

- (a) For so long as a Sponsor Affiliate (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
  - (i) in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero; and
  - (ii) for the purposes of Clause 19.3 (*Exceptions*), such Sponsor Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender (unless in the case of a person not being a Sponsor Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).
- (b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a “**Notifiable Debt Purchase Transaction**”), such notification to be substantially in the form set out in Part I of Schedule 14 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (c) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:
  - (i) is terminated; or
  - (ii) ceases to be with a Sponsor Affiliate,such notification to be substantially in the form set out in Part II of Schedule 14 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (d) Each Sponsor Affiliate that is a Lender agrees that:
  - (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
  - (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

## **31. CHANGES TO THE OBLIGORS**

### **31.1 Assignment and transfers by Obligor**

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

### **31.2 Additional Borrowers**

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 25.10 (“*Know your customer*” checks), the Parent may request that any of its wholly owned Subsidiaries which is not a Dormant Subsidiary becomes a Borrower. That Subsidiary shall become a Borrower if:
  - (i) it is incorporated in the same jurisdiction as an existing Borrower and the Majority Lenders approve the addition of that Subsidiary or otherwise if all the Lenders approve the addition of that Subsidiary;
  - (ii) the Parent and that Subsidiary deliver to the Agent a duly completed and executed Accession Deed;
  - (iii) the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;
  - (iv) the Parent confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
  - (v) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent (acting reasonably).
- (b) The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*).

### **31.3 Resignation of a Borrower**

- (a) If a Borrower or a Holding company of that Borrower is the subject of an Asset Disposition or as a result of the disposal of Charged Property that is otherwise permitted pursuant to paragraph [●] of Schedule 15 (*Restrictive Covenants*) or the Intercreditor Agreement, the Parent may request that such Borrower (other than the Parent or the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Parent and the other Finance Parties of its acceptance if:
  - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
  - (ii) the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents;
  - (iii) where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with Clause 31.5 (*Resignation of a Guarantor*)), its obligations in its capacity as Guarantor continue to be (subject to the Legal Reservations) legal, valid, binding and enforceable and in full force and

effect and the amount guaranteed by it as a Guarantor is not decreased (and the Parent has confirmed this is the case); and

- (iv) the Parent has confirmed that it shall ensure that any relevant Disposal Proceeds will be applied in accordance with Clause 12.2 (*Disposal Proceeds and Insurance Proceeds*).
- (c) Upon notification by the Agent to the Parent of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Asset Disposition takes effect.
- (d) The Agent may, at the cost and expense of the Parent, require a legal opinion from counsel to the Agent confirming the matters set out in paragraph (c)(iii) above and the Agent shall be under no obligation to accept a Resignation Letter until it has obtained such opinion in form and substance satisfactory to it.

#### **31.4 Additional Guarantors**

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 25.10 (*“Know your customer” checks*), the Parent may request that any of its Subsidiaries become a Guarantor.
- (b) The Parent shall procure that any other member of the Group which is a Material Company shall, as soon as possible after becoming a Material Company, become an Additional Guarantor and, subject to the Agreed Security Principles, grant Security as the Agent may require and shall accede to the Intercreditor Agreement.
- (c) A member of the Group shall become an Additional Guarantor if:
  - (i) the Parent and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Deed; and
  - (ii) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- (d) The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*).

#### **31.5 Resignation of a Guarantor**

- (a) The Parent may request that a Guarantor (other than the Parent or the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:
  - (i) that Guarantor (or a Holding Company of that Guarantor) is being disposed of by way of an Asset Disposition or as a result of the disposal of Charged Property that is otherwise permitted pursuant to paragraph [●] of Schedule 15 (*Restrictive Covenants*) or the Intercreditor Agreement and the Parent has confirmed this is the case; or

- (ii) subject to Clause 27.2 (*Amendments and Waivers: Transaction Security Documents*) of the Intercreditor Agreement, the Lenders have consented to the resignation of that Guarantor.
- (b) The Agent shall accept a Resignation Letter and notify the Parent and the Lenders of its acceptance if:
    - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
    - (ii) no payment is due from the Guarantor under Clause 23.1 (*Guarantee and indemnity*);
    - (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 31.3 (*Resignation of a Borrower*); and
    - (iv) the Parent has confirmed that it shall ensure that any relevant Disposal Proceeds will be applied in accordance with Clause 12.2 (*Disposal Proceeds and Insurance Proceeds*).
  - (c) The resignation of that Guarantor shall not be effective until the date of the relevant Asset Disposition 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.

### **31.6 Repetition of Representations**

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (e) of Clause 24.37 (*Times when representations made*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

### **31.7 Resignation and release of security on disposal**

If a Borrower or Guarantor (or a Holding Company of such Borrower or Guarantor) is or is proposed to be the subject of an Asset Disposition, or there is a disposal of Charged Property that is otherwise permitted pursuant to paragraph [●] of Schedule 15 (*Restrictive Covenants*) or the Intercreditor Agreement then:<sup>10</sup>

- (a) where that Borrower or Guarantor created Transaction Security over any of its assets or business (or Transaction Security otherwise exists over the Charged Property to be disposed of) in favour of the Security Agent, or Transaction Security in favour of the Security Agent was created over the shares (or equivalent) of that Borrower or Guarantor, the Security Agent shall, at the cost and request of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;
- (b) the resignation of that Borrower or Guarantor and related release of Transaction Security referred to in paragraph (a) above shall not become effective until the date of that disposal; and
- (c) if the disposal of that Borrower or Guarantor (or a Holding Company of such Borrower or Guarantor) is not made, the Resignation Letter of that Borrower or

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<sup>10</sup> Subject to review of the Notes.

Guarantor and the related release of Transaction Security referred to in paragraph (a) above shall have no effect and the obligations of the Borrower or Guarantor and the Transaction Security created or intended to be created by or over that Borrower or Guarantor shall continue in such force and effect as if that release had not been effected.

## **32. ROLE OF THE AGENT, THE ARRANGER, THE ISSUING BANK AND OTHERS**

### **32.1 Appointment of the Agent**

- (a) Each of the Arranger, the Lenders and the Issuing Bank appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each Finance Party hereby, to the extent legally possible, releases the Agent (and each of its successors appointed under this Agreement) from the restrictions of Section 181 of the German Civil Code (BGB).
- (c) Each of the Arranger, the Lenders and the Issuing Bank authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **32.2 Duties of the Agent**

- (a) Subject to paragraph (b) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Without prejudice to Clause 29.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent*) and paragraph (e) of Clause 7.4 (*Cash Collateral by Non-Acceptable L/C Lender*), paragraph (a) above shall not apply to any Transfer Certificate, any Assignment Agreement or Increase Confirmation.
- (c) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Agent shall provide to the Parent within ten (10) Business Days of a request by the Parent (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to



whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

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

### **32.3 Role of the Arranger**

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

### **32.4 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent, the Arranger and/or any of the Issuing Bank as a trustee or fiduciary of any other person.
- (b) None of the Agent, the Security Agent, the Arranger, any Issuing Bank or any Ancillary Lender shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

### **32.5 Business with the Group**

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

### **32.6 Rights and discretions**

- (a) The Agent and the Issuing Bank may rely on:
  - (i) any representation, notice or document (including, without limitation, any notice given by a Lender pursuant to paragraph (b) or paragraph (c) of Clause 30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*)) 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 notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 28.1 (*Non-payment*));
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised;
  - (iii) any notice or request made by the Parent (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors; and
  - (iv) no Notifiable Debt Purchase Transaction:
    - (A) has been entered into;

- (B) has been terminated; or
- (C) has ceased to be with a Sponsor Affiliate.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (f) Without prejudice to the generality of paragraph (e) above, the Agent may disclose the identity of a Defaulting Lender to the other Finance Parties and the Parent and shall disclose the same upon the written request of the Parent or the Majority Lenders.
- (g) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent, the Arranger or the Issuing Bank is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (h) The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender for the purpose of paragraph (a)(ii) of Clause 16.2 (*Market Disruption*).

### **32.7 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 the Majority Lenders (or, if so instructed by the Majority 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 an instruction of the Majority Lenders.
- (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 the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (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 (e) 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.

### **32.8 Responsibility for documentation**

None of the Agent, the Arranger, the Issuing Bank or any Ancillary Lender:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Issuing Bank, an Ancillary Lender, an Obligor or any other person given in or in connection with any Finance Document or the Structure Memorandum or the transactions contemplated in the Finance Documents;
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security; or
- (c) is responsible for any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

### **32.9 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of Clause 35.11 (*Disruption to Payment Systems etc.*)), none of the Agent, the Issuing Bank, or any Ancillary Lender will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for any action taken by it under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct.
- (b) No Party (other than the Agent, the Issuing Bank or an Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, the Issuing Bank or any Ancillary Lender, in respect of any claim it might have against the Agent, the Issuing Bank or an Ancillary Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent, the Issuing Bank or any Ancillary Lender 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 or the Arranger to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

### **32.10 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against

any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 35.11 (*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).

### **32.11 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 Parent.
- (b) Alternatively the Agent may resign by giving 30 days notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Parent) may appoint a successor Agent (acting through an office in the United Kingdom).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 32 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) 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 32. 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.

### **32.12 Replacement of the Agent**

- (a) After consultation with the Parent, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (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 32 (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.

### **32.13 Resignation of the Issuing Bank**

- (a) The Issuing Bank 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 Parent.
- (b) Alternatively the Issuing Bank may resign by giving 30 days notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Issuing Bank. The Issuing Bank's resignation notice shall take effect immediately upon the expiry of such 30 day notice period, regardless of whether a successor Issuing Bank has been appointed.
- (c) If the Majority Lenders have not appointed a successor Issuing Bank in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Issuing Bank (after consultation with the Parent) may (but shall have no obligation to) appoint a successor Issuing Bank (acting through an office in the United Kingdom).
- (d) The retiring Issuing Bank shall make available to any successor Issuing Bank such documents and records and provide such assistance as the successor Issuing Bank may reasonably request for the purposes of performing its functions as Issuing Bank under the Finance Documents.
- (e) Upon the resignation of the Issuing Bank having become effective in accordance with paragraph (b) above, the retiring Issuing Bank shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 32.
- (f) Any successor Issuing Bank and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor Issuing Bank had been an original Party.

### **32.14 Confidentiality**

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

### **32.15 Relationship with the Lenders**

- (a) Subject to Clause 29.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (*Mandatory Cost formula*).
- (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 despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 37.6 (*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 37.2 (*Addresses*) and paragraph (a)(iii) of Clause 37.6 (*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.

### **32.16 Credit appraisal by the Lenders, Issuing Bank and Ancillary Lenders**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender, Issuing Bank and Ancillary Lender confirms to the Agent, the Arranger, the Issuing Bank and each Ancillary Lender that

it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the adequacy, accuracy and/or completeness of the Structure Memorandum 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.

### **32.17 Base Reference Banks**

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

### **32.18 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.

### **32.19 Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each of the Arranger and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or Agent) the terms of any reliance letter or engagement letter relating to the Structure Memorandum or any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of the Structure Memorandum, 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.

### 32.20 Withholding

To the extent required by any applicable law, the Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other governmental authority of the United States or other jurisdiction asserts a claim that the Agent did not properly withhold Tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding Tax ineffective, or for any other reason), or the Agent has paid over to the Internal Revenue Service or other governmental authority applicable withholding Tax relating to a payment to a Lender but no deduction has been made from such payment, such Lender shall indemnify and hold the Agent harmless for all amounts paid, directly or indirectly, by the Agent, as Tax or otherwise, including penalties and interest, and including any Taxes imposed by any jurisdiction on the amounts payable to the Agent under this Clause 32.20, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders under this Clause 32.20 shall survive the payment of all obligations under any Finance Document and the resignation or replacement of the Agent. For avoidance of doubt, nothing in this Clause 32.20 shall have any impact on the Obligors under Clause 18 (*Tax gross-up and indemnities*) hereof.

### 33. 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.

### 34. SHARING AMONG THE FINANCE PARTIES

#### 34.1 Payments to Finance Parties

- (a) Subject to paragraph (b) below, if a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from an Obligor other than in accordance with Clause 35 (*Payment mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under the Finance Documents then:
  - (i) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery, to the Agent;
  - (ii) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 35 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
  - (iii) the Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Agent



determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 35.6 (*Partial payments*).

- (b) Paragraph (a) above shall not apply to any amount received or recovered by an Issuing Bank or an Ancillary Lender in respect of any cash cover provided for the benefit of that Issuing Bank or that Ancillary Lender.

#### **34.2 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 35.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

#### **34.3 Recovering Finance Party’s rights**

On a distribution by the Agent under Clause 34.2 (*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.

#### **34.4 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.

#### **34.5 Exceptions**

- (a) This Clause 34 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.

### **34.6 Ancillary Lenders**

- (a) This Clause 34 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender at any time prior to service of notice under Clause 28.22 (*Acceleration*).
- (b) Following service of notice under Clause 28.22 (*Acceleration*), this Clause 34 shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction from the Designated Gross Amount for an Ancillary Facility to its Designated Net Amount.

## **35. PAYMENT MECHANICS**

### **35.1 Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document excluding a payment under the terms of an Ancillary Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.

### **35.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 35.3 (*Distributions to an Obligor*) and Clause 35.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or London).

### **35.3 Distributions to an Obligor**

The Agent may (with the consent of the Obligor or in accordance with Clause 36 (*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.

### **35.4 Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the

date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

### **35.5 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 35.1 (*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 35.5 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 32.12 (*Replacement of the Agent*), each Party which has made a payment to a trust account in accordance with this Clause 35.5 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 34.2 (*Distributions by the Agent*).

### **35.6 Partial payments**

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
  - (i) first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent, the Issuing Bank and the Security Agent under those Finance Documents and any other amounts owing to the Issuing Bank for its own account;
  - (ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under those Finance Documents;
  - (iii) thirdly, in or towards payment pro rata of any principal due but unpaid under those Finance Documents and any amount due but unpaid under Clause 7.2 (*Claims under a Letter of Credit*) and Clause 7.3 (*Indemnities*) (in the case of the Issuing Bank, to the extent that it has not been paid out under paragraph (i) above); 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.

### **35.7 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.

### **35.8 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.

### **35.9 Currency of account**

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

### **35.10 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Parent); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

### **35.11 Disruption to Payment Systems etc.**

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

- (a) the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Parent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 41 (*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 35.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### **36. SET-OFF**

- (a) While an Event of Default is continuing, a Finance Party may set-off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) Any credit balances taken into account by an Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility shall on enforcement of the Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility in accordance with its terms.

## **37. NOTICES**

### **37.1 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.

### **37.2 Addresses**

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

- (a) in the case of the Parent or the Company, that identified with its name below;
- (b) in the case of each Lender, the Issuing Bank, each Ancillary Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent or the Security Agent, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five (5) Business Days' notice.

### **37.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 37.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Agent's signature below (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Parent in accordance with this Clause 37.3 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document made or delivered to an Obligor (other than the Parent) shall be copied to the Parent at the same time and by the same method.

### 37.4 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 37.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

### 37.5 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.

### 37.6 Electronic communication

- (a) Any communication to be made between the Agent or the Security Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the Security Agent and the relevant Lender:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Agent and a Lender or the Security Agent will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.

### 37.7 Use of websites

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

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Agent shall notify the Parent accordingly and the Parent shall at its own cost supply the information to the Agent (in sufficient copies

for each Paper Form Lender) in paper form. In any event the Parent shall at its own cost supply the Agent with at least one copy in paper form of any information required to be provided by it.

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

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

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Parent shall at its own cost comply with any such request within ten (10) Business Days.

### **37.8 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.

## **38. CALCULATIONS AND CERTIFICATES**

### **38.1 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.



## **38.2 Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document shall set out in reasonable detail the basis of calculation of that rate or amount and is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **38.3 Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

## **39. 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.

## **40. 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.

## **41. AMENDMENTS AND WAIVERS**

### **41.1 Intercreditor Agreement**

This Clause 41 is subject to the terms of the Intercreditor Agreement.

### **41.2 Required consents**

- (a) Subject to Clause 41.3 (*Exceptions*) any term of the Finance Documents (other than the Commitment Letter, which may be amended or waived by the relevant parties to it) may be amended or waived only with the consent of the Majority Lenders and the Parent and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 41.
- (c) Each Obligor agrees to any such amendment or waiver permitted by this Clause 41 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of all of the Guarantors.

### **41.3 Exceptions**

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definitions of “Majority Lenders” or “Change of Control” in Clause 1.1 (*Definitions*);
  - (ii) an extension to the date of payment of any amount under the Finance Documents;

- (iii) an extension of the Availability Period;
- (iv) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (v) a change in currency of payment of any amount under the Finance Documents;
- (vi) an increase in or an extension of any Commitment or the Total Commitments;
- (vii) a change to the Borrowers or Guarantors other than in accordance with Clause 31 (*Changes to the Obligors*);
- (viii) any provision which expressly requires the consent of all the Lenders;
- (ix) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 12 (*Mandatory prepayment*), Clause 29 (*Changes to the Lenders*) or this Clause 41;
- (x) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
  - (A) the guarantee and indemnity granted under Clause 23 (*Guarantee and Indemnity*);
  - (B) the Charged Property; or
  - (C) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in the case of paragraph (B) and paragraph (C) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);
- (xi) the release of any guarantee and indemnity granted under Clause 23 (*Guarantee and Indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document; or
- (xii) subject to the terms of the Intercreditor Agreement, any amendment to the order of priority or subordination under the Intercreditor Agreement,

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 Arranger, any Issuing Bank, the Security Agent, any Ancillary Lender or a Hedge Counterparty (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger, any Issuing Bank, the Security Agent, that Ancillary Lender or, as the case may be, that Hedge Counterparty.
- (c) If any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any of the terms of any Finance Document where the consent of all the Lenders is required (other than an amendment or waiver referred to in paragraphs (a)(ii), (iii), (iv) and (vi) above) within 15 Business Days (unless the Parent and the

Agent agree to a longer time period in relation to any request) of that request being made, its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments and/or participations has been obtained to approve that request.

#### 41.4 Replacement of Lender

- (a) If at any time an Obligor becomes obliged to repay any amount in accordance with Clause 11.1 (*Illegality*) or to pay additional amounts pursuant to Clause 19.1 (*Increased Costs*) or Clause 18.2 (*Tax gross-up*) to any Lender in excess of amounts payable to the other Lenders generally, then the Parent may, on five (5) Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent (excluding a member of the Group and if such entity is a Sponsor Affiliate, provided that such transfer shall be in accordance with Clause 30 (*Restriction on Debt Purchase Transactions*)), and which is acceptable to the Agent (acting reasonably), the Issuing Bank, which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Letter of Credit fees, Break Costs and other amounts payable in relation thereto under the Finance Documents.
- (b) The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:
  - (i) the Parent shall have no right to replace the Agent or Security Agent;
  - (ii) neither the Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender; and
  - (iii) in no event shall the Lender replaced under this paragraph (b) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents.

#### 41.5 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments.
- (b) For the purposes of this Clause 41.5, the Agent may assume that the following Lenders are Defaulting Lenders:
  - (i) any Lender which has notified the Agent that it has become a Defaulting Lender;

- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of “Defaulting Lender” has occurred,

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

#### **41.6 Replacement of a Defaulting Lender**

- (a) The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving five (5) Business Days’ prior written notice to the Agent and such Lender:
  - (i) replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement; or
  - (ii) require such Lender to (and such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of the undrawn Commitment of the Lender;

to a Lender or other bank, financial institution, trust, fund or other entity (a “**Replacement Lender**”) selected by the Parent, and which (unless the Agent is an Impaired Agent) is acceptable to the Agent (acting reasonably) and to the Issuing Bank, which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender’s participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender’s participation in the outstanding Utilisations and all accrued interest and/or Letter of Credit fees, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:
  - (i) the Parent shall have no right to replace the Agent or Security Agent;
  - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;
  - (iii) the transfer must take place no later than 20 days after the notice referred to in paragraph (a) above; and
  - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents.

## **42. CONFIDENTIALITY**

### **42.1 Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 42.2 (*Disclosure of Confidential Information*) and Clause 42.3 (*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.

#### 42.2 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 32.14 (*Relationship with the Lenders*));
  - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
  - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
  - (vi) to whom information is required by law to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
  - (vii) who is a Party; or
  - (viii) with the consent of the Parent;

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
  - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
  - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Finance Party;
  - (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

#### **42.3 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 names of the Agent and the Arranger;

- (vi) date of each amendment and restatement of this Agreement;
  - (vii) amount of Total Commitments;
  - (viii) currencies of the 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; and
  - (xiii) such other information agreed between such Finance Party and the Parent,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the 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) Each Obligor represents that none of the information set out in paragraphs (i) to (xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Parent and the other Finance Parties of:
  - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the 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.

#### **42.4 Entire agreement**

This Clause 42 (*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.

#### **42.5 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.

#### **42.6 Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 42.2 (*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 42 (*Confidentiality*).

#### **42.7 Continuing obligations**

The obligations in this Clause 42 (*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.

#### **43. 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.

#### **44. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by, and shall be construed in accordance with English law provided that Schedule 15 (*Restrictive Covenants*) shall be interpreted in accordance with New York law (without prejudice to the fact that this Agreement is governed by English law).

#### **45. ENFORCEMENT**

##### **45.1 Jurisdiction**

- (a) Subject to paragraph (c) below, the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) Subject to paragraph (c) below, 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 45.1 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

##### **45.2 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):



- (i) irrevocably appoints Almatris UK Limited of c/o Gallaghers, 69-85 Tabernacle Street, P.O. Box 698, London EC2A 4RR as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
  - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must immediately (and in any event within ten (10) Business Days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) Each Obligor expressly agrees and consents to the provisions of this Clause 45.2 and Clause 44 (*Governing law*).

**46. PATRIOT ACT**

Each Lender hereby notifies each Obligor that, pursuant to the requirements of the USA PATRIOT Act, such Lender is required to obtain, verify and record information that identifies such Obligor, which information includes the name and address of such Obligor and other information that will allow such Lender to identify such Obligor in accordance with the USA PATRIOT Act.

**47. POWERS OF ATTORNEY**

If any of the parties to this Agreement is represented by an attorney or attorneys in connection with the signing and/or execution and/or delivery of this Agreement or any agreement or document referred to herein or made pursuant hereto and the relevant power or powers of attorney is or are expressed to be governed by English law, it is hereby expressly acknowledged and accepted by the other parties hereto that such laws shall govern the existence and extent of such attorney's authority and the effects of the exercise thereof.

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

## SCHEDULE 1

### THE ORIGINAL PARTIES

#### Part I The Original Obligor

#### The Original Borrowers

Name of Original Borrower	Registration number (or equivalent, if any) Jurisdiction of Incorporation
Almatis B.V.	24253371, The Netherlands
Almatis GmbH	HRB 2360 (local court ( <i>Amtsgericht</i> ) of Ludwigshafen am Rhein), Germany
Almatis, Inc.	3750817, Delaware, USA

#### The Original Guarantors

Name of Original Guarantor	Registration number (or equivalent, if any) and Jurisdiction of Incorporation
Almatis Holdings 3 B.V.	24387315, The Netherlands
Almatis Holdings 9 B.V.	24413773, The Netherlands
Almatis B.V.	24253371, The Netherlands
Almatis Holdings 7 B.V.	24387290, The Netherlands
Almatis US Holding, Inc.	3750819, Delaware, USA
Almatis, Inc.	3750817, Delaware, USA
Almatis Asset Holdings LLC	3769768, Delaware, USA
Blitz F07-neunhundert-sechzig-drei GmbH	HRB 81516 (local court ( <i>Amtsgericht</i> ) of Ludwigshafen am Rhein), Germany
Almatis Holdings GmbH	HRB 5238 (local court ( <i>Amtsgericht</i> ) of Ludwigshafen am Rhein), Germany
Almatis GmbH	HRB 2360 (local court ( <i>Amtsgericht</i> ) of Ludwigshafen am Rhein), Germany

**Part II**  
**The Original Lenders**

<b>Name of Original Lender</b>	<b>Facility Commitment</b>	<b>Status (Non-Acceptable L/C Lender: Yes/No)</b>
[•]	USD [•]	[Yes/No]
[•]	USD [•]	[Yes/No]
<b>Total</b>	<b>USD 50,000,000</b>	

## SCHEDULE 2

### CONDITIONS PRECEDENT

#### Part I

#### Conditions precedent to initial Utilisation

##### 1. Obligors

- (a) A copy of the Constitutional Documents and the constitutional documents of each Original Obligor and, in relation to each Dutch Obligor, copies of the shareholders register and an extract (*uittreksel*) from the relevant Chamber of Commerce (*Kamer van Koophandel*) of each Dutch Obligor.
- (b) A copy of the following constitutional documents in respect of each PRC WFOE:
  - (i) business license;
  - (ii) certificate of approval;
  - (iii) articles of association;
  - (iv) approval on the establishment of it;
  - (v) organisational code certificate;
  - (vi) national and local tax certificate;
  - (vii) foreign registration certificate/card; and
  - (viii) latest capital verification report.
- (c) A copy of a resolution of the board or, if applicable, a committee of the board of directors (or, in the case of a German Obligor, its shareholders) of each Original Obligor and each PRC WFOE, in form and substance satisfactory to the Agent (acting reasonably):
  - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
  - (ii) authorising or confirming authorisation of a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
  - (iii) authorising or confirming authorisation of 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 Obligor other than the Parent, authorising or confirming authorisation of the Parent to act as its agent in connection with the Finance Documents.
- (d) If applicable, a copy of the resolution of the board of directors of the relevant company, establishing the committee referred to in paragraph (c) above.

- (e) A specimen of the signature of each person executing Finance Documents as authorised by the resolution referred to in paragraph (c) above in relation to the Finance Documents and related documents.
- (f) To the extent required under applicable law or customary in accordance with local law or practice, a copy of a resolution, in form and substance satisfactory to the Agent (acting reasonably), signed by all the holders of the issued shares in each Original and each PRC WFOE, approving the terms of, and the transactions contemplated by, the Finance Documents to which that Obligor is a party.
- (g) If applicable, a copy of the resolution of the board of supervisory directors of each Dutch Obligor approving the resolution of the board of directors under (c) above.
- (h) A certificate of the Parent (signed by a director), in form and substance satisfactory to the Agent (acting reasonably), confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor (other than any US Obligor) to be exceeded.
- (i) A certificate of an authorised signatory of the Parent or other relevant Original Obligor, in form and substance satisfactory to the Agent (acting reasonably), certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of this Agreement.
- (j) To the extent required under applicable law or customary in accordance with local law or practice, a good standing certificate from the applicable governmental authority of its jurisdiction of incorporation, organisation or formation, dated a recent date prior to the date of this Agreement and satisfactory to the Finance Parties (acting reasonably).
- (k) If applicable, a copy of (i) the request for advice from each works council or central or European works council with jurisdiction over the transactions contemplated by this Agreement and (ii) the positive advice from such works council which contains no condition which if complied with, could result in a breach of any of the Finance Documents.
- (l) In respect of the Chinese Security Documents:
  - (i) Duly executed consent letters by UBS Limited and duly executed consent letters by Almatris B.V., consenting to the release of the existing pledge under the Existing PRC Equity Pledge;
  - (ii) Duly executed application letter for release of the Existing PRC Equity Pledge;
  - (iii) Board resolution of each PRC WFOE approving release of the Existing PRC Equity Pledge;
  - (iv) Business license and certificate of approval of each PRC WFOE for approval of release of the Existing PRC Equity Pledge;
  - (v) Duly executed application letter for deregistration of the Existing PRC Equity Pledge;

- (vi) Power of Attorney (as part of the application letter under (v) above) issued by the existing pledgor and pledgee under the Existing PRC Equity Pledge for handling the release and deregistration;
- (vii) Duly executed application letter for approval of the Chinese Security Documents;
- (viii) Board resolution of each PRC WFOE approving the Chinese Security Documents;
- (ix) Business license and certificate of approval of each PRC WFOE for approval of the Chinese Security Documents;
- (x) Capital contribution certificate issued by each PRC WFOE;
- (xi) Latest capital verification report of each PRC WFOE;
- (xii) Certificate of incorporation of the pledgee and pledgor under the Chinese Security Documents for approval application signed by the authorised signatory certifying that the certificate of incorporation is a true copy;
- (xiii) Application letter for registration of the Chinese Security Documents;
- (xiv) Shareholder register of each PRC WFOE recording the equity pledge under the Chinese Security Documents;
- (xv) Certificate of incorporation of the pledgee and pledgor under the Chinese Security Documents for registration application signed by the authorised signatory certifying that the certificate of incorporation is a true copy;
- (xvi) Power of attorney (as part of the application letter under (xiii)) issued by the pledgor and pledgee under the Chinese Security Documents for handling the registration and perfection of the Chinese Security Documents;
- (xvii) Business license and certificate of approval of each PRC WFOE for registration application.

## 2. Finance Documents

- (a) This Agreement (in form and substance satisfactory to the Agent (acting reasonably)) executed by the members of the Group party to this Agreement.
- (b) The Intercreditor Agreement (in form and substance satisfactory to the Agent (acting reasonably)) executed by the members of the Group party to that agreement and the Note Trustee.
- (c) The Fee Letters, executed by the members of the Group party to them.
- (d) A copy of (if any) each Structural Debt Document and each Intra-Group Loan Agreement executed by each entity party to such agreements.
- (e) A copy of the Notes Documents and confirmation that all conditions precedent to the issuance and purchase of the Notes has been (or will be on the Closing Date) satisfied in full or waived.
- (f) At least two originals of each of the Transaction Security Documents listed in Part III of Schedule 2 (*Transaction Security Documents*) (other than Transaction Security

Documents to be entered into and delivered as conditions subsequent pursuant to Clause 27.30 (*Conditions Subsequent*), in each case, in form and substance satisfactory to the Agent (acting reasonably).

- (g) Unless a grace period for supply of notices is contained in the relevant Transaction Security Document, a copy of all notices required to be sent under the Transaction Security Documents executed by relevant Obligors and, in the case of any notice to be sent to another member of the Restricted Group, duly acknowledged, in each case, in form and substance satisfactory to the Agent (acting reasonably).
- (h) All share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.
- (i) In relation to the Company, a copy of an extract of the register of shareholders of the Company evidencing registration of the Share Pledge.

### 3. **Legal opinions**

The following legal opinions, each addressed to the Agent, the Security Agent and the Original Lenders and capable of being relied upon by any persons who become Lenders pursuant to the primary syndication of the Facility and, in each case, in form and substance satisfactory to the Agent (acting reasonably):

- (a) Latham & Watkins (London) LLP, legal advisers to the Agent and the Arrangers, as to English law as to enforceability of the Finance Documents;
- (b) Latham & Watkins LLP, legal advisers to the Agent and the Arrangers, as to German law as to enforceability of the Finance Documents;
- (c) Linklaters LLP, legal advisers to the Group, as to capacity of the Obligors under German law;
- (d) Linklaters LLP, legal advisers to the Group, as to capacity of the Obligors under New York law and Delaware law;
- (e) Latham & Watkins LLP, legal advisers to the Agent and the Arrangers, as to New York Law as to enforceability of the Finance Documents;
- (f) Qindao Law Firm, legal advisors to the Group, as to Chinese law as to capacity of the PRC WFOEs;
- (g) Jun-He Law Offices, legal advisers to the Agent and the Arrangers, as to Chinese Law as to enforceability of the Chinese Security Documents
- (h) Linklaters LLP, legal advisers to the Group, as to capacity of the Obligors under Dutch law;
- (i) NautaDutilh N.V., legal advisors to the Agent and the Arrangers, as to Dutch law as to enforceability of the Finance Documents;
- (j) Latham & Watkins Gaikokuho Joint Enterprise, legal advisors to the Agent and the Arrangers, as to Japanese law as to enforceability of the Japanese Security Documents;

- (k) Kutak Rock LLP, legal advisers to the Agent and the Arrangers, as to Arkansas law as to the enforceability of the mortgage to be filed in Saline County, Arkansas,

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

#### 4. **Other Documents and Evidence**

- (a) The Funds Flow Statement.
- (b) The Group Structure Chart including an annexe of the intra-Group loan balances, satisfactory to the Agent (acting reasonably).
- (c) The Base Case Model.
- (d) The Structure Memorandum, in form and substance satisfactory to the Agent (acting reasonably), together with confirmation that it can be relied upon by the Finance Parties, subject to customary indemnity caps, and the transaction set out therein shall be consummated in accordance therewith.
- (e) An executed independent expert's opinion on the restructuring concept of the management according to the requirements of the German Supreme Court, addressed to the Finance Parties and on which each Finance Party is satisfied that it may rely, in substantially in the form and substance of the draft thereof provided to the Arrangers dated 5 September 2010 of Schultze & Braun, or otherwise acceptable to the Finance Parties
- (f) A copy, certified by an authorised signatory of the Parent to be a true copy, of the Original Financial Statements (satisfactory to the Agent (acting reasonably)).
- (g) Confirmation by the Agent that the fees, costs and expenses then due from the Parent pursuant to Clause 17 (*Fees*), Clause 17.5 (*Fees payable in respect of Letters of Credit*), Clause 17.6 (*Interest, commission and fees on Ancillary Facilities*), Clause 18.6 (*Stamp taxes*) and Clause 22 (*Costs and expenses*) have been paid or evidence satisfactory to the Agent (acting reasonably) that the foregoing fees, costs and expenses will be paid on or by the first Closing Date.
- (h) Confirmation by the Security Agent that the fees, costs and expenses then due from the Parent to the Security Agent pursuant to Clause 17 (*Fees*) and Clause 22 (*Costs and expenses*) have been paid or evidence satisfactory to the Security Agent (acting reasonably) that the foregoing fees, costs and expenses will be paid on or by the first Closing Date
- (i) A certificate of the Parent (signed by an authorised signatory) and evidence satisfactory to the Agent (acting reasonably) that Notes in an aggregate principal amount of no less than USD 400,000,000 and EUR 110,000,000 have been, or will, on the Closing Date, be issued and subscribed to.
- (j) The Equity Commitment Letter and a certificate of an authorised signatory of the Parent and evidence satisfactory to the Agent (acting reasonably) that as a result of an equity issuance, the Parent has received, or will, on the Closing Date, receive cash proceeds of no less than USD 100,000,000 (or its EUR equivalent as at the conversion date as contemplated in the Escrow Agreement) from the Investors on terms satisfactory to the Arrangers.



- (k) A letter from the Parent in respect of the insurance coverage of the Group, in form and substance satisfactory to the Agent (acting reasonably).
- (l) A copy of the agreed form report to be delivered by the Auditors pursuant to paragraph (c) of Clause 25.2 (*Provisions and contents of Compliance Certificate*) together with confirmation from the Auditors that it can be relied upon by the Finance Parties, in form and substance satisfactory to the Agent (acting reasonably).
- (m) A certificate of the Parent, in form and substance satisfactory to the Agent (acting reasonably), signed by the chief financial officer of the Group addressed to the Finance Parties confirming:
  - (i) which companies within the Group are Material Companies and that the aggregate of earnings before interest, tax depreciation and amortisation (calculated on the same basis as Consolidated EBITDA, as defined in Clause 26 (*Financial Covenants*)), aggregate gross assets and aggregate turnover of the Original Guarantors (in each case calculated on an unconsolidated basis and excluding all intra-Group items and investments in Subsidiaries of any member of the Group) exceeds 90 per cent. of the Consolidated EBITDA (defined in Clause 26 (*Financial Covenants*)), consolidated gross assets and consolidated turnover of the Guarantor Group;
  - (ii) showing the Group's ratio of consolidated gross Total Net Debt to LTM EBITDA as of 30 June 2010 not exceeding 5.60:1.0;
  - (iii) showing the Group's consolidated LTM EBITDA as of 30 June 2010 being not less than USD 103,000,000; and
  - (iv) the Group as reorganised pursuant to the Revised Plan shall have achieved minimum liquidity (post payment of transaction expenses paid on the Closing Date or substantially concurrently with the Closing Date) (including cash on hand (including restricted or trapped cash) and undrawn availability under the Facility) of not less than USD 75,000,000.
- (n) Evidence that the Holding Account and the Mandatory Prepayment Account have been opened including details of each account name, account number and the name and address of the bank where each account is held.
- (o) Evidence that any process agent referred to in Clause 45.2 (*Service of process*), if not an Original Obligor, has accepted its appointment.
- (p) A certificate signed by an authorised signatory of the Parent specifying each member of the Group (assuming the Closing Date has occurred) which is a Dormant Company as at the Closing Date together with certified copies (certified by an authorised signatory to be a true copy) of the last audited accounts of each such Dormant Subsidiary.
- (q) The following documents in relation to Financial Indebtedness, Security and Guarantees, in each case, satisfactory to the Agent (acting reasonably):
  - (i) Security Release Agreements as set out in Schedule 19 (*Security Release Agreements*) and any other local release documents necessary to release the existing security.
  - (ii) Evidence that the fees, costs and expenses due in relation to the Existing Facilities have been paid or will be paid on or before the Closing Date.

**[RELEASE AND PAY-OFF MECHANICS TO BE DISCUSSED]**

- (r) Satisfaction by each Finance Party of the absence of any change, development or event that had a material adverse effect on the business or properties of the Group since the date of the Commitment Letter other than any change, development or event that is not specific to, or does not disproportionately affect, the Group and its business.
- (s) Evidence that immediately after giving effect to the issuance of the Notes and any Utilisation of the Facility on the Closing Date and the repayment of the Existing Facilities First Lien Discharge Debt (as defined in the Intercreditor Agreement in respect of the Existing Facilities) has occurred, the Group shall have no outstanding Financial Indebtedness (including finance and capital leases) other than the (i) the Financial Indebtedness comprised of the Notes and the Facility (provided that, not more than USD 10,000,000 will be utilised under the Facility on the Closing Date), (ii) secured or unsecured indebtedness (including finance and capital leases) not exceeding USD 15,000,000, which existed as at 23 July 2010 and which is not repaid in connection with the Recapitalisation and (iii) derivative transactions and other hedging in each case entered into in connection with or as a consequence of the Recapitalisation.
- (t) [A tax ruling issued by the relevant Dutch Tax authorities in accordance with the steps contemplated in the Structure Memorandum and satisfactory in form and substance to the Agent (acting reasonably).]<sup>11</sup>
- (u) Any information and evidence reasonably requested by any Finance Party in order to comply with applicable law and pursuant to its “know your client” procedures.
- (v) Evidence satisfactory to the Finance Parties that all regulatory and tax consents, clearances and approvals required in connection with the transactions contemplated by the Finance Documents have been obtained.
- (w) A copy of the Confirmation Order certificated by the Clerk of the Bankruptcy Court and at least three (3) Business Days has elapsed since the entry of the Confirmation Order.

**5. Exit from Bankruptcy Cases**

- (a) The Bankruptcy Court shall have entered the Confirmation Order, and such Confirmation Order (i) shall be substantially in the form attached as Exhibit L to the Disclosure Statement, with such changes that either (a) do not in the sole judgement of the Agent (acting reasonably) adversely affect the rights or interests of all or any of the Finance Parties or (b) to which the Agent in its sole judgement has consented; and (ii) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended except with the prior written consent of the Agent in its sole discretion if such vacatur, stay, reversal, modification or amendment is, in the reasonable judgment of the Agent, adverse to the rights or interests of the any or all of the Finance Parties.
- (b) The Revised Plan, together with all exhibits, supplements, annexes, schedules and any other attachments thereto, in each case, shall be substantially in the form attached to the Plan Support Agreement or as amended or restated, supplemented or otherwise modified from time to time in any manner that either (i) is not inconsistent with, or does not conflict with the terms of the Commitment Letter and in the reasonable

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<sup>11</sup> To be confirmed.

judgement of the Agent does not adversely affect the rights or interest of any or all of the Finance Parties or (ii) is acceptable to the Agent in its sole discretion.

- (c) The Effective Date of the Revised Plan (as defined in the Revised Plan) shall have occurred, and all conditions precedent thereto as set forth therein shall have been satisfied or waived (with the prior written consent of the Agent, if in the sole judgment of the Agent, any such waiver is adverse to the rights or interests of any or all of the Finance Parties), in each case subject only to the funding under the Notes and the Equity Contribution and the repayment of existing obligations in accordance with the Revised Plan with proceeds thereof.
- (d) Almatís B.V., as reorganised pursuant to the Revised Plan (“**Reorganised Almatís**” and together with all other Debtors as reorganised pursuant to the Revised Plan, collectively, the “**Reorganised Debtors**”) shall have received (i) the cash proceeds of the Equity Contribution. Each Finance Party shall be satisfied in its reasonable judgment that there will not exist (pro forma after giving effect to the confirmation of the Revised Plan and the financing thereof) any default or event of default under any of the Finance Documents, or under any other material indebtedness of the Reorganised Almatís and its subsidiaries.

“**Revised Plan**” for the purposes of paragraph 5(a)-(d) of this Schedule means the First Amended Joint Plan of Reorganisation for the Debtors Under Chapter 11 of the Bankruptcy Code, dated August 23, 2010 that was filed in the Existing bankruptcy Cases (Docket No. 395), together with all exhibits, supplements, annexes, schedules and any other attachments thereto or documents represented therein as the same may be amended, restated, supplemented or otherwise modified from time to time.

**Part II**  
**Conditions precedent required to be**  
**delivered by an Additional Obligor**

1. An Accession Deed executed by the Additional Obligor and the Parent.
2. A copy of the constitutional documents of the Additional Obligor.
3. A copy of a resolution of the board or, if applicable, a committee of the board of directors of the Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is party;
  - (b) authorising a specified person or persons to execute the Accession Deed and other Finance Documents on its behalf;
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (d) authorising the Parent to act as its agent in connection with the Finance Documents
4. If applicable, a copy of a resolution of the board of directors of the Additional Obligor, establishing the committee referred to in paragraph 3 above.
5. A specimen of the signature of each person (executing Finance Documents) authorised by the resolution referred to in paragraph 3 above.
6. To the extent required under applicable law or customary in accordance with local law or practice, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
7. If applicable, a certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
8. If applicable, a copy of the resolution of the board of supervisory directors of each Additional Guarantor approving the resolution of the board of directors under (3) above.
9. To the extent required under applicable law or customary in accordance with local law or practice, a good standing certificate from the applicable Governmental Authority of its jurisdiction of incorporation, organisation or formation, dated a recent date prior to the date of the relevant Accession Deed.
10. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Deed.
11. A copy of any other authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of

the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.

12. If available, a copy of the latest audited financial statements of the Additional Obligor.
13. The following legal opinions, each addressed to the Agent, the Security Agent and the Lenders:
  - (a) A legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Deed.
  - (b) If the Additional Obligor is incorporated in or has its COMI 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, COMI or, as the case may be, the jurisdiction of the governing law of that Finance Document (the “**Applicable Jurisdiction**”) as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Deed.
14. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 45.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
15. Any security documents which, subject to the Agreed Security Principles, are required by the Agent to be executed by the proposed Additional Obligor.
16. Any notices or documents required to be given or executed under the terms of those security documents.
17. If the Additional Obligor is incorporated in England and Wales, Scotland or Northern Ireland, evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to comply with Sections 677 to 683 of the Companies Act 2006 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents.
18. If applicable, a copy of (i) the request for advice from each works council or central or European works council with jurisdiction over the transactions contemplated by this Agreement and (ii) the positive advice from such works council which contains no condition which if complied with, could result in a breach of any of the Finance Documents.

**Part III**  
**Transaction Security Documents**

**1. Dutch Security Documents**

First ranking share pledge granted by Almatris Topco 2 B.V. over the shares in Almatris Holdings 3 B.V, Almatris Holdings 3 B.V. over the shares in Almatris Holdings 9 B.V, Almatris Holdings 9 B.V. over the shares in Almatris B.V, and Almatris B.V. over the shares in Almatris Holdings 7 B.V.

First ranking omnibus pledge granted by Almatris B.V. in relation to all rights, insurances, intercompany loans, IP rights, licences, moveable assets and bank accounts of Almatris B.V.

First ranking pledge over the rights under all bank accounts held by Almatris Holdings 3 B.V, Almatris Holdings 9 B.V, and Almatris Holdings 7 B.V.

First ranking pledge over the rights under all intercompany loans owed to Almatris Holdings 3 B.V, Almatris Holdings 9 B.V, and Almatris Holdings 7 B.V.

First ranking pledge over the intercompany loan granted by Almatris Topco 2 B.V. as lender and Almatris Holdings 3 B.V. as borrower.

**2. German Security Documents**

First ranking share pledge granted by Almatris B.V. over the shares in Blitz F07-neunhundertsechzig-drei GmbH, Blitz F07-neunhundertsechzig-drei GmbH over the shares in Almatris Holdings GmbH and Almatris Holdings GmbH over the shares in Almatris GmbH.

Assignment of all intercompany receivables and other receivables (including trade receivables) granted by Blitz F07-neunhundertsechzig-drei GmbH, Almatris Holdings GmbH and Almatris GmbH.

Transfer of fixed and current assets granted by Almatris GmbH (*Raumsicherungsvertrag*).

Bank account pledge agreement granted by Almatris, Inc., Blitz F07-neunhundertsechzig-drei GmbH, Almatris Holdings GmbH and Almatris GmbH.

Transfer of IP rights granted by Almatris GmbH.

**3. US Security Documents**

New York law governed first ranking security agreement by US Obligors, with limited grant by Dutch and German Obligors, which includes:

- (i) pledges over, amongst others, personal property, documents, accounts, IP, commercial tort and insurance claims of Almatris US Holding, Inc., Almatris, Inc. and Almatris Asset Holdings LLC; and
- (ii) pledges granted by Almatris B.V., Almatris Holdings 7 B.V., Almatris Holdings 3 B.V., Almatris Holdings 9 B.V., Blitz F07-neunhundertsechzig-drei GmbH, Almatris Holdings GmbH and Almatris GmbH over certain US bank accounts held by Almatris B.V., Almatris Holdings 7 B.V., Almatris Holdings 3 B.V., Almatris Holdings 9 B.V.,

Blitz F07-neunhundertsechzig-drei GmbH, Almatris Holdings GmbH and Almatris GmbH respectively; and

- (iii) pledges over any interests under the Alcoa Acquisition Agreement, the Alcoa Supply Agreement and any other document related or in connection thereto, granted by Almatris GmbH, Almatris B.V. and Almatris, Inc.

NY law governed first ranking share pledge granted by (i) Almatris Holdings 7 B.V. over the shares in Almatris US Holding, Inc., (ii) Almatris US Holding, Inc over the shares in Almatris, Inc. and (iii) Almatris, Inc. over the shares in Almatris Asset Holdings LLC.

Deposit account control agreement by and among, Mellon Bank N.A., Almatris US Holding, Inc. and the Security Agent, over a deposit account numbered 0230957 maintained at Mellon Bank N.A. in the name of Almatris US Holding, Inc.

Deposit account control agreement by and among, Mellon Bank N.A., Almatris, Inc. and the Security Agent, over a deposit account numbered maintained at Mellon Bank N.A. in the name of Almatris, Inc.

Deposit account control agreement by and among, Mellon Bank N.A., Almatris, Inc. and the Security Trustee, over lockbox account numbered 0113195 maintained at Mellon Bank N.A. in the name of Almatris, Inc.

Deposit account control agreement by and among, Commerzbank Aktiengesellschaft, New York Branch, Almatris B.V. and the Security Agent, over a deposit account numbered 150-1077783 maintained at Commerzbank Aktiengesellschaft, New York Branch in the name of Almatris B.V.

Deposit account control agreement by and among, Commerzbank Aktiengesellschaft, New York Branch, Almatris Holdings 7 B.V. and the Security Agent, over a deposit account numbered 150-1077734 maintained at Commerzbank Aktiengesellschaft, New York Branch in the name of Almatris Holdings 7 B.V.

Deposit account control agreement by and among, Commerzbank Aktiengesellschaft, New York Branch, Almatris Holdings 3 B.V. and the Security Agent, over a deposit account numbered 150-1077726 maintained at Commerzbank Aktiengesellschaft, New York Branch in the name of Almatris Holdings 3 B.V.

Deposit account control agreement by and among, Commerzbank Aktiengesellschaft, New York Branch, Almatris Holdings 9 B.V. and the Security Agent, over a deposit account numbered 150-1077742 maintained at Commerzbank Aktiengesellschaft, New York Branch in the name of Almatris Holdings 9 B.V.

Deposit account control agreement by and among, Commerzbank Aktiengesellschaft, New York Branch, Blitz F07-neunhundertsechzig-drei GmbH and the Security Agent, over a deposit account numbered 150-1077809 maintained at Commerzbank Aktiengesellschaft, New York Branch in the name of Blitz F07-neunhundertsechzig-drei GmbH.

Deposit account control agreement by and among, Commerzbank Aktiengesellschaft, New York Branch, Almatris Holdings GmbH and the Security Agent, over a deposit account numbered 150-1077700 maintained at Commerzbank Aktiengesellschaft, New York Branch in the name of Almatris Holdings GmbH.

Deposit account control agreement by and among, Commerzbank Aktiengesellschaft, New York Branch, Almatris GmbH and the Security Agent, over a deposit account numbered 150-

1077791 maintained at Commerzbank Aktiengesellschaft, New York Branch in the name of Almatris GmbH.

Mortgage granted by Almatris Asset Holdings LLC, over real property located in Bauxite, Arkansas.

**4. Japanese Security Document**

Japanese law pledge over 80.47 per cent. of the voting shares in Almatris Limited (Japan) granted by Almatris B.V.

**5. Chinese Security Documents**

Pledge over the ownership rights granted by Almatris B.V. over the shares in Qingdao Almatris Co., Ltd.

Pledge over the ownership rights granted by Almatris B.V. over the shares in Qingdao Almatris Trading Co., Ltd.

**6. English Security Document**

Security Assignment of the Mandatory Prepayment Account and Holding Account granted by Almatris Holdings 3 B.V.



**SCHEDULE 3**  
**REQUESTS AND NOTICES**

**Part IA**  
**Utilisation Request**

**Loans**

From: [Borrower] [Parent]\*

To: [Agent]

Dated: [●]

Dear Sirs

**Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement  
dated [●] (the “Facility Agreement”)**

1. We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
  - (a) Borrower: [●]
  - (b) Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)
  - (c) Currency of Loan: [●]
  - (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. [The proceeds of this Loan should be credited to [account]].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

[the Parent 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 Parent.

**Part IB**  
**Utilisation Request**

**Letters of Credit**

From: [Borrower] [Parent]\*

To: [Agent]

Dated: [●]

Dear Sirs

**Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement  
dated [●] (the “Facility Agreement”)**

1. We refer to the Facility Agreement. This is a Utilisation Request. Terms defined in the Facility Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to arrange for a Letter of Credit to be issued by the Issuing Bank specified below (which has agreed to do so) on the following terms:
  - (a) Borrower: [●]
  - (b) Issuing Bank: [●]
  - (c) Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)
  - (d) Currency of Letter of Credit: [●]
  - (e) Amount: [●] or, if less, the Available Facility
  - (f) Term: [●]
3. We confirm that each condition specified in paragraph (b) (or, to the extent applicable, paragraph (c)), of Clause 6.5 (*Issue of Letters of Credit*) is satisfied on the date of this Utilisation Request.
4. We attach a copy of the proposed Letter of Credit.
5. The purpose of this proposed Letter of Credit is [●].
6. This Utilisation Request is irrevocable.

Yours faithfully,

.....

authorised signatory for

[the Parent on behalf of] [insert name of relevant Borrower] / [insert name of Relevant Borrower]\*

NOTES:

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

## SCHEDULE 4

### MANDATORY COST FORMULA

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

- (a) in relation to a sterling Loan:

$$\frac{AB + C(B - D) + E \times 0.01}{100 - (A + C)} \text{ per cent. per annum}$$

- (b) in relation to a Loan in any currency other than sterling:

$$\frac{E \times 0.01}{300} \text{ per cent. per annum.}$$

Where:

- A is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.
- B is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, if the Loan is an Unpaid Sum, the additional rate of interest specified in paragraph (a) of Clause 14.3 (*Default interest*)) payable for the relevant Interest Period on the Loan.
- C is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.
- D is the percentage rate per annum payable by the Bank of England to the Agent on interest bearing Special Deposits.

- E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Base Reference Banks to the Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.
5. For the purposes of this Schedule:
    - (a) “**Eligible Liabilities**” and “**Special Deposits**” have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
    - (b) “**Fees Rules**” means the rules on periodic fees contained in the Financial Services Authority Fees Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
    - (c) “**Fee Tariffs**” means the fee tariffs specified in the Fees Rules under Column 1 of the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and
    - (d) “**Tariff Base**” has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.
  6. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 per cent. will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.
  7. If requested by the Agent, each Base Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Base Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Base Reference Bank as being the average of the Fee Tariffs applicable to that Base Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Base Reference Bank.
  8. Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:
    - (a) the jurisdiction of its Facility Office; and
    - (b) any other information that the Agent may reasonably require for such purpose.
  9. Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.
  10. The percentages of each Lender for the purpose of A and C above and the rates of charge of each Base Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender’s obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.

11. The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Base Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.
12. The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Base Reference Bank pursuant to paragraphs 3, 7 and 8 above.
13. Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.
14. The Agent may from time to time, after consultation with the Parent and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

## 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:

#### **Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement dated [●] (the “Facility Agreement”)**

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the “**Agreement**”) shall take effect as a Transfer Certificate for the purpose of the Facility Agreement and as a Creditor/Agent 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 29.5 (*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 29.5 (*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 37.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 29.4 (*Limitation of responsibility of Existing Lenders*).
4. The New Lender confirms that it [is]/[is not]\* a Sponsor Affiliate.
5. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a German Qualifying Lender that is not a German Treaty Lender;]
  - (b) [a German Exempt Lender;]
  - (c) [a German Treaty Lender;]
  - (d) [neither a German Qualifying Lender nor a German Exempt Lender.]
6. The New Lender confirms (without prejudice to the validity of this Transfer Certificate) that:
  - (a) it [is]/[is not] a United States person (as defined by Section 7701(a)(30) of the Code); and
  - (b) in accordance with Clause 18.8 (*US tax forms*) of the Facility Agreement, it has provided the Agent and the relevant Obligor with two properly completed and duly executed Internal Revenue Service Forms [W-9]/[W-8BEN]/[W-8ECI]/[W-8IMY],

together with any supplementary information the New Lender is required to transmit with such form.

7. We refer to Clause 19.3 (*Change of Senior Creditor*) of the Intercreditor Agreement.
    - (a) In consideration of the New Lender being accepted as a Senior Creditor for the purposes of the Intercreditor Agreement (and as defined therein), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Creditor, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Creditor 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.
    - [(b) The New Lender hereby expressly consents to the declaration of the Security Agent made on behalf and in the name of the New Lender as future pledgee in the Transaction Security Documents for the purpose of any accessory (*akzessorische*) security created under German law (an “**Accessory Security**”), the New Lender acknowledges that it will from the Transfer Date and pro rata to its participation in the amounts secured by such Transaction Security become a direct beneficiary of the relevant Accessory Security.]
  8. 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.
  9. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
  10. 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.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

[insert relevant details]

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

[Existing Lender]

[New Lender]

By:

By:

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

The Agent acknowledges that it will request the Obligors' Agent to deliver a copy of this Transfer Certificate to Almatris B.V. in its capacity as shareholder of the Japanese Joint Venture for the purpose it procuring that the Japanese Joint Venture promptly registers the New Lender as pledgee under the Japanese Security Document in its shareholders' registry.

[Agent]

By:

[Security Agent]

By:



## SCHEDULE 6

### FORM OF ASSIGNMENT AGREEMENT

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

From: [the Existing Lender] (the “Existing Lender”) and [the New Lender] (the “New Lender”)

Dated:

#### **Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement dated [●] (the “Facility Agreement”)**

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This is an Assignment Agreement. This agreement (the “**Agreement**”) shall take effect as an Assignment Agreement for the purpose of the Facility Agreement and as a Creditor/Agent 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 29.6 (*Procedure for assignment*) of the Facility Agreement:
  - (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. 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 Senior Creditor.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 37.2 (*Addresses*) are set out in the Schedule.
6. The New Lender confirms that it [is]/[is not]\* a Sponsor Affiliate.
7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a German Qualifying Lender that is not a German Treaty Lender;]
  - (b) [a German Exempt Lender;]
  - (c) [a German Treaty Lender;]

- (d) [neither a German Qualifying Lender nor a German Exempt Lender.]
8. The New Lender confirms (without prejudice to the validity of this Assignment Agreement) that:
- (a) it [is]/[is not] a United States person (as defined by Section 7701(a)(30) of the Code); and
  - (b) in accordance with Clause 18.8 (*US tax forms*) of the Facility Agreement, it has provided the Agent and the relevant Obligor with two properly completed and duly executed Internal Revenue Service Forms [W-9]/[W-8BEN]/[W-8ECI]/[W-8IMY], together with any supplementary information the New Lender is required to transmit with such form.
9. We refer to Clause 19.5 (*Change of Senior Creditor*) of the Intercreditor Agreement:
- (a) In consideration of the New Lender being accepted as a Senior Creditor for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Creditor, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Creditor 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.
  - (b) [The New Lender hereby expressly consents to the declaration of the Security Agent made on behalf and in the name of the New Lender as future pledgee in the Transaction Security Documents for the purpose of any accessory (*akzessorische*) security created under German law (an “**Accessory Security**”), the New Lender acknowledges that it will from the Transfer Date and pro rata to its participation in the amounts secured by such Transaction Security become a direct beneficiary of the relevant Accessory Security.]
10. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 29.7 (*Copy of Transfer Certificate or Assignment Agreement to Parent*), to the Parent (on behalf of each Obligor) of the assignment referred to in this Agreement.
11. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
12. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
13. This Agreement has been entered into on the date stated at the beginning of this Agreement.
- Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender’s interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender’s Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

**THE SCHEDULE**

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

[insert relevant details]

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facility Agreement by the Agent, and as a Creditor/Agent 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 DEED

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

From: [Subsidiary] and [Parent]

Dated: [●]

Dear Sirs

**Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement  
dated [●] (the “Facility Agreement”)**

1. We refer to the Facility Agreement and to the Intercreditor Agreement. This deed (the “**Accession Deed**”) shall take effect as an Accession Deed for the purposes of the Facility Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in paragraphs 1-3 of this Accession Deed unless given a different meaning in this Accession Deed.
2. [Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facility Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional [Borrower]/[Guarantor] pursuant to Clause [31.2 (*Additional Borrowers*)]/[Clause 31.4 (*Additional Guarantors*)] of the Facility Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited [partnership][liability company][and registered number [●]].
3. [Subsidiary’s] administrative details for the purposes of the Facility Agreement and the Intercreditor Agreement are as follows:  
  
Address: [●]  
  
Fax No.: [●]  
  
Attention: [●]
4. [Subsidiary] (for the purposes of this paragraph 4, the “**Acceding Debtor**”) intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

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

the “**Relevant Documents**”.

**IT IS AGREED** as follows:

- (a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, 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 Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;

- (ii) all proceeds of that Security; and]
- (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].

[4]/[5] This Accession Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

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

[Subsidiary]

[EXECUTED AS A DEED )

By: [Subsidiary] )

\_\_\_\_\_  
Director

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

**OR**

[EXECUTED AS A DEED

By: [Subsidiary]

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Occupation of witness]

**The Parent**

\_\_\_\_\_  
[Parent]

By:

**The Security Agent**

[Full Name of Current Security Agent]

By:

Date:

## SCHEDULE 8

### FORM OF RESIGNATION LETTER

To: [●] as Agent

From: [resigning Obligor] and [Parent]

Dated: [●]

Dear Sirs

**Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement  
dated [●] (the “Facility Agreement”)**

1. We refer to the Facility Agreement. This is a Resignation Letter. Terms defined in the Facility Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [Clause 31.3 (*Resignation of a Borrower*)]/[Clause 31.5 (*Resignation of a Guarantor*)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facility Agreement and the Finance Documents (other than the Intercreditor Agreement).
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) \*[[this request is given in relation to an Asset Disposition of [resigning Obligor];
  - (c) [the Disposal Proceeds have ben or will be applied in accordance with Clause 12.2 (*Disposal Proceeds and Insurance Proceeds*)] \*\*
  - (d) [●]\*\*\*
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

[resigning Obligor]

By:

By:

#### NOTES:

\* Insert where resignation only permitted in case of an Asset Disposition.

\*\* Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.

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

SCHEDULE 9

FORM OF COMPLIANCE CERTIFICATE

To: [●] as Agent

From: [Parent]

Dated: [●]

Dear Sirs

**Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement  
dated [●] (the “Facility Agreement”)**

- 1. We refer to the Facility Agreement. This is a Compliance Certificate [given under Clause 26.4 (*Equity cure*)<sup>\*</sup> of the Facility Agreement]. Terms defined in the Facility Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2. We confirm that:  
[Insert details of covenants to be certified].
- 3. [We confirm that no Default is continuing.]\*
- 4. [We confirm that the following companies constitute Material Companies for the purposes of the Facility Agreement: [●].]

We confirm that the aggregate of the earnings before interest, tax, depreciation and amortisation (calculated on the same basis as Consolidated EBITDA, as defined in Clause 26 (*Financial Covenants*)), aggregate gross assets and aggregate turnover of the Guarantors (calculated on an unconsolidated basis and excluding all intra-Guarantor Group items and investments in Subsidiaries of any member of the Group) exceeds [●] per cent. of the Consolidated EBITDA, as defined in Clause 26 (*Financial Covenants*), consolidated gross assets and consolidated turnover of the Guarantor Group.

Signed	.....	.....
	Director	Director
	Of	Of
	[Parent]	[Parent]

[insert applicable certification language]

.....

for and on behalf of

[name of Auditors of the Parent]\*\*

NOTES:

\* If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.



\*\* Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the Auditors. To be agreed with the Parent's auditor's prior to signing the Agreement.

## SCHEDULE 10

### LMA FORM OF CONFIDENTIALITY UNDERTAKING

To: [●] as Agent

From: [Parent]

Dated: [●]

Dear Sirs

**Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Facility Agreement  
dated [●] (the “Facility Agreement”)**

Dear Sirs

We understand that you are considering participating in the Facility. 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:

**(A) CONFIDENTIALITY**

**1. CONFIDENTIALITY UNDERTAKING**

You undertake:

- 1.1 to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph (A)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;
- 1.2 to keep confidential and not disclose to anyone except as provided for by paragraph (A)2 below the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us in connection with the Facility; and
- 1.3 to use the Confidential Information only for the Permitted Purpose.

**2. PERMITTED DISCLOSURE**

We agree that you may disclose such Confidential Information and such of those matters referred to in paragraph (A)1.2 above as you shall consider appropriate:

- 2.1 to members of the Participant Group and their officers, directors, employees, professional advisers and auditors if any person to whom the Confidential Information is to be given pursuant to this paragraph (A)2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

- 2.2 to any person 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; and
- 2.3 with the prior written consent of us and the Company.

### **3. NOTIFICATION OF DISCLOSURE**

You agree (to the extent permitted by law and regulation) to inform us:

- 3.1 of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (A)2.2 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
- 3.2 upon becoming aware that Confidential Information has been disclosed in breach of this letter.

### **4. RETURN OF COPIES**

If you do not participate in the Facility and we so request in writing, you shall return 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 paragraph (A)2.2 above.

### **5. CONTINUING OBLIGATIONS**

The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in Part A of this letter [(other than those set out in paragraph A(10) below which shall remain in place until the end of the Offer Period (as defined in paragraph A(10) below))] shall cease on the earlier of (a) the date on which you become a party to the Facility Agreement or (b) [twelve] Months after the date of this letter.

### **6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC**

You acknowledge and agree that:

- 6.1 neither we nor any of our 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 any member of the Group 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 any member of the Group or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- 6.2 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 or member of the Group 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**

- 7.1 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.
- 7.2 No failure or delay in exercising any right or remedy under this letter will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any further exercise thereof or the exercise of any other right or remedy under this letter.
- 7.3 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 Part A of this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the Parent and each other member of the Group.

### **(B) MISCELLANEOUS**

#### **1. THIRD PARTY RIGHTS**

- 1.1 Subject to this paragraph (B)1 and to paragraphs (A)6 and (A)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.
- 1.2 The Relevant Persons and each member of the Group may enjoy the benefit of the terms of paragraphs (A)6 and (A)9 subject to and in accordance with this paragraph (B)1 and the provisions of the Third Parties Act.
- 1.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person or any member of the Group to rescind or vary this letter at any time.

#### **2. GOVERNING LAW AND JURISDICTION**

- 2.1 This letter and 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.
- 2.2 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).

#### **3. DEFINITIONS**

In this letter (including the acknowledgement set out below):

“**Arranger Group**” means us, each of our holding companies and subsidiaries and each subsidiary of each of our holding companies (as each such term is defined in the Companies Act 2006) and each of our or their directors, officers and employees (including any sales and trading teams) provided that when used in this letter in respect of an Arranger it applies severally only in respect of that Arranger, each of that Arranger's holding companies and subsidiaries, each subsidiary of each of its holding companies and each director, officer and employee (including any sales and trading teams) of that Arranger or any of the foregoing and not, for the avoidance of doubt, those of another Arranger.

“**Confidential Information**” means all information relating to the Company, any Obligor, the Group, the Finance Documents and/or the Facility which is provided to you in relation to the Finance Documents or 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.

“**Facility**” means the facility under the Facility Agreement.

“**Facility Interest**” means a legal, beneficial or economic interest acquired or to be acquired expressly and specifically in or in relation to the Facility, whether as initial lender or by way of assignment, transfer, novation, sub-participation (whether disclosed, undisclosed, risk or funded) or any other similar method.

“**Finance Documents**” means the documents defined in the Facility Agreement as Finance Documents.

“**Group**” means the Parent and its subsidiaries for the time being (as such term is defined in the Companies Act 2006).

“**Obligor**” means a borrower or a guarantor under the Facility Agreement.

“**Participant Group**” means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 2006).

“**Permitted Purpose**” means considering and evaluating whether to enter into the Facility.

“**Syndication**” means the primary syndication of the Facility.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of

[Arranger]

To: [Arranger]

The Parent and each other member of the Group

We acknowledge and agree to the above:

.....

For and on behalf of

[Potential Lender]

## SCHEDULE 11

### TIMETABLES

#### Part I Loans

	Loans in euro	Loans in USD
Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> ))	U-3 9.30 am	U-3* 9.30 am
Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 ( <i>Lenders' participation</i> ) and notifies the Lenders of the Loan in accordance with Clause 5.4 ( <i>Lenders' participation</i> )	U-3 Noon	U-3 Noon
Agent receives a notification from a Lender under Clause 8.2 ( <i>Unavailability of a currency</i> )	Quotation Day 9.30 am	-
Agent gives notice in accordance with Clause 8.2 ( <i>Unavailability of a currency</i> )	Quotation Day	-
LIBOR or EURIBOR is fixed	Quotation Day as of 11:00 a.m. in respect of LIBOR and as of 11.00 a.m. (Brussels time) in respect of EURIBOR	Quotation Day as of 11:00 a.m.

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

“U - X” = X Business Days prior to date of utilisation

\* In respect of a Utilisation on the Closing Date, U.

#### Part II Letters of Credit

#### Letters of Credit

Delivery of a duly completed Utilisation Request (Clause 6.2 (*Delivery of a Utilisation Request for Letters of Credit*)) U-2 9:30am

Agent determines (in relation to a Utilisation) the Base Currency Amount of the Letter of Credit if required under paragraph (f) of Clause 6.5 (*Issue of Letters of Credit*) and notifies the relevant Issuing Bank and Lenders of the Letter of Credit in accordance with paragraph (f) of Clause 6.5 (*Issue of*) U-1 10.30am

*Letters of Credit).*

Delivery of duly completed Renewal Request (Clause 6.6 U-3 9:30am  
(*Renewal of a Letter of Credit*))

“U” = date of utilisation, or, if applicable, in the case of a Letter of Credit to be renewed in accordance with Clause 6.6 (*Renewal of a Letter of Credit*), the first day of the proposed term of the renewed Letter of Credit

“U-X” = Business Days prior to date of utilisation



## SCHEDULE 12

### FORM OF LETTER OF CREDIT

[*TO BE REVIEWED BY ISSUING BANK*]

To: [Beneficiary] (the “**Beneficiary**”)

Date [●]

**Irrevocable Standby Letter of Credit no. [●]**

At the request of [●], [Issuing Bank] (the “**Issuing Bank**”) issues this irrevocable standby Letter of Credit (“**Letter of Credit**”) in your favour on the following terms and conditions:

#### 1. Definitions

In this Letter of Credit:

“**Business Day**” means a day (other than a Saturday or a Sunday) on which banks are open for general business in [London].\*

“**Demand**” means a demand for a payment under this Letter of Credit in the form of the schedule to this Letter of Credit.

“**Expiry Date**” means [●].

“**Total L/C Amount**” means [●].

#### 2. Issuing Bank's agreement

- (a) The Beneficiary may request a drawing or drawings under this Letter of Credit by giving to the Issuing Bank a duly completed Demand. A Demand must be received by the Issuing Bank by no later than [●] p.m. ([London] time) on the Expiry Date.
- (b) Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, within [ten (10)] Business Days of receipt by it of a Demand, it must pay to the Beneficiary the amount demanded in that Demand.
- (c) The Issuing Bank will not be obliged to make a payment under this Letter of Credit if as a result the aggregate of all payments made by it under this Letter of Credit would exceed the Total L/C Amount.

#### 3. Expiry

- (a) The Issuing Bank will be released from its obligations under this Letter of Credit on the date (if any) notified by the Beneficiary to the Issuing Bank as the date upon which the obligations of the Issuing Bank under this Letter of Credit are released.
- (b) Unless previously released under paragraph (a) above, on [●] p.m.([London] time) on the Expiry Date the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid.

- (c) When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank.

**4. Payments**

All payments under this Letter of Credit shall be made in [●] and for value on the due date to the account of the Beneficiary specified in the Demand.

**5. Delivery of Demand**

Each Demand shall be in writing, and, unless otherwise stated, may be made by letter, fax or telex and must be received in legible form by the Issuing Bank at its address and by the particular department or office (if any) as follows:

[●]

**6. Assignment**

The Beneficiary's rights under this Letter of Credit may not be assigned or transferred.

**7. ISP**

Except to the extent it is inconsistent with the express terms of this Letter of Credit, this Letter of Credit is subject to the International Standby Practices (ISP 98), International Chamber of Commerce Publication No. 590.

**8. Governing Law**

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

**9. Jurisdiction**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter of Credit (including a dispute relating to any non-contractual obligation arising out of or in connection with this Letter of Credit).

Yours faithfully

[Issuing Bank]

By:

NOTES:

\* This may need to be amended depending on the currency of payment under the Letter of Credit.

**SCHEDULE**  
**FORM OF DEMAND**

To: [ISSUING BANK]

[Date]

Dears Sirs

Standby Letter of Credit no. [●] issued in favour of [BENEFICIARY] (the “**Letter of Credit**”)

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. We certify that the sum of [●] is due [and has remained unpaid for at least [●] Business Days] [under [set out underlying contract or agreement]]. We therefore demand payment of the sum of [●].
2. Payment should be made to the following account:  
  
Name: [●]  
Account Number: [●]  
Bank: [●]
3. The date of this Demand is not later than the Expiry Date.

Yours faithfully

(Authorised Signatory) (Authorised Signatory)

For  
[BENEFICIARY]

**SCHEDULE 13**  
**AGREED SECURITY PRINCIPLES**

**1. AGREED SECURITY PRINCIPLES**

- (a) The guarantees and security to be provided will be given in accordance with certain agreed security principles (the “Agreed Security Principles”). This Schedule addresses the manner in which the Agreed Security Principles will impact on the guarantees and security proposed to be taken in relation to this transaction.
- (b) The Agreed Security Principles embody recognition by all parties that there may be certain legal and practical difficulties in obtaining effective security from all members of the Group in every jurisdiction in which members of the Group are located. In particular:
  - (i) general statutory limitations, capital maintenance rules, financial assistance, corporate benefit, fiduciary duties, fraudulent preference, retention of title claims and similar principles may limit the ability of a member of the Group to provide a guarantee or security or may require that the guarantee be limited by an amount or otherwise;
  - (ii) in determining whether or not guarantees or security shall be taken, due regard shall be made to applicable cost;
  - (iii) in determining whether or not guarantees or security shall be taken, security perfected or other legal formalities completed, due regard shall be made as to whether such action would have a material adverse effect on the ability of the relevant Obligor or security provider to conduct its operations or business in the ordinary course as otherwise permitted by the Finance Documents;
  - (iv) any assets subject to third party arrangements which are permitted by this agreement and which may prevent those assets from being charged will, to the extent those arrangements cannot be removed, be excluded from any fixed charge in the relevant Transaction Security Document;
  - (v) members of the Group will not be required to give guarantees or enter into a Transaction Security Document if it is not within the legal capacity of the relevant members of the Group or if the same would contravene any legal prohibition or would reasonably be expected to result in personal or criminal liability on the part of any officer or director;
  - (vi) the granting of guarantees, perfection of security, when required, and other legal formalities will be completed as soon as practicable and, in any event, within the time periods specified in this agreement or within the time periods specified by applicable law in order to ensure due perfection;
  - (vii) the Security Agent (on behalf of the Secured Parties) shall be able, subject to the terms of the Intercreditor Agreement, to enforce the security constituted by the Transaction Security Documents without any restriction from either (i) the constitutional documents of the relevant Obligor (other than with respect to Almatris Limited (Japan)); (ii) any Obligor which is or whose assets are the subject of such security document; or (iii) any shareholders of the foregoing not being party to the relevant Transaction Security Document (other than with respect to Almatris Limited (Japan)).
  - (viii) the perfection of pledges of ownership rights over entities incorporated in China are dependent on the actions taken by the relevant regulatory authorities; and

- (ix) share pledges over entities incorporated in Japan will be vested in each Finance Party and will not be held by the Security Trustee on trust. The Security Trustee will act as agent for the benefit of the Finance Parties in relation to such share pledges in accordance with the relevant Transaction Security Documents.

Notwithstanding the above, in each case, each party required to provide security or give guarantees shall use its reasonable endeavours to overcome any of the above difficulties including, but not limited to, using reasonable endeavours to obtain relevant third party consent or complying with whitewash procedures or equivalent.

## **2. GUARANTEES AND SECURITY**

- (a) Each guarantee will be an upstream, cross-stream and downstream guarantee and each guarantee and security will be for all liabilities of the Obligors under the Finance Documents in accordance with, and subject to, the requirements of the Agreed Security Principles in each relevant jurisdiction.
- (b) Where an Obligor acquires assets of material value or significance after the date on which it initially grants security, such Obligor shall promptly enter into security arrangements in accordance with these Agreed Security Principles.

## **3. TERMS OF SECURITY DOCUMENTS**

The following principles will be reflected in the terms of any security taken as part of this transaction:

- (a) the security will be first ranking, to the extent possible;
- (b) security will not be enforceable until an Event of Default has occurred and notice of acceleration has been given by the Facility Agent under the Finance Documents (“Declared Default”) provided that the Security Agent will be entitled where the relevant security provider fails to fulfil its obligations under the security documents, to perfect all documents and do all things which it may consider to be required or desired to perfect its rights thereunder;
- (c) the Transaction Security Documents should only operate to create security rather than to impose new commercial obligations. Accordingly, they should not contain any additional representations or undertakings (such as in respect of insurance, information or the payment of costs) unless these are the same as those contained in this Agreement or are covenants required for the creation or perfection of the security;
- (d) in respect of the share pledges, until a Declared Default has occurred, the pledgors should be permitted to retain and to exercise voting rights to any shares pledged by them in a manner which does not adversely affect the validity or enforceability of the security or cause a Declared Default to occur and the pledgors should be permitted to receive and retain dividends on pledged shares and to pay dividends upstream on pledged shares to the extent permitted under this Agreement;
- (e) information, such as lists of assets, will be provided promptly upon the request of the Security Agent (acting reasonably) and in any event it shall be delivered promptly upon the occurrence of a Declared of Default;
- (f) the Finance Parties should only be able to exercise any power of attorney granted to them under the Transaction Security Documents after a Declared Default has occurred or if the Obligor has failed to perform the relevant obligations;

- (g) the amount secured by any Transaction Security Document or under a guarantee will not be an “all monies” charge or guarantee but will be restricted to a charge or guarantee of all the liabilities owed to the Finance Parties and arising under the Finance Documents;
- (h) security, will where possible and practical, automatically create security over future assets of the same type as those already secured.
- (i) to the extent that covenants to pay in the Transaction Security Documents or guarantees refer to calculation of interest payable, this should be calculated at the rate specified in the relevant clauses of this Agreement;
- (j) negative pledges should not prevent transactions which are permitted under this Agreement;
- (k) with regard to any land charges or mortgages over real estate situated in Germany (if any), the security purpose agreement relating to such land charge or mortgage will contain a provision pursuant to which the land charge or mortgage will only secure claims of the Finance Parties if and to the extent that such Finance Party’s claim can be allocated to such Finance Party or to a permanent establishment of such Finance Party which, from a German tax point of view, is resident or located (i) in the Federal Republic of Germany; or (ii) in a country with which the Federal Republic of Germany has entered into an international convention for the avoidance of double taxation in respect of tax on income, under which the Federal Republic of Germany may not levy taxes on interest income attained under any of the Finance Documents which is secured by real property located in the Federal Republic of Germany; and
- (l) no security shall be granted over any Intellectual Property which cannot be secured under the terms of the relevant licensing agreement relating to that Intellectual Property provided that reasonable endeavours are used to amend the relevant licensing agreement to permit security to be granted. No notice of assignment of Intellectual Property shall be required to be given to any third party from whom that Intellectual Property is licensed until a Declared Default has occurred. Any Transaction Security relating to Intellectual Property shall contain a provision that if requested to do so by the Security Trustee the applicable Obligor shall, at its own cost and within 30 days of such request, submit an application to enter on any public register of its material Intellectual Property such particulars of the transaction affected by the Finance Documents as are required to ensure the validity and effectiveness of the Transaction Security.

#### **4. BANK ACCOUNTS**

- (a) Subject to these Agreed Security Principles, each Obligor shall grant security over its bank accounts but it shall be free to deal with those accounts in the course of its business until a Declared Default has occurred.
- (b) Each Obligor shall use its best efforts to perfect the security, including by way of service of a notice of the security on the account bank within 5 Business Days of the security being granted and each Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice and in any event within two months of service. If the Obligor has used its reasonable endeavours but has not been able to obtain an acknowledgement its obligation to obtain an acknowledgement shall cease on the expiry of a 2 month period.
- (c) If required under local law, the security will be registered subject to the general principles set out in these Agreed Security Principles.

- (d) Any security over bank accounts shall be subject to any prior security interests in favour of the account bank which are created either by law or in the standard terms and conditions of the account bank. The notice of security may request these be waived by the account bank but the Obligor shall not be required to change its banking arrangements if these security interests are not waived or only partially waived.

## **5. EQUIPMENT AND MACHINERY**

- (a) Subject to these Agreed Security Principles each Obligor shall grant security over its equipment and machinery but, subject to any undertakings contained in the Transaction Documents, it shall be free to deal with those assets in the ordinary course of its business until a Declared Default has occurred.
- (b) No notice (whether to third parties or by attaching a notice to the equipment and machinery) shall be given until a Declared Default has occurred.
- (c) If required under local law, security over equipment and machinery will be registered subject to the general principles set out in these Agreed Security Principles.

## **6. INSURANCE POLICIES**

- (a) Subject to these Agreed Security Principles, each Obligor shall grant Security over its insurance policies in relation to assets that are also subject to Transaction Security. No Security will be granted over any insurance policies which cannot be secured under local law or under the terms of the relevant policy. Insurance claims will be collected by the Obligor in the ordinary course of business until a Declared Default has occurred. To the extent required under local law and standard local practice, each Obligor shall use reasonable endeavours to note the interest of the Security Agent as secured creditor or loss payee, on each such policy.
- (b) If required by local law to perfect the security, notice of the security will be served on the insurance provider within 5 Business Days of the security being granted and the relevant Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice and in any event within two months of service.
- (c) If the Obligor has used its reasonable endeavours but has not been able to obtain an acknowledgement its obligation to obtain an acknowledgement shall cease on the expiry of the two month period.

## **7. INTERCOMPANY RECEIVABLES**

- (a) Subject to these Agreed Security Principles, each Obligor shall grant security over its intercompany receivables but it shall, subject to provisions of the Transaction Documents, be free to deal with those receivables in the ordinary course of its business used in accordance with the Intercreditor Agreement until a Declared Default has occurred.
- (b) If required under local law to perfect the relevant security, notice of the security will be served on the relevant debtor within 5 Business Days of the security being granted and the relevant Obligor shall promptly obtain an acknowledgement of such notice from the relevant debtor promptly.
- (c) If required under local law for perfection or otherwise, security over intercompany receivables will be registered subject to the general principles set out in these Agreed Security Principles.
- (d) Subject to the Agreed Security Principles referred to in Clause 1 above, if local law requires supplemental pledges to be delivered in respect of future intercompany receivables in order

for effective security to be created, the Obligor shall provide such supplemental pledges or other forms of security (including but not limited to assignments) promptly.

## **8. TRADE RECEIVABLES**

- (a) Subject to these Agreed Security Principles, each Obligor shall grant security over its trade receivables but it shall, subject to provisions of the Transaction Documents, be free to deal with those receivables in the ordinary course of its business until a Declared Default has occurred.
- (b) No notice of security may be served until a Declared Default has occurred.
- (c) If required under local law for perfection or otherwise, security over trade receivables will be registered subject to the general principles set out in these Agreed Security Principles.
- (d) Subject to the Agreed Security Principles referred to in Clause 1 above, if local law requires supplemental pledges to be delivered in respect of future trade receivables in order for effective security to be created, each Obligor shall provide such supplemental pledges or other forms of security (including but not limited to assignments) promptly.

## **9. SHARES**

- (a) Subject to these Agreed Security Principles, each Obligor shall grant a charge over or pledge of the shares it owns in other Obligor or in any agreed Subsidiaries.
- (b) The Transaction Security Documents will be governed by the laws of the company whose shares are being pledged and not by the law of the country of the Obligor granting the security.
- (c) Until a Declared Default has occurred, each relevant Obligor will be, subject to the provisions of the Transaction Documents, permitted to retain and to exercise voting rights related to any shares charged by it in a manner which does not adversely affect the validity or enforceability of the security or cause a Declared Default to occur and the entity whose shares have been charged will be permitted to pay dividends on any pledged shares to the extent permitted under the Transaction Documents with the proceeds to be available to the relevant shareholding Obligor.
- (d) Where customary, within 5 Business Days of execution of any share charge or pledge, a share certificate and a stock transfer form executed in blank will be provided to the Security Agent and where required by law the share certificate will be endorsed or a notice of pledge will be recorded in the shareholders' register and the endorsed share certificate or a copy of the notice in the shareholders' register will be provided to the Security Agent.
- (e) The constitutional documents of the entity (other than Almatris Limited (Japan)) whose shares are charged or pledged will, to the extent legally possible, be amended without undue delay to remove any restriction on the transfer or the registration of the transfer of the shares on enforcement of the relevant Security.
- (f) Subject to the Agreed Security Principles referred to in Clause 1 above, if local law requires supplemental pledges to be delivered in respect of future shares in order for effective security to be created, each Obligor shall provide such supplemental pledges or other forms of security (including but not limited to assignments) promptly.



## **10. REAL ESTATE**

- (a) Subject to these Agreed Security Principles, each Obligor shall grant security over its real estate.
- (b) With respect to any real estate located in Germany (if any), a submission to immediate foreclosure (Unterwerfung unter die sofortige Zwangsvollstreckung) relating to any real estate security is to be provided.
- (c) There will be no obligation to investigate title, provide surveys or other insurance.
- (d) Any real estate security will be subject to usual and applicable easements and other liens in favour of taxing authorities , municipalities and other applicable bodies.
- (e) Each Obligor shall use its reasonable endeavours to obtain any consent required to grant security over its real estate but will be under no obligation to obtain such consent if the granting of the security would contravene any legal prohibition.
- (f) Subject to the Agreed Security Principles referred to in Clause 1 above, if local law requires supplemental pledges to be delivered in respect of future real estate in order for effective security to be created, each Obligor shall provide such supplemental pledges or other forms of security (including but not limited to assignments) promptly.

## **11. INTELLECTUAL PROPERTY**

- (a) Subject to these Agreed Security Principles, each Obligor shall grant security over its Intellectual Property, but, subject to any undertakings contained in the Transaction Documents, it shall be free to deal with those assets in the ordinary course of its business (including without limitation, allowing its intellectual property to lapse if no longer material to its business) until a Declared Default has occurred.
- (b) Each Obligor shall use its reasonable endeavours to obtain any consent required to grant security over its Intellectual Property but will be under no obligation to obtain such consent if the granting of the security would contravene any legal prohibition.

## **12. RELEASE OF SECURITY**

Any security shall be discharged by, and only by, the express release thereof granted by the Security Agent, which release will be confirmed as soon as all the liabilities under the Transaction Documents shall have been finally discharged and there is no possibility of any further liabilities under the Transaction Documents coming into existence.

**SCHEDULE 14**

**FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE**

**Part I**

**Form of Notice on Entering into Notifiable Debt Purchase Transaction**

To: [●] as Agent

From: [The Lender]

Dated:

**Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement  
dated [●] (the “Facility Agreement”)**

1. We refer to paragraph (b) of Clause 30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Notifiable Debt Purchase Transaction.
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to USD [●] of our Commitment.

[Lender]

By:

**Part II**  
**Form of Notice on Termination of Notifiable Debt Purchase Transaction**

Notifiable Debt Purchase Transaction ceasing to be with Sponsor Affiliate

To: [●] as Agent

From: [The Lender]

Dated: [●]

**Almatis Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement  
dated [●] (the “Facility Agreement”)**

1. We refer to paragraph (c) of Clause 30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*) of the Facility Agreement. Terms defined in the Facility Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. A Notifiable Debt Purchase Transaction which we entered into and which we notified you of in a notice dated [●] has [terminated]/[ceased to be with a Sponsor Affiliate].\*
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to USD [●] of our Commitment as set out below.

[Lender]

By:

**SCHEDULE 15**  
**RESTRICTIVE COVENANTS**

**Current draft dated 15th September 2010 and subject to conforming changes to be included following agreement of the equivalent covenants set out in the Note Indenture save for where certain provisions will be adapted and revised for this Agreement .**

## **RESTRICTIVE COVENANTS**

### **1. Limitation on Indebtedness**

**1.1** The Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness); *provided* that the Company may Incur Indebtedness (including Acquired Indebtedness) if, after giving effect thereto (the “**Leverage Ratio Exception**”):

- (a) the Consolidated Leverage Ratio for the Parent and its Restricted Subsidiaries is not greater than (i) 5.00 to 1.00, if the Incurrence occurs prior to December 31, 2011, and (ii) 4.00 to 1.00 if the Incurrence occurs on or after that date; and
- (b) no Default or Event of Default will have occurred or be continuing or would occur as a consequence of Incurring the Indebtedness or transactions relating to such Incurrence.

**1.2** Notwithstanding the above, each of the following shall be permitted (“**Permitted Indebtedness**”):

- (a) Indebtedness Incurred by the Obligor pursuant to the Finance Documents;
- (b) the guarantee by the Parent or any of its Restricted Subsidiaries of Indebtedness of the Parent or any of its Restricted Subsidiaries to the extent that the guaranteed Indebtedness was permitted to be Incurred by another provision of this Clause 1; *provided* that if the Indebtedness being guaranteed is subordinated to or *pari passu* with the Indebtedness under this Agreement, then such guarantee must be subordinated or *pari passu*, as applicable, to the same extent as the Indebtedness being guaranteed;
- (c) Indebtedness of the Parent owing to and held by any Restricted Subsidiary or Indebtedness of a Restricted Subsidiary owing to and held by the Parent or any other Restricted Subsidiary; *provided* that
  - (i) if the Company is the obligor on such Indebtedness, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all obligations with respect to the Finance Documents;
  - (ii) if a Guarantor is the obligor on such Indebtedness and the Parent or a Guarantor is not the obligee, such Indebtedness must be subordinated in right of payment to the guarantees under the Finance Documents of such Guarantor; and
  - (iii) upon any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or such Indebtedness being owed to any Person other than the Parent or a Restricted Subsidiary, the Company or such Restricted Subsidiary, as applicable, shall be deemed to have Incurred Indebtedness not permitted by this paragraph (c);
- (d) Indebtedness represented by (i) the Notes issued on the Closing Date (including, for the avoidance of doubt, PIK Interest issued thereon) and the Note Guarantees and (ii) any other Indebtedness (other than (A) Indebtedness in respect of borrowed

money and (B) Indebtedness described in paragraphs (a), (c), (d), (g), (j), (k) and (l)<sup>1</sup>) outstanding on the Closing Date;

- (e) any Refinancing Indebtedness (in the case of the Notes and the Notes Guarantees including Retrenching Indebtedness) Incurred in respect of any Indebtedness described in paragraph (d)[(ii)] of this Permitted Indebtedness definition or this paragraph (e) or Incurred pursuant to the Leverage Ratio Exception in Clause 1.1;
- (f) Indebtedness under Hedging Obligations entered into for bona fide hedging purposes of the Parent or any Restricted Subsidiary not for the purpose of speculation;
- (g) indemnification, adjustment of purchase price, earn-out or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business or assets of the Parent or any Restricted Subsidiary or Capital Stock of a Restricted Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Capital Stock for the purpose of financing or in contemplation of any such acquisition; *provided* that (i) any amount of such obligations included on the face of the balance sheet of the Parent or any Restricted Subsidiary shall not be permitted under this paragraph (g) and (ii) in the case of a disposition, the maximum aggregate liability in respect of all such obligations outstanding under this paragraph (g) shall at no time exceed the gross proceeds, including the Fair Market Value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Parent and the Restricted Subsidiaries in connection with such disposition;
- (h) Indebtedness Incurred in respect of letters of credit (provided that, upon the drawing of such letters of credit, such obligations are reimbursed within 30 days following such drawing), judgment, advance payment, customs, VAT or other tax guarantees, the financing of insurance premiums, workers' compensation claims, self-insurance obligations, performance, surety and similar bonds and completion guarantees provided by the Parent or a Restricted Subsidiary in the ordinary course of business and not in connection with the borrowing of money and customary cash management, cash pooling or netting or setting off arrangements;
- (i) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within five Business Days of Incurrence;
- (j) Indebtedness under one or more local revolving or term loan or other debt facilities of Subsidiaries organized under the laws of and operating in China ("**China Subsidiaries**") in an aggregate amount not to exceed \$25.0 million at any time outstanding (and Refinancing Indebtedness in respect thereof) the "**China Facilities**"; *provided* that such Indebtedness is either unsecured or secured only by assets of China Subsidiaries (excluding capital stock pledged to secure obligations under the Finance Documents), constitutes Non-Recourse Debt and is incurred exclusively for use in the Calcine project and/or the Tabular project;
- (k) Indebtedness under one or more local revolving or term loan or other debt facilities of Subsidiaries organized under the laws of and operating in Japan (the "**Japan Subsidiaries**") in an aggregate amount not to exceed \$10.0 million at any time

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<sup>1</sup> Cross references to be checked.

outstanding (and Refinancing Indebtedness in respect thereof) (the “**Japan Facilities**”); provided that such Indebtedness is unsecured and constitutes Non-Recourse Debt; and

- (l) (i) Purchase Money Indebtedness and/or Capitalized Lease Obligations Incurred by the Parent or any Restricted Subsidiary (and Refinancing Indebtedness in respect thereof) in an aggregate amount not to exceed \$10.0 million at any time outstanding and (ii) Purchase Money Indebtedness and/or Capitalized Lease Obligations of Persons that are acquired by the Parent or a Restricted Subsidiary or merged or amalgamated or consolidated with the Parent or a Restricted Subsidiary (and Refinancing Indebtedness in respect thereof) existing prior to such acquisition, merger, amalgamation or consolidation and not Incurred in contemplation thereof in aggregate amount not to exceed \$5.0 million at any time outstanding.

**1.3** In addition, all Indebtedness Incurred pursuant to the Leverage Ratio Exception or pursuant to Permitted Indebtedness that is owed or payable to the Investors or any direct or indirect holding company of the Parent shall only be permitted to the extent it constitutes Subordinated Shareholder Debt.

**1.4** For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this Clause 1 of this Schedule 15 (*Restrictive Covenants*):

- (a) in the event that Indebtedness meets the criteria of more than one of the types of Indebtedness described in Clause 1.1 or Clause 1.2 of this Schedule 15 (*Restrictive Covenants*), the Company, in its sole discretion, will classify such item of Indebtedness on the date of Incurrence and only be required to include the amount and type of such Indebtedness in one of such clauses;
- (b) notwithstanding paragraph (a) of this Clause 1.4, all Indebtedness Incurred under paragraph (a) of Clause 1.2 of this Schedule 15 (*Restrictive Covenants*) may not be reclassified;
- (c) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included;
- (d) the principal amount of any Disqualified Stock of the Parent or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary that is not a Guarantor, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;
- (e) Indebtedness permitted by this Clause 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 Clause 1 permitting such Indebtedness; and
- (f) 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 in accordance with the Accounting Principles.

**1.5** Accrual of interest, accrual of dividends, the accretion of accreted value, the payment of interest in the form of additional Indebtedness (including PIK Interest on the Notes) and the

payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock will not be deemed to be an Incurrence of Indebtedness for purposes of this Clause 1.

- 1.6 For purposes of the definition of Permitted Indebtedness, (a) the Dollar Equivalent principal amount of Indebtedness denominated in a currency other than the U.S. dollar 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 first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a currency other than the U.S. dollar, and such refinancing would cause the applicable U.S. dollar-dominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this Clause 1, the maximum amount of Indebtedness that may be Incurred pursuant to this Clause 1 shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies and (b) 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

- 2.1 The Parent will not, and will not permit any Restricted Subsidiary to, directly or indirectly, make any Restricted Payment if at the time of such Restricted Payment:
- (a) a Default shall have occurred and be continuing or shall occur as a consequence thereof;
  - (b) the Company cannot Incur \$1.00 of additional Indebtedness pursuant to the Leverage Ratio Exception of Clause 1.1 (*Limitation on Indebtedness*) of this Schedule 15 (*Restrictive Covenants*); or
  - (c) the amount of such Restricted Payment, when added to the aggregate amount of all other Restricted Payments made since the Closing Date (other than Restricted Payments made pursuant to paragraphs (b), (c), (e), [(i),] [(j) and (k)] of Clause 2.2 of this Schedule 15 (*Restrictive Covenants*)), exceeds the sum (the “**Restricted Payments Basket**”) of (without duplication):
    - (i) 50% of Consolidated Net Income for the period (taken as one accounting period) commencing on the first day of the first full fiscal quarter commencing after the Closing Date to and including the last day of the fiscal quarter ended immediately prior to the date of such calculation for which consolidated financial statements are available (or, if such Consolidated Net Income shall be a deficit, minus 100% of such aggregate deficit), plus
    - (ii) 100% of the aggregate net cash (and Cash Equivalents) proceeds received by the Parent either
      - (A) as contributions to the common equity of the Parent after the Closing Date or
      - (B) from the issuance and sale of Qualified Capital Stock after the Closing Date, other than (A) any such proceeds which are used to redeem Notes in accordance with the Indenture and this Agreement,



or (B) any such proceeds or assets received from a Subsidiary of the Parent, plus

- (iii) in the case of the disposition or repayment of or return (including by way of dividend, distribution, interest payment or return of capital) on any Investment that was treated as a Restricted Payment made after the Closing Date, an amount (to the extent not included in the computation of Consolidated Net Income) equal to the lesser of (A) 100% of the aggregate amount received by the Parent or any Restricted Subsidiary in cash or other property (valued at the Fair Market Value thereof) as the return of capital with respect to such Investment, and (B) the amount of such Investment that was treated as a Restricted Payment, in either case, less the cost of the disposition of such Investment and net of taxes, plus
- (iv) upon a redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger or consolidation of such Unrestricted Subsidiary with or into the Parent or a Restricted Subsidiary, or the transfer of all or substantially all of the assets of such Unrestricted Subsidiary to the Parent or a Restricted Subsidiary, the lesser of (A) the Fair Market Value of the Parent's and its Restricted Subsidiaries' proportionate interest in such Subsidiary immediately following such redesignation or of the property received by the Parent or Restricted Subsidiary and (B) the aggregate amount of the Parent's Investments in such Subsidiary to the extent such Investments reduced the Restricted Payments Basket and were not previously repaid or otherwise reduced; plus
- (v) to the extent that any Restricted Investment that was made after the Closing Date is made in an entity that subsequently becomes a Restricted Subsidiary, the lesser of (A) the amount of such Investment that was treated as a Restricted Payment and (B) 100% of the Fair Market Value of the Restricted Investment of the Parent and its Restricted Subsidiaries as of the date such entity becomes a Restricted Subsidiary; plus
- (vi) upon the full and unconditional release of a Restricted Investment that is a guarantee made by the Parent or one of its Restricted Subsidiaries to any Person, an amount equal to the amount of such guarantee, to the extent the amount of such Investment reduced the Restricted Payments Basket on the date of the incurrence of such guarantee; plus
- (vii) the aggregate amount by which Indebtedness (other than any Subordinated Indebtedness) incurred by the Parent or any Restricted Subsidiary subsequent to the Closing Date is reduced on the Parent's balance sheet upon the conversion or exchange (other than by a Subsidiary of the Parent) into Qualified Capital Stock (less the amount of any cash, or the fair value of assets, distributed by the Parent or any Restricted Subsidiary upon such conversion or exchange),

provided that any Additional Shareholder Funding taken into account for any other purpose under this Agreement will not be taken into account in increasing the Restricted Payments Basket in this paragraph (c) and the amount of the Restricted Payments Basket in this paragraph (c) will be reduced by the amount of any Additional Shareholder Amounts taken into account under any other provision of this Agreement.

2.2 The foregoing provisions will not prohibit:

- (a) the payment by the Parent or any Restricted Subsidiary of any dividend within 60 days after the date of declaration thereof, if on the date of declaration the payment would have complied with the provisions of the Finance Documents;
- (b) the making of any Restricted Payment in exchange for, out of or with the Net Cash Proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Parent) of, Qualified Capital Stock of the Parent or from the substantially concurrent contribution of common equity capital to the Parent;
- (c) the redemption of Subordinated Indebtedness of the Parent or any Restricted Subsidiary (i) in exchange for, or out of the proceeds of the substantially concurrent issuance and sale of, Qualified Capital Stock, (ii) in exchange for, or out of the proceeds of the substantially concurrent incurrence of, Refinancing Indebtedness permitted to be Incurred under Clause 1 (*Limitation on Indebtedness*) of this Schedule 15 (*Restrictive Covenants*) and the other terms of this Agreement;
- (d) payments to Parent or Holdings to permit Parent or Holdings, and which are used by Parent or Holdings, to redeem Capital Stock of Parent or Holdings held by officers, directors, employees or consultants, or former officers, directors, employees or consultants (or their transferees, estates or beneficiaries under their estates), upon their death, disability, retirement, severance or termination of employment or service; provided that the aggregate cash consideration paid for all such redemptions shall not exceed (i) \$2.0 million during any calendar year (with unused amounts in any calendar year being carried over to succeeding calendar years) and (ii) \$10.0 million in the aggregate since the Closing Date, plus the Net Cash Proceeds received by the Parent or any Restricted Subsidiary since the Closing Date from, or as a contribution to the equity of the Parent from, the issuance or sale of Capital Stock to such employees, directors, officers or consultants to the extent such Net Cash Proceeds are not included in the calculation of the Restricted Payments Basket; [plus the net cash proceeds of key man life insurance received after the Closing Date by the Parent or any of its Restricted Subsidiaries and, to the extent contributed to the equity (other than through the issuance of Capital Stock) of the Parent after the Closing Date, by any Parent Entity];
- (e) cashless repurchases of Capital Stock deemed to occur upon the cashless exercise of stock options if the Capital Stock represents a portion of the exercise price thereof;
- (f) so long as no Default or Event of Default has occurred and is continuing, the payment of Management Fees;
- (g) Permitted Parent Payments not to exceed \$500,000 per calendar year;
- (h) dividends or other distributions of Capital Stock, Indebtedness or other securities of Unrestricted Subsidiaries;
- (i) payments or distributions to dissenting shareholders of an entity acquired after the Closing Date pursuant to applicable law in connection with a merger, consolidation or transfer of assets that otherwise complies with this Agreement, *provided* that if such dissenting shareholders or acquired entity were Affiliates of the Parent immediately prior to the applicable acquisition the provisions of Clause 7.1 (*Limitation on Affiliate Transactions*) of this Schedule 15 (*Restrictive Covenants*) shall apply in respect thereof;

- (j) the declaration and payment of regularly scheduled or accrued dividends to holders of any class or series of Disqualified Stock of the Parent or any preferred stock of any Restricted Subsidiary issued on or after the Closing Date in accordance with Clause 1 (*Limitation on Indebtedness*) of this Schedule 15 (*Restrictive Covenants*); and
- (k) payments pursuant to any tax sharing agreement or arrangement among the Parent and its Subsidiaries and other Persons with which the Parent or any of its Subsidiaries is required or permitted to file a consolidated tax return or with which the Parent or any of its Restricted Subsidiaries is a part of a group for tax purposes; provided, however, that such payments will not exceed the amount of tax that the Parent and its Subsidiaries would owe on a stand-alone basis and the related tax liabilities of the Company and its Subsidiaries are relieved thereby;

*provided* that (i) in the case of any Restricted Payment pursuant to paragraph (c) of Clause 2.1 above, no Default shall have occurred and be continuing or occur as a consequence thereof and (ii) no issuance and sale of Qualified Capital Stock are used to make a payment pursuant to paragraphs (b) or (c) or (d) of Clause 2.2 shall increase the Restricted Payments Basket.

- 2.3** Notwithstanding anything contained in this Clause 2, if the Company has elected to exercise the PIK Toggle Option in respect of any Interest Period, no Restricted Payments may be made by means of application of the Restricted Payments Basket during the Interest Period immediately following the PIK Toggle Period (or in the case of two consecutive PIK Toggle Periods, during the two Interest Periods immediately following the second consecutive PIK Toggle Interest Period) and any positive Consolidated Net Income earned during a PIK Toggle Interest Period shall not be counted in calculating or applied towards increasing the Restricted Payments Basket.

### **3. Limitation on Liens**

- 3.1** The Parent will not and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind securing Indebtedness upon any of their property or assets, now owned or hereafter acquired (the “**Initial Lien**”), except (a) in the case of any property or asset that does not constitute Collateral, Permitted Liens or if the Notes are secured on an equal and ratable (or if such Indebtedness is Subordinated Indebtedness, prior) basis with the obligations so secured until such time as such obligations are no longer secured by a Lien and (b) in the case of any property or asset that constitutes Collateral, Permitted Collateral Liens.
- 3.2** Any such Lien thereby created in favor of the Finance Parties will be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien to which it relates.

### **4. Limitation on Restrictions on Distributions from Restricted Subsidiaries**

- 4.1** The Parent will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:
- (a) pay dividends or make any other distributions on its Capital Stock to the Parent or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed to the Parent or any of its Restricted Subsidiaries;

- (b) make loans or advances to the Parent or any of its Restricted Subsidiaries; or
- (c) sell, lease or transfer any of its properties or assets to the Parent or any of its Restricted Subsidiaries.

**4.2** However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

- (a) agreements governing Indebtedness (including the Notes and the Notes Indenture and related documentation), in each case, as in effect on the Closing Date and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; provided that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the Closing Date;
- (b) the Finance Documents;
- (c) any encumbrance or restriction arising pursuant to an agreement or instrument relating to any Indebtedness permitted to be incurred subsequent to the Closing Date pursuant to Clause 1 (*Limitation on Indebtedness*) of this Schedule 15 (*Restrictive Covenants*) if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Finance Parties than the encumbrances and restrictions, taken as a whole, than those contained in the Finance Documents (as of the Closing Date), the Note Indenture, the Notes and the Note Guarantees (as determined in good faith by the Parent);
- (d) applicable law, rule, regulation or order or the terms of any license, authorization, concession or permit;
- (e) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Parent or any of its Restricted Subsidiaries or encumbrances on property that exist at the time the property was acquired by the Parent or a Restricted Subsidiary, in each case as in effect at the time of such acquisition (except to the extent such Indebtedness, Capital Stock or encumbrance was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Agreement to be Incurred;
- (f) customary non-assignment and similar provisions in contracts, leases and licenses entered into in the ordinary course of business;
- (g) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in paragraph (c) of Clause 4.1 above;
- (h) any agreement for the sale or other disposition of the Capital Stock or all or substantially all of the property and assets of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending its sale or other disposition;
- (i) Refinancing Indebtedness; provided that the restrictions contained in the agreements governing such Refinancing Indebtedness are not materially more restrictive, taken as

a whole, than those contained in the agreements governing the Indebtedness being refinanced;

- (j) Liens permitted to be Incurred under Clause 3 (*Limitation on Liens*) of this Schedule 15 (*Restrictive Covenants*) that limit the right of the debtor to dispose of the assets subject to such Liens;
- (k) customary provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements in the ordinary course of business (including agreements entered into in connection with a Restricted Investment), which limitation is applicable only to the assets that are the subject of such agreements;
- (l) restrictions on cash or other deposits or net worth imposed by customers or suppliers or required by insurance, surety or bonding companies, in each case, under contracts entered into in the ordinary course of business;
- (m) restrictions contained in the Japan JV Agreements, as in effect on the Closing Date or as thereafter amended, modified, restated or replaced in any manner, that, taken as a whole, are no more restrictive than those contained in the Japan JV Agreements as in effect on the Closing Date; and
- (n) any encumbrance or restriction existing under any agreement that extends, renews, refinances or replaces the agreements containing the encumbrances or restrictions in paragraphs (a) to (m) of this Clause 4.2, or in this paragraph (n); provided that the terms and conditions of any such encumbrances or restrictions are not materially more restrictive, taken as a whole, than those under or pursuant to the agreement so extended, renewed, refinanced or replaced.

## **5. Limitation on Sales of Assets and Subsidiary Stock**

**5.1** The Parent will not, and will not permit any of its Restricted Subsidiaries to, make any Asset Disposition *unless*:

- (a) the Parent or such Restricted Subsidiary, as the case may be, receives consideration at least equal to the Fair Market Value of the shares and assets subject to such Asset Disposition; and
- (b) at least 75% of the consideration from such Asset Disposition received by the Parent or such Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents.

**5.2** For purposes of paragraph (b) of Clause 5.1 of this Schedule 15 (*Restrictive Covenants*), the following shall be deemed to be cash:

- (a) the amount (without duplication) of any Indebtedness (other than Subordinated Indebtedness) of the Parent or such Restricted Subsidiary that is expressly assumed by the transferee in such Asset Disposition and with respect to which the Parent or such Restricted Subsidiary, as the case may be, is unconditionally released by the holder of such Indebtedness; and
- (b) the amount of any obligations received from such transferee that are within 90 days converted by the Parent or such Restricted Subsidiary to cash (to the extent of the cash actually so received).

- 5.3** If at any time any non-cash consideration received by the Parent or any Restricted Subsidiary, as the case may be, in connection with any Asset Disposition is repaid or converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then the date of such repayment, conversion or disposition shall be deemed to constitute the date of an Asset Disposition hereunder and the Net Available Cash thereof shall be applied in accordance with this Clause 5.
- 5.4** If the Parent or any Restricted Subsidiary engages in an Asset Disposition, the Parent or such Restricted Subsidiary shall, no later than 360 days following the consummation thereof, apply all or any of the Net Available Cash therefrom to:
- (a) voluntarily prepay Indebtedness outstanding under this Agreement in accordance with Clause 11.4 (*Voluntary prepayment of Loans*) of this Agreement and cancel a corresponding amount of the Commitments pursuant to Clause 11.3 (*Voluntary cancellation*) of this Agreement; and/or
  - (b) repurchase the Notes pursuant to and actual compliance with Clause 27.24 (*Note Purchase Condition*) of this Agreement; and/or
  - (c) (A) invest all or any part of the Net Available Cash thereof in the purchase of assets (other than securities) to be used by the Parent or any Restricted Subsidiary in the Related Business, (B) make a capital expenditure, (C) acquire all or substantially all the assets of, or any Qualified Capital Stock in, a Person that is a Restricted Subsidiary or in a Person engaged in a Related Business that shall become a Restricted Subsidiary immediately upon the consummation of such acquisition, (D) acquire Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary, (E) enter into one or more binding commitments to apply the Net Available Cash pursuant to clauses (A), (B), (C) or (D) of this paragraph (3), each such application being deemed to have complied with the provisions of this Section so long as it is consummated within 180 days of the execution of the aforementioned 360-day period, or (F) any combination of (A) through (E) above.
- 5.5** Any Net Available Cash from Asset Dispositions that are not applied or invested as provided in the preceding paragraph will be deemed to constitute “**Excess Proceeds.**” All Excess Proceeds shall be applied to prepay Indebtedness outstanding under this Agreement and cancel corresponding commitments hereunder as set out in Clause 12 (*Mandatory Prepayment*) of this Agreement.

## **6. Limitation on Designation of Unrestricted Subsidiaries**

- 6.1** The Parent may designate any Subsidiary (including any newly formed or newly acquired Subsidiary) of the Parent as an “Unrestricted Subsidiary” under this Agreement (a “**Designation**”) only if:
- (a) no Default shall have occurred and be continuing at the time of or after giving effect to such Designation; and
  - (b) the Parent would be permitted to make, at the time of such Designation, (i) a Permitted Investment or (ii) an Investment pursuant to the Restricted Payments Basket in Clause 2.1 (*Limitation on Restricted Payments*) of this Schedule 15 (*Restrictive Covenants*), in either case, in an amount (the “**Designation Amount**”) equal to the Fair Market Value of the Parent’s proportionate interest in such Subsidiary on such date.

- 6.2** No Subsidiary shall be Designated as an “Unrestricted Subsidiary” unless such Subsidiary:
- (a) has no Indebtedness other than Non-Recourse Debt;
  - (b) is not party to any agreement, contract, arrangement or understanding with the Parent or any Restricted Subsidiary unless the terms of the agreement, contract, arrangement or understanding are no less favorable to the Parent or the Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates;
  - (c) is a Person with respect to which neither the Parent nor any Restricted Subsidiary has any direct or indirect obligation (i) to subscribe for additional Capital Stock or (ii) to maintain or preserve the Person’s financial condition or to cause the Person to achieve any specified levels of operating results;
  - (d) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Parent or any Restricted Subsidiary, except for any guarantee given solely to support the pledge by the Parent or any Restricted Subsidiary of the Capital Stock of such Unrestricted Subsidiary, which guarantee is not recourse to the Company or any Restricted Subsidiary; and
  - (e) is not incorporated or organized under the laws of China, India or Japan.
- 6.3** If, at any time, any Unrestricted Subsidiary fails to meet the preceding requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness of the Subsidiary and any Liens on assets of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary at such time and, if the Indebtedness is not permitted to be incurred under Clause 1 (*Limitation on Indebtedness*) of this Schedule 15 (*Restrictive Covenants*) or the Lien is not permitted under Clause 3 (*Limitation on Liens*) of this Schedule 15 (*Restrictive Covenants*), the Company shall be in default of the applicable covenant.
- 6.4** The Parent may redesignate an Unrestricted Subsidiary as a Restricted Subsidiary (a “**Redesignation**”) only if:
- (a) no Default shall have occurred and be continuing at the time of and after giving effect to such Redesignation; and
  - (b) all Liens, Indebtedness and Investments of such Unrestricted Subsidiary out-standing immediately following such Redesignation would, if incurred or made at such time, have been permitted to be incurred or made for all purposes of this Agreement.
- 6.5** All Designations and Redesignations must be evidenced by resolutions of the Board of Directors of the Parent, delivered to the Agent certifying compliance with the foregoing provisions. No Guarantor may be designated as a Restricted Subsidiary unless it is released from its guarantee in accordance with the provisions this Agreement. As of the Closing Date, all Subsidiaries of the Parent are Restricted Subsidiaries.

## **7. Limitation on Affiliate Transactions**

- 7.1** The Parent will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or asset or the rendering of any service) with any Affiliate of the Parent (an “**Affiliate Transaction**”), *unless*:

- (a) the terms of such Affiliate Transaction are not materially less favorable to the Parent or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction in arm's-length dealings with a Person who is not such an Affiliate; and
- (b) the Parent delivers to the Agent:
  - (i) in the event such Affiliate Transaction involves an aggregate consideration in excess of \$5.0 million, an Officers' Certificate certifying that such Affiliate Transaction complies with paragraph (a) above and a secretary's certificate which sets forth and authenticates a resolution that has been adopted by a majority of the Disinterested Directors approving such Affiliate Transaction (or delivers a Fairness Opinion with respect to such Affiliate Transaction); and
  - (ii) in the event such Affiliate Transaction involves an aggregate consideration in excess of \$10.0 million, the certificates described in paragraph (i) above and a written opinion (a "**Fairness Opinion**") from an independent investment banking, accounting or appraisal firm of internationally recognized standing that such Affiliate Transaction is (A) not materially less favorable than those that might 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 or (B) fair, from a financial point of view, to the Parent and its Restricted Subsidiaries.

**7.2** The preceding paragraph will not apply to:

- (a) any Restricted Payment (other than Investments) permitted to be made pursuant to Clause 2 (*Limitation on Restricted Payments*) of this Schedule 15 (*Restrictive Covenants*);
- (b) any transaction between the Parent and a Restricted Subsidiary or between Restricted Subsidiaries;
- (c) the payment of reasonable and customary fees paid to, reimbursements of expenses to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Parent or any Restricted Subsidiary approved by a majority of the Disinterested Directors;
- (d) the performance of obligations of the Parent or any of its Restricted Subsidiaries under the terms of any agreement to which the Parent or any of its Restricted Subsidiaries is a party as of or on the Closing Date (including the Management Incentive Plan, as in effect on the Closing Date), as these agreements or plan may be amended, modified, supplemented, extended or renewed from time to time; *provided* that any future amendment, modification, supplement, extension or renewal entered into after the Closing Date will be permitted to the extent that its terms are not materially more disadvantageous to the Finance Parties than the terms of the agreements in effect on the Closing Date;
- (e) any employment agreement, collective bargaining agreement, consultant, employee benefit arrangements with any employee, consultant, officer or director of the Parent or any Restricted Subsidiary, including under any stock option, stock appreciation rights, stock incentive or similar plans, entered into in the ordinary course of business;



- (f) transactions in the ordinary course of business with a Person (other than an Unrestricted Subsidiary of the Parent) that is an Affiliate of the Parent solely because the Parent owns, directly or through a Restricted Subsidiary, Capital Stock in, or controls, such Person;
- (g) any issuance of Qualified Capital Stock of the Parent to Affiliates of the Parent; and
- (h) the incurrence of any Subordinated Shareholder Debt.

## **8. Merger, Consolidation or Sale of Assets**

**8.1** Neither the Parent, the Company nor any Borrower will, directly or indirectly, in a single transaction or a series of related transactions, consolidate or merge with or into another Person, or sell, transfer, lease, convey or otherwise dispose of or assign all or substantially all of the assets of the Parent, the Company or any Borrower or the Parent and the Restricted Subsidiaries (taken as a whole) unless:

- (a) the resulting, surviving or transferee Person (the “**Successor Company**”) will be a corporation or limited liability company or limited partnership or similar legal entity organized and existing under the laws of the United States of America, Germany or the Netherlands and such Successor Company expressly assumes, by agreements in form and substance satisfactory to the Agent, all of the obligations of the Obligors under the Finance Documents (or the Parent’s holding company, if applicable);
- (b) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default shall have occurred and be continuing;
- (c) immediately after giving pro forma effect to such transaction, the Successor Company would (i) be able to Incur at least an additional \$1.00 of Indebtedness pursuant to the Leverage Ratio Exception set forth in Clause 1.1 (*Limitation on Indebtedness*) or (ii) have a Consolidated Leverage Ratio no greater than such ratio was immediately prior to such transaction;
- (d) each other Obligor (unless it is the other party to the transactions above, in which case paragraph (a) above shall apply) shall have by supplemental agreement confirmed that its guarantee and any collateral security therefor shall apply to such Person’s obligations in respect of the Finance Documents; and
- (e) the Parent shall have delivered to the Agent an Officers’ Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such agreements and/or supplemental agreements (if any) comply with the Finance Documents.

**8.2** Paragraphs Clauses (b) and (c) of Clause 8.1 above shall not apply to any sale or other disposition of all or substantially all of the assets or merger or consolidation of the Company with or into any other Guarantor and paragraph (c) of the Clause 8.1 will not apply to any sale or other disposition of all or substantially all of the assets or merger or consolidation of the Company with or into an Affiliate solely for the purpose of reincorporating the Issuer in another jurisdiction for tax reasons.

- 8.3** In addition, the Company will not, directly or indirectly, lease all or substantially all of the properties and assets of it and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to any other Person.
- 8.4** For purposes of this Clause 8, the sale, lease, conveyance, assignment, transfer, or other disposition of all or substantially all of 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 of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.
- 8.5** For purposes of this Clause 8, any Indebtedness of the Successor Company which was not Indebtedness of the Company or any Borrower immediately prior to the transaction shall be deemed to have been incurred in connection with such transaction
- 8.6** No Guarantor (that is not the Parent, the Company or a Borrower) may consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, unless:
- (a) either:
    - (i) such Guarantor will be the surviving or continuing Person; or
    - (ii) the Person formed by or surviving any such consolidation or merger is another Guarantor or assumes, by agreements in form and substance reasonably satisfactory to the Agent, all of the obligations of such Guarantor under the Finance Documents and is a corporation, limited liability company or limited partnership or other similar legal entity organized and existing under the laws of a jurisdiction of a member of the Guarantor Group as at the Closing Date (or, if the non-surviving Guarantor was organized under a jurisdiction that is not an Approved Jurisdiction, the surviving entity shall either be organized under the laws of an Approved Jurisdiction or organized under the laws of the same jurisdiction as that under which the non-surviving Guarantor was organized); and
  - (b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing.
- 8.7** For purposes of this Clause 8, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries, the Capital Stock of which constitute all or substantially all of the properties and assets of the Company or the Parent, will be deemed to be the transfer of all or substantially all of the properties and assets of the Company or Parent, as the case may be.
- 8.8** The following additional conditions will apply to each transaction described in this Clause 8:
- (a) to the extent required and subject to the Agreed Security Principles, the Company, the Parent, the Guarantors or the relevant successor company, as applicable, will cause such amendments or other instruments to be filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Liens under the Security on the Collateral owned by or transferred to such Person, together with such financing statements or similar documents as may be required to perfect any security interests in such Collateral which may be perfected by the filing of a financing statement under any applicable law;

- (b) the Collateral owned by or transferred to the Company, a Guarantor, or the successor company, as applicable, will (A) continue to constitute Collateral under the Security; and (B) not be subject to any Lien other than Liens permitted by this Agreement; and
- (c) the successor company will succeed to, and be substituted for, and may exercise every right and power of, the relevant obligor under this Agreement, but, in the case of a lease of all or substantially all of the Company's or a Guarantor's assets, the Company or such Guarantor will not be released from the obligation to pay the amounts due by it under the Finance Documents.

## 9. Miscellaneous

This Schedule constitutes an integral part of this Agreement and the obligations under this Agreement constitute an integral part of this Schedule.

## 10. Definitions

Terms used in this Schedule 15 (*Restrictive Covenants*) and defined in this Clause 10 have the meanings assigned to them in this Clause 10 unless the context requires otherwise.

**“Accounting Principles”** means International Financial Reporting Standards as endorsed by the European Union and in effect on the date of any calculation or determination required hereunder.

**“Acquired Indebtedness”** means Indebtedness (a) of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or (b) assumed in connection with the acquisition of assets from such Person, in each case whether or not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to have been Incurred, with respect to (a) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to (b) of the preceding sentence, on the date of consummation of such acquisition of assets.

**“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”** and **“under common control with”** have meanings correlative to the foregoing; *provided* that Beneficial Ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control.

**“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, transfers, issuances or dispositions that are part of a common plan, of shares of Capital Stock of a Subsidiary (other than directors' qualifying shares), property or other assets (each referred to for the purposes of this definition as a **“disposition”**) by the Parent or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction.

Notwithstanding the preceding, the following items shall not be deemed to be Asset Dispositions:

- (a) (i) a disposition by a Restricted Subsidiary to the Parent; (ii) by the Parent or a Restricted Subsidiary to a member of the Guarantor Group or (iii) a disposition of by a member of the Guarantor Group to a member of the Restricted Group that is not a member of the Guarantor Group of (A) Cash, (B) inventory or (C) any other assets (excluding any ownership interest in a Restricted Subsidiary or any fixed assets) where the value of such disposition made pursuant to this clause (iii) (when aggregated with the value of all other such dispositions and all Investments made

pursuant to paragraph (a)(iii) of the definition of Permitted Investments since the Closing Date) does not exceed USD 25,000,000;

- (b) the sale of cash or Cash Equivalents;
- (c) a sale, discount, lease, transfer or other disposition of inventory, accounts receivable and trading stock in the ordinary course of business;
- (d) a disposition of obsolete or worn out equipment or equipment that is no longer useful in the conduct of the business of the Parent and its Restricted Subsidiaries and that is either (i) disposed of in the ordinary course of business or (ii) will not need to be replaced by a replacement asset which is material to the business of the Parent and the Replacement Subsidiaries, taken as a whole;
- (e) transactions permitted under Clause 8 of this Schedule 15 (*Restrictive Covenants*);
- (f) an issuance of Capital Stock by a Restricted Subsidiary to the Parent or to a Restricted Subsidiary;
- (g) the making of a Restricted Payment that complies with Clause 2 (*Limitation on Restricted Payments*) of this Schedule 15 (*Restrictive Covenants*), any Permitted Investment or a disposition permitted by Clause 2 (*Limitation on Restricted Payments*) of this Schedule 15 (*Restrictive Covenants*);
- (h) any disposition or series of related dispositions that, but for this paragraph (h), would have constituted an Asset Disposition, if after giving effect to such dispositions, the aggregate Fair Market Value of the assets disposed in such disposition or series of related dispositions does not exceed \$5 million with respect to any single or series of related asset dispositions and not more than \$10 million in the aggregate since the Closing Date for all assets disposed of pursuant to this paragraph (h) (regardless of whether or not disposed of in a single disposition, a series of related dispositions or separate unrelated dispositions);
- (i) the creation or realization of Permitted Liens or any other Lien that complies with Clause 3 (*Limitation on Liens*) of this Schedule 15 (*Restrictive Covenants*);
- (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 sublicensing of intellectual property or other general intangibles and licenses, leases or subleases of other property in the ordinary course of business;
- (l) any surrender or waiver of contract rights or settlement, release, recovery on or surrender of contract, tort or other claims in the ordinary course of business;
- (m) the foreclosure, condemnation or any similar action with respect to any property or other assets or a surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind;

- (n) [the disposition of assets to a Person who is providing services (the provision of which have been or are to be outsourced by the Parent or any Restricted Subsidiary to such Person) related to such assets;]<sup>2</sup>
- (o) any disposition of Capital Stock, of an Unrestricted Subsidiary; and
- (p) the sale or other disposition of the Specialty Hydrate Business.

“**Attributable Indebtedness**” in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate borne by the Notes, compounded quarterly) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended).

“**Average Life**” means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (a) the sum of the products of the numbers of years (rounded to the nearest one-twelfth of one year) from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by (b) the sum of all such payments.

“**Beneficial Owner**” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the U.S. Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the U.S. Exchange Act), such “person” will be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms “**Beneficially Owns**” and “**Beneficially Owned**” have a corresponding meaning. [Notwithstanding anything else to the contrary, any Voting Stock of which any Permitted Holder is the Beneficial Owner shall not be included in any Voting Stock of which any such person or group is the Beneficial Owner, unless that person or group is not an affiliate of a Permitted Holder and has the sole voting power with respect to that Voting Stock.]<sup>3</sup>

“**Board of Directors**” means, as to any Person, the board of directors (or board of supervisory directors, if applicable) (or the functional equivalent thereof) of such Person or any duly authorized committee thereof.<sup>4</sup>

“**Business Day**” means each day that is not a Saturday, Sunday or other day on which banking institutions in Frankfurt, Germany and New York, New York are authorized or required by law to close.

“**Capital Assets**” shall mean, with respect to any person, all equipment, fixed assets and real property or improvements of such person, or replacements or substitutions therefor or additions thereto, that, in accordance with the Accounting Principles, have been or should be reflected as additions to property, plant or equipment on the balance sheet of such person.

“**Capital Expenditures**” shall mean, for any period, without duplication, all expenditures made directly or indirectly by the Parent and its Restricted Subsidiaries during such period for Capital Assets (whether paid in cash or other consideration, financed by the incurrence of Indebtedness or accrued as a liability) and all Capitalized Lease Obligations of the Parent and its Restricted Subsidiaries payable during such period. For purposes of this definition, the purchase price of

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<sup>2</sup> [Need to understand who retains title and on whose balance sheet the asset sits.]

<sup>3</sup> [Discuss]

<sup>4</sup> [Local counsel to advise]

equipment or other fixed assets that are purchased simultaneously with the trade-in of existing assets or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such assets for the assets being traded in at such time or the amount of such insurance proceeds, as the case may be.

“**Capital Stock**” of any Person means any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or 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 in accordance with the Accounting Principles, and 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 in accordance with the Accounting Principles, 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) euro or U.S. dollars;
- (b) securities issued or directly and fully guaranteed or insured by the United States Government or any member state of the European Union as of December 31, 2003, or any agency or instrumentality thereof (provided that the full faith and credit of the United States or such member state is pledged in support thereof), having maturities of not more than one year from the date of acquisition;
- (c) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition and, at the time of acquisition, having a credit rating of “A” or better from either Standard & Poor’s Ratings Services or Moody’s Investors Service, Inc.;
- (d) certificates of deposit, euro or U.S. dollar 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 commercial bank the long-term debt of which is rated at the time of acquisition thereof at least “A” or the equivalent thereof by Standard & Poor’s Ratings Services, or “A” or the equivalent thereof by Moody’s Investors Service, Inc., and having combined capital and surplus in excess of \$500 million;
- (e) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in paragraphs (a), (b) and (c) entered into with any bank meeting the qualifications specified in paragraph (d) above;
- (f) commercial paper rated at the time of acquisition thereof at least “A-2” or the equivalent thereof by Standard & Poor’s Ratings Services or “P-2” or the equivalent thereof by Moody’s Investors Service, Inc., or carrying an equivalent rating by an internationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of investments, and in any case maturing within one year after the date of acquisition thereof; and
- (g) interests in any investment company or money market fund which invests 95% or more of its assets in instruments of the type specified in paragraphs (a) through (f) above.

“**Collateral**” has the meaning given to “Transaction Security” in this Agreement and includes any rights, property or assets in which a security interest has been granted to secure the obligations of the Obligors under and as defined in this Agreement.

“**Consolidated EBITDA**” for any period means, without duplication,

- (a) the Consolidated Net Income for such period, plus
- (b) in each case only to the extent (and in the same proportion) deducted in determining Consolidated Net Income,
  - (i) Consolidated Interest Expense;
  - (ii) Consolidated Income Taxes;
  - (iii) consolidated depreciation expense;
  - (iv) consolidated amortization expense (including, without limitation, amortization of intangibles);
  - (v) other non-cash charges reducing Consolidated Net Income (including without limitation write-downs and impairment of property, plant, equipment and intangibles and other long-lived assets and the impact of purchase accounting on the Parent and its Restricted Subsidiaries for such period and excluding any such non-cash charge to the extent it represents an accrual of or reserve for cash charges in any future period or amortization of a prepaid cash expense that was paid in a prior period not included in the calculation);
  - (vi) if any expense or net loss of any non-wholly-owned Restricted Subsidiary resulted in a decrease in Consolidated Net Income, any such deduction to Consolidated Net Income to the extent attributable to any minority equity interests of third parties in such non-wholly owned Subsidiary, except to the extent of dividends declared or paid on Equity Interests held by third parties;
  - (vii) Permitted Parent Payments to the extent actually paid (but in no event to exceed \$500,000 per calendar year); and
  - (viii) fees, expenses, commissions and other charges relating to [the Existing Bankruptcy Cases, the Former Plan (as defined in the Note Indenture as in effect on the Closing Date), the Revised Plan, and the Restructuring (as defined in the Note Indenture as in effect on the Closing Date)], minus (without duplication)
- (c) the aggregate amount of all non-cash items, determined on a consolidated basis, to the extent such items increased Consolidated Net Income for such period (excluding any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period).

“**Consolidated Income Taxes**” means, with respect to any Person for any period, taxes imposed upon such Person or other payments required to be made by such Person by any governmental authority which taxes or other payments are calculated by reference to the income or profits of such Person or such Person and its Restricted Subsidiaries, regardless of whether such taxes or payments are required to be remitted to any governmental authority.

**“Consolidated Interest Expense”** means, for any period, the total interest expense of the Parent and its Restricted Subsidiaries, whether paid or accrued, determined on a consolidated basis in accordance with Accounting Principles, and any cost charged to finance costs in accordance with Accounting Principles. For purposes of the foregoing, total interest expense will be determined (a) after giving effect to any net payments made or received by the Parent and its Subsidiaries with respect to Interest Rate Agreements and (b) exclusive of amounts classified as other comprehensive income in the balance sheet of the Parent. Notwithstanding anything to the contrary contained herein, commissions, discounts, yield and other fees and charges Incurred in connection with any transaction pursuant to which the Parent or its Restricted Subsidiaries may sell, convey or otherwise transfer or grant a security interest in any accounts receivable or related assets shall be included in Consolidated Interest Expense.

**“Consolidated Leverage”** means the sum, without duplication, of the total amount of Indebtedness of the Parent and its Restricted Subsidiaries (calculated using the Four-Quarter Average Dollar Equivalent for purposes of Indebtedness denominated in a currency other than U.S. dollars) determined on a consolidated basis in accordance with the Accounting Principles.

**“Consolidated Leverage Ratio”** means, with respect to the Parent and on any date of determination, the ratio of (i) the Consolidated Leverage of the Parent and the Restricted Subsidiaries on such date of determination, to (ii) the Consolidated EBITDA of the Parent and the Restricted Subsidiaries for the most recent four consecutive full fiscal quarters ending immediately prior to such date of determination for which quarterly or annual financial statements are available; *provided* that for purposes of calculating the Consolidated Leverage Ratio:

- (a) if the Parent or any Restricted Subsidiary:
  - (i) has Incurred any Indebtedness since the beginning of such period that remains outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Leverage Ratio is an Incurrence of Indebtedness, Consolidated EBITDA for such period will be calculated after giving effect on a *pro forma* basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of the applicable four-quarter period and the discharge of any other Indebtedness repaid, repurchased, defeased or otherwise discharged with the proceeds of such new Indebtedness as if such discharge had occurred on the first day of such period; or
  - (ii) has repaid, repurchased, defeased or otherwise discharged any Indebtedness since the beginning of the period that is no longer outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Leverage Ratio involves a discharge of Indebtedness (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid and the related commitment terminated), Consolidated EBITDA for the applicable four-quarter period will be calculated after giving effect on a *pro forma* basis to such discharge of such Indebtedness, including with the proceeds of such new Indebtedness, as if such discharge had occurred on the first day of such period;
- (b) if since the beginning of the applicable four-quarter period the Parent or any Restricted Subsidiary will have made any asset sale or disposed of, or designated as discontinued operations or assets held for sale, any company, division, operating unit, segment, business, group of related assets or line of business or if the transaction giving rise to the need to calculate the Consolidated Leverage Ratio is such an asset sale the Consolidated EBITDA for such period will be reduced by an amount equal to the Consolidated EBITDA (if positive) directly attributable to the assets which are the



subject of such asset disposition for such period or increased by an amount equal to the Consolidated EBITDA (if negative) directly attributable thereto for such period;

- (c) if since the beginning of the applicable four-quarter period the Parent or any Restricted Subsidiary (by merger or otherwise) will have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary or is merged with or into the Parent or a Restricted Subsidiary) or an acquisition of assets, including any acquisition of assets occurring in connection with a transaction causing a calculation to be made hereunder, which constitutes all or substantially all of a company, division, operating unit, segment, business, group of related assets or line of business, Consolidated EBITDA for such period will be calculated after giving *pro forma* effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of such period; and
- (d) if since the beginning of the applicable four-quarter period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Parent or any Restricted Subsidiary since the beginning of such period) will have Incurred any Indebtedness or discharged any Indebtedness, made any asset sale or any Investment or acquisition of assets that would have required an adjustment pursuant to paragraphs (b) or (c) above if made by the Parent or a Restricted Subsidiary during such period, Consolidated EBITDA for such period will be calculated after giving *pro forma* effect thereto as if such asset sale or Investment or acquisition of assets occurred on the first day of such period.

For purposes of this definition, (i) whenever *pro forma* effect is to be given to any calculation under this definition, the *pro forma* calculations will be determined in good faith by a responsible financial or accounting officer of the Company (including *pro forma* expense and cost reductions calculated on a basis consistent with Regulation S-X under the Securities Act) and (ii) if any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest expense on such Indebtedness will be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness).

“**Consolidated Net Income**” means, for any period, the consolidated net income (loss) of the Parent and its Restricted Subsidiaries determined in accordance with the Accounting Principles; *provided* that there will not be included in such Consolidated Net Income:

- (a) any net income (loss) of any Person if such Person is not a Restricted Subsidiary, except that:
  - (i) subject to the limitations contained in [paragraphs (c), (d) and (d)] below, the Parent’s equity in the net income of any such Person for such period will be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Parent or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in paragraph (b) below); and
  - (ii) the Parent’s equity in a net loss of any such Person for such period will be included in determining such Consolidated Net Income to the extent such loss has been funded with cash from the Parent or a Restricted Subsidiary;
- (b) solely for purposes of calculating the Restricted Payments Basket, any net income (but not loss) of any Restricted Subsidiary if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by

such Restricted Subsidiary, directly or indirectly, to the Parent (including, without limitation, pursuant to joint venture agreements), other than restrictions that have been waived or otherwise released, except that: (i) subject to the limitations contained in paragraphs [(c), (d) and (e)] below, the Parent's equity in the net income of any such Restricted Subsidiary for such period will be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Restricted Subsidiary during such period to the Parent or another Restricted Subsidiary as a dividend (subject, in the case of a dividend to another Restricted Subsidiary, to the limitation contained in this clause); and (ii) the Parent's equity in a net loss of any such Restricted Subsidiary for such period will be included in determining such Consolidated Net Income (for all purposes for which Consolidated Net Income is calculated);

- (c) other than for purposes of calculating the Restricted Payments Basket, any gain (loss) realized upon the sale or other disposition of any property, plant or equipment of the Parent or its consolidated Restricted Subsidiaries (including pursuant to any Sale/Leaseback Transaction) which is not sold or otherwise disposed of in the ordinary course of business and any gain (loss) realized upon the sale or other disposition of any Capital Stock of any Person;
- (d) gains and losses due solely to fluctuations in currency values and the related tax effects according to Accounting Principles;
- (e) unrealized gains and losses with respect to Hedging Obligations or other derivative instruments or forward contracts or any ineffectiveness recognized in earnings related to qualifying hedge transactions or the fair value or changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations;
- (f) other than for purposes of calculating the Restricted Payments Basket, any extraordinary, exceptional, unusual or nonrecurring gain, loss or charge during such period, together with any related provision for taxes on any such extraordinary gain (or the tax effect of any such extraordinary loss or charge) (provided that in the case of any such charges or losses, they are identified in the most recently available quarterly or audited financial statements, either on the face thereof or the footnotes thereto, as extraordinary charges or "pro forma" or other similarly denoted items);
- (g) the cumulative effect of a change in accounting principles;
- (h) 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;
- (i) 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;
- (j) any one-time non-cash charges or any increases in amortization or depreciation resulting from purchase accounting, in each case, in relation to any acquisition of another Person or business or resulting from any reorganization or restructuring involving the Parent or its Restricted Subsidiaries;
- (k) any goodwill or other intangible asset amortization, impairment charge or write-off;

- (l) 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; and
- (m) [any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness or other obligations of the Parent or any Restricted Subsidiary owing to the Parent or any Restricted Subsidiary.]<sup>5</sup>

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing in any manner, whether directly or indirectly, any operating lease, dividend or other obligation that, in each case, does not constitute Indebtedness (“**primary obligations**”) of any other Person (the “**primary obligor**”), including any obligation of such Person, whether or not contingent:

- (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (b) to advance or supply funds:
  - (i) for the purchase or payment of any such primary obligation; or
  - (ii) to maintain the working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

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

“**Disinterested Director**” means a member of the Board of Directors of [Almatis Topco 1 B.V.] who is independent with respect to the transaction at issue and does not have any financial interest in respect of such transaction (other than such director’s interest in the Parent and its Subsidiaries).

“**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 pursuant to a sinking fund obligation or otherwise;
- (b) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Parent or a Restricted Subsidiary); or
- (c) is redeemable at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the date that is 180 days after the Termination Date, *provided* that 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; *provided further* that any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Parent or a Restricted Subsidiary

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<sup>5</sup> [Discuss – is this intended only to be intercompany].

to repurchase such Capital Stock upon the occurrence of a change of control or asset sale (each defined in a substantially identical manner to the corresponding definitions in this Agreement) shall not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) provide that the Parent or a Restricted Subsidiary may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is ratable or exchangeable) pursuant to such provision prior to compliance by the Company, if required, with the provisions of 12 (*Mandatory Prepayment*) of this Agreement and Clause 5 (*Limitation on Sales of Assets and Subsidiary Stock*) of this Schedule 15 (*Restrictive Covenants*) and such repurchase or redemption complies with Clause 2 (*Limitation on Restricted Payments*) of this Schedule 15 (*Restrictive Covenants*).

“**Dollar Equivalent**” means, with respect to any monetary amount in a currency other than U.S. Dollars, at any time of determination thereof by the Company, the amount of U.S. Dollars obtained by converting such currency other than U.S. Dollars involved in such computation into U.S. Dollars at the spot rate for the purchase of U.S. Dollars with the applicable currency other than U.S. Dollars as published in [*The Wall Street Journal*] (or, if [*The Wall Street Journal*] is no longer published, or if such information is no longer available in [*The Wall Street Journal*], such source as may be selected in good faith by the Company) on the date of such determination (or, in the case of calculating Indebtedness or interest expense in connection with the Consolidated Leverage Ratio, the average of the spot rates of exchange for each day quoted [(as of the end of each day)] since the beginning of the applicable four quarter period for which Consolidated EBITDA is being calculated through the date of determination (taken into account the effect that any Currency Agreement in effect in respect of such Indebtedness has on such fluctuations over such period) (the “**Four-Quarter Average Dollar Equivalent**”).

“**EBITDA**” for any Person in respect of any period means the sum of net income for such Person, plus the following to the extent deducted in calculating such net income:

- (a) interest expense;
- (b) income tax expense;
- (c) depreciation and amortization; and
- (d) all other non-cash charges of the Person (excluding any such non-cash charge to the extent that it represents an accrual of or reserve for cash expenditures in any future period) less all non-cash items of income of the Person (other than accruals of revenue by the Person in the ordinary course of business),

in each case for such period.

“**euro**” or “**€**” means the currency introduced at the start of the third stage of the European economic and monetary union pursuant to the Treaty establishing the European Community, as amended by the Treaty on European Union.

“**Fair Market Value**” means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) that would be negotiated in an arm’s-length transaction for cash between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction, as such price is determined in good faith by the Board of Directors of the Parent or a duly authorized committee thereof, as evidenced by a resolution of such Board or committee.

“**Four-Quarter Average Dollar Equivalent**” has the meaning set forth in the definition of Dollar Equivalent.

“**guarantee**” means a direct or indirect guarantee by any Person of any Indebtedness of any other Person and includes any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply fund for the purchase or payment of) 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 (unless such purchase arrangements are on an arm’s-length terms and are entered into in the ordinary course of business), to take-or-pay, or to maintain financial statement conditions or otherwise); or (b) entered into 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); “**guarantee**,” when used as a verb, and “**guaranteed**” have correlative meanings.

“**Hedging Obligations**” of any Person means the obligations of such Person under swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates (including Interest Rate Agreement), currency exchange rates or commodity prices, either generally or under specific contingencies.

“**Holdings**” means Almatris Topco 2 B.V.

“**Incur**” or “**incur**” means issue, create, assume, guarantee, incur or otherwise become liable for; *provided* 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.

“**Indebtedness**” of any Person at any date means, without duplication:

- (a) all liabilities, contingent or otherwise, of such Person for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof);
- (b) all 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, letters of guaranty, bankers’ acceptances and similar credit transactions (other than obligations with respect to letters of credit securing obligations (other than obligations described in paragraphs (a), (b) and (d)) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit);
- (d) all obligations of such Person to pay the deferred and unpaid purchase price of property or services due more than six months after such property is acquired or such services are completed, except trade payables and accrued expenses incurred by such Person in the ordinary course of business in connection with obtaining goods, materials or services;
- (e) the maximum fixed redemption or repurchase price of all Disqualified Capital Stock of such Person;
- (f) all Capitalized Lease Obligations of such Person;
- (g) all Indebtedness of others secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;

- (h) all Indebtedness of others guaranteed by such Person to the extent of such guarantee; *provided* that Indebtedness of the Parent or its Subsidiaries that is guaranteed by the Parent or the Parent's Subsidiaries shall only be counted once in the calculation of the amount of Indebtedness of the Parent and its Subsidiaries on a consolidated basis;
- (i) all Attributable Indebtedness; and
- (j) [to the extent not otherwise included in this definition, Hedging Obligations of such Person (other than obligations in respect of amounts representing unrealized losses under Hedging Obligations Incurred as described in paragraph (f) of Clause 1.2 (*Limitation of Indebtedness*) of this Schedule 15 (*Restrictive Covenants*) of the definition of "Permitted Indebtedness," but only to the extent that the underlying hedging arrangement is not yet closed out and such Hedging Obligations are not yet due).]

The term "**Indebtedness**" shall not include:

- (a) Subordinated Shareholder Debt;
- (b) any lease of property which would be considered an operating lease under Accounting Principles;
- (c) Contingent Obligations in the ordinary course of business; or
- (d) for the avoidance of doubt, any contingent obligations in respect of workers' compensation claims, early retirement or termination obligations, pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage Taxes.

The amount of Indebtedness of any Person at any date will be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date. Notwithstanding the foregoing, money borrowed and set aside at the time of the Incurrence of any Indebtedness in order to pre-fund the payment of interest on such Indebtedness shall not be deemed to be "Indebtedness" *provided* that such money is held to secure the payment of such interest.

In addition, "**Indebtedness**" of any Person shall include Indebtedness described in the preceding paragraph that would not appear as a liability on the balance sheet of such Person if:

- (a) such Indebtedness is the obligation of a partnership or joint venture that is not a Restricted Subsidiary (a "**Joint Venture**");
- (b) such Person or a Restricted Subsidiary of such Person is a general partner of the Joint Venture (a "**General Partner**"); and
- (c) there is recourse, by contract or operation of law, with respect to the payment of such Indebtedness to property or assets of such Person or a Restricted Subsidiary of such Person; and then such Indebtedness shall be included in an amount not to exceed:
  - (i) the lesser of (A) the net assets of the General Partner and (B) the amount of such obligations to the extent that there is recourse, by contract or operation of law, to the property or assets of such Person or a Restricted Subsidiary of such Person; or

- (ii) if less than the amount determined pursuant to paragraph (A) immediately above, the actual amount of such Indebtedness that is recourse to such Person or a Restricted Subsidiary of such Person, if the Indebtedness is evidenced by a writing and is for a determinable amount.

“**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 as to which such Person is party or a beneficiary.

“**Interest Period**” has the meaning given to it in the Note Indenture as in effect on the Closing Date.

“**Investments**” of any Person means:

- (a) all direct or indirect investments by such Person in any other Person in the form of loans, advances or capital contributions or other credit extensions constituting Indebtedness of such other Person, and any guarantee of Indebtedness of any other Person;
- (b) all purchases (or other acquisitions for consideration) by such Person of Indebtedness, Capital Stock or other securities of any other Person (other than any such purchase that constitutes a Restricted Payment of the type described in paragraph (b) of the definition thereof);
- (c) all other items that would be classified as investments on a balance sheet of such Person prepared in accordance with the Accounting Principles (including, if required by the Accounting Principles, purchases of assets outside the ordinary course of business); and
- (d) the Designation of any Subsidiary as an Unrestricted Subsidiary.

Except as otherwise expressly specified in this definition, the amount of any Investment (other than an Investment made in cash) shall be the Fair Market Value thereof on the date such Investment is made. The amount of Investment pursuant to paragraph (d) shall be the Designation Amount determined in accordance with Clause 6 (*Limitations on Designation of Unrestricted Subsidiaries*) of this Schedule 15 (*Restrictive Covenants*). If the Parent or any Restricted Subsidiary sells or otherwise disposes of any Capital Stock of any Restricted Subsidiary, or any Restricted Subsidiary issues any Capital Stock, in either case, such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary, the Parent shall be deemed to have made an Investment on the date of any such sale or other disposition equal to the Fair Market Value of the Capital Stock of and all other Investments in such Restricted Subsidiary retained. Notwithstanding the foregoing, purchases or redemptions of Capital Stock of the Parent or a Restricted Subsidiary shall be deemed not to be Investments.

“**Issuer**” means Almatris Holdings 9 B.V.

“**Japan JV Agreements**” means [●].

“**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 Fees**” means customary fees and related expenses for the performance of advisory services in connection with mergers, acquisitions, dispositions or joint ventures, by the Investors for the Parent or any of its Restricted Subsidiaries, which payments have been approved by a majority of the Disinterested Directors.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**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 installment 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 national and local taxes required to be paid or accrued as a liability under the Accounting Principles (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 must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law be repaid out of the proceeds from such Asset Disposition;
- (c) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Disposition; and
- (d) the deduction of appropriate amounts to be provided by the seller as a reserve, in accordance with the Accounting Principles, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Parent or any Restricted Subsidiary after such Asset Disposition.

“**Net Cash Proceeds**,” with respect to any issuance or sale of Capital Stock, 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 arrangements).

“**Non-Recourse Debt**” means Indebtedness of a Person:

- (a) as to which neither the Parent nor any Restricted Subsidiary (other than China Subsidiaries, in the case of China Facilities, and other than Japan Subsidiaries, in the case of Japan Facilities) (i) provides any Guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Indebtedness) or (ii) is directly or indirectly liable (as a guarantor or otherwise); and
- (b) the explicit terms of which provide there is no recourse against any of the assets of the Parent or its Restricted Subsidiaries (other than China Subsidiaries, in the case of China Facilities, and other than Japan Subsidiaries, in the case of Japan Facilities).

“**Note Guarantee**” means, individually, any guarantee of payment of the Notes by a Guarantor pursuant to the terms of the Note Indenture and any supplemental Note Indenture thereto, and, collectively, all such Note Guarantees.



“**Obligations**” means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

“**Officer**” of any Person means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or the Secretary of such Person. Officer of any Guarantor has a correlative meaning.

“**Officers’ Certificate**” means a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of the Company.

“**Opinion of Counsel**” means a written opinion from legal counsel who is reasonably acceptable to the Agent. The counsel may be an employee of or counsel to the Parent, any Subsidiary of the Parent or the Agent.

“**Parent Entity**” means any direct or indirect parent company or entity of the Parent.

“**Permitted Collateral Liens**” means:

- (a) Liens on the Collateral to secure the Notes (or the Note Guarantees) and any Refinancing Indebtedness in respect thereof, in each case, permitted to be incurred under this Agreement; *provided* that each of the parties thereto will have entered into the Intercreditor Agreement or an Additional Intercreditor Agreement; and *provided, further*, that all property and assets (including, without limitation, the Collateral) securing such Refinancing Indebtedness secures all Indebtedness under the Finance Documents on at least an equal and ratable basis;
- (b) Liens on the Collateral to secure Indebtedness under the Finance Documents;
- (c) Liens on the Collateral securing the Parent’s or any Guarantor’s obligations under Hedging Obligations permitted by paragraph (f) of the definition of Permitted Indebtedness in Clause 1.2 (*Limitation on Indebtedness*) of this Schedule 15 (*Restrictive Covenants*), provided that property and assets securing such Indebtedness will also secure all Indebtedness under the Finance Documents on at least an equal and ratable basis (subject to the Intercreditor Agreement); *provided, further*, that each of the parties thereto will have entered into the Intercreditor Agreement or an Additional Intercreditor Agreement; and
- (d) Liens on the Collateral described in one or more of paragraphs (c), (e), (f), (g), (k), (l), (m), (n) and (p) of the definition of “Permitted Liens”.

“**Permitted Investment**” means:

- (a) (i) Investments by the Parent or any Restricted Subsidiary in any member of the Guarantor Group; (ii) by the Parent or any Restricted Subsidiary in any Person that will become immediately after such Investment a member of the Guarantor Group or that will merge or consolidate into the Parent or any member of the Guarantor Group or (iii) by a member of the Guarantor Group to a member of the Restricted Group that is not a member of the Guarantor Group where the value of such Investments pursuant to this clause (iii) (when aggregated with the value of all other such Investments and all Asset Dispositions made pursuant to paragraph (a)(iii) of the definition of Asset Dispositions since the Closing Date) does not exceed USD 25,000,000;
- (b) Hedging Obligations entered into for bona fide hedging purposes of the Parent or any Restricted Subsidiary not for the purpose of speculation;

- (c) cash and Cash Equivalents;
- (d) receivables owing to the Parent or any Restricted Subsidiary if created or acquired in the ordinary course of business;
- (e) Investments in compromise or resolution of, or otherwise relating to, obligations of trade creditors or customers incurred in the ordinary course of business, including such Investments received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;
- (f) Investments received in compromise or resolution of litigation, arbitration or other disputes;
- (g) Investments made by the Parent or any Restricted Subsidiary as a result of consideration received in connection with an Asset Disposition made in compliance with Clause 5 (*Limitations on Sales of Assets and Subsidiary Stock*) of this Schedule 15 (*Restrictive Covenants*);
- (h) lease, utility and other similar deposits in the ordinary course of business;
- (i) Investments made for consideration consisting only of Qualified Capital Stock of the Parent;
- (j) stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Parent or any Restricted Subsidiary or in satisfaction of judgments;
- (k) Investments existing on the Closing Date;
- (l) Investments acquired after the Closing Date as a result of the acquisition by the Parent or any Restricted Subsidiary of another Person, including by way of a merger, amalgamation or consolidation with or into the Parent or any of its Restricted Subsidiaries in a transaction that is not prohibited by Clause 8 (*Merger, Consolidation or Sale of Assets*) of this Schedule 15 (*Restrictive Covenants*) after the Closing Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;
- (m) (other than with respect to Indebtedness) guarantees, keepwells and similar arrangements in the ordinary course of business;
- (n) any guarantee of Indebtedness permitted to be incurred by Clause 1 (*Limitation on Indebtedness*) of this Schedule 15 (*Restrictive Covenants*); and
- (o) other Investments (other than Investments by a member of the Guarantor Group in a member of the Restricted Group that is not a member of the Guarantor Group) in an aggregate amount, when taken together with all other Investments made pursuant to this clause (o), not to exceed \$10.0 million in the aggregate since the Closing Date.

**“Permitted Liens”** means:

- (a) Liens in favor of the Company or the Guarantors;
- (b) Liens on property (including Capital Stock) of a Person existing at the time such Person becomes a Restricted Subsidiary of the Parent or is merged with or into or

consolidated with the Parent or any of its Restricted Subsidiaries or at the time such property is acquired; *provided* that such Liens were in existence prior to such Person becoming a Restricted Subsidiary of the Parent or such merger or consolidation or such acquisition of property, were not Incurred in contemplation thereof; *provided, further, however,* that such Liens do not extend to any other property owned by such Person or any of its Subsidiaries unless otherwise permitted hereunder;

- (c) Liens to secure the performance of statutory obligations, trade contracts, insurance, surety or appeal bonds, workers compensation obligations, leases, performance bonds or other obligations of a like nature incurred in the ordinary course of business (including Liens to secure letters of credit issued to assure payment of such obligations);
- (d) Liens securing Purchase Money Indebtedness and/or Capitalized Lease Obligations Incurred or existing under paragraph (l) of the definition of “Permitted Indebtedness” in Clause 1.2 (*Limitation on Indebtedness*) of this Schedule 15 (*Restrictive Covenants*); *provided* that such Liens shall not extend to any asset other than the specified asset so financed and additions and improvements thereon;
- (e) Liens for taxes, assessments or governmental charges or claims that (i) are not yet due and payable or (ii) are being contested in good faith by appropriate proceedings and for which a reserve or other appropriate provision, if any, as will be required in conformity with the Accounting Principles will have been made;
- (f) Liens imposed by law, such as carriers’, warehousemen’s, landlord’s and mechanics’ Liens, in each case, incurred in the ordinary course of business;
- (g) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;
- (h) Liens created for the benefit of the Finance Parties or to secure the obligations of the Obligors under the Finance Documents;
- (i) Liens to secure any Refinancing Indebtedness permitted to be Incurred under this Agreement; *provided, however,* that:
  - (i) the new Lien is limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and
  - (ii) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (A) the outstanding principal amount, or, if greater, committed amount, of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged with such Refinancing Indebtedness and (B) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;
- (j) Liens on insurance policies and proceeds thereof, or other deposits, to secure insurance premium financings;

- (k) filing of Uniform Commercial Code financing statements under U.S. state law (or similar filings under applicable jurisdiction) in connection with operating leases in the ordinary course of business;
- (l) bankers' Liens, rights of setoff or similar rights and remedies as to deposit accounts, Liens arising out of judgments or awards not constituting an Event of Default and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;
- (m) Liens on cash, Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;
- (n) Liens on specific items of inventory or other goods (and the proceeds thereof) of any Person securing such Person's obligations in respect of bankers' acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (o) leases, licenses, subleases and sublicenses of assets in the ordinary course of business;
- (p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of assets entered into in the ordinary course of business;
- (q) (i) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any developer, landlord or other third party on property over which the Parent or any of its Restricted Subsidiaries has easement rights or on any real property leased by the Parent or any of its Restricted Subsidiaries and subordination or similar agreements relating thereto and (ii) any condemnation or eminent domain proceedings or compulsory purchase order affecting real property;
- (r) 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;
- (s) 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;
- (t) Liens (including put and call arrangements) on Capital Stock or other securities of any Unrestricted Subsidiary that secure Indebtedness of such Unrestricted Subsidiary;
- (u) Liens on assets of any China Subsidiary securing Indebtedness and obligations of the China Subsidiaries in respect of China Facilities, Incurred pursuant to paragraph (j) of the definition of "Permitted Indebtedness" in Clause 1.2 (*Limitation on Indebtedness*) of this Schedule 15 (*Restrictive Covenants*); and
- (v) Liens on assets other than Collateral securing Hedging Obligations entered into for bona fide business purposes and not for speculation.

**"Permitted Parent Payments"** means, the declaration and payment of dividends or other distributions, or the making of loans, by the Parent or any of its Restricted Subsidiaries to any Parent Entity in amounts and at times required to pay directors' fees and other administrative and corporate expenses.

“**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 hereof or any other entity.

“**PIK Interest**” has the meaning given to it in the Note Indenture as in effect on the Closing Date.

“**PIK Toggle Option**” has the meaning given to it in the Note Indenture as in effect on the Closing Date.

“**Preferred Stock**,” as applied to the Capital Stock of any corporation, 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 corporation, over shares of Capital Stock of any other class of such corporation.

“**Purchase Money Indebtedness**” means Indebtedness, including Capitalized Lease Obligations, of the Parent or any Restricted Subsidiary incurred for the purpose of financing all or any part of the purchase price of property, plant or equipment used in the business of the Company or any Restricted Subsidiary or the cost of installation, construction or improvement thereof; provided, however, that (a) the amount of such Indebtedness shall not exceed such purchase price or cost and (b) such Indebtedness shall be Incurred within 90 days after such acquisition of such asset by the Parent or such Restricted Subsidiary or such installation, construction or improvement.

“**Qualified Capital Stock**” of any Person means Capital Stock of such Person other than Disqualified Capital Stock; *provided* that such Capital Stock shall not be deemed Qualified Capital Stock to the extent sold or owed to a Subsidiary of such Person or financed, directly or indirectly, using funds (a) borrowed from such Person or any Subsidiary of such Person until and to the extent such borrowing is repaid or (b) contributed, extended, guaranteed or advanced by such Person or any Subsidiary of such Person (including, without limitation, in respect of any employee stock ownership or benefit plan). Unless otherwise specified, Qualified Capital Stock refers to Qualified Capital Stock of the Parent.

“**refinance**” means to refinance, repay, prepay, replace, renew or refund.

“**Refinancing Indebtedness**” means Indebtedness of the Parent or a Restricted Subsidiary incurred in exchange for, or the proceeds of which are used to redeem or refinance in whole or in part, any Indebtedness of the Parent or any Restricted Subsidiary (the “**Refinanced Indebtedness**”); *provided* that:

- (a) the principal amount (and accreted value, in the case of Indebtedness issued at a discount) of the Refinancing Indebtedness does not exceed the principal amount (and accreted value, as the case may be) of the Refinanced Indebtedness plus the amount of accrued and unpaid interest on the Refinanced Indebtedness, any reasonable premium paid to the holders of the Refinanced Indebtedness and the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with the incurrence of the Refinancing Indebtedness;
- (b) if the Parent or a Guarantor was the obligor under the Refinanced Indebtedness, the Refinancing Indebtedness is incurred by the Parent or a Guarantor;
- (c) if the Refinanced Indebtedness was subordinated in right of payment to the Notes or the Note Guarantees, as the case may be, then such Refinancing Indebtedness, by its terms, is subordinate in right of payment to the Notes or the Note Guarantees, as the case may be, at least to the same extent as the Refinanced Indebtedness;

- (d) the Refinancing Indebtedness has a final stated maturity either (i) no earlier than the Refinanced Indebtedness being repaid or amended (if the stated maturity of the Refinanced Indebtedness is earlier than (or concurrent with) the stated maturity of the Notes) or (ii) at least 180 days after the stated maturity date of the Notes (if the Refinanced Indebtedness has a stated maturity later than the stated maturity of the Notes);
- (e) the portion, if any, of the Refinancing Indebtedness that is scheduled to mature on or prior to the maturity date of the Notes has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the portion of the Refinanced Indebtedness being repaid that is scheduled to mature on or prior to the maturity date of the Notes; and
- (f) the proceeds of the Refinancing Indebtedness shall be used substantially concurrently with the incurrence thereof to redeem or refinance the Refinanced Indebtedness, unless the Refinanced Indebtedness is not then due and is not redeemable or prepayable at the option of the obligor thereof or is redeemable or prepayable only with notice, in which case such proceeds shall be held in a segregated account of the obligor of the Refinanced Indebtedness until the Refinanced Indebtedness becomes due or redeemable or prepayable or such notice period lapses and then shall be used to refinance the Refinanced Indebtedness; *provided* that in any event the Refinanced Indebtedness shall be redeemed or refinanced within one year of the incurrence of the Refinancing Indebtedness.

In addition, any Retrenching Indebtedness in respect of Notes pursuant to Section 4.19 of the Note Indenture as in effect on the Closing Date shall constitute Refinancing Indebtedness of the Notes and Note Guarantees.

“**Related Business**” means any business which is the same as or related, ancillary or complementary to any of the businesses of the Parent and its Restricted Subsidiaries on the Closing Date.

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

“**Restricted Payment**” means any of the following:

- (a) the declaration or payment of any dividend or any other distribution on Capital Stock of the Parent or any Restricted Subsidiary or any payment made to the direct or indirect holders (in their capacities as such) of Capital Stock of the Parent or any Restricted Subsidiary, including, without limitation, any payment in connection with any merger or consolidation involving the Company but excluding (i) dividends or distributions payable solely in Qualified Capital Stock or through accretion or accumulation of such dividends on such Capital Stock and (ii) in the case of Restricted Subsidiaries, dividends or distributions payable to the Parent or to a Restricted Subsidiary and pro rata dividends or distributions payable to minority stockholders of any Restricted Subsidiary;
- (b) the redemption of any Capital Stock of the Parent held by any Person (other than by a Restricted Subsidiary) or any Restricted Subsidiary, held by any Affiliate of the Parent (other than by a Restricted Subsidiary), including, without limitation, any payment in connection with any merger or consolidation involving the Parent but excluding any such Capital Stock held by the Parent or any Restricted Subsidiary (other than in exchange for Qualified Capital Stock of the Parent);
- (c) any Restricted Investment;

- (d) any payment or redemption prior to the scheduled maturity or prior to any scheduled repayment of principal or sinking fund payment, as the case may be, in respect of Subordinated Indebtedness (other than any Subordinated Indebtedness owed to and held by the Parent or any Restricted Subsidiary); or
- (e) any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or refine for value any Subordinated Shareholder Debt.

“**Restricted Subsidiary**” means any Subsidiary of the Parent other than an Unrestricted Subsidiary.

“**Retranching Indebtedness**” means any notes, note guarantees and related obligations outstanding as a result of the retranching of Notes in accordance with Section 4.19 of the Note Indenture as in effect on the Closing Date.

“**Sale/Leaseback Transaction**” means an arrangement relating to property now owned or hereafter acquired whereby the Parent or a Restricted Subsidiary transfers such property to a Person and the Parent or a Restricted Subsidiary leases it from such Person.

“**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.

“**Subordinated Indebtedness**” means Indebtedness of the Parent or any Restricted Subsidiary that is expressly subordinated in right of payment to the Indebtedness under this Agreement.

“**Subordinated Shareholder Debt**” means, collectively, any indebtedness provided to the Parent or any of its Restricted Subsidiaries by any direct or indirect parent of the Parent, the Investors, in exchange for or pursuant to any security, instrument or agreement other than Capital Stock, together with any such security, instrument or agreement and any other security or instrument other than Capital Stock issued in payment of any obligation under any Subordinated Shareholder Debt; *provided* that such Subordinated Shareholder Debt:

- (a) does not (including upon the happening of any event) mature or require any amortization or other payment of principal prior to [91] days after the Termination Date (other than through conversion or exchange of any such security or instrument for Equity Interests of the Parent (other than Disqualified Capital Stock) or for any other security or instrument meeting the requirements of the definition);
- (b) does not (including upon the happening of any event) require the payment of cash interest prior to 180 days after the Termination Date;
- (c) does not (including upon the happening of any event) provide for the acceleration of its maturity nor confers on its shareholders any right (including upon the happening of any event) to declare a default or event of default or take any enforcement action, in each case, prior to the first anniversary of the Termination Date;
- (d) is not secured by a lien on any assets of the Parent or a Restricted Subsidiary and is not guaranteed by any Restricted Subsidiary of the Parent;
- (e) is expressly subordinated in right of payment to the prior payment in full in cash of the Indebtedness under this Agreement in the event of any default, bankruptcy, reorganization, liquidation, winding up or other disposition of assets of the Parent at least to the same extent as the [“Subordinated Liabilities”] are subordinated to the Indebtedness under this Agreement;

- (f) does not (including upon the happening of any event) restrict the payment of amounts due in respect of the Finance Documents or compliance by the Parent with its obligations under the Finance Documents;
- (g) is not (including upon the happening of any event) mandatorily convertible or exchangeable, or convertible or exchangeable at the option of the holder, in whole or in part, prior to the Termination Date other than into or for Capital Stock (other than Disqualified Stock) of the Parent; and
- (h) is pledged (along with all securities it is convertible into, if any) as Collateral to secure Obligations in respect of the Finance Documents and the obligee thereof is party to the Intercreditor Agreement.

“**Subsidiary**” of any Person means (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 ordinary 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 (or persons performing similar functions) or (b) any partnership, joint venture limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of (a) and (b), at the time owned or controlled, directly or indirectly, by (i) such Person, (ii) such Person and one or more Subsidiaries of such Person or (iii) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary will refer to a Subsidiary of the Parent.

“**Taxes**” and “**Taxation**” shall be construed to have corresponding meanings.

“**Unrestricted Subsidiary**” means (i) any Subsidiary of the Parent that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Parent in accordance with Clause 6 (*Limitations on Designation of Unrestricted Subsidiaries*) of this Schedule 15 (*Restrictive Covenants*) and (ii) any Subsidiary of an Unrestricted Subsidiary.

“**U.S. Dollars**,” “**Dollars**,” or “**\$**” means and/or refers to the lawful currency of the United States.

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



**SCHEDULE 16**  
**FORM OF INCREASE CONFIRMATION**

To: [●] as Agent, [●] as Security Agent, [●] as Issuing Bank and Almatix Holdings 3 B.V. as Parent, for and on behalf of each Obligor

From: [the *Increase Lender*] (the “**Increase Lender**”)

Dated: [●]

**Almatix Holdings 3 B.V. – USD 50,000,000 Revolving Facility Agreement**  
**dated [●] (the “Facility Agreement”)**

1. We refer to the Facility Agreement and to the Intercreditor Agreement (as defined in the Facility Agreement). This agreement (the “**Agreement**”) shall take effect as an Increase Confirmation for the purpose of the Facility Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to clause 2.2 (*Increase*) of the Facility Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the “**Relevant Commitment**”) as if it was an Original Lender under the Facility Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the “**Increase Date**”) is [●].
5. On the Increase Date, the Increase Lender becomes:
  - (a) party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
  - (b) party to the Intercreditor Agreement as a Senior Creditor.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 37.2 (Addresses) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (f) of Clause 2.2 (*Increase*).
8. The Increase Lender confirms that it is not a Sponsor Affiliate.
9. [The Increase Lender confirms that it [is]/[is not]\* a Non-Acceptable L/C Lender.]\*\*
10. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a German Qualifying Lender that is not a German Treaty Lender;]
  - (b) [a German Exempt Lender;]

(c) [a German Treaty Lender;]

(d) [neither a German Qualifying Lender nor a German Exempt Lender.]

11. We refer to clause 19.13 (*Creditor/Creditor Representative Accession Undertaking*) of the Intercreditor Agreement:

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

12. This Agreement 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. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
14. This Agreement has been entered into on the date stated at the beginning of this Agreement.

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

**THE SCHEDULE**

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

*[insert relevant details]*

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

[Increase Lender]

By:

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

Agent

By:

Issuing Bank

By:

Security Agent

By:

**SCHEDULE 17  
MATERIAL COMPANIES**

<b>Company</b>	<b>Jurisdiction of Incorporation</b>	<b>Registration Number</b>
Almatis Holdings 3 B.V.	The Netherlands	24387315
Almatis Holdings 9 B.V.	The Netherlands	24413773
Almatis B.V.	The Netherlands	24253371
Almatis Holdings 7 B.V.	The Netherlands	24387290
Almatis US Holdings, Inc.	Delaware, USA	3750819
Almatis Inc.	Delaware, USA	3750817
Almatis Asset Holdings LLC	Delaware, USA	3769768
Blitz F07-neunhundert-sechzig-drei GmbH	Germany	HRB 81516 (local court ( <i>Amtsgericht</i> ) of Ludwigshafen am Rhein)
Almatis Holdings GmbH	Germany	HRB 5238 (local court ( <i>Amtsgericht</i> ) of Ludwigshafen am Rhein)
Almatis GmbH	Germany	HRB 2360 (local court ( <i>Amtsgericht</i> ) of Ludwigshafen am Rhein)

**SCHEDULE 18**  
**FORM OF EXEMPTION CERTIFICATE**

- I. The Lender is the sole record and beneficial owner of the Loans in respect of which it is providing this certificate.
- II. The Lender is not a “bank” for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the “Code”). In this regard, the Lender further represents and warrants that:
  - A. the Lender is not subject to regulatory or other legal requirements as a bank in any jurisdiction; and
  - B. the Lender has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any governmental authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements.
- III. The Lender is not a 10-percent shareholder of the relevant Obligor within the meaning of Section 881(c)(3)(B) of the Code.
- IV. The Lender is not a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.

## SCHEDULE 18

### SECURITY RELEASE AGREEMENTS

#### 1. Dutch Security Release Agreements

Dutch release agreement from UBS Limited as the security trustee to DIC Almatris Bidco B.V., Almatris Holdings 3, Almatris Holdings 9, Almatris B.V. and Almatris Holdings 7 B.V. as the security providers and Almatris B.V., DIC Almatris Bidco B.V., Almatris Holdings 3 B.V., Almatris Holdings 9 B.V. and Almatris Holdings 7 B.V. as the Dutch companies.

Dutch release agreement from UBS Limited as the security trustee to DIC Almatris Bidco B.V. (releasing all Dutch law security granted by DIC Almatris Bidco B.V. (except the pledge over the shares in Almatris Holdings 3 BV and the pledge over the shares in DIC Almatris Bidco B.V.).

Dutch release agreement from UBS Limited as the security trustee to DIC Almatris Midco B.V. (releasing all Dutch law security granted by DIC Almatris Midco B.V., except the pledge over the shares in DIC Almatris Bidco).

#### 2. German Security Release Agreement

German law security release agreement between Almatris B.V., Almatris Holdings GmbH Almatris GmbH and Blitz F07-neunhundert-sechzig-drei GmbH as security grantors and UBS Limited as security trustee relating to the release of German accessory security

#### 3. US Security Release Agreements

General New York law governed release document between UBS Limited in its capacity as security trustee, Almatris B.V., Almatris GmbH, Almatris Holdings 7 B.V., Almatris US Holding, Inc., Almatris, Inc. and Almatris Asset Holdings LLC.

Existing IP security releases in respect of:

- (a) Trademarks:
  - (i) UBS liens and executed by UBS Limited; and
  - (i) Bank of Nova Scotia liens and executed by The Bank of Nova Scotia.
- (b) Patents:
  - (i) UBS liens and executed by UBS Limited; and
  - (ii) Bank of Nova Scotia liens and executed by The Bank of Nova Scotia.

Existing mortgage releases in respect of:

- (a) senior Arkansas mortgage and executed by UBS Limited;
- (b) mezzanine Arkansas mortgage and executed by UBS Limited; and
- (c) senior and mezzanine Georgia mortgage and executed by UBS Limited.

Termination of existing deposit account control agreements between Mellon Bank, N.A. and

- (a) Almatris US Holdings, Inc. executed by UBS Limited as security party and acknowledged by Mellon Bank, N.A. and Almatris US Holding, Inc.; and
- (b) Almatris, Inc. executed by UBS Limited as secured party and acknowledged by Mellon Bank, N.A. and Almatris, Inc.

#### 4. Japanese Security Release Agreement

Japanese release letter regarding Almatris Limited's release of existing security, from UBS Limited as the security agent to Almatris B.V. as the security grantor.

**5. Chinese Security Release Agreements**

Duly executed consent letters by UBS Limited consenting to the release of the existing pledge under the Existing PRC Equity Pledge.

Duly executed consent letters by Almatris B.V. consenting to the release of the existing pledge under the Existing PRC Equity Pledge.

Application letter for release of the Existing PRC Equity Pledge.

Board resolution of each PRC WFOE approving release of the Existing PRC Equity Pledge.

Business license and certificate of approval of each PRC WFOE for approval of release of the Existing PRC Equity Pledge.

Application letter for deregistration of the Existing PRC Equity Pledge.

Power of Attorney issued by the existing pledgor and pledgee under the Existing PRC Equity Pledge for handling the release and deregistration.

**6. English Security Release Agreements**

English law deed of release between DIC Almatris Bidco B.V. as parent, Almatris B.V. and UBS Limited as security trustee.

English law deed of release between DIC Almatris Bidco B.V. as parent, Almatris B.V. and UBS Limited as security trustee.

**SIGNATURES**

**THE PARENT**

**ALMATIS HOLDINGS 3 B.V.**

By:

Address: Theemsweg 30, 3197 KM Botlek Rotterdam, The Netherlands

Fax: +31 (0) 181 217853

**THE ORIGINAL BORROWERS**

**ALMATIS B.V.**

By:

Address: Theemsweg 30, 3197 KM Botlek Rotterdam, The Netherlands

Fax: +31 (0) 181 217853

**ALMATIS GMBH**

By:

Address:

Fax:

**ALMATIS, INC.**

By:

Address:

Fax:

**THE ORIGINAL GUARANTORS**

**ALMATIS HOLDINGS 3 B.V.**

By:

Address: Theemsweg 30, 3197 KM Botlek Rotterdam, The Netherlands



Fax: +31 (0) 181 217853

**ALMATIS HOLDINGS 9 B.V.**

By:

Address: Theemsweg 30, 3197 KM Botlek Rotterdam, The Netherlands

Fax: +31 (0) 181 217853

**ALMATIS B.V.**

By:

Address: Theemsweg 30, 3197 KM Botlek Rotterdam, The Netherlands

Fax: +31 (0) 181 217853

**ALMATIS HOLDINGS 7 B.V.**

By:

Address: Theemsweg 30, 3197 KM Botlek Rotterdam, The Netherlands

Fax: +31 (0) 181 217853

**ALMATIS US HOLDING, INC.**

By:

Address: 501 West Park Road, Leetsdale, PA 15056, USA

Fax: +1 501 7764 592

**ALMATIS, INC.**

By:

Address: 501 West Park Road, Leetsdale, PA 15056 USA

Fax: +1 501 7764 592

**ALMATIS ASSET HOLDINGS LLC**

By:

Address: 501 West Park Road, Leetsdale, PA 15056, USA

Fax: +1 501 7764 592

**BLITZ F07-NEUNHUNDERT-SECHZIG-DREI GMBH**

By:

Address:

Fax:

**ALMATIS HOLDINGS GMBH**

By:

Address:

Fax:

**ALMATIS GMBH**

By:

Address:

Fax:

**THE ARRANGERS**

**J.P. MORGAN PLC**

By:

Address: [125 London Wall, London EC2Y 5AJ]

Fax:

Attention:

**MERRILL LYNCH INTERNATIONAL**

By:

Address: [2 King Edward Street, London EC1A 1HQ]

Fax:

Attention:

**THE AGENT**

**J.P. MORGAN EUROPE LIMITED**

By:

Address:

Fax:

Attention:

**THE SECURITY AGENT**

**WILMINGTON TRUST (LONDON) LIMITED**

By:

Address:

Fax:

Attention:

**THE ISSUING BANK**

**JPMORGAN CHASE BANK NA**

By:

Address:

Fax:

Attention:

**THE ORIGINAL LENDERS**

**[JPMORGAN CHASE BANK, N.A.]**

By:

Address: [125 London Wall, London EC2Y 5AJ]

Fax:

Attention:

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

By:

Address: [2 King Edward Street, London EC1A 1HQ]

Fax:

Attention: