

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549  
**FORM 20-F**

- (Mark One)
- ☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(B) OR 12(G) OF THE SECURITIES EXCHANGE ACT OF 1934  
OR  
☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2022  
OR  
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934  
OR  
☐ SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934  
Date of event requiring this shell company report:  
Commission File Number: 001-40302

**PAYSAFE LIMITED**

(Exact name of Registrant as specified in its charter)

Washington, DC 20549

Not applicable Bermuda  
(Translation of Registrant's name into English) (Jurisdiction of incorporation or organization)

Paysafe Limited  
25 Canada Square  
27th Floor  
London, United Kingdom E14 5LQ  
(Address of Principal Executive Offices)

Elliott Wiseman  
25 Canada Square, 27th Floor, London, United Kingdom E14 5LQ  
+44 (0) 207 608 8460  
(Name, Telephone, Email and/or Facsimile number and Address of Company Contact Person)

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

Title of each class	Trading Symbols	Name of each exchange on which registered
Common Shares	PSFE	New York Stock Exchange
Warrants	PSFE.WS	New York Stock Exchange

Securities registered or to be registered pursuant to Section 12(g) of the Act: None

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: None

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report: 60,788,816 common shares and 53,900,725 warrants.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or an emerging growth company. See definition of "large accelerated filer," "accelerated filer," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Emerging growth company	<input type="checkbox"/>

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected to use the extended transition period for complying with any new or revised financial accounting standards† provided pursuant to Section 13(a) of the Exchange Act. ☐

The term "new or revised financial accounting standard" refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting over Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect a correction of an error

to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP ☒

International Financial Reporting Standards as issued  
by the International Accounting Standards Board ☐

Other ☐

If "Other" has been checked in response to the previous question indicate by check mark which financial statement item the registrant has elected to follow. Item 17 ☐ Item 18 ☐

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

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**PAYSAFE LIMITED**  
**TABLE OF CONTENTS**

<a href="#">Explanatory Note</a>	ii
<a href="#">Financial Statement Presentation</a>	ii
<a href="#">Cautionary Note Regarding Forward-Looking Statements</a>	iii
<a href="#">Industry and Market Data</a>	iii
<a href="#">Summary Risk Factors</a>	iv
<a href="#">Defined Terms</a>	vi
 <a href="#">PART I</a>	 1
Item 1. <a href="#">Identity of Directors, Senior Management and Advisers</a>	1
Item 2. <a href="#">Offer Statistics and Expected Timetable</a>	1
Item 3. <a href="#">Key Information</a>	1
Item 4. <a href="#">Information on the Company</a>	40
Item 4A. <a href="#">Unresolved Staff Comments</a>	60
Item 5. <a href="#">Operating and Financial Review and Prospects</a>	60
Item 6. <a href="#">Directors, Senior Management and Employees</a>	78
Item 7. <a href="#">Major Shareholders and Related Party Transactions</a>	90
Item 8. <a href="#">Financial Information</a>	96
Item 9. <a href="#">The Offer and Listing</a>	96
Item 10. <a href="#">Additional Information</a>	97
Item 11. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	103
Item 12. <a href="#">Description of Securities Other than Equity Securities</a>	103
 <a href="#">PART II</a>	 103
Item 13. <a href="#">Defaults, Dividend Arrearages and Delinquencies</a>	103
Item 14. <a href="#">Material Modifications to the Rights of Security Holders and Use of Proceeds</a>	103
Item 15. <a href="#">Control and Procedures</a>	103
Item 16A. <a href="#">Audit Committee Financial Expert</a>	105
Item 16B. <a href="#">Code of Ethics</a>	105
Item 16C. <a href="#">Principal Accountant Fees and Services</a>	105
Item 16D. <a href="#">Exemptions from the Listing Standards for Audit Committees</a>	106
Item 16E. <a href="#">Purchases of Equity Securities by the Issuer and Affiliated Purchasers</a>	106
Item 16F. <a href="#">Change in Registrant's Certifying Accountant</a>	106
Item 16G. <a href="#">Corporate Governance</a>	106
Item 16H. <a href="#">Mine Safety Disclosure</a>	106
Item 16I. <a href="#">Disclosure Regarding Foreign Jurisdictions that Prevent Inspections</a>	106
 <a href="#">PART III</a>	 107
Item 17. <a href="#">Financial Statements</a>	107
Item 18. <a href="#">Financial Statements</a>	107
Item 19. <a href="#">Exhibits</a>	108
 <a href="#">INDEX TO FINANCIAL STATEMENTS</a>	 F-1

## EXPLANATORY NOTE

On December 7, 2020, Foley Trasimene Acquisition Corp. II, a Delaware corporation (“FTAC”), Paysafe Limited, an exempted limited company incorporated under the laws of Bermuda (“Paysafe Limited”), Merger Sub Inc., a Delaware corporation and direct, wholly owned subsidiary of Paysafe Limited (“Merger Sub”), Paysafe Bermuda Holding LLC, a Bermuda exempted limited liability company (the “LLC”), Pi Jersey Holdco 1.5 Limited, a private limited company incorporated under the laws of Jersey, Channel Islands (the “Accounting Predecessor”), and Paysafe Group Holdings Limited, a private limited company incorporated under the laws of England and Wales (“PGHL”), entered into the Agreement and Plan of Merger (the “Merger Agreement”). Pursuant to the Merger Agreement, among other things, (i) Merger Sub would merge with and into FTAC, with FTAC being the surviving corporation in the merger and an indirect subsidiary of Paysafe Limited (“Merger”) and each outstanding publicly traded share of FTAC Class A Common Stock and FTAC Class B Common Stock (other than certain excluded shares) would convert into the right to receive one common share, par value \$0.001 per share (prior to “Reverse Stock Split” described below) of Paysafe Limited (“Company Common Shares”), (ii) PGHL would transfer and contribute the Accounting Predecessor to the Company in exchange for Company Common Shares and cash and (iii) each of FTAC’s publicly traded warrants that are outstanding immediately prior to the Effective Time of the Merger would, pursuant to and in accordance with the warrant agreement covering such warrants, automatically and irrevocably be modified to provide that such warrant will no longer entitle the holder thereof to purchase the amount of share(s) of FTAC common stock set forth therein and in substitution thereof such warrant will entitle the holder thereof to acquire the same number of Company Common Shares per warrant on the same terms. The Transaction, as defined herein, was consummated on March 30, 2021, and on March 31, 2021 Paysafe Limited’s common shares and warrants began trading on the NYSE under the symbols “PSFE” and “PSFE.WS,” respectively.

## FINANCIAL STATEMENT PRESENTATION

### *Paysafe Limited*

Paysafe Limited was incorporated by PGHL under the laws of Bermuda on November 23, 2020 for the purpose of effectuating the Transaction. Prior to the Transaction, Paysafe Limited had no material assets and did not operate any businesses. The Transaction resulted in Paysafe Limited acquiring, and becoming the successor to, the Accounting Predecessor. Simultaneously, it completed the combination with the public shell company, FTAC, with an exchange of the shares and warrants issued by Paysafe Limited for those of FTAC. The Transaction was accounted for as a capital reorganization followed by the combination with FTAC, which was treated as a recapitalization. Following the Transaction, both the Accounting Predecessor and FTAC are indirect wholly owned subsidiaries of Paysafe Limited.

### *The Accounting Predecessor*

As a result of the Transaction being accounted for as a capital reorganization, Pi Jersey Holdco 1.5 Limited was deemed to be the Accounting Predecessor of Paysafe Limited. The accompanying consolidated financial statements for the year ended December 31, 2022 include the accounts of Paysafe Limited, and its subsidiaries after giving effect to the Transaction with FTAC that completed on March 30, 2021. The comparative financial information for the year ended December 31, 2020 is based upon the accounts of Pi Jersey Holdco 1.5 Limited, prior to giving effect to the Transaction. Prior to the Transaction, Paysafe Limited had no material operations, assets or liabilities.

### *Reverse Stock Split*

On December 12, 2022, we effected a 1-for-12 reverse stock split of our issued and outstanding common stock (the “Reverse Stock Split”). As a result of the Reverse Stock Split, each issued and outstanding share of our common stock, and the per share exercise price of and number of shares of our common stock underlying our outstanding equity awards were automatically proportionally adjusted based on the 1-for-12 Reverse Stock Split ratio. No fractional shares of common stock were issued in connection with the reverse stock split, and all such fractional interests were rounded up to the nearest whole number.

Except as otherwise provided herein, all share and per-share amounts of our common stock, equity awards, warrants and other outstanding equity rights have been adjusted to give effect to the Reverse Stock Split for all periods presented. The Reverse Stock Split amended the par value of our common stock from \$0.001 to \$0.012 per share, but did not modify any voting rights or other terms of our common stock.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report on Form 20-F (including information incorporated by reference herein, the “Report”) contains or may contain forward-looking statements as defined in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that involve significant risks and uncertainties. All statements other than statements of historical facts are forward-looking statements. These forward-looking statements include information about our possible or assumed future results of operations or our performance. Words such as “anticipate,” “appear,” “approximate,” “believe,” “continue,” “could,” “estimate,” “expect,” “foresee,” “intends,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “seek,” “should,” “would” and variations of such words and similar expressions (or the negative version of such words or expressions) may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. The risk factors and cautionary language referred to or incorporated by reference in this Report provide examples of risks, uncertainties and events that may cause actual results to differ materially from the expectations described in our forward-looking statements, including among other things, the items identified below and those identified in the section entitled “Item 3.D. Risk Factors” of this Report:

- our ability to effectively compete in the large entertainment verticals;
- our ability to successfully acquire and integrate new operations;
- complex and changing regulatory requirements;
- our ability to maintain and develop relationships with banks, payment card networks and financial institutions;
- our ability to prevent and manage cybersecurity attacks;
- market and global conditions and economic factors beyond our control, including foreign currency risks, inflation and rising interest rates;
- significant competition and competitive pressures from other companies worldwide in the industries in which we operate;
- our ability to raise financing in the future;
- our substantial level of indebtedness and
- litigation and the ability to adequately protect our intellectual property rights.

Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this Report. Although we believe that the expectations reflected in such forward-looking statements are reasonable, there can be no assurance that such expectations will prove to be correct. These statements involve known and unknown risks and are based upon a number of assumptions and estimates which are inherently subject to significant uncertainties and contingencies, many of which are beyond our control. Actual results may differ materially from those expressed or implied by such forward-looking statements. Accordingly, forward-looking statements should not be relied upon as representing our views as of any subsequent date, and we do not undertake any obligation to update forward-looking statements to reflect events or circumstances after the date they were made, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

## INDUSTRY AND MARKET DATA

In this Report, we present industry data, forecasts, information and statistics regarding the markets in which we compete as well as our analysis of statistics, data and other information that we have derived from third parties, including independent consultant reports, publicly available information, various industry publications and other published industry sources (including FIS and IBM). Independent consultant reports, industry publications and other published industry sources generally indicate that the information contained therein was obtained from sources believed to be reliable. Such information is supplemented where necessary with our own internal estimates and information obtained from discussions with our customers, taking into account publicly available information about other industry participants and our management’s judgment where information is not publicly available. This information appears in “Item 4.B. Information on the Company—Business Overview,” “Item 5. Operating and Financial Review and Prospects” and other sections of this Report.”

Forecasts and other forward-looking information obtained from these sources are subject to the same qualifications and uncertainties as the other forward-looking statements in this Report. These forecasts and forward-looking information are subject to uncertainty and risk due to a variety of factors, including those described under “Item 3.D. Risk Factors” of this Report. These and other factors could cause results to differ materially from those expressed in any forecasts or estimates. Some market data and statistical information are also based on our good faith estimates, which are derived from management’s knowledge of our industry and such independent sources

referred to above. Certain market, ranking and industry data included elsewhere in this Report, including the size of certain markets and our size or position and the positions of our competitors within these markets, including its services relative to its competitors, are based on estimates by us. These estimates have been derived from management's knowledge and experience in the markets in which we operate, as well as information obtained from surveys, reports by market research firms, our customers, distributors, suppliers, trade and business organizations and other contacts in the markets in which we operate and have not been verified by independent sources. Unless otherwise noted, all of our market share and market position information presented in this Report is an approximation. Our market share and market position in each of our business segments, unless otherwise noted, is based on our volume relative to the estimated volume in the markets served by each of our business segments. References herein to Paysafe being a leader in a market or product category refer to our belief that we have a leading market share position in each specified market, unless the context otherwise requires. As there are no publicly available sources supporting this belief, it is based solely on our internal analysis of our volume as compared to the estimated volume of our competitors. In addition, the discussion herein regarding our various end markets is based on how it defines the end markets for its products, which products may be either part of larger overall end markets or end markets that include other types of products and services.

Our internal data and estimates are based upon information obtained from trade and business organizations and other contacts in the markets in which we operate and management's understanding of industry conditions. Although we believe that such information is reliable, we have not had this information verified by any independent sources.

This Report contains trademarks, service marks, trade names and copyrights of other companies, which are the property of their respective owners. Solely for convenience, some of the trademarks, service marks, trade names and copyrights referred to in this presentation may be listed without the TM, SM © or ® symbols, but Paysafe will assert, to the fullest extent under applicable law, the rights of the applicable owners, if any, to these trademarks, service marks, trade names and copyrights.

## SUMMARY RISK FACTORS

An investment in our shares involves substantial risks and uncertainties that may adversely affect our business, financial condition and results of operations and cash flows. Some of the more significant challenges and risks relating to an investment in our company include, among other things, the following:

- Our focus on the large entertainment verticals can increase risk relative to other companies in the global payments industry.
- Cyberattacks and security vulnerabilities could result in loss of customer and merchant funds and personal data, including financial data, as well as serious harm to our reputation, business, and financial condition.
- Global and regional economic conditions could materially harm our business.
- International operations subject us to increased risks.
- We may not be successful at acquiring, investing and integrating businesses.
- Our success depends on our relationships with banks, payment card networks, issuers and financial institutions.
- Our revenues from the sale of services to merchants that accept Visa cards and Mastercard cards are dependent on our continued financial institution sponsorship.
- We rely on third parties in many aspects of our business, which creates additional operational risk.
- Our business depends on a strong and trusted brand, and any failure to maintain, protect and enhance our brand could materially harm our business.
- The COVID-19 pandemic, including the resulting global economic uncertainty and measures taken in response to the pandemic, could materially impact our business and future results of operations and financial condition.
- We may fail to hold, safeguard or account accurately for merchant or customer funds.
- Our business and products are dependent on the availability, integrity and security of internal and external IT transaction processing systems and services and outages could adversely affect our business.
- We are vulnerable to the effects of chargebacks, merchant insolvency and consumer deposit settlement risk.
- We may become an unwitting party to fraud or be deemed to be handling proceeds of crimes being committed by customers.

- Our risk management policies and procedures may not be fully effective in mitigating our risk exposure in all market environments or against all types of risks.
- We are required to comply with payment card network operating rules.
- Our efforts to expand our product portfolio and market research may not succeed, and if we fail to manage our growth effectively, our business could be materially harmed.
- We depend on key management, as well as our experienced and capable employees.
- If we cannot keep pace with rapid technological developments to provide new and innovative products and services, the use of our products and services and, consequently, our revenues could decline.
- We face substantial and increasingly intense competition worldwide in the global payments industry.
- Our business is subject to extensive regulation and oversight in a variety of areas, all of which are subject to change and uncertain interpretation, including in such a way as to criminalize certain of our activities.
- We are subject to financial services regulatory risks.
- We generate a significant portion of our revenue by processing online payments for merchants and customers engaged in the online gambling and foreign exchange trading sectors.
- We are subject to current and proposed regulations addressing both consumer and business privacy and data use, which could adversely affect our business, financial condition and results of operations.
- We must comply with money laundering regulations in Bermuda, the UK, Ireland, Switzerland, the United States, Canada and elsewhere, and any failure to do so could result in severe financial and legal penalties.
- If we are unable to develop and maintain effective internal controls over financial reporting, we may not be able to produce timely and accurate financial statements, which could have a material adverse effect on our business.
- Catastrophic events or geopolitical conditions, including those related to climate change and increased focus on sustainability issues, may adversely affect our business and financial results and damage our reputation.
- Our substantial leverage could adversely affect our financial condition.
- Despite our current level of indebtedness, we may be able to incur substantially more debt and enter into other transactions which could further exacerbate the risks to our financial condition.
- Our variable rate indebtedness subjects us to interest rate risk, which could cause our indebtedness service obligations to increase significantly.
- Our debt agreements impose significant operating and financial restrictions on us and our subsidiaries, which could prevent us from capitalizing on business opportunities.
- Our business may be adversely impacted by changes in currency exchange rates.
- The IRS may not agree that Paysafe (i) should be treated as a non-U.S. corporation for U.S. federal income tax purposes and (ii) should not be treated as a “surrogate foreign corporation” for U.S. federal income tax purposes.
- As a foreign private issuer, we are exempt from a number of rules under the U.S. securities laws and are permitted to file less information with the SEC than a U.S. company. This may limit the information available to holders of the Common Shares.
- Our Principal Shareholders control 47.5% of our Company and their interests may conflict with ours or yours in the future.

## DEFINED TERMS

Unless otherwise stated or unless the context otherwise requires, all references to “we,” “us,” “our,” “Paysafe” or the “Company” refer to (i) Pi Jersey Holdco 1.5 Limited prior to the consummation of the Transaction and to (ii) Paysafe Limited following the consummation of the Transaction.

In addition, in this document:

“Accounting Predecessor” means Pi Jersey Holdco 1.5 Limited, a private limited company incorporated under the laws of Jersey, Channel Islands. “Additional I/C Loans” means FTAC’s loans out of the Available Cash Amount, caused by the Company, to certain Subsidiaries of the Company following the FTAC Contribution.

“Affiliate” means, with respect to any specified Person, any Person that, directly or indirectly, controls, is controlled by, or is under common control with, such specified Person, through one or more intermediaries or otherwise; provided, except for the Company and its Subsidiaries, no Affiliate or portfolio company (as such term is commonly understood in the private equity industry) of funds advised by affiliates of CVC or Blackstone or any of their respective Affiliates shall be considered an Affiliate of the Company or any of its Subsidiaries.

“Available Cash Amount” means, as of immediately prior to Closing, all available Cash and Cash Equivalents of FTAC and its Subsidiaries, including (i) all amounts in the Trust Account (after reduction for the aggregate amount of payments required to be made in connection with FTAC Stockholder Redemption), (ii) the PIPE Investment Proceeds, and (iii) the aggregate amount of cash proceeds from the FTAC Financing.

“Blackstone” means Blackstone Inc.

“Blackstone Investors” means certain funds affiliated with Blackstone.

“CAGR” means compounded annual growth rate.

“Cannae” means Cannae Holdings and Cannae LLC. “Cannae Holdings” means Cannae Holdings, Inc.

“Cannae LLC” means Cannae Holdings LLC, a wholly-owned subsidiary of Cannae Holdings.

“Cash and Cash Equivalents” means, for any Person, all cash and cash equivalents (including marketable securities, checks and bank deposits); provided, however that with respect to PGHL and its Subsidiaries, such amount shall (x) exclude segregated account funds and liquid assets as more fully described on Exhibit F-1 attached to the Merger Agreement and (y) include any costs, fees and expenses associated with refinancing or repricing the existing indebtedness of the Company (in accordance with the Merger Agreement) that have not been paid on or prior to the Closing Date.

“CBI” means the Central Bank of Ireland.

“Closing” means the closing of the transactions contemplated by the Transaction and the PIPE Investment agreements.

“Closing Date” means the date on which the Closing is completed.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Company Board” means the board of directors of the Company from time to time.

“Company Bye-laws” means the second amended bye-laws of the Company.

“Company Common Share(s)” means the common shares, par value \$0.012 per share, of Paysafe Limited and any successors thereto.

“Company LLC Contribution” means the transfer and contribution of FTAC and the Accounting Predecessor by the Company to the LLC in exchange for LLC Interests immediately following the I/C Loan.

“Company Warrants” means warrants that will entitle the holder thereof to purchase for \$138.00 per share one Company Common Share in lieu of one share of FTAC Class A Common Stock (subject to adjustment in accordance with the Warrant Agreement).



“CVC” means CVC Advisers Limited.

“CVC Investors” means Pi Holdings Jersey Limited and Pi Syndication LP.

“CVC Party” means Pi Holdings Jersey Limited.

“DGCL” means the Delaware General Corporation Law.

“Effective Time” has the meaning specified in Section 2.04 of the Merger Agreement.

“ERISA” means Employee Retirement Income Security Act of 1974.

“EU” means European Union.

“EUR” means Euro, the legal currency of the European Union.

“Executive Management” means members of the executive management of Paysafe.

“Existing Paysafe Shareholders” means CVC Investors, Blackstone Investors and Executive Management.

“FCA” means the UK Financial Conduct Authority and any successor authority thereto.

“Forward Purchase Agreement” means the forward purchase agreement, dated as of July 31, 2020, between FTAC and Cannae Holdings, Inc.

“Founder” means Trasimene Capital FT, LP II.

“Founder LLC Contribution” means the contribution by Founder of FTAC Class C Common Stock to the LLC in exchange for exchangeable units.

“FTAC” means Foley Trasimene Acquisition Corp. II.

“FTAC Class A Common Stock” means the Class A common stock, par value \$0.0001 per share, of FTAC.

“FTAC Class B Common Stock” means the Class B common stock, par value \$0.0001 per share, of FTAC.

“FTAC Common Stock” means FTAC Class A Common Stock and FTAC Class B Common Stock.

“FTAC Contribution” means, immediately following the Company LLC Contribution, the transfer by the LLC to the Accounting Predecessor, or a Subsidiary of the Accounting Predecessor, of all of the stock of FTAC, consummated prior to the consummation to the Additional I/C Loans.

“FTAC Financing” means the equity financing to be provided pursuant to the Forward Purchase Agreement.

“FTAC Stockholders” means the holders of shares of FTAC Common Stock.

“GAAP” means generally accepted accounting principles in the United States.

“GDPR” means the EU’s General Data Protection Regulation 2016/679, as amended.

“Group” means, where appropriate, Paysafe and its subsidiaries.

“HMRC” means HM Revenue & Customs.

“I/C Loans” means the loans made by FTAC to the Company and the Accounting Predecessor out of the Available Cash Amount, made prior to the consummation of the Company LLC Contribution, FTAC Contribution and the Additional I/C Loans.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, encumbrance, easement, license, option, right of first refusal, security interest or other lien of any kind.

“LLC” means, Paysafe Bermuda Holding LLC, a Bermuda exempted limited liability company.

“LLC Contribution” means, collectively, the Founder LLC Contribution and the Company LLC Contribution.

“LLC Interests” means the limited liability company interests in the LLC.

“Merger” means, immediately following the Founder LLC Contribution, on the terms and subject to the conditions of the Merger Agreement and in accordance with the DGCL and other applicable Laws, a business combination transaction by and among the Parties by which Merger Sub will merge with and into FTAC, with FTAC being the surviving corporation of the Merger, consummated prior to the consummation of the I/C Loans, the Company LLC Contribution, the FTAC Contribution and the Additional I/C Loans.

“Merger Agreement” means the agreement and plan of merger made and entered into as of December 7, 2020, by and among FTAC, the Company, Merger Sub, the LLC, the Accounting Predecessor and PGHL.

“Merger Sub” means Paysafe Merger Sub Inc., a Delaware corporation and direct, wholly owned subsidiary of the Company. “NYSE” means the New York Stock Exchange.

“OECD” means the Organization for Economic Co-operation and Development.

“Omnibus Incentive Plan” means the Paysafe Limited 2021 Omnibus Incentive Plan attached as Exhibit H to the Merger Agreement.

“Paysafe Consolidated Financial Statements” means the Consolidated Statements of Financial Position of Paysafe Limited as of December 31, 2022 and 2021 and the related Consolidated Statements of Comprehensive Loss, Shareholder’s Equity, and Cash Flows, for the three years ended December 31, 2022, together with the comparative financial information for the year ended December 31, 2020 which is based upon the accounts of Pi Jersey Holdco 1.5 Limited.

“Paysafe Limited” means Paysafe Limited, an exempted limited company incorporated under the laws of Bermuda.

“Paysafe Holdings II” means Paysafe Group Holdings II Ltd.

“Paysafe Parties” means PGHL, the Accounting Predecessor, Merger Sub and the LLC.

“PCAOB” means the Public Company Accounting Oversight Board.

“PGHL” means Paysafe Group Holdings Limited, a private limited company incorporated under the laws of England and Wales.

“Pi Topco” means Pi Jersey Topco Limited, a company incorporated in Jersey.

“PIPE Investment” means the commitments obtained by FTAC from certain investors for a private placement of Company Common Shares pursuant to those certain Subscription Agreements.

“PIPE Investment Proceeds” mean the aggregate amount funded and paid to the Company by the PIPE Investors pursuant to their Subscription Agreements.

“PIPE Investor” means an investor party to a Subscription Agreement.

“Principal Shareholders” means, collectively, the Founder, Cannae LLC, the CVC Investors and the Blackstone Investors.

“Registration Rights Agreement” means the agreement entered into by the Company, Pi Topco, PGHL, Cannae LLC, the Founder, the CVC Party and the Blackstone Investors in connection with the consummation of the Merger, attached to the Merger Agreement as Exhibit D.

“Shareholders Agreement” means the agreement entered into by the Company, Pi Topco, PGHL and the Principal Shareholders in connection with the consummation of the Merger, attached to the Merger Agreement as Exhibit D.

“SMB” means small and medium-sized businesses.

“Subscription Agreement” means each individual subscription agreement entered into by each PIPE Investor.

“Transaction” means the transactions contemplated by the Merger Agreement, including the Merger, the Paysafe Contribution, the FTAC Contribution, the Founder LLC Contribution, the Company LLC Contribution.

“Trasimene Capital” means Trasimene Capital Management, LLC, a financial advisory firm led by William P. Foley, II, a former director of Paysafe Limited.

“Treasury Regulations” means the regulations, including proposed and temporary regulations, promulgated under the Code.

“U.S. dollar,” “USD,” “US\$” and “\$” mean the legal currency of the United States.

“VAT” means any: (a) tax imposed in compliance with the council directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112) (including, in relation to the UK, value added tax imposed by the Value Added Tax Act 1994 and legislation and regulations supplemental thereto); and (b) other tax of a similar nature (including, without limitation, sales tax, use tax, consumption tax and goods and services tax), whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in (a), or elsewhere.

“Warrant Agreement” means that certain Warrant Agreement, dated as of August 21, 2020, between FTAC and Continental Stock Transfer & Trust Company, a New York corporation.

## PART I

### ITEM 1. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISERS

Not applicable.

### ITEM 2. OFFER STATISTICS AND EXPECTED TIMETABLE

Not applicable.

### ITEM 3. KEY INFORMATION

#### A. [Reserved]

#### B. Capitalization and Indebtedness

The following section summarizes the terms of our principal indebtedness.

##### Credit Facilities

###### *Former Debt Facilities*

As of December 31, 2020, the Company's debt facilities consisted of the following (collectively, the “former debt facilities”):

- \$1,540 million first lien term loan facility (the “USD First Lien Term Loan”) of which \$1,497.7 million was outstanding as of December 31, 2020 and €1,043.7 million (\$1,274.8 million equivalent as of December 31, 2020) first lien term loan facility (the “EUR First Lien Term Loan” and, together with the USD First Lien Term Loan, the “First Lien Term Loan”);
- \$250.0 million second lien term loan facility (the “USD Second Lien Term Loan”) and €212.5 million (\$259.5 million equivalent as of December 31, 2020) second lien term loan facility (the “EUR Second Lien Term Loan” and, together with the USD Second Lien Term Loan, the “Second Lien Term Loans”); and
- \$225.0 million first lien revolving credit facility (the “First Lien Revolving Credit Facility” and, together with the First Lien Term Loan and the Second Lien Term Loan, the “Facilities”), the maturity date of which is January 3, 2024. The commitments under the First Lien Revolving Credit Facility may be utilized for the issuance of letters of credit and/or ancillary facilities.

On March 31, 2021, the Company repaid \$416.7 million and €204.5 million under the USD First Lien Term Loan and EUR First Lien Term Loan, respectively, and the Second Lien Term Loans were repaid in full.

###### *Current Debt Facilities*

On June 28, 2021, Paysafe refinanced its former debt facilities by entering into a Senior Facilities Agreement (the “2021 Senior Facilities”) and issuing Senior Secured Notes (the “2021 Secured Notes”). The proceeds of these facilities and notes were used to repay the remaining former debt facilities:

As of December 31, 2022, the 2021 Senior Facilities and 2021 Secured Notes consist of the following:

- \$305,000 senior secured revolving credit facility (the “Revolving Credit Facility”);
- \$1,108 million first lien term loan facility (the “USD First Lien Term Loan”) of which \$990 million was outstanding as of December 31, 2022 and €710 million first lien term loan facility (the “EUR First Lien Term Loan”) of which €701 million was outstanding at December 31, 2022 (the EUR First Lien Term Loan and, together with the USD First Lien Term Loan, the “First Lien Term Loan”), the maturity date of which is June 28, 2028;
- \$400.0 million Senior Secured Notes (the “USD Notes”) of which \$370 million was outstanding at December 31, 2022 and €435.0 million Senior Secured Notes (the “EUR Notes”) of which €421 million was outstanding at December 31, 2022 (the EUR Notes and, together with the USD Notes, the “Senior Secured Notes”), the maturity date of which is June 28, 2029.

In addition, the 2021 Senior Facilities provide that Paysafe Holdings II has the right at any time, subject to customary conditions, to request incremental term loans or incremental revolving credit commitments in an aggregate principal amount of up to (a) the greater of

(1) \$430.0 million and (2) an amount equal to 100% of Paysafe Holdings II's trailing twelve-month consolidated EBITDA (as such term is defined in the credit agreement) at the time of determination plus (b) an amount equal to all voluntary prepayments, repurchases, redemptions and other retirements of the term loans under the credit agreements and certain other incremental equivalent debt and permanent revolving credit commitment reductions under the credit agreements, in each case prior to or simultaneous with the date of any such incurrence (to the extent not funded with the proceeds of long-term debt other than revolving loans) plus (c) an additional unlimited amount so long as Paysafe Holdings II (I) in the case of incremental indebtedness that is secured by the collateral under the credit agreements on a *pari passu* basis with the First Lien Term Loan, does not exceed a specified pro forma first lien net leverage ratio, and (II) in the case of unsecured incremental indebtedness (or indebtedness not secured by all or a portion of the collateral securing the Facilities), either does not exceed a specified total net leverage ratio or satisfies a specified fixed charge coverage ratio. The lenders under the Facilities are not under any obligation to provide any such incremental loans or commitments, and any such addition of or increase in loans will be subject to certain customary conditions precedent and other provisions."

Paysafe Finance PLC and Paysafe Holdings (US) Corp., collectively referred to in this section as the "First Lien Term Loan Borrowers," are the borrowers under the First Lien Term Loan. Paysafe Holdings UK Limited, Paysafe Holdings (US) Corp. and Paysafe Payment Processing Solutions LLC (referred to in this section as the "Revolving Credit Borrowers") are the borrowers under the First Lien Revolving Credit Facility. The First Lien Term Loan Borrowers and the Revolving Credit Borrowers are collectively referred to in this section as the "Borrowers."

### ***Interest Rate and Fees***

Borrowings under the USD First Lien Term Loan bear interest at a rate per annum equal to USD LIBOR, determined in accordance with the credit agreements (including a floor of 0.50% per annum), plus the applicable margin (which is currently 2.75%). Borrowings under the EUR First Lien Term Loan bear interest at a rate per annum equal to EURIBOR, determined in accordance with the credit agreements (including a floor of 0.00% per annum), plus the applicable margin (which is currently 3.00%). The USD Notes and EUR Notes carry a coupon of 4.00% and 3.00% respectively, payable semi-annually.

Borrowings under the First Lien Revolving Credit Facility bear interest at a rate equal to LIBOR, EURIBOR or equivalent (as applicable), determined in accordance with the Senior Facilities Agreement (including a floor of 0.00% per annum), plus the applicable margin (which is currently 2.25%). The applicable margin for the Facilities is subject to adjustment based on Paysafe Holdings II's consolidated first lien net leverage ratio.

In addition to paying interest on outstanding principal under the Facilities, Paysafe Holdings II will continue to be required to pay a commitment fee to the lenders under the First Lien Revolving Credit Facility in an amount equal to 30% of the applicable margin in respect of the First Lien Revolving Credit Facility multiplied by the aggregate undrawn commitments under the First Lien Revolving Credit Facility, payable quarterly in arrears. Paysafe Holdings II will also continue to be required to pay customary letter of credit fees and annual agency fees to the agent and security agent.

### ***Prepayments***

The credit agreements require Paysafe Holdings II to prepay outstanding loans under the Facilities, subject to certain exceptions, with:

- 75% of the net cash proceeds of certain dispositions of property (which percentage may be reduced to 0% if Paysafe Holdings II achieves and maintains specified consolidated first lien net leverage ratios), subject to certain exceptions, and subject to Paysafe Holdings II's right to reinvest the proceeds within a time period set forth in the credit agreements; and
- 50% of annual excess cash flow (determined in accordance with the credit agreements) commencing with the first full fiscal year completed after the closing of the Facilities (which percentage may be reduced to 25% and 0% if Paysafe Holdings II achieves and maintains, as of the end of the applicable fiscal year, specified consolidated first lien net leverage ratios), subject to certain credits and exceptions.

In addition, unless the lenders holding a majority of the outstanding loans and commitments under each credit agreement consent, each of the credit agreements provide that upon a change of control (determined in accordance with the credit agreements) or a sale of all or substantially all of the business and/or assets of the group the Facilities will be canceled and all amounts thereunder will become immediately due and payable.

Paysafe Holdings II may elect to apply the foregoing mandatory prepayments (i) if the consolidated total net leverage ratio is less than or equal to 6.25:1.00, between the First Lien Term Loans, and the Secured Notes on a pro rata basis.

The Borrowers may voluntarily, in minimum amounts set forth in the credit agreements, repay outstanding loans or reduce outstanding commitments under the Facilities at any time without premium or penalty, subject to reimbursements of the lenders' breakage costs

actually incurred in the case of a prepayment of borrowings prior to the last day of the relevant interest period. Subject to the Intercreditor Agreement, the foregoing voluntary prepayments may be applied to any class of loans under the Facilities as Paysafe Holdings II or the Borrowers shall direct.

#### ***Amortization and Maturity***

The USD First Lien Term Loan amortizes in equal quarterly installments in aggregate annual amounts equal to 1.00% of the principal amount of the USD First Lien Term Loan outstanding as of the date of the closing of the Facilities, with the balance being payable at maturity on June 28, 2028. Principal amounts outstanding under the EUR First Lien Term Loan are due and payable in full at maturity on June 28, 2028. Principal amounts outstanding under the First Lien Revolving Credit Facility are due and payable in full at final maturity on December 28, 2027.

#### ***Guarantees and Security***

All obligations of the obligors under the credit agreements are unconditionally guaranteed by all guarantors under the credit agreements, such guarantors being material wholly owned direct and indirect restricted subsidiaries of Paysafe Holdings II that are organized in the UK, the United States, Canada or the jurisdiction of incorporation of any Borrower and by Paysafe Holdings II, with customary exceptions and certain agreed security principles including, among other things, where providing such guarantees is not permitted by law, regulation or contract or would result in adverse tax consequences.

Subject to the Intercreditor Agreement, all obligations of the obligors under the credit agreements and the guarantees of such obligations, are secured, subject to permitted liens, certain agreed security principles and other exceptions, by: (i) a pledge of all of the shares issued by the Borrowers and each subsidiary guarantor (subject to certain exceptions), (ii) a security interest in all material intercompany loan receivables of the Borrowers and each guarantor and (iii) in the case of any obligor organized in the UK, security interests in substantially all tangible and intangible personal property (subject to certain exceptions and exclusions) and a floating charge over substantially all of the assets of the relevant obligor.

Subject to certain agreed security principles, the aggregate EBITDA (determined in accordance with the credit agreements) of all guarantors as of the end of each fiscal year must not represent less than 80% of the aggregate EBITDA of Paysafe Holdings II and its restricted subsidiaries as of the end of each fiscal year.

#### ***Certain Covenants and Events of Default***

The credit agreements contain a number of negative covenants that, among other things, restrict, subject to certain exceptions, the ability of Paysafe Holdings II and its restricted subsidiaries to:

- incur additional indebtedness and make guarantees;
- create liens on assets;
- engage in mergers or consolidations or make fundamental changes;
- sell assets;
- pay dividends and distributions or repurchase their share capital;
- make investments, loans and advances, including acquisitions;
- engage in certain transactions with affiliates;
- enter into certain burdensome agreements;
- make changes in the nature of their business; and
- make prepayments of junior debt.

In addition, with respect to the First Lien Revolving Credit Facility, the Senior Facilities Agreement requires Paysafe Holdings II to maintain, as of the last day of each four fiscal quarter period, a maximum consolidated first lien net leverage ratio of 7.50 to 1.00 only if, as of the last day of any fiscal quarter, revolving loans under the First Lien Revolving Credit Facility are outstanding in an aggregate amount greater than 40% of the total commitments under the First Lien Revolving Credit Facility at such time. The financial maintenance covenant is subject to customary equity cure rights.

The credit agreements also contain certain customary representations and warranties, affirmative covenants and events of default. If an event of default occurs, the lenders under the Facilities will be entitled to take various actions, including the acceleration of amounts due under the credit agreements and all actions permitted to be taken by a secured creditor.

#### **Paysafe Payment Revolving Credit Facility**

On June 18, 2019, Paysafe Payment Processing Solutions LLC (“Paysafe Payment”) entered into a credit agreement with Woodforest National Bank, as administrative agent (as amended and restated on January 21, 2020, the “Paysafe Payment Credit Agreement”). The Paysafe Payment Credit Agreement provides for a \$50 million revolving credit facility (the “Paysafe Revolving Credit Facility”), the maturity date of which was May 31, 2023.

On June 27, 2022, Paysafe Payment amended the Paysafe Payment Credit Agreement with PNC National Bank as administrative agent. The amended Paysafe Credit Agreement provides for a \$75 million revolving credit facility, the maturity date of which is June 27, 2025.

The proceeds of the Paysafe Revolving Credit Facility may be used for working capital and other general corporate purposes, other than for the repayment of debt or for personal, family, household or agricultural purposes.

#### ***Interest Rate and Fees***

Borrowings under the Paysafe Revolving Credit Facility bear interest at a floating rate per annum which can be, at Paysafe Payment’s option, either (i) a Secured Overnight Financing Rate (SOFR) for a specified interest period plus 2.70% or (ii) US Prime rate minus 0.25%. Paysafe Payment will also continue to be required to pay customary annual agency fees to the administrative agent.

#### ***Prepayments***

The Paysafe Payment Credit Agreement requires Paysafe Payment to prepay outstanding loans under the Paysafe Revolving Credit Facility (i) immediately, if the principal amount of borrowings under the Paysafe Revolving Credit Facility exceeds the aggregate commitments thereunder or (ii) within 30 days, if the proceeds of borrowings under the Paysafe Revolving Credit Facility are used to fund certain permitted acquisitions. Paysafe Payment may voluntarily, in minimum amounts set forth in the Paysafe Payment Credit Agreement, repay outstanding loans or reduce outstanding commitments under the Paysafe Revolving Credit Facility at any time without premium or penalty.

#### ***Maturity***

Principal amounts outstanding under the Paysafe Revolving Credit Facility are due and payable in full at maturity on June 27, 2025.

#### ***Guarantees and Security***

All obligations of Paysafe Payment under the Paysafe Payment Credit Agreement are unconditionally guaranteed by Paysafe Holdings II.

All obligations of Paysafe Payment under the Paysafe Payment Credit Agreement and the guarantees of such obligations, are secured, subject to permitted liens and other exceptions, by perfected security interests in the accounts, collateral accounts and liquid assets of Paysafe Payment, and certain contracts, documents, general intangibles, letter-of-credit rights, proceeds and records relating thereto (subject to certain exceptions and exclusions).

#### **C. Reasons for the Offer and Use of Proceeds**

Not applicable.

## D. Risk Factors

### Risks Related to Paysafe's Business and Industry

#### *Our focus on the large entertainment verticals can increase risk relative to other companies in the global payments industry.*

We operate in the global entertainment verticals, which include: iGaming, travel, streaming/video gaming, retail/hospitality and digital assets. Although this focus distinguishes us from industry peers, it also increases risks inherent in our business and broader industry. For example:

- the industries we serve are extensively regulated, and their regulation is evolving and subject to frequent change and uncertain interpretation. As a result of regulatory actions, we have had to exit a market altogether, limit services we provide, or otherwise modify our business in ways that have adversely impacted profitability. We are also exposed to a higher risk of losses resulting from related investigations, regulatory actions and litigation. See “—Regulatory, Legal and Tax Risks—We generate a significant portion of our revenue by processing online payments for merchants and customers engaged in the online gambling and foreign exchange trading sectors”;
- serving the entertainment verticals creates greater operational complexity, including for our compliance, legal and risk functions;
- with respect to certain industries (such as iGaming), the laws related to, or the legal status of, such industries vary significantly among the countries in which we operate and, in the U.S., from state to state, further adding operational complexity particularly in compliance and risk mitigation;
- we may have difficulty obtaining or maintaining relationships with merchants and third-party service providers for our business, such as banks and payment card networks, including as a result of their assessment and appetite for the compliance, cost, government regulation, risk of consumer fraud or public pressure that can be associated with some of the industries that we operate in. For example, merchants may compel us to change our operations or add bespoke or enhanced internal controls in order to do business with them; and
- from time to time, the industries we serve (and we by association) are the subject of negative publicity, which can harm our reputation if we are viewed as associated to the industry vertical. In addition, any negative publicity could deter future consumers and merchants from adopting our products and services and influence our third-party service providers' assessment of our business.

The enhanced risks resulting from our core focus can materialize suddenly and without warning, which may result in increased volatility in our results of operations compared with other companies in our industry that do not provide services to companies in the entertainment verticals, and could result in a material adverse effect on our business, financial condition, results of operations and future prospects.

#### *Cyberattacks and security vulnerabilities could result in disruption, loss of customer and merchant funds and personal data, including financial data, as well as serious harm to our reputation, business, and financial condition.*

Our information technology (“IT”) security systems, software and networks and those of the customers and third parties with whom we interact may be vulnerable to unauthorized access (from the Internet, from within or by third parties), computer viruses or other malicious code, denial of service or other cybersecurity threats, which could result in the unauthorized access, loss, theft, changes to, unavailability, destruction or disclosure of confidential, proprietary, financial or personal information relating to merchants, customers and employees. Such unauthorized access, loss, theft, changes to, unavailability, destruction or disclosure of confidential, proprietary, financial or personal information could result in identity theft, misuse of pin codes, the loss of card payment details that are stored on our system, and/or the loss of funds stored in customers' wallets and prepaid cards and other monetary loss or have other material impacts on our business. We, like other financial technology organizations, as well as our customers and third parties with whom we interact, are routinely subject to cybersecurity threats and our and their technologies, IT systems and networks have been victims of cyberattacks in the past. Information security risks for payment and technology companies such as ours have significantly increased in recent years and in particular with the changes in ways of working driven by the pandemic, in part because of the proliferation of new technologies, the use of the internet and telecommunications technologies to conduct financial transactions, and the increased sophistication and activities of organized crime, hackers, terrorists and other external parties. Geopolitical events and resulting government activity could also lead to information security threats and attacks by affected jurisdictions and their sympathizers.

We are responsible for data security for ourselves and for third parties with whom we partner, including with respect to complying with rules and regulations established by the payment networks and card networks. These third parties include merchants, our distribution partners, our third-party payment processors and other third-party service providers and agents. We and other third parties collect,



process, store and/or transmit personal information, such as names, contact details, addresses, social security numbers, credit or debit card numbers, expiration dates, driver's license numbers, bank account numbers and bank routing information as well as certain information gathered during our Know Your Customer ("KYC") procedures. We have ultimate liability to the payment networks and our partner banks for our failure or the failure of third parties with whom we contract to protect this data in accordance with payment network requirements. The loss, destruction or unauthorized modification of merchant or consumer data by us or our contracted third parties could result in significant fines, sanctions, proceedings or actions against us by governmental bodies, the payment networks, consumers, merchants or others, and could harm our business and reputation. In addition, a breach or other cybersecurity incident at a third party with whom we interact has in the past, and could in the future, result in our inability to safeguard our customers' information and fund.

Certain products particular to our eCash Solutions division are identified by unique PIN codes assigned to them at the point of sale, and when a customer uses the voucher on a merchant website. These active voucher PINs are stored in our systems. Due to the anonymous nature of these PINs, a theft and subsequent fraudulent utilization of PINs (either due to third-party hacking or due to internal fraud by an employee) could result in the original voucher holder's inability to use his or her vouchers. While customer verification and fraud management procedures are in place to mitigate this risk, we would honor the payment by the original voucher holder from our own funds and therefore incur a loss. Our Digital Wallet business, on the other hand, could suffer from a loss of funds if a third-party hacker or an employee is successful in taking over one of our customer's accounts as well as suffer the costs of any subsequent reimbursement to customers. Additionally, loss of payment card information could also lead us to incur card re-issuing costs, which depending on the size of the data breach could be significant. Significant losses incurred as a result of such activity would have a material adverse effect on our results of operations and, depending on the nature of such fraudulent attacks, we may be required to notify relevant regulators and other authorities such as law enforcement. Any adverse publicity as a result of such theft and fraudulent utilization could adversely affect our reputation and the demand for our products.

Despite various mitigation efforts that we undertake, there can be no assurance that we and our third party partners will be immune to these risks and not suffer material security incidents and resulting losses in the future, or that our insurance coverage would be sufficient to cover the related financial losses over and above the excess of the insurance policy. The techniques used to obtain unauthorized, improper, or illegal access to our systems, our data (including our confidential business information and intellectual property rights) or our customers' data (including our merchants and consumers), to disable or degrade our services, demand ransom or to sabotage our systems are constantly evolving and have become increasingly complex and sophisticated. These techniques may be difficult to detect quickly, and often are not recognized or detected until after they have been launched against a target. Threats to our IT systems and our associated third parties' IT systems may result from human error, fraud or malice on the part of employees or third parties, including state-sponsored organizations with significant financial and technological resources, organized crime groups or from accidental technological failure. For example, certain of our employees require access to sensitive data that could be used to commit identity theft or fraud. While we have internal controls in place surrounding system access and segregation of duties, if unauthorized individuals gain access to this data, the risk of malfeasance is heightened. Concerns about security increase when we transmit information electronically, even though we encrypt certain communications and data to reduce this risk, because such transmissions can be subject to attack, interception or loss. Also, computer viruses can be distributed and spread rapidly over the internet and could infiltrate our systems or those of our contracted third parties. Denial of service, ransomware, or other attacks could be launched against us for a variety of purposes, including interfering with our services or to create a diversion for other malicious activities. These or similar types of actions and attacks could disrupt our delivery of services or make them unavailable. As cybersecurity threats continue to evolve, we may be required to expend significant additional resources to continue to modify or enhance our protective measures or to investigate and remediate any information security vulnerabilities. Any of the risks described above could materially adversely affect our overall business, financial condition and results of operations.

We and our third party partners have experienced and will likely continue to regularly experience denial-of-service and other cyberattacks and security events. In such circumstances, our data encryption practices and other protective measures have not always prevented and in the future may not prevent, as applicable, unauthorized access service disruption or system sabotage.

Regardless of whether an actual or perceived breach is attributable to our products, such a breach could, among other things:

- interrupt our operations,
- result in our systems or services being unavailable,
- result in improper disclosure of data,
- result in a demand for a ransom payment,
- materially harm our reputation and brands,
- result in significant regulatory scrutiny and legal and financial exposure,
- cause us to incur significant remediation costs,

- lead to loss of customer confidence in, or decreased use of, our products and services,
- divert the attention of management from the operation of our business,
- result in significant compensation or contractual penalties from us to our customers and their business partners as a result of losses to them or claims by them, and
- adversely affect our business and results of operations.

In addition, a significant cybersecurity breach of our systems or communications could result in payment networks prohibiting us from processing transactions on their networks or the loss of our sponsor banks that facilitate our participation in the payment networks, either of which could materially impede our ability to conduct our business. We may also be subject to liability for claims relating to misuse of personal information, such as unauthorized marketing, or violation of data privacy laws. In addition, our agreements with our sponsor banks and our third-party payment processors (as well as payment network requirements) require us to take certain protective measures to ensure the confidentiality of merchant and consumer data. Any failure to adequately comply with these protective measures could result in fees, penalties, litigation or termination of our sponsor bank agreements. Although we generally require that our agreements with distribution partners or our service providers who may have access to merchant or consumer data include confidentiality obligations that restrict these parties from using or disclosing any merchant or consumer data except as necessary to perform their services under the applicable agreements, we cannot guarantee that these contractual measures will be followed or will be adequate to prevent the unauthorized access, use, modification, destruction or disclosure of data or allow us to seek damages from the contracted party. In addition, many of our merchants are small and medium businesses that may have fewer resources dedicated to data security and may thus experience data breaches. Any unauthorized use, modification, destruction or disclosure of data could result in protracted and costly litigation, and cause us to incur significant losses.

***Global and regional economic conditions could materially harm our business.***

Our operations and performance depend significantly on global and regional economic conditions. Uncertainty about global and regional economic events and conditions may impact our ability to conduct business in certain areas and may result in consumers and businesses postponing or lowering spending in response to, among other factors:

- tighter credit;
- inflation;
- supply chain issues;
- financial market volatility;
- fluctuations in foreign currency exchange rates and interest rates;
- changes and uncertainties related to government fiscal and tax policies, U.S. and international trade relationships, agreements, policies, treaties and restrictive actions, including increased duties, tariffs, or other restrictive actions;
- geopolitical events in countries we operate or have offices, including natural disasters, public health issues, pandemics, changes in political conditions, acts of war and terrorism, including the military hostilities commenced in Ukraine (operations in Russia and Ukraine represented approximately 1% of revenues for the year ended December 31, 2022);
- higher unemployment;
- consumer debt levels or reduced consumer confidence;
- complying with all applicable restrictions and sanctions that may impact our operations, including complying with any applicable sanctions imposed on Russia;
- government austerity programs; and
- other negative financial news, macroeconomic developments or pandemics.

In addition, many of our merchants are small businesses and these businesses may be disproportionately adversely affected by economic downturns or conditions and may fail at a higher rate than larger or more established businesses. If spending by their customers declines, or if customer behavior is otherwise adversely impacted by rising inflation, these businesses would experience reduced sales and process fewer payments with us or, if they cease to operate, stop using our products and services altogether. Small businesses frequently have limited budgets and limited access to capital, and they may choose to allocate their spending to items other than our financial or marketing services, especially in times of economic uncertainty or in recessions. These and other global and regional economic events and conditions could have a material adverse impact on the demand for our products and services. Furthermore, any financial turmoil affecting the banking system or financial markets could cause additional consolidation of the financial services industry, significant

financial service institution failures, new or incremental tightening in the credit markets, low liquidity, and extreme volatility or distress in the fixed income, credit, currency, and equity markets, which could have a material adverse impact on our results of operations, financial condition and future prospects.

***Our international operations subject us to increased risks, which could harm our business.***

We have extensive international operations and our customers are resident in over 120 countries and territories. There are risks inherent in doing business internationally on both a domestic (i.e., in-country) and cross-border basis, including, but not limited to:

- foreign currency and cross-border trade risks;
- risks related to government regulation or required compliance with local laws;
- local licensing and reporting obligations;
- obligations to comply with local regulatory and legal obligations related to privacy, data security and data localization;
- expenses associated with localizing our products and services, including offering customers the ability to transact business in the local currency, and adapting our products and services to local preferences (e.g., payment methods) with which we may have limited or no experience;
- trade barriers and changes in trade regulations;
- difficulties in developing, staffing, and simultaneously managing a large number of varying foreign operations as a result of distance, language and cultural differences;
- stringent local labor laws and regulations;
- credit risk and higher levels of payment fraud;
- profit repatriation restrictions, foreign currency exchange restrictions or extreme fluctuations in foreign currency exchange rates for a particular currency;
- political or social unrest, economic instability, repression or human rights issues;
- geopolitical events, including natural disasters, public health issues, pandemics, acts of war and terrorism;
- import or export regulations;
- compliance with Bermuda, UK, Irish, U.S. and other international laws prohibiting corrupt payments to government officials, such as the Bermuda Bribery Act, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, the Irish Criminal Justice (Corruption Offences) Act 2018 and other local anticorruption laws;
- compliance with Bermuda, UK, Irish, U.S. and other international laws and associated regulations designed to combat money laundering and the financing of terrorist activities;
- antitrust and competition regulations;
- potentially adverse tax developments and consequences;
- economic uncertainties relating to sovereign and other debt;
- national or regional differences in macroeconomic growth rates;
- different, uncertain, overlapping, or more stringent user protection, data protection, privacy and other laws and regulations; and
- increased difficulties in collecting accounts receivable.

Violations of the complex UK, Irish, U.S. and other international laws, rules and regulations that apply to our international operations may result in fines, criminal actions, or sanctions against us, our officers, or our employees; prohibitions on the conduct of our business; and damage to our reputation. Although we have implemented policies and procedures designed to promote compliance with these laws, there can be no assurance that our employees, contractors, or agents will not violate our policies. These risks are inherent in our international operations and expansion, may increase our costs of doing business internationally, and could harm our business.

***We might not be successful at acquiring, investing in or integrating businesses, entering into joint ventures or divesting businesses.***

We expect to continue pursuing strategic and targeted acquisitions, investments and joint ventures to enhance or add to our skills and capabilities or offerings of services and solutions, or to enable us to expand in certain geographic and other markets. For example, in January 2022, we acquired SafetyPay and in 2021, we acquired Orbis Ventures S.A.C. ("PagoEfectivo") and viaFintech, but our broader plan to expand into markets and grow in the markets we are in may not succeed. We may not be successful in identifying additional suitable investment opportunities. We also might not succeed in completing targeted transactions or achieve desired results of operations of these transactions.

Furthermore, we face risks in successfully integrating any businesses we might acquire or create through a joint venture. Ongoing business may be disrupted, and our management's attention may be diverted by acquisition, investment, transition or integration activities. In addition, we might need to dedicate additional management and other resources, and our organizational structure could make it difficult for us to efficiently integrate acquired businesses into our ongoing operations and assimilate and retain employees of those businesses into our culture and operations. The potential loss of key executives, employees, customers, suppliers, and other business partners of businesses we acquire may adversely impact the value of the assets, operations or businesses. Moreover, acquisitions or joint ventures may result in significant costs and expenses, including those related to retention payments, equity compensation, severance pay, early retirement costs, intangible asset amortization and asset impairment charges, assumed litigation and other liabilities, and legal, accounting and financial advisory fees, which could negatively affect our profitability. We may have difficulties as a result of entering into new markets where we have limited or no direct prior experience or where competitors may have stronger market positions.

We might fail to realize the expected benefits or strategic objectives of any acquisition, investment or joint venture we undertake. We might not achieve our expected return on investment or may lose money. We may be adversely impacted by liabilities that we assume from a company we acquire or in which we invest, including from that company's known and unknown obligations, intellectual property or other assets, terminated employees, current or former clients or other third parties. In addition, we may fail to identify or adequately assess the magnitude of certain liabilities, shortcomings or other circumstances prior to acquiring, investing in or partnering with a company, including potential exposure to regulatory sanctions or liabilities resulting from an acquisition target's previous activities, internal controls and security environment. If any of these circumstances occurs, they could result in unexpected legal or regulatory exposure, unfavorable accounting treatment, unexpected increases in taxes or other adverse effects on our business. Litigation, indemnification claims and other unforeseen claims and liabilities may arise from the acquisition or operation of acquired businesses. If we are unable to complete the number and kind of investments for which we plan, or if we are inefficient or unsuccessful at finding a suitable target or at integrating any acquired businesses into our operations, we may not be able to achieve our planned rates of growth or improve our market share, profitability or competitive position in specific markets or services.

We periodically evaluate, and have engaged in, the disposition of assets and businesses. Divestitures could involve difficulties in the separation of operations, services, products and personnel, the diversion of management's attention, the disruption of our business and the potential loss of key employees. After reaching an agreement with a buyer for the disposition of a business, the transaction may be subject to the satisfaction of pre-closing conditions, including obtaining necessary regulatory and government approvals, which, if not satisfied or obtained, may prevent us from completing the transaction. Divestitures may also involve continued financial involvement in or liability with respect to the divested assets and businesses, such as indemnities or other financial obligations, in which the performance of the divested assets or businesses could impact our results of operations. Any divestiture we undertake could adversely affect our results of operations.

***Our success depends on our relationships with banks, payment card networks, issuers and financial institutions.***

The nature of our business requires us to enter into numerous commercial and contractual relationships with banks, card networks, issuers and financial institutions. We depend on these relationships to operate on a day-to-day basis. If we are unsuccessful in establishing, renegotiating or maintaining mutually beneficial relationships with these parties, our business may be harmed. In addition, these relationships are subject to a number of risks, including the following:

- loss of banking relationships*: we rely on the use of numerous bank accounts in the jurisdictions in which we operate for the efficient delivery of our services. A loss of any important banking relationship could have a material effect on our business and financial performance. For example, in the past, we have experienced the loss of three important banking relationships for our Digital Wallet business, which resulted in a higher concentration risk with our remaining banking partners;
- new banking relationships*: as we are considered a high risk customer for our banks and payment partners, there is a long lead time associated with establishing new or replacing banking and non-bank payment partner relationships due to the extensive level of compliance due diligence required by the banks and providers. See "—Risks Related to Paysafe's Business and Industry—" Our focus on specialized industry verticals can increase our risks relative to other companies in our industry;

- loss of a banking product*: many of our products rely on banks providing payments capability to us. We may lose that service although still maintain the banking relationship as the bank would, for example, continue to provide us with foreign exchange services. Such a loss of services from a bank (or banks) could have a material effect on our business and financial performance including on the geographies, customers and associated payment volumes which we are able to serve;
- loss of an alternative payment method*: many of our products rely on processing relationships and connections to alternative or local payment methods, either direct or indirect via aggregators. Such a loss of payment methods or providers could have a material effect on our business and financial performance, including on the geographies, customers and associated payment volumes which we are able to serve;
- downstream correspondent banking risk*: if the correspondent banks of our banks (or the underlying banks of our non-bank payment providers) change their risk appetite, this could lead to restrictions with or rejections of our products' payment flows which could have a material effect on our business and financial performance, including on the geographies, customers and associated payment volumes which we are able to serve;
- failure of banks and financial institutions*: across our businesses, we hold our own, merchants' and customers' funds on deposit at various banks and financial institutions. In Digital Wallets, we receive funds from our merchants and customers into a number of bank accounts operated by various banks in the countries in which we operate. We then transfer funds, from the various banks in the countries in which we operate, to multiple banks such that amounts equivalent to all merchant and customer funds are held in segregated accounts in accordance with applicable regulatory requirements. While we have controls in place intended to monitor and mitigate this risk, there can be no guarantee that the banks in which funds are held will not suffer any kind of financial difficulty or commence any insolvency or bankruptcy proceedings, or any moratorium, composition, arrangement or enforcement action or any other kind of analogous event in any jurisdiction that may result in the permanent loss of some or all of our own funds or the funds of merchants or customers, which could have a material adverse effect on our business and financial performance;
- Card scheme operating rules*: we are subject to the operating rules and regulations of card schemes such as Visa and Mastercard and changes to those operating rules and regulations could have a material adverse effect on our business. If a merchant or an independent sales organization ("ISO") fails to comply with the applicable requirements of the card associations and networks, we or the merchant or ISO could be subject to a variety of fines or penalties that may be levied by the card associations or networks. If we cannot collect or pursue collection of such amounts from the applicable merchant or ISO, we may have to bear the cost of such fines or penalties, resulting in lower earnings for us. Policy changes could impact the merchant category code assignments to our business which can in turn impact our acceptance and authorization rates as well as our banking provider risk appetite assessment and costs. Policy changes can also impact our ability to acquire card transactions on a cross-border basis in particular markets, for example depending on the merchant country of registration;
- finances and assessments*: the payment card schemes and their processing service providers may pass on fines and assessments in respect of fraud or chargebacks related to our merchants or disqualify us from processing transactions if satisfactory controls are not maintained;
- risk management policies*: banks and financial institutions that provide us with services enabling us to operate our payments platform could reassess our risk profile due to the portfolio of products and services we offer and/or regard us as being non-compliant with certain laws or regulations (e.g., in relation to the regulation of e-money, cross border transactions or the provision of services to online gambling operators) that are applicable in their relevant jurisdictions or may regard our customers as being non-compliant. Banks and financial institutions may choose to withdraw from certain markets as a result of their internal risk management policies and may, in compliance with their regulatory obligations or internal risk and compliance policies, freeze the funds of our merchants and customers. In addition, consolidation in the banking sector may result in one of our banking providers being acquired by another bank, which may then prompt a change in our provider's risk appetite and impacts our relationship with that provider;
- potential competitors*: banks, payment card schemes, issuers and financial institutions may view us as being a competitor to their own business and may cease doing business with us as a result; and
- fee increases*: we are required to pay interchange and assessment fees, processing fees and bank settlement fees to third-party payment processors and financial institutions. From time to time, payment card networks have increased, and may increase in the future, the interchange fees and assessments that they charge for each transaction processed using their networks. Banks occasionally raise our fees in order to compensate for the increased risk, controls and anti-money laundering monitoring costs the bank may incur due to increased regulatory requirements or scrutiny. Additionally, if one of our banking providers cease to supply us services, that could lead to an increase in costs to continue to offer those services via alternative means, particularly where the service is provided in multiple currencies due to the incursion of additional foreign transaction fees.

If, for any reason, any banks, payment card schemes, issuers or financial institutions cease to supply us with the services we require to conduct our business, or the terms on which such services are provided were to become less favorable or be canceled, or a contractual claim made against us, it could impact our ability to provide our payment services, or the basis on which we are able to provide such services. This, and any of the factors set forth above, could result in a loss for us, which could have a material adverse effect on our results of operations, financial condition and future prospects.

***Our revenues from the sale of services to merchants that accept Visa cards and Mastercard cards are dependent on our continued financial institution sponsorship.***

Because we are not a bank, our business is not eligible for membership in the card payment networks, and we are, therefore, unable to directly access these card payment networks, which are required to process transactions. These networks' operating regulations require us to be sponsored by a member bank in order to process electronic payment transactions. Our various payment processing businesses are registered with the card networks through seven separate sponsor banks (who settle the transactions with our merchants).

Our sponsor banks may terminate their agreements with us if we materially breach the agreements and do not cure the breach within an established cure period, if we enter bankruptcy or file for bankruptcy, or if applicable laws or regulations, including Visa and/or Mastercard regulations, change to prevent either the applicable bank or us from performing services under the agreement. If these sponsorships are terminated and we are unable to secure a replacement sponsor bank within the applicable wind down period, we will not be able to process electronic payment transactions.

Furthermore, our agreements with our sponsor banks provide the sponsor banks with substantial discretion in approving certain elements of our business practices, including our solicitation, application and underwriting procedures for merchants. We cannot guarantee that our sponsor banks' actions under these agreements will not be detrimental to us, nor can we provide assurance that any of our sponsor banks will not terminate their sponsorship of us in the future. Our sponsor banks have broad discretion to impose new business or operational requirements on us for purposes of compliance with payment network rules, which may materially adversely affect our business. If our sponsorship agreements are terminated and we are unable to secure another sponsor bank, we will not be able to offer Visa, Mastercard or other card scheme transactions or settle transactions which would likely cause us to terminate our operations.

Our sponsor banks also provide or supplement authorization, funding and settlement services in connection with our bankcard processing services. If our sponsorships agreements are terminated and we are unable to secure another sponsor bank, we will not be able to process Visa, Mastercard or other card scheme transactions, which would have a material adverse effect on results of operations, financial conditions and future prospects. A change in underwriting, credit policies, credit risk or reputational risk appetite of our sponsor banks may impact appetite for volume and/or merchant categories. Further, there is a long lead time to secure new sponsor banks, as described above under "—Our success depends on our relationships with banks, payment card networks, issuers and financial institutions—new banking relationships."

In Bermuda and in many countries in which we operate, we are legally or contractually required to comply with the anti-money laundering laws and regulations, such as, in the United States, the Bank Secrecy Act, as amended by the USA PATRIOT Act (collectively, the "BSA"), and similar laws of other countries, which, among other things, require that customer identifying information be obtained and verified. As described in "—Regulatory, Legal and Tax Risks—We must comply with money laundering regulations in Bermuda, the UK, Ireland, Switzerland, the United States, Canada and elsewhere, and any failure to do so could result in severe financial and legal penalties," we are directly subject to certain of these requirements, including, in the United States, BSA requirements applicable to Skrill USA Inc. ("Skrill USA"). In other instances, we also have contractually agreed to assist our sponsor banks with their obligation to comply with any-money laundering requirements that apply to them, including, in the United States, BSA requirements applicable to such sponsor banks. In addition, we and our sponsor banks are subject to laws and regulations that prohibit persons in certain jurisdictions from engaging in transactions with certain prohibited persons or entities, such as those enforced by the Office of Foreign Assets Control in the United States ("OFAC"). Similar requirements apply in other countries. It could be costly for us to comply with these legal and contractual requirements and our failure to comply with any of these contractual requirements or laws could adversely affect our results of operations, financial conditions and future prospects, and could result in termination of the contracts.

We have obtained "principal membership" with both Mastercard Europe and Visa Europe payment networks to offer merchant acquiring services to merchants in the European Union. This means that we are solely responsible for the adherence to the rules and standards of the payment networks and it enables us to route transactions under our own payment network license to authorize and clear transactions. Under our payment network licenses, we are allowed to perform funds settlement directly to merchants. A loss of membership or significant change to the commercial terms of our European Mastercard and Visa payment network membership or sponsor bank relationships would have an adverse effect on the results of these businesses' operations.

***We rely on third parties in many aspects of our business, which creates additional operational risk.***

We rely on third parties in many aspects of our business, including the following:

- payment processing services from various service providers in order to allow us to process payments for merchants and customers and to properly code such transactions;
- payment networks;
- connectivity, routing and payment orchestration providers;
- banks;
- payment processors;
- payment gateways that link us to the payment card and bank clearing networks to process transactions;
- third parties that provide certain outsourced customer support functions, which are critical to our operations;
- third parties that provide KYC information and services (for example, through our embedded financing offering we offer an integrated digital wallet solution to third parties, which may result in certain KYC services being outsourced to third parties); and
- third parties that provide IT-related services including data center facilities and cloud computing and compliance and risk functions.

This reliance exposes us to increased operational risk. These third parties may be subject to financial, legal, regulatory and labor issues, cybersecurity incidents, privacy breaches, service terminations, disruptions or interruptions, or other problems, including reputational problems, which may impose additional costs or requirements on us or prevent these third parties from providing services to us or our customers on our behalf, or result in loss of funds to us or our customers, which could have a material adverse effect on our results of operations, financial condition and future prospects.

The European Banking Authority (“EBA”) published guidance on outsourcing arrangements that became effective on September 30, 2019 and is applicable to certain aspects of our businesses. These guidelines set out strict standards to follow when outsourcing critical or important functions that have a strong impact on a financial institution’s risk profile or on its internal control framework. Although we have implemented processes to ensure compliance with the required standards, a failure to meet these requirements could lead to regulatory challenge and require remediation and/or fines or penalties if we are found to be in noncompliance with the relevant regulation. Furthermore, any changes to our existing critical or important outsourced functions may be subject to regulatory approval, which, if not satisfied or obtained, may prevent us from initiating the change.

In addition, these third parties may breach their agreements with us, disagree with our interpretation of contract terms or applicable laws and regulations, refuse to continue or renew these agreements on commercially reasonable terms or at all, fail or refuse to process transactions or provide other services adequately, take actions that degrade the functionality of our services, impose additional costs or requirements on us or our customers, or give preferential treatment to competitive services. Some of these third party service providers are, or may become, owned by our competitors. There can be no assurance that third parties who provide services directly to us or our customers on our behalf will continue to do so on acceptable terms, or at all. If any third parties do not adequately or appropriately provide their services or perform their responsibilities to us or our customers on our behalf, we may be unable to procure alternatives from other third parties in a timely and efficient manner and on acceptable terms, or at all, and we may be subject to business disruptions, losses or costs to remediate any of the deficiencies, customer dissatisfaction, reputational damage, legal or regulatory proceedings, or other adverse consequences, any of which could have a material adverse effect on our results of operations, financial condition and future prospects.

***Our business depends on a strong and trusted brand, and any failure to maintain, protect and enhance our brand could materially harm our business.***

We believe that maintaining, protecting and enhancing our strong and trusted brand is critical to achieving widespread acceptance of our products and services and expanding our base of customers. Maintaining and promoting our brand will depend largely on our ability to continue to provide useful, reliable, secure, and innovative products and services, as well as our ability to maintain trust and be a technology leader. We may introduce, or make changes to, features, products, services, privacy practices, or terms of service that customers do not like, which may materially and adversely affect our brand. Our brand promotion activities may not generate customer awareness or increase revenue, and even if they do, any increase in revenue may not offset the expenses we incur in building our brand. The introduction and promotion of new products and services, as well as the promotion of existing products and services, may be partly dependent on our visibility on third-party advertising platforms, such as Google, Twitter, or Facebook. Changes in the way these

platforms operate or changes in their advertising prices, data use practices or other terms could make the maintenance and promotion of our products and services and our brand more expensive or more difficult. If we fail to successfully promote and maintain our brand or if we incur excessive expenses in this effort, our business could be materially and adversely affected.

Harm to our brand can arise from many sources, including failure by us or our partners and service providers to satisfy expectations of service and quality, inadequate protection or misuse of sensitive information, failure to meet applicable legal and regulatory requirements, including compliance failures and allegations, litigation and other claims, employee misconduct, fraud, fictitious transactions, bad transactions, negative customer experiences, and misconduct by our partners, service providers, or other counterparties. We have also been in the past, and may in the future be, the target of incomplete, inaccurate, and misleading or false statements about our company, our business, and our products and services that could damage our brand and deter consumers and merchants from adopting our products and services. From time to time, the industry verticals we serve (and we, by association) are the subject of negative publicity, which can harm our brand and deter consumers and merchants from adopting our products and services. See “—Our focus on the global entertainment verticals can increase our risks relative to other companies in our industry.” Any negative publicity about our industry or our company, the quality and reliability of our products and services, our risk management processes, changes to our products and services, our ability to effectively manage and resolve customer complaints, our privacy, data protection, and information security practices, litigation, regulatory activity, policy positions, and the experience of our customers with our products or services could adversely affect our reputation and the confidence in and use of our products and services. If we do not successfully maintain a strong and trusted brand, our business could be materially and adversely affected.

In addition, the registered or unregistered trademarks or trade names that we own may be challenged, infringed, declared generic, or determined to be infringing on or dilutive of other marks. We may not be able to protect our rights in these trademarks and trade names, which we need in order to build name recognition with potential customers. Moreover, third parties may use, or file for registration of trademarks similar or identical to our trademarks; if they succeed in registering or otherwise developing common law rights in such trademarks, and if we are not successful in challenging such third-party’s use of such trademarks, our own trademarks may no longer be useful to develop brand recognition of our technologies, products or services. Furthermore, there could be potential trade name or trademark infringement claims brought by owners of other trademarks, including trademarks that incorporate variations of our registered or unregistered trademarks or trade names. If we are unable to establish name recognition based on our trademarks and trade names, we may not be able to compete effectively, which could have a material adverse effect on our competitive position, business, financial condition, results of operations, and prospects.

***The global economic uncertainty resulting from the Covid-19 pandemic and other geopolitical conditions, could materially impact our business and future results of operations and financial condition.***

The Covid-19 pandemic has disrupted the economy and put unprecedented strains on governments, health care systems, businesses and individuals around the world. Our merchants, particularly in industries most impacted by the Covid-19 pandemic, including the retail, restaurant, hotel, hospitality, consumer discretionary and travel industries and companies whose customers operate in impacted industries, may reduce or delay their technology-driven transformation initiatives, which could materially and adversely impact our business. Further, as a result of the Covid-19 pandemic, we have experienced, and may continue to experience, slowed growth or decline in new demand for our products and services and lower demand from our existing merchants for expansion within our products and services, as well as existing and potential merchants reducing or delaying purchasing decisions. We have experienced, and may continue to experience, an increase in prospective merchants seeking lower prices or other more favorable contract terms and current merchants attempting to obtain concessions on the terms of existing contracts, including requests for early termination or waiver or delay of payment obligations, all of which has adversely affected and could materially adversely impact our business, results of operations and overall financial condition in future periods.

The Covid-19 pandemic could cause our third-party service providers such as data center hosting facilities and cloud computing platform providers, which are critical to our infrastructure, to shut down their business, experience security incidents that impact our business, delay or disrupt performance or delivery of services or experience interference with the supply chain of hardware required by their systems and services, any of which could materially adversely affect our business. In addition, our technology platforms and the other systems or networks used in our business may experience an increase in attempted cyber-attacks, targeted intrusions, ransomware and phishing campaigns seeking to take advantage of shifts to employees working remotely using their household or personal internet networks as a result of the Covid-19 pandemic. The success of any of these unauthorized attempts could substantially impact our technology platforms, the proprietary and other confidential data contained therein or otherwise stored or processed in our operations, and ultimately our business. Any actual or perceived security incident also may cause us to incur increased expenses to improve our security controls and to remediate security vulnerabilities. Additionally, we may experience an increased volume of unanticipated customer requests for support (resulting in increased volume to our customer support and operations centers) and regulatory requests for information and support or additional regulatory requirements, which could require additional resources and costs to address.

To the extent that the Covid-19 pandemic or other geopolitical conditions adversely affects our business and financial results, it may also have the effect of heightening many of the other risks described in this “Risk Factors” section.



***We may fail to hold, safeguard or account accurately for merchant or customer funds.***

Our success requires significant public confidence in our ability to properly manage our customers' balances and handle large and growing transaction volumes and amounts of customer funds. Customer and merchant funds must either be held in secure, liquid low-risk assets that are held by a custodian or placed in a segregated account of an authorized credit institution or we may hold an insurance policy or bank guarantee to safeguard the funds. We employ internal controls and compliance procedures designed to hold, safeguard and account accurately for customer and merchant funds. Our ability to manage and account accurately for the assets underlying our customer funds and comply with applicable liquidity requirements requires a high level of internal controls. As our business continues to grow and we expand our product offerings, we must continue to strengthen our associated internal controls. Any failure to account accurately for customer and merchant funds or to fail to comply with applicable regulatory requirements could result in reputational harm, lead customers to discontinue or reduce their use of our products and result in significant penalties and fines, which could materially harm our business. Our Safeguarding controls undergo annual and event triggered examination and review by independent internal and external auditors, as well as continuous first line self-assessment. Any self-identified issue or audit observation or finding is immediately addressed through remediation action. For more information regarding our assessment of the consequences of breaches of our e-money issuer, payment initiation services provider or money transmitter licenses, see “—Regulatory, Legal and Tax Risk—We are subject to financial services regulatory risks.”

***Our business and products are dependent on the availability, integrity and security of internal and external IT transaction processing systems and services.***

Our business requires the ongoing availability and uninterrupted operation of internal and external transaction processing systems and services. We rely on controls and systems designed to ensure data integrity of critical business information and proper operation of our systems and networks, and we review the processes of our third party providers of transaction processing and IT-related functions. Such third parties are, however, ultimately responsible for maintaining their own network security, disaster recovery and system management procedures. All operational systems are vulnerable to damage or interruption from targeted denial of service attacks, viruses, unauthorized access (internally or by third parties), natural or man-made disasters and human or technological failures under a variety of scenarios. A system outage or data loss, whether connected to our IT transaction processing systems and services or those of our third party providers, could have a material adverse effect on our business, financial condition and results of operations. In addition, as a provider of payments solutions, we are subject to scrutiny by regulators, and laws and regulations may require specific business continuity and disaster recovery plans and rigorous testing of such plans. This scrutiny and the related requirements may be costly and time-consuming and may divert our resources from other business priorities, and frequent or persistent site interruptions could lead to fines and penalties, and mandatory and costly changes to our business practices, and ultimately could cause us to lose existing licenses that we need to operate or prevent or delay us from obtaining additional licenses that may be required for our business. Events that could cause system interruptions or impact the ability of staff or third parties to supply necessary skills or services include pandemics, fire, earthquake, flood, terrorist attacks, natural disasters, attacks from malicious third parties, employee malfeasance or negligence, computer viruses, unauthorized entry, telecommunications failure, power loss, data loss, cyberattacks, acts of war or any similar events.

We may modify, enhance, upgrade and implement new systems, procedures and controls to reflect changes in our business, technological advancements and changing industry trends. These upgrades can create risks associated with implementing new systems and integrating them with existing ones. As a result, our IT and information management systems may fail to operate properly (for example, by capturing customer data erroneously) or become disabled as a result of events that are beyond our control, such as an usually high increase in transaction volume. We may also incur additional costs in relation to any new or upgraded systems, procedures and controls and additional management attention could be required in order to ensure an efficient integration, placing burdens on our internal resources.

Despite the network security, disaster recovery and systems management measures that we have in place, we cannot ensure that we would be able to carry on our business in the ordinary course if our systems or those of our third party service providers fail or are disrupted. Indeed, while much of our processing infrastructure is located in multiple redundant data centers or hosted on resilient cloud platforms, we have a limited number of core business systems that are located in only one facility and do not have redundancy. Any such failure of IT and information management systems could adversely affect our reputation, our ability to effect transactions and service customers and merchants, disrupt our business or result in the misuse of customer data, financial loss or liability to our customers or regulators, the loss of suppliers, regulatory intervention or reputational damage.

Additionally, as our customers may use our products for critical transactions, any errors, defects or other infrastructure problems could result in damage to such customers' businesses. These customers could seek compensation from us for their losses and our insurance policies may be insufficient to cover such claims. Even if unsuccessful, this type of claim may be time consuming and costly for us. Any of the foregoing could have a material adverse effect on our results of operations and financial condition.

***We are vulnerable to the effects of chargebacks, merchant insolvency and consumer deposit settlement risk.***

We are exposed to the effect of chargebacks and merchant insolvency in our business. We are liable to various banks for chargebacks incurred by our merchants where the merchants are unable to meet liabilities arising as a result of those chargebacks. If the average chargeback rate on any of our merchant portfolios at any acquiring bank exceeds the maximum average chargeback rate permitted by the card agreements, we will be required to take steps to reduce the average chargeback rate so that it falls below the maximum permitted rate or risk losing our relationship with that acquiring bank. Those steps might include processing more transactions for merchants who have lower chargeback rates to produce a lower average chargeback rate for the portfolio as a whole or terminating relationships with merchants who have higher chargeback rates, which could in turn lead to a material loss of revenue for us. Chargebacks may arise as individual claims or as multiple claims relating to the same facts or circumstances. For example, the insolvency or cessation of a merchant doing business could cause numerous individual customers to bring claims at once which, either singly or in aggregate, could have a material adverse effect on our results of operations, financial condition and future prospects. Similarly, chargebacks or fraud related to our customers or merchants in our Digital Wallet business could cause the payment card schemes of which we are a member in Europe to require us to implement additional and potentially costly controls, and ultimately disqualify us from processing transactions if satisfactory controls are not maintained. Further, if any of the services we offer are deemed to have caused or contributed to illegal activity, customers, consumer protection agencies and regulatory firms could band together to initiate chargeback card payments or ACH reversals for transactions associated with the activity in question.

In our Digital Wallet division, we offer our merchants a “no chargeback policy.” A chargeback is the return of funds to a customer and in this context relates to a reversal of unauthorized charges to a customer’s credit card, for example, as a result of fraud or identity theft. Under our “no chargeback policy,” we agree to allow merchants who qualify under our vetting policy to retain all monies received from our NETELLER and Skrill digital wallet holders and undertake not to request reimbursement from such merchants in respect of chargebacks incurred. In such cases, the full amount of the disputed transaction is charged back to us and our credit card processor may levy additional fees against us unless we can successfully challenge the chargeback. We believe that our “no chargeback policy” is a key factor in a merchant’s decision to use our Digital Wallet services.

Our eCash Solutions division utilizes distribution partners and as such is exposed to credit risk in the event a distribution partner fails. This is managed through ongoing credit risk assessment with active exposure management including the use of credit limits, guarantees and insurance to limit overall exposure.

Our businesses are also subject to merchant credit risk in respect of non-payment for products provided and services rendered or non-reimbursement of costs incurred. The contracts we enter into may require significant expenditure prior to merchant payments and may expose us to potential credit risk or may require us to use our available bank facilities in order to meet payment obligations.

Additionally, we are exposed to risk associated with the settlement of consumer deposits. Digital Wallet deposits from financial institutions, such as bank accounts, are credited to customer accounts before settlement of funds is received. Thus, there is a risk that the funds may not be settled or may be recalled due to insufficient funds or fraud reasons, exposing us to the risk of negative customer wallet balances and bad debt. Further, Digital Wallet prepaid card deposits or transactions made by consumers may be charged back by consumers resulting in a negative balance and loss on our accounts. If we are unable to effectively manage and monitor these risks, they could have a material adverse effect on our results of operations, financial condition and future prospects.

***We may become an unwitting party to fraud or be deemed to be handling proceeds resulting from the criminal activity of our customers.***

We are focused on providing trusted services to our customers and merchants and ensuring that data and confidential information is transmitted and stored securely. Combating money laundering and fraud is a significant challenge in the online payment services industry because transactions are conducted between parties who are not physically present, which in turn creates opportunities for misrepresentation and abuse. Criminals are using increasingly sophisticated methods to engage in illegal activities such as identity theft, fraud and paper instrument counterfeiting. Online payment companies are especially vulnerable because of the convenience, immediacy and in some cases anonymity of transferring funds from one account to another and subsequently withdrawing them. The highly automated nature of, and liquidity offered by, our payments services make us a target for illegal or improper uses, including fraudulent or illegal sales of goods or services, money laundering and terrorist financing. Allegations of fraud may result in fines, settlements, litigation expenses and reputational damage.

While we employ a variety of tools to protect against fraud, these tools may not be successful. We reserve the right to refuse to accept accounts or transactions from many high-risk countries, internet protocol addresses and e-mail domains and continually update these screening filters. Our transaction monitoring systems are designed to identify various criteria, including the country of origination, in order to detect and monitor fraud and to reject any purported transactions if they appear to be fraudulent. Nevertheless, our transaction monitoring systems may not operate as intended or may otherwise fail to effectively detect fraudulent transactions or locate where a

transaction is being made. We face significant risks of loss due to money laundering, fraud and disputes between senders and recipients, and if we are unable to deal effectively with losses from fraudulent transactions our business could be materially harmed.

The ability for customers to withdraw and deposit funds within various accounts and the potential for customer fraud in connection with certain gambling activities heightens the risks of money laundering and the unwitting receipt by us of criminal proceeds. Our industry is under increasing scrutiny from governmental authorities—in Europe, the United States and many other jurisdictions in which we operate—in connection with the potential for consumer fraud. The laws of some jurisdictions define or interpret what constitutes the underlying criminal activity that gives rise to criminal proceeds relatively narrowly (for example, terrorist financing). Conversely, other jurisdictions have adopted laws providing for relatively broad definitions or interpretations of underlying criminal activity (for example, in the UK criminal proceeds may arise from the conviction of any criminal offence where it is found that the defendant has benefited from the criminal conduct). Further, to the extent to which payment processors may be held civilly or criminally liable for the criminal activities of its merchant customers also varies widely across the jurisdictions in which we operate.

If consumer fraud levels involving our services were to rise, it could lead to regulatory intervention and reputational and financial damage. This, in turn, could lead to additional government enforcement actions and investigations and concerns raised by merchants and our banking partners, which in turn could reduce the use and acceptance of our services or increase our compliance costs and thereby have a material adverse impact on our business, financial condition and results of operations. By processing payments for merchants and customers in certain industry vehicles, such as those engaged in the online gambling sector, we may be deemed to be handling proceeds of crime in the jurisdiction where our merchants and customers are located. We are subject to anti-money laundering laws and regulations, including, in the United States, the BSA which requires money services businesses such as us to develop and implement risk-based anti-money laundering programs, report large cash transactions and suspicious activity and maintain transaction records. We have adopted a program to comply with these and other anti-money laundering regulations, but any errors or failure to implement the program properly could lead to lawsuits, administrative action and government fines and/or prosecution. In addition, even if we comply with such reporting and record-keeping requirements, law enforcement agencies in the relevant country could seize merchants' or customers' funds that are the proceeds of unlawful activity. Any such action could result in adverse publicity for our business and could have a material adverse effect on our results of operations, financial condition and future prospects.

***Our risk management policies and procedures may not be fully effective in mitigating our risk exposure in all market environments or against all types of risks, which could expose us to losses and liability and otherwise harm our business.***

We operate in a rapidly changing industry and we have experienced significant change in recent years, including in connection with certain acquisitions. Accordingly, our risk management policies and procedures may not be fully effective at identifying, monitoring and managing our risks at pace with these changes. Some of our risk evaluation methods depend upon information provided by third parties regarding markets, clients or other matters that are otherwise inaccessible to us. In some cases, however, that information may not be accurate, complete or up-to-date. Our risk management policies, procedures, techniques and processes may not be effective at identifying all of the risks to which we are exposed or enabling us to mitigate the risks we have identified. In addition, when we introduce new services, focus on new business types or begin to operate in markets in which we have a limited history of fraud loss, we may be less able to forecast and reserve accurately for new risks. Some risk mitigations may be deemed ineffectual, for example, if our insurance coverage is not adequate. We may need to initiate legal proceedings at a high cost if we are unable to come to a settlement with adversarial parties. If our risk management policies and processes are ineffective, we may suffer large financial losses, we may be subject to civil and criminal liability and our business, financial condition and results of operations may be materially and adversely affected.

***We are required to comply with payment card network operating rules.***

Payment networks, such as Visa, Mastercard and American Express, establish their own rules and standards that allocate liabilities and responsibilities among the payment networks and their participants. These rules and standards, including the Payment Card Industry Data Security Standards, govern a variety of areas, including how consumers and clients may use their cards, the security features of cards, security standards for processing, data security and allocation of liability for certain acts or omissions, including liability in the event of a data breach. The payment networks may change these rules and standards from time to time as they may determine in their sole discretion and with or without advance notice to their participants. These changes may be made for any number of reasons, including as a result of changes in the regulatory environment, to maintain or attract new participants, or to serve the strategic initiatives of the payment networks, and may impose additional costs and expenses on or be disadvantageous to certain participants. Participants are subject to audit by the payment networks to ensure compliance with applicable rules and standards. The networks may fine, penalize or suspend the registration of participants for certain acts or omissions or the failure of the participants to comply with applicable rules and standards. Furthermore, the networks may levy fines on our sponsor banks in the event that our processing behavior causes our sponsor banks to breach their obligations to scheme rules including breaching, for example, applicable thresholds, such as chargeback or fraud thresholds. This occurrence can lead to an adverse impact on our sponsor bank relationships and any required remedies can create additional costs. Our removal from a given network's list of Payment Card Industry Data Security Standard compliant service providers could mean that existing merchants, customers, sales partners or other third parties may cease using or referring our services. Also,

prospective merchants, customers, sales partners or other third parties may choose to terminate negotiations with us, or delay or choose not to consider us for their processing needs. In addition, the card networks could refuse to allow us to process through their networks. Any of the foregoing could materially adversely impact our business, financial condition or results of operations.

Changes to these network rules or how they are interpreted could have a significant impact on our business and financial results. For example, changes in the payment card network rules regarding chargebacks may affect our ability to dispute chargebacks and the amount of losses we incur from chargebacks. Changes to and interpretations of the network rules that were inconsistent with the way we operated has, in the past, required us to make changes to our business, and any future changes to or interpretations of the network rules that are inconsistent with the way we currently operate may require us to make changes to our business that could be costly or difficult to implement. If we fail to make such changes or otherwise resolve the issue with the payment card networks, the networks could pass on fines and assessments in respect of fraud or chargebacks related to our merchants or disqualify us from processing transactions if satisfactory controls are not maintained, which could have a material adverse effect on our business, financial condition and results of operations.

In addition, we are required to comply with additional clearing scheme rules not particular to card companies, such as Bacs Payment Schemes Limited (formerly known as the Bankers Automated Clearing System), and the Single Euro Payments Area (also known as the SEPA, EBA Step2) scheme, which govern the clearing and settlement of certain UK and European electronic payment methods. Changes in the classification of our business by Visa and/or Mastercard could result in restrictions on our service offerings. For examples, the classification of our Digital Wallet as a “Staged Digital Wallet,” a “Pass-Through Digital Wallet,” or a “Stored Value Digital Wallet” impacts which merchants in various jurisdictions can accept our funds.

***Our efforts to expand our product portfolio and market reach may not succeed, and if we fail to manage our growth effectively, our business could be materially harmed.***

While we intend to continue to broaden the scope of products and services we offer, we may not be successful in deriving any significant revenue from these products and services. Failure to broaden the scope of products and services that are attractive may inhibit our growth and harm our business. Furthermore, we may have limited or no experience in our newer markets and we cannot assure you that any of our products or services in our newer markets will be widely accepted or that they will generate revenue. Our offerings may present new and difficult technological, operational, regulatory and other challenges, and if we experience service disruptions, failures, or other issues, our business may be materially and adversely affected. Our newer activities may not recoup our investments in a timely manner or at all. If any of this were to occur, it could damage our reputation, limit our growth, and materially and adversely affect our results of operations and financial condition.

Further, in order to manage our growth effectively, we must continue to strengthen our existing infrastructure, develop and improve our processes and internal controls, create and improve our reporting systems, and timely address issues as they arise. As we continue to strengthen our existing infrastructure and systems, we will also be required to hire additional personnel. These efforts may require substantial financial expenditures, commitments of resources, developments of our processes, and other investments and innovations. Furthermore, we encourage employees to quickly develop and launch new features for our products and services. As we grow, we may not be able to execute as quickly as smaller, more agile organizations. In addition, as we grow, we may not be able to maintain our entrepreneurial company culture, which fosters innovation and talent. If we do not successfully manage our growth, our business may be adversely affected.

***We depend on key management, as well as our experienced and capable employees, and any failure to attract, motivate, and retain our employees could harm our ability to maintain and grow our business.***

We depend upon the continued services and performance of our directors and key senior management. Our directors and key senior management play a key role in maintaining our culture and in setting our strategic direction. The unexpected departure or loss of one or more of our directors or key senior management team members could harm our ability to maintain and grow our business, and there can be no assurance we will be able to attract or retain suitable replacements for such directors and/or key management in a timely manner, or at all. We also may incur significant additional costs in recruiting and retaining suitable replacements and avoiding disruption in integrating them into our business.

In addition, our operations and the execution of our business plan depend on our ability to attract, train and retain suitably skilled or qualified personnel with relevant industry and operational experience and to ensure that we have a robust succession planning system in place. In order for us to expand our operations in the future we will need to recruit and retain further personnel with suitable experience, qualifications and skill sets capable of advancing our business. Additionally, we are in the process of incorporating more automation and re-engineering processes in our business, and uncertainty related to this transformation may affect our ability to retain our employees. Depending on the geographical area, there can be substantial competition for suitably skilled or qualified personnel with relevant industry and operational experience and there can be no assurance that we will be able to attract or retain our personnel on similar terms to those

on which we currently engage our employees, or at all. We see this risk in particular in our Digital Wallet operations center in Sofia, Bulgaria, where we have found it can be more difficult to identify qualified local talent from which to staff our operations. If we are unable to attract or retain suitably skilled or qualified personnel then this could have a material adverse effect on our results of operations, financial condition and future prospects.

***If we cannot keep pace with rapid technological developments to provide new and innovative products and services, the use of our products and services and, consequently, our revenues could decline.***

Rapid, significant, and disruptive technological changes, such as machine learning, container technology, artificial intelligence, biometrics (for authorization and authentication) as well as quantum computing, impact the industries in which we operate, including developments in payment card tokenization, mobile, social commerce (i.e., eCommerce through social networks), authentication, cryptocurrencies (including distributed ledger and blockchain technologies), and near-field communication, and other proximity payment technology, such as contactless payments. As a result, we expect new services and technologies to continue to emerge and evolve, and we cannot predict the effects of technological changes on our business. In addition to our own initiatives and innovations, we rely in part on third parties, including some of our competitors, for the development of and access to new or evolving technologies. These third parties may restrict or prevent our access to, or utilization of, those technologies, as well as their platforms or products. In addition, we may not be able to accurately predict which technological developments or innovations will become widely adopted and how those technologies may be regulated. We expect that new services and technologies applicable to the industries in which we operate will continue to emerge and may be superior to, or render obsolete, the technologies we currently use in our products and services. Developing and incorporating new technologies into our products and services may require substantial expenditures, take considerable time, and ultimately may not be successful.

In addition, our ability to adopt new products and services and to develop new technologies may be inhibited by industry-wide standards, payments networks, changes to laws and regulations, resistance to change from consumers or merchants, third-party intellectual property rights, or other factors. For example, consumers can use their Skrill and NETELLER wallets to trade in cryptocurrencies. Our success in providing cryptocurrency services, and with other rapid technological innovations, will depend on our ability to develop and incorporate new technologies and adapt to technological changes and evolving industry standards; if we are unable to do so in a timely or cost-effective manner, our business could be harmed.

We are currently building a single core platform for our businesses to increase resilience, speed and security and provide firm foundations for future releases and enhancements. Related to this are various initiatives, which include increasing our risk management, fraud management and compliance capabilities and ensuring that our updated architecture can support a constantly evolving KYC, anti-money laundering, credit check and fraud monitoring environment; providing us with better reporting and analytics; providing our merchants with the ability to accept any payment method they wish and allowing for increased customer customization of their services. However, there is no assurance that this platform will operate effectively or that we will achieve these intended benefits. A failure to deliver the solutions identified by our businesses as important for their future success in a timely or cost-effective manner could have an impact on our future success.

***We face substantial and increasingly intense competition worldwide in the global payments industry.***

The global payments industry is highly competitive, rapidly changing, very innovative, and increasingly subject to regulatory scrutiny. We compete against a wide range of businesses, including businesses that are larger than we are with substantially greater financial and other resources than we have, have a more dominant and secure position, or offer other products and services to consumers and merchants that we do not offer, as well as smaller companies that may be able to respond more quickly to regulatory and technological changes. These competitors may act on business opportunities within our specialized industry verticals, which may reduce our ability to maintain or increase or market share. In addition, the services of our various competitors are differentiated by features and functionalities such as brand recognition, customer service, trust and reliability, distribution network and channel options, convenience, price, speed, variety of payment methods, service offerings and innovation.

In addition, our competitors may be able to offer more attractive economic terms to our current and prospective clients. If competition requires us to offer more attractive economics by reducing our fees or otherwise modifying our terms in order to maintain market share and continue growing our client base, we will need to aggressively control our costs in order to maintain our profit margins and our revenues may be adversely affected, and our ability to control our costs is limited because we are subject to fixed transaction costs related to payment networks. Competition could also result in a loss of existing clients and greater difficulty in attracting new clients. One or more of these factors could have a material adverse effect on our business, financial condition and results of operations.

Furthermore, many of the areas in which we compete evolve rapidly with changing and disruptive technologies, shifting user needs, and frequent introductions of new products and services. Competition may also intensify as businesses enter into business combinations and alliances, and established companies in other segments expand to become competitive with different aspects of our business. If we

cannot compete effectively, the demand for our products and services may decline, which would adversely impact our competitive position, business and financial performance.

***Our operating results and operating metrics are subject to seasonality and volatility, which could result in fluctuations in our quarterly revenues and operating results or in perceptions of our business prospects.***

We have experienced in the past, and expect to continue to experience, seasonal fluctuations in our business. For instance, our eCash Solutions division historically experiences increased activity during the traditional holiday period and around other nationally recognized holidays, when certain games operators may run promotions, consumers enjoy more leisure time and younger consumers may receive our products as gifts. Our Digital Wallet segment experiences increased activity based on the occurrence and timing of sporting events. Volatility in our revenue, key operating metrics or their rates of growth could result in fluctuations in our financial condition or results of operations and may lead to adverse inferences about our prospects, which could result in declines in our share price.

## **Regulatory, Legal and Tax Risks**

***Our operations can be constrained in countries with less predictable legal and regulatory frameworks.***

If the legal and regulatory system in a particular country is less predictable, this can create a more difficult environment in which to conduct business. For example, any of the following could hamper our operations and reduce our earnings in these types of countries:

- the absence of a statutory or regulatory basis or guidance for engaging in specific types of business or transactions;
- conflicting or ambiguous laws and regulations, or the inconsistent application or interpretation of existing laws and regulations;
- uncertainty concerning the enforceability of contractual, intellectual property or other obligations;
- difficulty in competing in economies in which the government controls or protects all or a portion of the local economy or specific businesses, or where graft or corruption may be pervasive; and
- the threat of arbitrary regulatory investigations, civil litigations or criminal prosecutions, the imposition of licensing requirements, or the termination or unavailability of licenses, to operate in the local market or the suspension of business relationships with governmental bodies.

Conducting business in countries with less predictable legal and regulatory regimes could require us to devote significant additional resources to understanding, and monitoring changes in, local laws and regulations, as well as structuring our operations to comply with local laws and regulations and implementing and administering related internal policies and procedures.

Given the above mentioned challenges and the ever changing landscape, we may fail to conduct our business in compliance with the laws and regulations of the jurisdictions in which we operate and/or those jurisdictions in which we provide services, and the risk of noncompliance can be greater in countries that have less predictable legal and regulatory systems.

***Our business is subject to extensive regulation and oversight in a variety of areas, all of which are subject to change and uncertain interpretation, including in such ways as could criminalize certain of our activities.***

We are subject to a wide variety of laws, regulations, licensing schemes and industry standards in the countries and localities in which we operate. These laws, regulations, and standards govern numerous areas that are important to our business, including, but not limited to, online gambling, consumer protection, privacy, information security, anti-money laundering, safeguarding of client funds, strong customer authentication, financial services, securities, labor and employment, unclaimed property laws, competition, data protection, biometric data processing and marketing and communications practices. Such laws, regulations, and standards are subject to changes and evolving interpretations and application, including by means of legislative changes, new guidance, administrative changes and/or executive orders, and it can be difficult to predict how they may be applied to our business and the way we conduct our operations, particularly as we introduce new products and services and expand into new jurisdictions. For example, in 2022, the Bank of Italy formed the view that the distribution of my paysafecard codes through the local network of points of sale resulted in Italian anti-money laundering law becoming directly applicable to the sale of those vouchers. After engagement with the Bank of Italy, a local Central Contact Point was established in Italy and changes to the process for the purchase of codes including the collection of 'code fiscale' were implemented. Any perceived or actual breach of laws, regulations, and standards could result in investigations, regulatory inquiries, loss of licensure, litigation, fines, injunctions, negative customer sentiment, impairment of our existing or planned products and services, or otherwise materially and adversely impact our business. In addition, regulatory scrutiny in one jurisdiction can lead to increased scrutiny from regulators and legislators in other jurisdictions that may harm our reputation, brand and third-party relationships and have a material adverse effect on our results of operations, financial performance and future prospects.

We are also subject to oversight by various governmental agencies and authorities in the countries and localities in which we operate. In light of the current conditions in the global financial markets and economy, lawmakers and regulators have increased their focus on the regulation of the financial services industry. Although we have a compliance program focused on the laws, rules, and regulations that we believe are applicable to our business, we may still be subject to a requirement to change various aspects of our business or the manner in which we carry out our business in certain countries, or to fines, injunctions or other penalties levied by regulators in one or more jurisdictions. In addition to fines, penalties for failing to comply with applicable rules and regulations could include significant criminal and civil lawsuits, forfeiture of significant assets, increased licensure requirements, loss of licensure or other enforcement actions. Any perceived or actual breach of compliance by us with respect to applicable laws, rules and regulations could have a significant impact on our reputation as a trusted brand and could cause us to lose existing customers, prevent us from obtaining new customers, require us to expend significant funds to remedy problems caused by breaches and to avert further breaches and expose us to legal risk and potential liability.

In the future, we may also be required to make changes to our business practices or compliance programs as a result of regulatory scrutiny. For example, in Germany, the gambling regulator adopted stringent enforcement of unlicensed gambling activity beyond a transitional period during which gambling licenses could be applied for and consequently we have increased our scrutiny of merchants' gambling licenses in relation to specific games. In the Netherlands, the introduction of new regulation has led to gambling operators having to end all customer relationships with Dutch customers while going through the process of applying for a Dutch gambling license. These changes in regulations have impacted our ability to do business and could adversely affect our results of operations, financial performance and future prospects. In Canada, the Alcohol and Gaming Commission of Ontario recently imposed a limit of \$250 CAD/week and a maximum of five (5) prepaid cards which can be used to fund gaming accounts with licensed Operators, which has impacted the use of one of our prepaid payment products.

***We generate a significant portion of our revenue by processing online payments for merchants and customers engaged in the online gambling and foreign exchange trading sectors.***

We generate a significant portion of our revenue from merchants operating in the regulated gaming and sports betting and foreign exchange trading sectors. We and our merchants and customers are subject to various laws and regulations in relation to online gambling. Regulations in the gaming and sports betting and foreign exchange trading sectors vary significantly among different countries and localities. In many cases, they may be unclear and may also change, sometimes dramatically, and such laws and regulations are constantly evolving and are often subject to conflicting interpretations.

In the United States, for instance, the evolving regulatory regime of online gambling creates uncertainty and could adversely affect our operations in those jurisdictions. As a particular example, in 2018, the U.S. Department of Justice ("DOJ") reversed its previously-issued opinion published in 2011, which stated that interstate transmissions of wire communications that do not relate to sports betting fall outside the purview of the Wire Act of 1961 (the "Wire Act"). The DOJ's updated opinion concluded instead that the Wire Act was not uniformly limited to sports betting and that certain of its provisions apply to non-sports-related wagering activity. On June 3, 2019, in a case challenging the DOJ's updated opinion, Judge Paul Barbadoro of the United States District Court for the District of New Hampshire found that the Wire Act only applies to sports betting and not to other online gambling games. On January 20, 2021, the First Circuit affirmed the ruling of the lower court, finding that the Wire Act only applies to sports betting.

The EU, by contrast, has generally moved towards controlled regulation of online-based gambling operators, rather than absolute prohibition. For example, in Germany in 2021, the new German Interstate Treaty on Gambling allows for online gambling in Germany, but has set forth certain restrictive measures that could adversely impact the Company. The new German regulations have put in place a mandatory deposit limit of 1,000 euros per month across all providers for online gambling. The regimes in Italy and France have similarly moved away from state-run monopoly-based markets to controlled regulation. However, local laws in place in EU member states are sometimes incompatible with EU laws, regulations and directives, which introduces additional uncertainty around licensing and ongoing compliance obligations into the regulatory framework.

Additionally, many jurisdictions, particularly those outside of Europe and the United States, including many Latin American countries, have not updated their laws to address the supply of online gambling, which by its nature is a multijurisdictional activity. Due to the borderless nature of online gaming and sports betting and foreign exchange trading, a merchant properly licensed in its home jurisdiction may still provide services to consumers in other jurisdictions, knowingly or unknowingly, including in jurisdictions whose regulations are ambiguous or where gaming, sports betting and/or foreign exchange trading are prohibited. For example, in India, 2021 and 2022 we were notified about a small number of investigations being conducted by the Government of India Enforcement Directorate ("ED") relating to gambling activity by Indian residents which indirectly concern the provision of digital wallet services to our Indian resident customers. If the ED or other Government of India regulatory authority finds that we violated Indian law by failing to restrict certain payments from being made, it could lead to certain penalties being imposed on us or we may cease providing services to Indian resident customers altogether if it is determined that our services to Indian resident customers are licensable in India and we cannot, or decide

not to, obtain a license. We currently operate in Latin American countries where there are no licensing requirements and the regulatory environment is changing. If new regulations are imposed, our ability to operate in those countries could become more difficult and more costly. Additionally, in Latvia, the Latvian Financial and Capital Market Commission (the “Commission”) notified us of their belief that we were in breach of Latvian law as a result of processing gambling payments between Latvian customers and gambling operators that do not have a local license. Following engagement with the Commission, we asserted that we were not in breach of Latvian law and currently have not received a response.

We have policies and procedures in place that are designed to ensure that we comply with applicable rules regarding card brands, regulated verticals and bank sponsor requirements. However, these policies and procedures may not always be effective. If we provide services, intentionally or unintentionally, to gaming and sports betting and foreign exchange trading companies that do not have proper regulatory authorizations, we could be subject to fines, penalties, reputational harm or other negative consequences. Other jurisdictions have updated legislation to pass laws to regulate online gambling but only to permit license holders to supply services in that jurisdiction, some of which laws purport to have an extra territorial effect and which specifically preclude payment support of any gambling transactions, with powers to request the co-operation of banks and card issuers, or, in some jurisdictions, to criminalize the support they provide. Nevertheless, the legality of online gambling and the provision of services to online gambling merchants and customers is subject to uncertainties arising from differing approaches by legislatures, regulators and enforcement agents, including in relation to determining in which jurisdiction the game or the bet takes place and, therefore, which law applies and where the transaction should be taxed. This uncertainty creates a risk for us that even in instances where older laws have not been updated to address new technology, courts may interpret older legislation in an unfavorable way and determine our activities to be illegal. This could lead to criminal or civil actions being brought against our customers, merchants, us or any of our directors, or us (or our merchants or customers) being forced to cease doing business in a particular jurisdiction, all or any of which may, individually or collectively, materially and adversely affect our results of operations and financial condition and damage our reputation.

We rely on the continued supply of our services to merchants within the online gambling industry. Digital Wallets (which primarily provides services to the online gambling industry) represents approximately 46% of our revenue for the year ended December 31, 2022. Changes in the regulation of online gambling in the markets where we operate may materially and adversely affect our results of operations and financial condition if such merchants are subject to increased taxes, compliance costs, levies and license fees or are forced to cease operating in a jurisdiction as a result of prohibitive legislation, which may result in reduced demand for our services within the online gambling industry.

While we do not provide gambling services, it is possible that we could be found to be acting unlawfully for processing gambling related payments. For example, we previously processed payments in connection with online gambling in the United States until the passage of the Unlawful Internet Gambling Enforcement Act (“UIGEA”), which banned the processing of payments related to illegal online gambling in the United States, in 2006. Within days of enactment of the UIGEA, we announced our intention to withdraw from the U.S. market. However, in January 2007 the Office of the United States Attorney for the Southern District of New York (the “USAO”) initiated criminal actions against us and two former senior executives and founding shareholders of NETELLER related to gambling and unlicensed money transmitting violations, seized approximately \$60 million in customer funds that were in transit with our payment processors and prohibited us from engaging in any further transactions with U.S. banks, effectively preventing our customers from withdrawing their funds. As a result, we suspended all U.S. gambling-related processing and negotiated a plan to facilitate the complete return of funds to our U.S. customers. In July 2007, we entered into a deferred prosecution agreement (“DPA”) with the USAO, providing for forfeiture of \$136 million, completion of the return of funds to U.S. customers, imposition of an ongoing obligation to cooperate with any further USAO inquiries and the appointment of a forensic accounting firm to monitor our activities in order to ensure we continued to comply with the UIGEA. All of our U.S. customers subsequently had their money returned, and the USAO obtained dismissal of the complaint and terminated the DPA in August 2009. Both former founders of NETELLER pled guilty to a single count of conspiracy to violate U.S. gambling and money-transmitting laws and agreed to a combined forfeiture of \$100 million. None of the management or directors at the time of the DPA are now employed by the Company.

If we were found to be acting unlawfully for processing online gambling payments in any jurisdiction, it could have a material adverse effect on our reputation, operations and financial performance. Additional civil, criminal or regulatory proceedings could also be brought against us and/or our directors, executive officers and employees as a result. We could also be joined to proceedings brought against a merchant or other third parties for tracing claims resulting in the seizure of funds. Any such proceedings would potentially have cost, resource and reputational implications, and could have a material adverse effect on our results of operations, financial performance and future prospects and on our ability to retain, renew or expand our portfolio of licenses. Moreover, even if successfully defended, the process may result in us incurring considerable costs and require significant management resource and time.

In addition to gambling related payments, our payment systems may be used for potentially illegal or improper uses, including the fraudulent sales of goods or services, illegal sales of controlled substances or to facilitate other illegal activity. Such usage of our payment systems may subject us to claims, individual and class action lawsuits, government and regulatory investigations, inquiries or requests that could result in liability and reputational harm for us. Changes in law have increased the penalties for intermediaries providing



payment services for certain illegal activities, and government authorities may consider additional payments-related proposals from time to time. Owners of intellectual property rights or government authorities may seek to bring legal action against providers of payments solutions that are peripherally involved in the sale of infringing or allegedly infringing items. Any threatened or resulting claims could result in reputational harm, and any resulting liabilities, loss of transaction volume, or increased costs could harm our business.

***We are subject to financial services regulatory risks.***

Certain of our subsidiaries in the UK are authorized by the FCA under the Electronic Money Regulations 2011 to perform the regulated activity of issuing e-money and the provision of payment services (which has the meaning specified in the Second Electronic Money Directive) as well as to provide account information services and payment initiation services to support our *Rapid Transfer* service. We have the appropriate licenses and permissions to act as an e-money issuer in the UK.

Two of our entities in Ireland are authorized by the CBI to act as e-money issuers and to provide payment services (including account information and payment initiation services) and are passporting in other European Economic Area (“EEA”) jurisdictions. As with the FCA, the CBI also implements, maintains and enforces a range of rules covering (among other things) market conduct, communications with customers, the safeguarding of users’ funds and the fair treatment of consumers and other vulnerable customers. These rules are contained in various sources including the Consumer Protection Code and the European Union (Payment Services) Regulations 2018 and apply to the regulated activities we carry out from Ireland across the EEA. Breach of these rules may result in fines, public censures, customer remediation and redress and ultimately in the revocation of our regulatory licenses in Ireland. For example, in 2022, an inaccurate description of the foreign exchange rate applied to customer transactions was identified, notified to the regulators and is being remediated through a refund of the relevant margin to all customers and merchants.

EU laws and regulations are typically subject to different and potentially inconsistent interpretations by the local authorities in EU member states, which can make compliance more costly and operationally difficult to manage. Moreover, countries that are EU members may each have different and potentially inconsistent domestic regulations implementing European Directives, including the Revised Payment Services Directive (“PSD2”), which may further increase compliance costs and operational complexity. As a result of PSD2, we have had to make changes which impacted our business. PSD2 seeks to enable new payment models whereby a newly formed category of regulated payment provider would be able to access bank and payment accounts (including our customers’ payment accounts) for the purposes of accessing account information or initiating a payment on behalf of a customer. Such access could subject us to data security and other legal and financial risks and could create new competitive forces and new types of competitors in the European payments market. PSD2 imposes new standards for payment security and strong customer authentication that may make it more difficult and time consuming to authorize a transaction, which may adversely impact our customer value proposition and its European business.

Additionally, Skrill USA is registered with the U.S. Department of the Treasury Financial Crimes Enforcement Network (“FinCEN”) as a money services business and is regarded as a money transmission business in the United States. Money transmitting businesses are subject to numerous regulations in the United States at the federal and state levels, and we have obtained or applied for money transmitter licenses (or applicable similar licenses) in all U.S. states and territories in which we are required to do so. As a result, we are also subject to inspections, examinations, supervision, and regulation by each state in which we are licensed, and are subject to direct supervision by the Consumer Financial Protection Bureau (the “CFPB”). The CFPB has authority to interpret, enforce and issue regulations implementing enumerated consumer laws, including certain laws that apply to our business. The Dodd-Frank Act also empowers state attorneys general and other state officials to enforce federal consumer protection laws under specified conditions.

Although we have the authorizations and licenses referred to above, we issue e-money to customers in over 120 countries and territories and we are not licensed as an e-money issuer in the vast majority of these jurisdictions. We take the view that, in general, we are not conducting regulated activities in these other jurisdictions on the basis that our activities of issuing e-money are not conducted in each jurisdiction in which our relevant customers reside, but rather e-money is issued in jurisdictions in which we are licensed. We acknowledge that local regulators in these jurisdictions may take a different view and, as transaction volumes increase and/or the matter is brought to our attention by local regulators, we will take advice in respect of local requirements on a case-by-case basis.

Due to ongoing developments in e-money regulation, we obtain advice from external counsel as required in order to assess any applicable risk and, where necessary, will limit the extent of our operations in a particular jurisdiction or will consider whether to obtain a license in such jurisdiction. The adoption of new money transmitter or other licensing statutes in the jurisdictions in which we operate, changes in regulators’ interpretation of existing money transmitter or other licensing statutes or regulations, or disagreement by a regulatory authority with our interpretation of such statutes or regulations, could require additional registrations or licenses, limit certain of our business activities until they are appropriately licensed, and expose us to financial penalties.

We are not aware of any circumstances that may result in us being in breach of the terms of our e-money issuer, payment initiation service provider or money transmitter licenses that would be likely to lead to a revocation or termination of such licenses or a material

restriction on such licenses, nor are we aware of any current or pending financial, civil or criminal proceedings asserted against us in connection with a failure to hold a license in any relevant jurisdiction. However, if we were found to be in violation of any current or future regulations, or to have previously been in breach of any regulation, in any countries from which we accept merchants or customers, including as a result of any failure by our employees to apply correctly our anti-money laundering procedures, this could result in a requirement for future compliance, fines, other forms of liability and/or force us to change business practices or to cease operations altogether, and we, our directors, executive officers or employees may also be exposed to a financial liability, civil or criminal liability, any of which could have a material adverse effect on our results of operations, financial condition and future prospects.

***Catastrophic events or geopolitical conditions, including those related to climate change and increased focus on sustainability issues, may adversely affect our business and financial results and damage our reputation.***

War, terrorism, political events, geopolitical instability, trade barriers and restrictions, public health issues, pandemics, natural disasters, or other catastrophic events have caused and could cause damage or disruption to the economy and commerce on a global, regional, or country-specific basis, which could have a material adverse effect on our business, our customers, and companies with which we do business. Such events could decrease demand for our products and services or make it difficult or impossible for us to deliver products and services to our customers. The frequency and severity of some catastrophic events, such as flooding, hurricanes, tornadoes, extended droughts, and wildfires are contributed to by global climate change, which many in the scientific community, in governmental bodies and elsewhere believe will continue for decades to come, potentially resulting in increased disruption to us. Geopolitical trends, including nationalism, protectionism, and restrictive visa requirements could limit the expansion of our business in those regions. Our business operations are subject to interruption by, among others, natural disasters, fire, power shortages, earthquakes, floods, nuclear power plant accidents, and events beyond our control such as other industrial accidents, terrorist attacks and other hostile acts, labor disputes and public health issues. A catastrophic event that results in a disruption or failure of our systems or operations could result in significant losses and require substantial recovery time and significant expenditures in order to resume or maintain operations, which could have a material adverse impact on our business, financial condition, and results of operations.

Additionally, actual or perceived environmental, social, governance and other sustainability (ESG) matters and our response to these matters could harm our business. Increasing governmental and societal attention to ESG matters, including expanding mandatory and voluntary reporting, diligence, and disclosure on topics such as climate change, human capital, labor and risk oversight, could expand the nature, scope, and complexity of matters that we are required to control, assess and report. These factors may alter the environment in which we do business and may increase the ongoing costs of compliance and adversely impact our results of operations and cash flows. If we are unable to adequately address such ESG matters or we or our borrowers fail to comply with all laws, regulations, policies and related interpretations, it could negatively impact our reputation and our business results.

***We are subject to current and proposed regulation addressing both consumer and business privacy and data use, which could adversely affect our business, financial condition and results of operations.***

We are subject to a number of laws, rules, directives, and regulations, as well as requirements imposed on us by contracts with clients, relating to the collection, use, retention, storage, destruction, security, processing, transfer, and sharing of personal information about our customers and employees in the countries where we operate. Our business relies on the processing of data in many jurisdictions and the movement of data across national borders. As a result, much of the personal information that we process, especially financial information, is regulated by multiple privacy laws and, in some cases, the privacy laws of multiple jurisdictions. In many cases, these laws apply not only to third-party transactions, but also to transfers of information between or among us, our subsidiaries, and other parties with which we have commercial relationships. These laws and regulations may at times be conflicting, and the requirements to comply with these regulations could result in a negative impact to our business.

Regulatory scrutiny of privacy, data protection, and the collection, use, storage, destruction, security, processing, transfer and sharing of personal information is increasing around the world. There is uncertainty associated with the legal and regulatory environment relating to privacy and data protection laws, which continue to develop in ways we cannot predict, including with respect to evolving technologies such as cloud computing and blockchain technology. Additionally, these laws and regulations may change or be interpreted and applied differently over time and from jurisdiction to jurisdiction, and it is possible they will be interpreted and applied in ways that will materially and adversely affect our business.

For example, we are subject to enhanced compliance and operational requirements under the General Data Protection Regulation (“GDPR”), which became effective in May 2018. Since 2016, we have engaged in a large, transformative program regarding data privacy in connection with GDPR compliance requirements. The GDPR applies to companies processing personal data of EU residents, imposes a strict data protection compliance regime with severe penalties for noncompliance of up to the greater of 4% of worldwide annual turnover or €20 million. The penalties for noncompliance with the GDPR could have a material adverse effect on our business, financial condition, results of operations and cash flows. We have incurred and we expect to continue to incur significant expenses to meet the obligations of the GDPR, which have required us to make significant changes to our business operations.

Although the GDPR applies across the EU without a need for local implementing legislation, each EU member state has the ability to interpret the GDPR opening clauses, which permit country-specific data protection legislation and which have created inconsistencies, on a country-by-country basis. Brexit and ongoing developments in the UK have created uncertainty with regard to data protection regulation in the UK and could result in the application of new data privacy and protection laws and standards to our operations in the UK, our handling of personal data of users located in the UK, and transfers of personal data between the EU and UK. The UK GDPR, effective as of January 1, 2021, and the UK Data Protection Act of 2018 (as amended on January 1, 2021) and which supplements the UK GDPR, now apply to our processing of personal data in the UK and elsewhere, if the processing is of UK residents. While the UK GDPR broadly mirrors the GDPR, the UK Government has indicated an intention to diverge from some areas of European legislation and a Consultation is currently underway in respect of changes to the UK's Data Protection Act 2018. In respect of the transfer of personal data from the EU to the UK under the GDPR, the UK and EU Trade and Cooperation Agreement ("TCA") permitted data transfers from the EU to the UK to continue without restriction for four months post-Brexit (including a potential extension of two months) while the EU considered the UK's application for adequacy of its data protection procedures. Such an adequacy decision by the EU was adopted by the European Commission on June 28, 2021 and permits personal data transfers between the EU and UK without further safeguards in place (such as standard contractual clauses). If the UK was to lose its adequacy decision from the EU, we may be required to implement new processes and put new agreements in place, such as standard contractual clauses, to govern any transfers of personal data from the EU to the UK; and any such changes could impact our ability to transfer personal data from the UK to the EU and other third countries. The divergence of the UK's data protection regime from GDPR could therefore lead to the removal of the EC adopted adequacy decision for the UK.

Additionally, Brexit and the subsequent implementation of the UK GDPR and any divergences therefrom expose us to parallel and differing data protection regimes, each of which potentially authorizes similar significant fines and other potentially divergent enforcement actions for certain violations.

Meanwhile, the Court of Justice of the European Union ("CJEU") issued a decision on July 16, 2020 (commonly known as "Schrems II") invalidating the EU-U.S. Privacy Shield Framework, a previously lawful mechanism of transfer for personal data from the EU to the United States. While the Schrems II decision did not invalidate standard contractual clauses, another lawful mechanism for making cross-border transfers, the decision has called their validity into question under certain circumstances, and has made the legality of transferring personal information from the EU to the United States more uncertain, and it may require government cooperation to resolve this issue. The issues and risks arising from the Schrems II decision, apply equally to transfers of personal information from the EU to any country which has not received an adequacy finding by the European Commission. Other jurisdictions could require us to make additional changes to the way we conduct our business and transmit data between the United States, the UK, the EU and the rest of the world. We are now seeing regulatory enforcement action arising from Schrems II, in particular the decisions of some European member state data protection authorities in prohibiting the transfer of Google Analytics data to the United States, the findings of which could apply to other / all transfers of personal data.

Any failure, or perceived failure, by us to comply with our privacy policies, with applicable industry data protection or security standards, with any applicable regulatory requirements or orders, or with privacy, data protection, information security, or consumer protection-related laws and regulations in one or more jurisdictions could result in proceedings or actions against us by data protection authorities, governmental entities or others, including class action privacy litigation in certain jurisdictions, which could subject us to significant awards, fines, sanctions (including prohibitions on the processing of personal information), penalties, judgments, and negative publicity arising from any financial or non-financial damages suffered by any individuals. This could, individually or in the aggregate, materially harm our business. For example, GDPR requires us to delete data when we no longer have an overriding business need to retain such data and to also accept data deletion rights requests. Paysafe systems do not always allow for such data to be deleted and/or to allow the exercise of such rights at all or within the required timeframes. This may be due to a variety of reasons, any failure, or perceived failure, by us to comply with the GDPR could result in proceedings or actions against us by data protection authorities, governmental entities or others, which could subject us to significant awards, fines, sanctions (including prohibitions on the processing of personal information), penalties, judgments, and negative publicity arising from any financial or non-financial damages suffered by any individuals.

Policymakers around the globe are using these GDPR requirements as a reference to adopt new or updated privacy laws that could result in similar or stricter requirements in other jurisdictions. In the United States, the Gramm-Leach-Bliley Act of 1999 (along with its implementing regulations) restricts certain collection, processing, storage, use and disclosure of personal financial information, requires notice to individuals of privacy practices and provides individuals with certain rights to prevent the use and disclosure of certain nonpublic or otherwise legally protected information. These rules also impose requirements for the safeguarding and proper destruction of such information through the issuance of data security standards or guidelines. In addition, there are new state laws in the United States governing the collection and processing of personal information (including, as of January 1, 2020, the California Consumer Privacy Act of 2018 (the "CCPA") and as of March 2, 2021, the Virginia Consumer Data Protection Act ("VCDPA"), which will become effective January 1, 2023 and finally the Colorado Privacy Act 2021, which comes into effect on July 1, 2023. Looking further ahead, on February 1, 2022, the Indiana senate passed the Consumer Data Privacy Bill; subject to ratification by the Indiana House, it will take

effect from January 1, 2025. The CCPA imposes stringent data privacy and data protection requirements for the personal data of California residents, and provides for government penalties for noncompliance of up to \$7,500 per violation, if willful, and provides for a private right of action in the event of a data breach affecting certain un-redacted or non-encrypted personal information of California residents. Implementing regulations for the CCPA were released in August 2020, and on November 3, 2020, California voters approved a new law, the California Privacy Rights Act, which will come into effect on January 1, 2023, applying to personal data collected on or after January 1, 2022. As a result of these constant changes, it is still not certain how the various provisions of the CCPA and the CPRA will be interpreted and enforced. The CPRA expands the rights of consumers and establishes the California Privacy Protection Agency, providing the agency with investigative, enforcement and rule-making powers. The effects of the CCPA are potentially far-reaching, however, and may require us to continue to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply. Certain other state laws impose or are in the process of imposing similar privacy obligations, including the recently passed VCDPA, that may be different from those under the CCPA, and, in addition, all 50 states have laws with varying obligations to provide notification of security breaches of personal information to affected individuals, state officers and/or others. The use or generation of biometric data as an aid to fraud prevention is becoming increasingly regulated through a patchwork of laws in both the EU and across the United States, with a number of state laws now requiring consent to such use. For example, Illinois has passed the Biometric Information Privacy Act (“BIPA”), Texas and Washington have passed similar laws, and other states plan to pass similar laws. The application of privacy laws to new technology, particularly in the area of artificial intelligence and machine learning, is not always clear and can pose additional regulatory risk and material harm to our business operations.

Some jurisdictions are also considering requirements for businesses that collect, process and/or store data within their borders (“data localization”), as well as prohibitions on the transfer of data abroad, leading to technological and operational implications. Other jurisdictions are considering adopting sector-specific regulations for the payments industry, including forced data sharing requirements or additional verification requirements that overlap or conflict with, or diverge from, general privacy rules. Failure to comply with these laws, regulations and requirements could result in fines, sanctions or other penalties, which could materially and adversely affect our results of operations, financial condition, and reputation. Collective or class-action litigations relating to data privacy violations are permitted under the GDPR and are beginning to arise in the EU, and are no longer unique to the United States. We may also be exposed to similar lawsuits in the UK with respect to Brexit.

Regulation of privacy and data protection and information security often requires monitoring of and changes to our data practices in regard to the collection, use, disclosure, deletion, storage, transfer and/or security of personal information. We have incurred, and may continue to incur, significant expenses to comply with evolving mandatory privacy and security standards and protocols imposed by law, regulation, industry standards, shifting consumer expectations, or contractual obligations. In particular, with laws and regulations, such as the GDPR in the EU, the GDPR in the UK, the Personal Information Protection and Electronic Documents Act (“PIPEDA”) in Canada (including its provincial laws) and the CCPA, CPRA, VCDPA and BIPA in the United States, imposing new and relatively burdensome obligations, and with substantial uncertainty over the interpretation and application of these and other laws and regulations, we may face challenges in addressing their requirements and making necessary changes to our policies and practices, and may incur significant costs and expenses in an effort to do so. New requirements or reinterpretations of existing requirements in these areas, or the development of new regulatory schemes related to the digital economy in general, may also increase our costs and could impact the products and services we offer and other aspects of our business, such as fraud monitoring, the development of information-based products and solutions and technology operations. We may not be able to respond quickly or effectively to regulatory, legislative, and other developments, and these changes may in turn impair our ability to offer our existing or planned features, products, and services and/or increase our cost of doing business. Any of these developments could materially and adversely affect our overall business and results of operations.

In addition, fraudulent activity could encourage regulatory intervention, which could damage our reputation and reduce the use and acceptance of our integrated products and services or increase our compliance costs. Criminals are using increasingly sophisticated methods to capture consumer account information to engage in illegal activities such as counterfeiting or other fraud, including setting up fake Paysafe websites or using stolen credentials from the dark web to attack customer accounts, where such customers are using the same credentials across multiple sites or accounts. While we are taking measures we believe will make payments more secure, increased fraud levels involving our products and services, or misconduct or negligence by third parties servicing our products and services, could lead to regulatory intervention, such as enhanced security requirements, as well as damage to our reputation.

***We must comply with money laundering regulations in Bermuda, the UK, Ireland, Switzerland, the United States, Canada, and elsewhere, and any failure to do so could result in severe financial and legal penalties.***

We are subject to various anti-money laundering and counter-terrorist financing laws and regulations around the world that prohibit, among other things, our involvement in transferring the proceeds resulting from criminal activities. Facilitating financial transactions over the internet creates a risk of fraud and ensuring customer data security, privacy, and ongoing compliance with applicable regulations requires significant capital expenditure. Applicable money laundering regulations require firms to put preventative measures in place and to perform KYC procedures, including conducting customer identification and verification and undertaking ongoing monitoring. In

addition, regulations require companies to keep records of identity and to train their staff on the requirements of the relevant money laundering regulations. At present, for instance, in the UK and Ireland, a senior member of staff needs to be appointed and approved by the FCA or by the CBI, respectively, to oversee appropriate policies and procedures. Regulators globally continue to increase their scrutiny of compliance with these obligations, which may require us to further revise or expand our compliance program, including the procedures we use to verify the identity of our customers and to monitor transactions. Regulators regularly re-examine the transaction volume thresholds at which we must obtain and keep applicable records or verify identities of customers and any change in such thresholds could result in greater costs for compliance. In the EU, the implementation of the Fifth Anti-Money Laundering Directive (“MLD5”) (which had to be transposed by each Member State by 10 January 2020) amended the Fourth Anti-Money Laundering Directive by (among other things) limiting the scope of customer due diligence exemptions for electronic money products and revising the monitoring requirements of existing customers. The implementation of MLD5 and the consequent potential for divergence in interpretation and application by EU Member States may make compliance more costly and operationally difficult to manage, lead to increased friction for customers, and result in a decrease in business. In the United States, the BSA requires among other things, money services businesses (such as money transmitters and providers of prepaid access) to develop and implement risk-based anti-money laundering programs, report large cash transactions and suspicious activity, and maintain transaction records. We are also subject to regulatory oversight and enforcement by FinCEN and have registered Skrill USA with FinCEN as a money services business. Any determination that we have violated the anti-money-laundering laws could have a material adverse effect on our financial condition, results of operations and future prospects. For example, the BSA requires us to report currency transactions in excess of \$10,000, including identification of the customer by name and social security number, to the IRS. This regulation also requires us to report certain suspicious activity, including any transaction that exceeds \$2,000 that we know, suspect or have reason to believe involves funds derived from illegal activity or is designed to evade federal regulations or reporting requirements and to verify sources of such funds. Substantial penalties can be imposed against us if we fail to comply with this regulation. If we fail to comply with these laws and regulations, the imposition of a substantial penalty could have a material adverse effect on our business, financial condition and results of operations.

Our customers are based in over 120 countries and territories. However, we believe that we do not conduct regulated activities in all of these jurisdictions. Rather, we conduct regulated activity in only a limited number of jurisdictions and our wider customer base accesses our services online. We are subject to anti-money laundering regulations in Bermuda, the UK, Ireland, Switzerland, the United States, Canada and in any other jurisdiction where we are established and performing activities that would require that we apply anti-money laundering regulations. Where a customer resides in a jurisdiction outside of Europe in which we do not consider ourselves to be conducting a regulated activity, we follow the home state laws of the relevant Group regulated entities and our group policies which seek to apply the highest common standard regardless of the residency of that customer. We believe that these processes are of the requisite standard, although there can be no guarantee that they meet all the requirements of other jurisdictions. However, if we were to violate laws or regulations governing money transmitters or electronic fund transfers, either in Bermuda, the UK, Ireland, Switzerland, the United States, Canada or elsewhere, including as a result of any failure by our employees to correctly apply our KYC procedures, this could result in a requirement for future compliance, fines, other forms of liability and/or force us to change business practices or to cease operations altogether.

We are also subject to rules and regulations imposed by, among others, the European Union, HM Treasury and OFAC restricting the transfer of funds to certain specifically designated countries. While we believe that we have in place appropriate systems and procedures to ensure that transfers to merchants or customers in countries on watch lists are not executed, there can be no guarantee that such controls are, or will continue to be, effective and any sanctions imposed by any regulatory body on us for executing a transfer to a country on a watch list could have a material adverse effect on our results of operations, financial condition and future prospects.

***Changes in the regulatory environment for digital assets could adversely affect our business.***

Consumers can use our digital wallets to trade in digital assets. Digital assets are not considered legal tender or backed by any government and have experienced price volatility, technological glitches and various law enforcement and regulatory interventions. The use of cryptocurrencies has been prohibited or effectively prohibited in some countries. If we (or our partners that we work with to provide the services) fail to comply with applicable requirements and prohibitions, we could face regulatory or other enforcement actions and potential fines and other consequences including licensing restrictions, censure or a significant impact on our revenues derived from such activity and increased future compliance costs. Even in countries where cryptocurrencies are permitted, businesses associated with cryptocurrencies have had and may continue to have their existing accounts with banks and financial institutions closed or services discontinued, and offering cryptocurrency services may cause difficulties in obtaining or maintaining our relationships with sponsor banks and payment card networks. Furthermore, the prices of cryptocurrencies are routinely highly volatile and subject to exchange rate risks as well as the risk that regulatory or other developments may adversely affect their value and their attractiveness to consumers for investment or speculation leading to reduced use of these services and thereby reducing our ability to earn revenue from such activity. Changes in the regulatory environment for cryptocurrency could impact our business and our future business arrangements, thereby

damaging our reputation, operations and financial position and lead to increased costs to retain current revenues, any of which could have a material adverse effect on us.

***Limitations imposed by the FCA and CBI on the right to own our securities may result in sanctions being imposed on our regulated subsidiaries and an acquirer of such securities in the event of noncompliance by such acquirer, and may reduce the value of our shares.***

Several of the Company's indirect subsidiaries are subject to regulatory supervision, including the requirement to obtain prior consent from the relevant regulator when a person holds, acquires or increases a qualifying holding in those entities. See "Item 4.B. Business Overview—Licensing and Regulation—Payments Regulation" of this Report. On the basis of these regulations, no person may hold or acquire, alone or together with others, a direct or indirect stake of 10% or more of our shares, 10% of the voting rights attached to our shares, or exercise, directly or indirectly, significant influence over any of the regulated subsidiaries (or increase an existing holding of 10% or more of our shares or the voting rights attached to our shares crossing a control threshold (20%, 30% or 50%) without first obtaining the prior approval of the FCA and the CBI.

Noncompliance with those requirements constitutes a criminal offense that may lead to criminal prosecution, as well a violation of applicable laws governing the payment services and electronic money industry in the relevant jurisdictions, which may lead to injunctions, penalties and sanctions against the Company's regulated subsidiaries as well as the person seeking to hold, acquire or increase the qualifying holding (including, but not limited to, substantial fines, public censure and prison sentences), may subject the relevant transactions to cancellation or forced sale, and may result in increased regulatory compliance requirements or other potential regulatory restrictions on our business (including in respect of matters such as corporate governance, restructurings, mergers and acquisitions, financings and distributions), enforced suspension of operations, cancellation of corporate resolutions made on the basis of such qualifying holding, restitution to customers, removal of board members, suspension of voting rights and variation, cancellation or withdrawal of licenses and authorizations. If any of this were to occur, it could damage our reputation, limit our growth and materially and adversely affect our business, financial condition and results of operations.

In addition, uncertainty and inconvenience created by those regulatory requirements may discourage potential investors from acquiring 10% or more of our shares, which may in turn reduce the value of the shares.

***We may not be able to adequately protect or enforce our intellectual property rights, or third parties may allege that we are infringing their intellectual property rights.***

Our success and ability to compete in various markets around the world depends, in part, upon our proprietary technology. We seek to protect our intellectual property rights by relying on applicable laws and regulations in the United States and internationally, as well as a variety of administrative procedures and contractual measures. We rely on copyright, trade secret and trademark laws to protect our technology, including the source code for proprietary software, and other proprietary information. We also rely on contractual restrictions to protect our proprietary rights when offering or procuring products and services, including confidentiality and invention assignment agreements entered into with our employees and contractors and confidentiality agreements with parties with whom we conduct business. We have not applied for any patents in respect of our electronic payment processing systems and cannot give assurances that any patent applications will be made by us in the future or that, if they are made, will be granted.

We may, over time, increase our investment in protecting our intellectual property through additional trademark, patent and other intellectual property filings, which could be expensive and time-consuming. We may not be able to obtain protection for our technology and even if we are successful in obtaining effective patent, trademark, trade secret and copyright protection, it is expensive to maintain these rights and the costs of defending our rights could be substantial. Moreover, our failure to develop and properly manage new intellectual property could hurt our market position and business opportunities.

Although we have generally taken measures to protect our intellectual property rights, there can be no assurance that we will be successful in protecting or enforcing our rights in every jurisdiction, or that contractual arrangements and other steps that we have taken to protect our intellectual property will prevent third parties from infringing or misappropriating our intellectual property or deter independent development of equivalent or superior intellectual property rights by others. If we are unable to prevent third parties from adopting, registering, or using trademarks and trade dress that infringe, dilute, or otherwise violate our trademark rights, the value of our brands could be diminished and our business could be adversely affected. Also, we may not be able to discover or determine the extent of any unauthorized use of our proprietary rights. Our intellectual property rights may be infringed, misappropriated, or challenged, which could result in them being narrowed in scope or declared invalid or unenforceable. Any failure to adequately protect or enforce our intellectual property rights, or the significant costs incurred in doing so, could diminish the value of our intangible assets and materially harm our business.

Similarly, our reliance on unpatented proprietary information and technology, such as trade secrets and confidential information, depends in part on agreements we have in place with employees and third parties that place restrictions on the use and disclosure of this intellectual property. These agreements may be insufficient or may be breached, in either case potentially resulting in the unauthorized use or disclosure of our trade secrets and other intellectual property, including to our competitors, which could cause us to lose any competitive advantage resulting from this intellectual property. Individuals not subject to invention assignment agreements may make adverse ownership claims to our current and future intellectual property. Unauthorized parties may attempt to copy aspects of our intellectual property or obtain and use information that we regard as proprietary and, if successful, may potentially cause us to lose market share or otherwise harm our business and ability to compete. There can be no assurance that the intellectual property we own or license will provide competitive advantages or will not be challenged or circumvented by our competitors.

We are, from time to time, subject to litigation related to alleged infringement of other parties' patents. As the number of products in the technology and payments industries increases and the functionality of these products further overlaps, and as we acquire technology through acquisitions or licenses, we may become increasingly subject to intellectual property infringement and other claims. These risks have been amplified by the increase in so-called non-practicing entities, third parties whose sole or primary business is to assert such claims. Even if we believe that any of these intellectual property related claims are without merit, litigation may be necessary to determine the validity and scope of the patent or other intellectual property rights of others. The ultimate outcome of any alleged infringement claim is often uncertain and, regardless of the outcome, any such claim, with or without merit, may be time-consuming, result in costly litigation, divert management's time and attention from our business, and require us to, among other things, redesign or stop providing our products or services, pay substantial amounts to satisfy judgments or settle claims or lawsuits, pay substantial royalty or licensing fees, or satisfy indemnification obligations that we have with certain parties with whom we have commercial relationships. Alternatively, we may, from time to time, determine to incur the costs required to obtain a third party patent license so as to avoid the uncertainty, significant costs and potentially negative publicity associated with patent litigation. We may not be able to obtain licenses to relevant intellectual property on commercially reasonable terms or at all, and such inability could materially harm or restrict our business. Even if we were able to obtain such a license, it could be non-exclusive, thereby giving our competitors and other third parties access to the same technologies licensed to us. In addition, we could be found liable for significant monetary damages, including treble damages and attorneys' fees, if we are found to have willfully infringed a patent or other intellectual property right. Claims that we have misappropriated the confidential information or trade secrets of third parties could similarly harm our business.

***Our use of open source software could compromise our ability to offer our products or services and subject us to possible litigation.***

We use open source software in connection with our products and services. Companies that incorporate open source software into their products have, from time to time, faced claims challenging the use of open source software and compliance with open source license terms. As a result, we could be subject to suits by parties claiming ownership of what we believe to be open source software or claiming noncompliance with open source licensing terms. While the use of open source software may reduce development costs and speed up the development process, it may also present certain risks that may be greater than those associated with the use of third-party commercial software. For example, open source software is generally provided without any warranties or other contractual protections regarding infringement or the quality of the code, including the existence of security vulnerabilities. Despite our efforts to monitor our use of open source software and compliance with applicable license terms (for example through our using of monitoring software to assess vulnerability and licensing implication), we cannot guarantee we comply with all terms of open source licenses applicable to us, and we could be required by the terms of applicable open source software licenses to publicly disclose all or part of the proprietary source code to our software and/or make available any derivative works of the open source code on unfavorable terms or at no cost. The terms of some open source licenses are ambiguous, and third parties may claim that we have violated terms of open source licenses even if we believe we comply. There is little legal precedent in this area and any actual or claimed requirement to disclose our proprietary source code or pay damages for breach of contract could harm our business and could help third parties, including our competitors, develop products and services that are similar to or better than ours. Any of the foregoing could be harmful to our business, financial condition and results of operations.

***If we fail to comply with our obligations under license or technology agreements with third parties, we may be required to pay damages and we could lose license rights that are critical to our business.***

We license certain intellectual property that is important to our business, including technologies, data and software from third parties, and in the future we may enter into additional agreements that provide us with licenses to valuable intellectual property, technology, or data. Certain of our agreements may provide that intellectual property arising under these agreements, such as data valuable to our business, will be owned by the counterparty, in which case, we may not have adequate rights to use such data or may not have exclusivity with respect to the use of such data, which could result in third parties, including our competitors, being able to use such data to compete with us. If we fail to comply with any of the obligations under our license agreements, we may be required to pay damages and the licensor may have the right to terminate the license. Termination by the licensor could cause us to lose valuable rights, and could prevent us from selling our products and services, or inhibit our ability to commercialize future products and services. Our business could suffer if any current or future licenses expire or are terminated, if the licensors fail to abide by the terms of the license, if the licensors fail to

enforce licensed intellectual property against infringing third parties, if the licensed intellectual property rights are found to be invalid or unenforceable, or if we are unable to enter into necessary licenses on acceptable terms, or at all. Any of the foregoing could have a material adverse effect on our competitive position, business, financial condition, results of operations, and prospects.

***Changes in tax law, changes in our effective tax rate or exposure to additional tax liabilities could affect our profitability and financial condition.***

We carry out our business operations through entities in multiple foreign jurisdictions. As such, we are required to file corporate income tax returns that are subject to foreign tax laws. The foreign tax liabilities are determined, in part, by the amount of operating profit generated in these different taxing jurisdictions. Our effective tax rate, earnings and operating cash flows could be adversely affected by changes in the mix of operating profits generated in countries with higher statutory tax rates as well as by the positioning of our cash balances globally. If statutory tax rates or tax bases were to increase or if changes in tax laws, regulations or interpretations were made that impact us directly, our effective tax rate, earnings and operating cash flows could be adversely impacted.

Any such adverse changes in the applicability of tax to us could increase the levels of taxation payable by us which would have an adverse effect on our business, financial condition, results of operations and prospects. In addition to the possibility of a substantial tax burden being imposed on us, the risk that we may become subject to an increased level of taxation may result in us needing to change our corporate or operational structure, which could have a material adverse effect on our business, financial condition, results of operations and prospects. Additionally, the tax authorities of the jurisdictions in which we operate may challenge our methodologies for valuing developed technology or intercompany arrangements. For example, work is currently being undertaken by the OECD on potential future recommendations related to the challenges arising from the digitalization of the global economy, specifically relating to reform of the international allocation of taxing rights (“Pillar One”) and a system ensuring a minimum level of tax for multinational enterprises (“Pillar Two”). On December 12, 2022, the European Union (EU) Member States agreed in principle on the introduction of a global minimum tax rate of 15%. On December 15, 2022, the written procedure for formal adoption of a directive was signed, meaning the directive will have to be transposed into the national law of EU Member States by the end of 2023 with effectiveness beginning January 1, 2024. Separately, the UK published draft legislation on July 20, 2022 that proposes to apply the top-up tax on subsidiary profits taxed at a rate of less than 15% effective for accounting periods beginning on or after December 31, 2023. Our global effective tax rate could be impacted by such legislation, or any resulting local country legislation enacted in response to any potential global minimum tax rates.

Additionally, tax authorities at the international, federal, state, and local levels are currently reviewing the appropriate tax treatment of companies engaged in internet commerce and financial technology. These developing changes could affect our financial position and results of operations. In particular, due to the global nature of the internet, it is possible that tax authorities at the international, federal, state, and local levels may attempt to regulate our transactions or levy new or revised sales & use taxes, VAT, digital services taxes, income taxes, or other taxes relating to our activities in the internet commerce and financial technology space. New or revised taxes, in particular, sales & use taxes, VAT, and similar taxes, including digital service taxes, would likely increase the cost of doing business. New taxes could also create significant increases in internal costs necessary to capture data and collect and remit taxes. Any of these events could have an adverse effect on our business and results of operations.

Furthermore, any changes in other jurisdictions to the political and social perception of running a business out of a tax-friendly jurisdiction (such as Bermuda) or any action by HMRC or any other tax authority to investigate our tax arrangements could result in adverse publicity and reputational damage for us, which could have an adverse effect on our business, financial condition, results of operations and prospects. For example, in January 2019, HMRC introduced its Profit Diversion Compliance Facility (“PDCF”), the focus of which is to target, and subsequently bring into the charge to tax, transactions which are considered to result in a diversion of profits from the UK corporation tax net. We are engaged in submissions and correspondence with HMRC in connection with the PDCF, primarily relating to legacy transfer pricing policies. Transfer pricing is an inherently contentious area as it requires the application of arm’s length pricing to specific transactions and arrangements for which it may be difficult to find market comparators. If HMRC or any other tax authority is successful in challenging our tax arrangements, we may be liable for additional tax and penalties and interest related thereto, which may have a significant impact on our business, financial condition, results of operations and prospects.

***We may be affected by Sections 1471-74 of the Code (“FATCA”) and other cross border automatic exchange of information provisions.***

In light of FATCA, certain non-U.S. financial institutions (“foreign financial institutions” or “FFIs”) are required to register with the U.S. Internal Revenue Service (“IRS”) to obtain a Global Intermediary Identification Number (“GIIN”) and comply with the terms of FATCA, including any applicable intergovernmental agreement (“IGA”) and any local laws implementing such agreement or FATCA. Based on our current operations and business activities, including our Digital Wallet business, we have registered certain of our subsidiaries, and may be required to register additional subsidiaries, as FFIs and will therefore be required to register with the IRS to obtain a GIIN, and required to comply with the terms of any applicable IGA. Failure to comply with FATCA (including as the same



may be implemented under the terms of any applicable IGA) could subject certain payments of U.S. source fixed, determinable, annual, or periodical income made to us to 30% FATCA withholding tax. Further, our FFI subsidiaries would need to perform diligence on their existing and new customers, provided that their account balances reached certain thresholds, including obtaining self-certifications regarding the account holder's citizenship or tax residence in the United States. They would then be required to report certain information about their U.S. account holders to either the IRS or their local tax authorities (which will in turn provide such information to the IRS). This reporting requirement could potentially dissuade customers from doing business with us.

***We are regularly subject to litigation, regulatory actions and government inquiries.***

We may be and in some cases have been subject to claims, lawsuits (including class action lawsuits), government or regulatory investigations, subpoenas, inquiries or audits, and other adverse legal proceedings involving areas such as intellectual property, consumer protection, privacy, data protection, biometric data processing, gambling, labor and employment, immigration, competition, accessibility, securities, tax, marketing and communications practices, commercial disputes, anti-money laundering, anti-corruption, counter-terrorist financing, sanctions and other matters. See "Item 4.B. Business Overview—Legal Proceedings." For example, on December 10, 2021, a class action complaint, *Lisa Wiley v Paysafe Limited f/ka/Foley Trasimene Acquisition Corp. II*, Richard N Massey, Bryan D. Coy, Philip McHugh and Ismail (Izzy) Dawood, was filed, naming among others the Company, our former Chief Executive Officer and our former Chief Financial Officer, as defendants. The complaint asserts claims, purportedly brought on behalf of a class of shareholders, under Sections 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, and alleges that the Company and individual defendants made false and misleading statements to the market regarding the Company's financial outlook in light of gambling regulations in key European markets, performance challenges in the company's Digital Wallets segment and the modified scope and timing of new eCommerce customer agreements. In addition, the complaint asserts claims against the individual defendants, under Sections 20(a) of the Exchange Act, alleging that the individual defendants filed false financial statements, misled the public and induced the public to buy shares. On January 21, 2022, a related complaint was brought by John Paul O'Brien also in the Southern District of New York, which additionally named William P. Foley II as a defendant. On May 5, 2022, the Southern District of New York consolidated the Wiley case and the O'Brien case and recaptioned the new case *In re: Paysafe Ltd. f/k/a Foley Trasimene Acquisition Corp. II Securities Litigation*. The complaints seek unspecified damages and an award of costs and expenses, including reasonable attorneys' fees, on behalf of a purported class of purchasers of our ordinary shares between December 7, 2020 and November 10, 2021.

The number and significance of disputes and inquiries may increase as our business expands in scale, scope and geographic reach, and our products and services increase in scale and complexity. In addition, the laws, rules and regulations affecting our business, including those pertaining to internet and mobile commerce, data protection, payments services, and credit, are subject to evolving interpretation by the courts and governmental authorities, and the resulting uncertainty in the scope and application of these laws, rules, and regulations increases the risk that we will be subject to private claims and governmental actions alleging liability on our part. Further, our focus on specialized industry verticals exposes us to a higher risk of losses resulting from investigations, regulatory actions and litigation. See "—Risks Related to Paysafe's Business and Industry —Our focus on specialized industry verticals can increase our risks relative to other companies in our industry."

The scope, outcome, and impact of any claims, lawsuits, government investigations, disputes, and other legal proceedings to which we are subject cannot be predicted with certainty. Regardless of the outcome, such matters can have an adverse impact, which may be material, on our business, financial condition and results of operations because of legal costs, diversion of management resources, reputational damage, and other factors. Determining reserves for our pending litigation and regulatory proceedings is a complex, fact-intensive process that involves a high degree of discretionary judgment. Resolving one or more of such legal and regulatory proceedings or other matters could potentially require us to make substantial payments to satisfy judgments, fines, or penalties or to settle claims or proceedings, any of which could materially and adversely affect our business, financial condition and results of operations. These proceedings could also result in reputational harm, criminal sanctions, consent decrees, or orders that prevent us from offering certain products or services, cause us to withdraw from certain markets or terminate certain relationships, require us to change our business practices in costly ways, or develop non-infringing or otherwise altered products or technologies. Any of these consequences could materially and adversely affect our business, financial condition, results of operations and future prospects.

**Risks Related to Paysafe's Indebtedness**

***Our substantial leverage could adversely affect our financial condition, our ability to raise additional capital to fund our operations, our ability to operate our business, our ability to engage in acquisitions, our ability to react to changes in the economy or our industry or our ability to pay our debts, and could divert our cash flow from operations to debt payments.***

We are highly leveraged. As of December 31, 2022, the total principal amount of our debt was approximately \$2.7 billion. Subject to the limits contained in the credit agreements that govern our credit facilities, we may be able to incur substantial additional debt from time to time to finance working capital, capital expenditures, investments or acquisitions, or for other purposes. If we do so, the risks

related to our high level of debt could increase. Specifically, our high level of debt could have important consequences, including the following:

- making it more difficult for us to satisfy our obligations with respect to our debt;
- limiting our ability to obtain additional financing to fund future working capital, capital expenditures, acquisitions or other general corporate requirements;
- requiring a substantial portion of our cash flows to be dedicated to debt service payments instead of other purposes, thereby reducing the amount of cash flows available for working capital, capital expenditures, acquisitions and other general corporate purposes;
- increasing our vulnerability to general adverse economic and industry conditions;
- exposing us to the risk of increased interest rates as certain of our borrowings are at variable rates of interest;
- limiting our flexibility in planning for and reacting to changes in the industry in which we compete;
- placing us at a disadvantage compared to other, less leveraged competitors; and
- increasing our cost of borrowing.

We are a holding company, and our consolidated assets are owned by, and our business is conducted through, our subsidiaries. Revenue from these subsidiaries is our primary source of funds for debt payments and operating expenses. Our credit agreements contain covenants that restrict our subsidiaries from making distributions, subject to certain baskets and exceptions, which may impair our ability to meet our debt service obligations or otherwise fund our operations. Moreover, there may be restrictions on payments by subsidiaries to their parent companies under applicable laws, including laws that require companies to maintain minimum amounts of capital and to make payments to shareholders only from profits. As a result, although a subsidiary of ours may have cash, we may not be able to obtain that cash to satisfy our obligation to service our outstanding debt or fund our operations.

***Despite our current level of indebtedness, we may be able to incur substantially more debt and enter into other transactions which could further exacerbate the risks to our financial condition described above.***

We may be able to incur significant additional indebtedness in the future. Although certain of the agreements governing our existing indebtedness contain restrictions on the incurrence of additional indebtedness and entering into certain types of other transactions, these restrictions are subject to a number of qualifications and exceptions. Additional indebtedness incurred in compliance with these restrictions could be substantial. These restrictions also do not prevent us from incurring obligations, such as trade payables, that do not constitute indebtedness as defined under our debt instruments. To the extent new debt is added to our current debt levels, the substantial leverage risks described in the immediately preceding risk factor would increase. See “Description of Certain Indebtedness”.

***Our variable rate indebtedness subjects us to interest rate risk, which could cause our indebtedness service obligations to increase significantly.***

Interest rates may increase in the future. As a result, interest rates on our variable rate credit facilities could be higher or lower than current levels. As of December 31, 2022, the Company held approximately \$1.8 billion of outstanding debt at variable interest rates. However, if interest rates were to increase, our debt service obligations on the variable rate indebtedness would increase even where the amount borrowed remained the same, and our net income and cash flows, including cash available for servicing our indebtedness, would correspondingly decrease.

Further, our USD First Lien Term Loan, USD Second Lien Term Loan and First Lien Revolving Credit Facility (each, as defined in “Description of Certain Indebtedness”) bear interest at a rate that varies depending on the London Interbank Offered Rate (“LIBOR”). In July 2017, the head of the FCA announced its intention to phase out the use of LIBOR by the end of 2021; in March 2021, the FCA extended the transition dates of certain LIBOR tenors to June 30, 2023, after which LIBOR reference rates will cease to be provided. If a published U.S. dollar LIBOR rate is unavailable after 2021, the interest rates on our USD First Lien Term Loan and USD Second Lien Term Loan will be determined using various alternative methods, any of which may result in interest obligations that are more than or do not otherwise correlate over time with the payments that would have been made on such debt if U.S. dollar LIBOR was available in its current form. Further, the same costs and risks that may lead to the discontinuation or unavailability of U.S. dollar LIBOR may make one or more of the alternative methods impossible or impracticable to determine. Any of these proposals or consequences could have a material adverse effect on our results of operations and financial condition.

***Our debt agreements impose significant operating and financial restrictions on us and our subsidiaries, which could prevent us from capitalizing on business opportunities.***

The agreements that govern our credit facilities impose significant operating and financial restrictions on us. These restrictions limit the ability of certain of our subsidiaries to, among other things:

- incur additional indebtedness and make guarantees;
- create liens on assets;
- engage in mergers or consolidations or make fundamental changes;
- sell assets;
- pay dividends and distributions or repurchase share capital;
- make investments, loans and advances, including acquisitions;
- engage in certain transactions with affiliates;
- enter into certain burdensome agreements;
- make changes in the nature of their business; and
- make prepayments of junior debt.

In addition, with respect to the First Lien Revolving Credit Facility, certain of our subsidiaries are required to maintain a maximum consolidated first lien net leverage ratio not to exceed 7.50:1.00, tested at the end of each quarter in which the principal amount of the First Lien Revolving Credit Facility outstanding exceeds 40% of the total commitments under such facility at such time. Furthermore, the Paysafe Payment Credit Agreement requires Paysafe Payment to maintain, as of the last day of each four fiscal quarter period, (i) a minimum fixed charge coverage ratio, (ii) a maximum leverage ratio and (iii) a minimum liquidity amount.

As a result of these restrictions, we are limited as to how we conduct our business and we may be unable to raise additional debt or equity financing to compete effectively or to take advantage of new business opportunities. The terms of any future indebtedness we may incur could include similar or more restrictive covenants. We cannot assure you that we will be able to maintain compliance with these covenants in the future and, if we fail to do so, that we will be able to obtain waivers from the lenders or amend the covenants.

Our failure to comply with the restrictive covenants described above as well as other terms of our other indebtedness or the terms of any future indebtedness from time to time could result in an event of default, which, if not cured or waived, could result in our being required to repay these borrowings before their due date. If we are forced to refinance these borrowings on less favorable terms or are unable to refinance these borrowings, our results of operations and financial condition could be adversely affected.

***Our business may be adversely impacted by changes in currency exchange rates.***

As we operate across multiple jurisdictions and currencies, changes in currency exchange rates could lead to adverse impacts on our financial assets and liability, and in particular on our external debt and intercompany transactions. A deterioration in reported earnings as a result of currency exchange rate fluctuations could lead to a covenant breach and result in an event of default in our agreements relating to our outstanding indebtedness which, if not cured or waived, could result in our being required to repay these borrowings before their due date. If we are forced to refinance these borrowings on less favorable terms or are unable to refinance these borrowings, our results of operations and financial condition could be adversely affected.

***Our failure to comply with the agreements relating to our outstanding indebtedness, including as a result of events beyond our control, could result in an event of default that could materially and adversely affect our results of operations and our financial condition.***

If there were an event of default under any of the agreements relating to our outstanding indebtedness, the holders of the defaulted debt could cause all amounts outstanding with respect to that debt to be due and payable immediately. We cannot assure you that our assets or cash flows would be sufficient to fully repay borrowings under our outstanding debt instruments if accelerated upon an event of default. Further, if we are unable to repay, refinance or restructure our indebtedness under our secured debt, the holders of such debt could proceed against the collateral securing that indebtedness. In addition, any event of default or declaration of acceleration under one debt instrument could also result in an event of default under one or more of our other debt instruments.

***Upon a change of control, all of our outstanding debt under our credit facilities would become immediately due and payable.***

Upon a change of control, as defined under our Senior Facilities Agreement, all of our outstanding debt under the Senior Facilities Agreement would be immediately due and payable. A person or group of persons acting in concert (other than with the CVC Investors and the Blackstone Investors and any person directly or indirectly controlled by any of them) acquiring (directly or indirectly) more than 50% of the Company Common Shares would constitute a change of control under our credit agreements. In order to obtain sufficient funds to repay our debt if a change of control occurs, we expect that we would have to refinance our debt. We cannot assure you that we would be able to refinance our debt on reasonable terms, if at all. Our failure to repay all outstanding debt which becomes due and payable due to a change of control would trigger an event of default under the applicable credit agreement and may be an event of default under one or more of our other agreements. Moreover, such an event of default under one credit facility may cause the acceleration of our other debt under our other credit facilities. Our future debt also may contain restrictions on repayment requirements with respect to specified events or transactions that constitute a change of control under our debt agreements. Such restrictions could discourage, delay or prevent a transaction involving a change in control of the Company, including actions that our shareholders may deem advantageous, or negatively affect the trading price of the Company Common Shares.

***Repayment of our debt is dependent on cash flow generated by our subsidiaries, which may be subject to limitations beyond our control.***

Our subsidiaries own all of our assets and conduct all of our operations. Accordingly, repayment of our indebtedness is dependent on the generation of cash flow by our subsidiaries and their ability to make such cash available by dividend, debt repayment or otherwise.

Unless they are obligors of our indebtedness, our subsidiaries do not have any obligation to pay amounts due on such indebtedness or to make funds available to the notes issuers for that purpose. Our non-guarantor subsidiaries may not be able to, or may not be permitted to, make distributions to enable us to make payments in respect of our indebtedness. Each non-guarantor subsidiary is a distinct legal entity and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from our non-guarantor subsidiaries. While limitations on our subsidiaries restrict their ability to pay dividends or make other intercompany payments, these limitations are subject to certain qualifications and exceptions.

In the event that we are unable to receive distributions from our subsidiaries or make other intercompany payments, we may be unable to make required principal and interest payments on our indebtedness.

***Our inability to generate sufficient cash flow could affect our ability to execute our strategic plans.***

Organic growth opportunities are an important element of our strategy. See “Item 4.B. Business Overview—Our Growth Strategies.” We may not generate sufficient cash flow to finance such growth plans. Consequently, the execution of our growth strategy may require access to external sources of capital, which may not be available to us on acceptable terms, or at all. Limitations on our access to capital, including on our ability to issue additional debt or equity, could result from events or causes beyond our control, and could include decreases in our creditworthiness or profitability, significant increases in interest rates, increases in the risk premium generally required by investors, decreases in the availability of credit or the tightening of terms required by lenders. Any limitations on our ability to secure external capital, continue our existing finance arrangements or refinance existing financing obligations could limit our liquidity, financial flexibility or cash flow and affect our ability to execute our strategic plans, which could have a material adverse effect on our business, results of operations and financial condition.

***Our consolidated financial statements include significant intangible assets which could be impaired.***

We carry significant intangible assets on our statement of financial position. As of December 31, 2022, we had \$1.3 billion of intangible assets and \$2.0 billion in goodwill. Pursuant to current accounting rules, we are required to assess goodwill for impairment at least annually or more frequently if impairment indicators are present. Impairment indicators include, but are not limited to, significant under-performance relative to historical or projected future operating results, a significant decline in share price or market capitalization and negative industry or economic trends. If such events were to occur, the carrying amount of our goodwill may no longer be recoverable and we may be required to record an impairment charge.

In the current year, due to a sustained decline in stock price and market capitalization, reduction in the fair value of debt, as well as current market and macroeconomic conditions, we concluded that an impairment indicator for goodwill was present in both the Merchant Solutions and Digital Wallets segments as of March 31, 2022 and June 30, 2022. We performed a goodwill impairment test as of these dates using a discounted cash flow methodology. Based on the analyses performed, we recognized an impairment expense for the year ended December 31, 2022 of \$1.2 billion and \$0.7 billion in the Merchant Solutions and Digital Wallet segments, respectively.

Should the impact of macro-economic conditions, or other factors, be more severe or of longer duration than assumed in the forecasted cash flows, the goodwill may be at risk of impairment. Further, continued sustained declines in our stock price would require us to perform goodwill impairment tests in subsequent periods. If there is a continued and sustained decline in our stock price this could result in a material goodwill impairment in future periods.

Due to the goodwill impairments described above, we also concluded that an impairment indicator for certain intangible assets was present within both segments. As a result, an impairment analysis was performed and based on an undiscounted cash flow model, it was determined that the assets were recoverable and no impairment charge was recorded. Failure to achieve the expected cash flows may result in a material impairment of intangible assets in future periods. Other intangible asset impairments during 2022 were not significant.

#### **Risks Related to the U.S. Federal Income Tax Treatment**

*The IRS may not agree that Paysafe (i) should be treated as a non-U.S. corporation for U.S. federal income tax purposes and (ii) should not be treated as a “surrogate foreign corporation” for U.S. federal income tax purposes.*

Under current U.S. federal income tax law, a corporation generally will be considered to be a U.S. corporation for U.S. federal income tax purposes only if it is created or organized in the United States or under the law of the United States or of any State. Accordingly, under generally applicable U.S. federal income tax rules, Paysafe, which is not created or organized in the United States or under the law of the United States or of any State but is instead a Bermuda incorporated entity, would generally be classified as a non-U.S. corporation. Section 7874 of the Code and the Treasury regulations promulgated thereunder, however, contain specific rules that may cause a non-U.S. corporation to be treated as a U.S. corporation for U.S. federal income tax purposes. If it were determined that Paysafe is treated as a U.S. corporation for U.S. federal income tax purposes under Section 7874 of the Code and the Treasury regulations promulgated thereunder, Paysafe would be liable for U.S. federal income tax on its income just like any other U.S. corporation and certain distributions made by Paysafe to non-U.S. holders of Paysafe’s securities would be subject to U.S. withholding tax. In addition, even if Paysafe is not treated as a U.S. corporation, it may be subject to unfavorable treatment as a “surrogate foreign corporation” in the event that ownership attributable to former FTAC Stockholders exceeds a threshold amount. If it were determined that Paysafe is treated as a surrogate foreign corporation for U.S. federal income tax purposes under Section 7874 of the Code and the Treasury regulations promulgated thereunder, dividends by Paysafe would not qualify for “qualified dividend income” treatment, and U.S. affiliates of Paysafe could be subject to increased taxation under the inversion gain rules and Section 59A of the Code.

Paysafe believes it should not be treated as a U.S. corporation for U.S. federal income tax purposes under Section 7874 of the Code or otherwise be subject to unfavorable treatment as a surrogate foreign corporation under Section 7874 of the Code. However, no IRS ruling has been requested or will be obtained in connection with the Transaction. Furthermore, the interpretation of Treasury regulations relating to the required ownership of Paysafe is subject to uncertainty and there is limited guidance regarding their application. Accordingly, there can be no assurance that the IRS will not take a contrary position to those described above or that a court will not agree with a contrary position of the IRS in the event of litigation.

*If a United States person is treated as owning at least 10% of Company Common Shares, such person may be subject to adverse U.S. federal income tax consequences.*

If a United States person is treated as owning (directly, indirectly or constructively) at least 10% of the value or voting power of Company Common Shares, such person may be treated as a “United States shareholder” with respect to each of Paysafe and its direct and indirect subsidiaries (the “Paysafe Group”) that is a “controlled foreign corporation.” The Paysafe Group includes U.S. subsidiaries, under recently enacted rules, certain of Paysafe’s non-U.S. subsidiaries could be treated as controlled foreign corporations regardless of whether Paysafe is treated as a controlled foreign corporation (although there is currently a pending legislative proposal to significantly limit the application of these rules).

A United States shareholder of a controlled foreign corporation may be required to report annually and include in its U.S. taxable income its pro rata share of the controlled foreign corporation’s “Subpart F income” and (in computing its “global intangible low-taxed income”) “tested income” and a pro rata share of the amount of U.S. property (including certain stock in U.S. corporations and certain tangible assets located in the United States) held by the controlled foreign corporation regardless of whether such controlled foreign corporation makes any distributions. Failure to comply with these reporting obligations (or related tax payment obligations) may subject such United States shareholder to significant monetary penalties and may prevent the statute of limitations with respect to such United States shareholder’s U.S. federal income tax return for the year for which reporting (or payment of tax) was due from starting. An individual that is a United States shareholder with respect to a controlled foreign corporation generally would not be allowed certain tax deductions or foreign tax credits that would be allowed to a United States shareholder that is a U.S. corporation. Paysafe cannot provide any assurances that it will assist holders in determining whether any of its non-U.S. subsidiaries are treated as a controlled foreign corporation or whether any holder is treated as a United States shareholder with respect to any of such controlled foreign corporations or furnish to

any holder information that may be necessary to comply with reporting and tax paying obligations. United States persons should consult with their tax advisor regarding the potential application of these rules.

***If Paysafe were a passive foreign investment company for U.S. federal income tax purposes for any taxable year, U.S. holders of Company Common Shares could be subject to adverse U.S. federal income tax consequences.***

If Paysafe is or becomes a “passive foreign investment company,” or a PFIC, within the meaning of Section 1297 of the Code for any taxable year during which a U.S. holder (as defined in “Taxation—Material U.S. Federal Income Tax Considerations”) holds Company Common Shares, certain adverse U.S. federal income tax consequences may apply to such U.S. holder. Paysafe does not believe that it was a PFIC for its prior taxable year and does not expect to be a PFIC for U.S. federal income tax purposes for the current taxable year or in the foreseeable future. However, PFIC status depends on the composition of a company’s income and assets and the fair market value of its assets from time to time, as well as on the application of complex statutory and regulatory rules that are subject to potentially varying or changing interpretations. Accordingly, there can be no assurance that Paysafe will not be treated as a PFIC for any taxable year.

If Paysafe were treated as a PFIC, a U.S. holder of Company Common Shares may be subject to adverse U.S. federal income tax consequences, such as taxation at the highest marginal ordinary income tax rates on capital gains and on certain actual or deemed distributions, interest charges on certain taxes treated as deferred, and additional reporting requirements. See “Taxation—Material U.S. Federal Income Tax Considerations—Passive Foreign Investment Company Rules.” U.S. holders of Company Common Shares should consult with their tax advisor regarding the potential application of these rules.

#### **Risks Related to Paysafe’s Common Shares and Corporate Structure**

***Paysafe will rely on its operating subsidiaries to provide it with funds necessary to meet Paysafe’s financial obligations and Paysafe’s ability to pay dividends may be constrained.***

Paysafe operates through a holding structure. Paysafe is a holding company with no material, direct business operations. Paysafe’s only assets are its direct and indirect equity interests in its operating subsidiaries. As a result, Paysafe is dependent on loans, dividends and other payments from these subsidiaries to generate the funds necessary to meet its financial obligations, including the payment of dividends. The ability of Paysafe’s subsidiaries to make such distributions and other payments depends on their earnings and may be subject to contractual or statutory limitations, such as limitations imposed by Paysafe’s financing facilities to which Paysafe’s subsidiaries are borrowers or guarantors or the legal requirement of having distributable profits or distributable reserves. For additional information, see “Item 8.A. Consolidated Statements and Other Financial Information” of this Report. As an equity investor in Paysafe’s subsidiaries, Paysafe’s right to receive assets upon a subsidiary’s liquidation or reorganization will be structurally subordinated to the claims of such subsidiary’s creditors. To the extent that Paysafe is recognized as a creditor of a subsidiary, its claims may still be subordinated to any security interest in or other lien on such subsidiary’s assets and to any of its debt or other obligations that are senior to Paysafe’s claims.

The actual payment of future dividends on the Company Common Shares and the amounts thereof depend on a number of factors, including, inter alia, the amount of distributable profits and reserves, including capital contribution reserves (which can be reduced by losses in a current year or carried forward from previous years), Paysafe’s capital expenditure and investment plans, revenue, profits, financial condition, Paysafe’s level of profitability, leverage ratio (as such term is defined under our credit agreements), applicable restrictions on the payment of dividends under applicable laws, compliance with credit covenants, general economic and market conditions, future prospects and such other factors as the Paysafe board of directors may deem relevant from time to time. There can be no assurance that the above mentioned factors will facilitate or allow adherence to Paysafe’s dividend policy. Paysafe’s ability to pay dividends may be impaired if any of the risks described in this section “Risk Factors” were to occur. As a result, Paysafe’s ability to pay dividends in the future may be limited and Paysafe’s dividend policy may change. Paysafe’s board of directors will revisit Paysafe’s dividend policy from time to time.

***Our Principal Shareholders control 47.5 % of our Company and their interests may conflict with ours or yours in the future.***

Our Principal Shareholders beneficially own approximately 47.5% of our Company Common Shares. Moreover, under the Company Bye-laws and the Shareholders Agreement with our Principal Shareholders, for so long as our Principal Shareholders retain significant ownership of us, we will agree to nominate to our board individuals designated by such shareholders. Even when our Principal Shareholders cease to own common shares representing a majority of the total voting power of our issued and outstanding shares carrying the right to vote at general meetings at the relevant time, for so long as each such shareholder continues to own a significant percentage of our Company Common Shares, such shareholder will still be able to significantly influence the composition of our board of directors and the approval of actions requiring shareholder approval through their voting power. Accordingly, for such period of time, our

Principal Shareholders will have significant influence with respect to our management, business plans and policies, including the appointment and removal of our officers. In particular, for so long as our Principal Shareholders continue to own a significant percentage of our Company Common Shares, such shareholder will be able to cause or prevent a change of control of our company or a change in the composition of our board of directors and could preclude any unsolicited acquisition of our company. The concentration of ownership could deprive you of an opportunity to receive a premium for your Company Common Shares as part of a sale of our company and ultimately might affect the market price of our Company Common Shares.

***If we are unable to maintain effective internal controls over financial reporting, we may not be able to produce timely and accurate financial statements or comply with applicable laws and regulations, which could have a material adverse effect on our business.***

As previously disclosed in our Annual Report on Form 20-F for the year ended December 31, 2020, management identified the following material weaknesses, affecting components of the Internal Control—Integrated Framework (2013) by the Committee of Sponsoring Organization of the Treadway Commission (“COSO 2013”), which have caused management to conclude that as of December 31, 2020, we did not maintain an effective control framework because of:

- inadequate controls over key accounting judgment areas including capitalized development costs and purchase price allocations; and
- insufficient review of the completeness and accuracy of data inputs associated with certain key controls impacting multiple financial statement account balances and disclosures.

During the fiscal year ended December 31, 2021, our management, with oversight from the Audit Committee of the Company Board (the “Audit Committee”), developed and implemented remediation plans in response to the identified material weaknesses described above. Based on the results of procedures performed, management concluded that the previously identified material weaknesses were remediated as of December 31, 2021.

Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. Further, weaknesses in our disclosure controls and internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls or any difficulties encountered in their implementation or improvement may prevent us from detecting errors on a timely basis, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Effective internal control is necessary for us to produce reliable financial reports and is important to prevent fraud.

Beginning with the current fiscal year ended December 31, 2022, our independent registered public accounting firm was required to attest to the effectiveness of our internal control over financial reporting on an annual basis. Matters impacting our internal controls may cause us to be unable to report our financial information on a timely basis and thereby subject us to adverse regulatory consequences, including sanctions by the SEC or violations of applicable stock exchange listing rules, which may result in a breach of the covenants under our financing arrangements. There also could be a negative reaction in the financial markets due to a loss of investor confidence in us and the reliability of our financial statements. Confidence in the reliability of our financial statements also could suffer if we or our independent registered public accounting firm were to report a material weakness in our internal controls over financial reporting. This could materially adversely affect us and lead to a decline in the price of our Company Common Shares.

***As a foreign private issuer we are exempt from a number of rules under the U.S. securities laws and are permitted to file less information with the SEC than a U.S. company. This may limit the information available to holders of the common shares.***

We were founded in the UK in 1996 and were previously listed on the London Stock Exchange. Additionally, U.S. residents do not comprise a majority of our executive officers or directors, and most of our assets are located, and our business is principally administered, outside of the United States. As a result, we report under the Exchange Act as a non-U.S. company with foreign private issuer status. Under Rule 405 of the Securities Act, the determination of foreign private issuer status is made annually on the last business day of an issuer’s most recently completed second fiscal quarter and, accordingly, the next determination will be made with respect to us on June 30, 2023.

As a foreign private issuer, we are not subject to all of the disclosure requirements applicable to public companies organized within the United States. For example, we are exempt from certain rules under the Exchange Act that regulate disclosure obligations and procedural requirements related to the solicitation of proxies, consents or authorizations applicable to a security registered under the Exchange Act, including the U.S. proxy rules under Section 14 of the Exchange Act. In addition, our officers and directors are exempt from the reporting and “short-swing” profit recovery provisions of Section 16 of the Exchange Act and related rules with respect to their purchases and sales of our securities. Moreover, while we expect to submit quarterly interim consolidated financial data to the SEC under cover of the SEC’s Form 6-K, we will not be required to file periodic reports and financial statements with the SEC as frequently or as promptly as U.S. public companies and will not be required to file quarterly reports on Form 10-Q or current reports on Form 8-K under the Exchange

Act. Accordingly, there may be less publicly available information concerning our business than there would be if we were a U.S. public company. Additionally, certain accommodations in the NYSE corporate governance standards allow foreign private issuers, such as us, to follow “home country” corporate governance practices in lieu of the otherwise applicable corporate governance standards. The Company Bye-laws do not require shareholder approval for the issuance of authorized but unissued shares, including (i) in connection with the acquisition of shares, stock or assets of another company; (ii) when it would result in a change of control; (iii) when a share option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which shares may be acquired by officers, directors, employees, or consultants; or (iv) in connection with certain private placements. To this extent, our practice varies from the requirements of the corporate governance standards of NYSE, which generally requires an issuer to obtain shareholder approval for the issuance of securities in connection with such events. While we do not currently intend to rely on any other home country accommodations, for so long as we qualify as a foreign private issuer, we may take advantage of them.

***There can be no assurance we will be able to comply with the continued listing standards of the NYSE for our securities.***

If we fail to continue to meet the listing requirements of the NYSE, the Company Common Shares and Company Warrants may be delisted, and Paysafe and its shareholders could face significant material adverse consequences, including:

- limited availability of market quotations for its securities;
- limited amount of news and analyst coverage for Paysafe; and
- decreased ability to issue additional securities or obtain additional financing in the future.

***We may lose our foreign private issuer status which would then require us to comply with the Exchange Act’s domestic reporting regime and cause us to incur significant legal, accounting and other expenses.***

For so long as we qualify as a foreign private issuer, we are not required to comply with all of the periodic disclosure and current reporting requirements of the Exchange Act applicable to U.S. domestic issuers. We may no longer be a foreign private issuer as early as June 30, 2023 (the last business day of the second fiscal quarter of 2023), which would require us to comply with all of the periodic disclosure and current reporting requirements of the Exchange Act applicable to U.S. domestic issuers as of January 1, 2024. In order to maintain our current status as a foreign private issuer, either (a) a majority of our securities must be either directly or indirectly owned of record by non-residents of the United States or (b)(i) a majority of our executive officers or directors cannot be U.S. citizens or residents, (ii) more than 50% of our assets must be located outside the United States and (iii) our business must be administered principally outside the United States. If we lose our status as a foreign private issuer, we would be required to comply with the Exchange Act reporting and other requirements applicable to U.S. domestic issuers, which are more detailed and extensive than the requirements for foreign private issuers. We may also be required to make changes in our corporate governance practices in accordance with various SEC and NYSE rules. For example, the annual report on Form 10-K requires domestic issuers to disclose executive compensation information on an individual basis with specific disclosure regarding the domestic compensation philosophy, objectives, annual total compensation (base salary, bonus, and equity compensation) and potential payments in connection with change in control, retirement, death or disability, while the annual report on Form 20-F permits foreign private issuers to disclose compensation information on an aggregate basis. We would also have to comply with U.S. federal proxy requirements, and our officers, directors, and principal shareholders will become subject to the short-swing profit disclosure and recovery provisions of Section 16 of the Exchange Act.

The regulatory and compliance costs to us under U.S. securities laws if we are required to comply with the reporting requirements applicable to a U.S. domestic issuer may be significantly higher than the cost we would incur as a foreign private issuer. As a result, we expect that a loss of foreign private issuer status would increase our legal and financial compliance costs and is likely to make some activities highly time consuming and costly. We also expect that if we were required to comply with the rules and regulations applicable to U.S. domestic issuers, it could make it more difficult and expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage.

***The Company Bye-laws and Shareholders Agreement, as well as Bermuda law, contain provisions that could discourage acquisition bids or merger proposals, which may adversely affect the market price of our Company Common Shares.***

The Company Bye-laws and Shareholders Agreement, as well as Bermuda law, contain provisions that may discourage, delay or prevent a merger, amalgamation, acquisition, or other change in control that shareholders may consider favorable, including transactions in which you might otherwise receive a premium for your Company Common Shares. These provisions may also prevent or frustrate attempts by our shareholders to replace or remove our management. Our corporate governance documents include provisions:

- authorizing blank check preference shares, which could be issued without shareholder approval and with voting, liquidation, dividend and other rights superior to our Company Common Shares;



- providing that any action required or permitted to be taken by our shareholders must be taken at a duly called annual or special meeting of such shareholders and may not be taken by any consent in writing by such shareholders; provided that for so long as our Principal Shareholders beneficially own, collectively, at least 30% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time, any action (except the removal of a director or an auditor) which may be done by resolution of the shareholders in a general meeting may also be done by resolution in writing, signed by the shareholders who at the date of the notice of the resolution in writing represent not less than the minimum number of votes as would be required to pass the resolution if the resolution was voted on at a quorate meeting of the shareholders;
- requiring, to the fullest extent permitted by applicable law, advance notice of shareholder proposals for business to be conducted at meetings of our shareholders and for shareholder-proposed nominations of candidates for election to our board of directors;
- establishing a classified board of directors, so that not all members of our board are elected at one time, with the election of directors requiring only a plurality of votes cast;
- providing that certain actions required or permitted to be taken by our shareholders, including amendments to the Company Bye-laws and certain specified corporate transactions, may be effected only with the approval of our board of directors, in addition to any other vote required by the Company Bye-laws and/or applicable law;
- prohibiting us from engaging in a business combination with a person who acquires at least 10% of our Company Common Shares for a period of three years from the date such person acquired such common shares unless approved by the Company Board and authorized at an annual or special meeting of shareholders by the affirmative vote of at least two-thirds of our issued and outstanding voting shares that are not owned by such person, subject to certain exceptions. This provision shall not apply to our Principal Shareholders and any of their respective direct or indirect transferees;
- limiting the filling of vacancies or newly created seats on the Company Board between general meetings to the decision of our board of directors then in office at any time when our Principal Shareholders beneficially own, collectively, less than 30% of the issued
- and outstanding shares carrying the right to vote at general meetings at the relevant time, subject to the rights granted to one or more series of preference shares then outstanding or the rights granted under the Shareholders Agreement; and
- providing that directors may be removed by shareholders only by resolution with or without cause upon the affirmative vote of a majority of our issued and outstanding voting shares; provided, however, at any time when our Principal Shareholders beneficially own, collectively, less than 30% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time, directors may only be removed for cause (as determined by the Company Board), and only upon the affirmative vote of holders of at least 66 2/3% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time, voting together as a single class.

The existence of the foregoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for common shares. They could also deter potential acquirers of our Company, thereby reducing the likelihood that you could receive a premium for your Company Common Shares in an acquisition.

***You may have difficulty enforcing judgments of U.S. courts against us in Bermuda courts.***

We are organized as an exempted company pursuant to the laws of Bermuda. In addition, a number of our directors and executive officers are not residents of the United States, and a substantial portion of our assets and their assets are or may be located in jurisdictions outside the United States. As a result, it may be difficult for you to effect service of process within the United States upon those persons or us or to recover against them or us on judgments of U.S. courts, including judgments predicated upon civil liability provisions of the U.S. federal securities laws.

We have been advised that there is no treaty in force between the United States and Bermuda providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters. As a result, whether a U.S. judgment would be enforceable in Bermuda against us or our directors and officers depends on whether the U.S. court that entered the judgment is recognized by the Bermuda court as having jurisdiction over us or our directors and officers, as determined by reference to Bermuda conflict of law rules. A judgment debt from a U.S. court that is final and for a sum certain based on U.S. federal securities laws will not be automatically enforceable in Bermuda unless the judgment debtor had submitted to the jurisdiction of the U.S. court, and the issue of submission and jurisdiction is a matter of Bermuda (not U.S.) law.

In addition, and irrespective of jurisdictional issues, the Bermuda courts will not enforce a U.S. federal securities law that is either penal or contrary to Bermuda public policy. We have been advised that an action brought pursuant to a public or penal law, the purpose of which is the enforcement of a sanction, power or right at the instance of the state in its sovereign capacity, will not be entertained by a

Bermuda court. Certain remedies available under the laws of U.S. jurisdictions, including certain remedies under U.S. federal securities laws, would not be available under Bermuda law or enforceable in a Bermuda court, as they would be contrary to Bermuda public policy. Further, no claim may be brought in Bermuda against us or our directors and officers in the first instance for violation of U.S. federal securities laws because these laws have no extraterritorial jurisdiction under Bermuda law and do not have force of law in Bermuda. A Bermuda court may, however, impose civil liability on us or our directors and officers if the facts alleged in a complaint constitute or give rise to a cause of action under Bermuda law.

***Our shareholders may have more difficulty protecting their interests than shareholders of a U.S. corporation.***

The rights of shareholders under Bermuda law are not as extensive as the rights of shareholders under legislation or judicial precedent in many U.S. jurisdictions. Class actions and derivative actions are generally not available to shareholders under Bermuda law. However, Bermuda courts ordinarily would be expected to follow English case law precedent, which would permit a shareholder to commence an action in the name of a company to remedy a wrong done to a company where the act complained of is alleged to be beyond the corporate power of a company, is illegal or would result in the violation of that company's memorandum of association or bye-laws. Furthermore, consideration would be given by a Bermuda court to allow derivative action rights where acts that are alleged to constitute a fraud against the minority shareholders or where an act requires the approval of a greater percentage of our shareholders than actually approved it. The winning party in such an action generally would be able to recover a portion of attorneys' fees incurred in connection with such action.

***We may issue additional Company Common Shares or other securities without shareholder approval, which would dilute existing ownership interests and may depress the market price of Company Common Shares.***

Paysafe may issue additional Company Common Shares or other equity securities of equal or senior rank in the future in connection with, among other things, repayment of outstanding indebtedness or Paysafe's equity incentive plan, without shareholder approval, in a number of circumstances.

Paysafe's issuance of additional Company Common Shares or other equity securities of equal or senior rank would have the following effects:

- Existing Paysafe Shareholders' proportionate ownership interest in Paysafe may decrease;
- the amount of cash available per share, including for payment of dividends in the future, may decrease;
- the relative voting strength of each previously outstanding Company Common Shares may be diminished; and
- the market price of Company Common Shares may decline.

***Future sales of the Company Common Shares issued to the Existing Paysafe Shareholders and other significant shareholders may cause the market price of Company Common Shares to drop significantly, even if Paysafe's business is doing well.***

Under the Merger Agreement, the Existing Paysafe Shareholders received, among other things, a significant amount of Company Common Shares.

Subject to the Shareholders Agreement, the Existing Paysafe Shareholders and certain other shareholders party to the Shareholders Agreement may sell Company's securities pursuant to Rule 144 under the Securities Act, if available.

Upon satisfaction of the requirements of Rule 144 under the Securities Act, the Existing Paysafe Shareholders and certain other significant shareholders may sell large amounts of the Company's securities in the open market or in privately negotiated transactions, which could have the effect of increasing the volatility in Paysafe's share price or putting significant downward pressure on the price of the Company Common Shares.

***Because we have no current plans to pay cash dividends on our Company Common Shares, you may not receive any return on your investment unless you sell your Company Common Shares for a price greater than that which you paid for it.***

We have no current plans to pay cash dividends. The declaration, amount and payment of any future dividends on our Company Common Shares will be at the sole discretion of our board of directors. Our board of directors may take into account general and economic conditions, our financial condition and results of operations, our available cash and current and anticipated cash needs, capital requirements, contractual, legal, tax and regulatory restrictions and implications on the payment of dividends by us to our shareholders or by our subsidiaries to us and such other factors as our board of directors may deem relevant. In addition, our ability to pay dividends is limited by our credit facilities and may be limited by covenants of other indebtedness we or our subsidiaries incur in the future. As a

result, you may not receive any return on an investment in our Company Common Shares unless you sell your Company Common Shares for a price greater than that which you paid for it.

*The market price of our Company Common Shares may be volatile, which could cause the value of your investment to decline.*

The market price of our Company Common Shares may be highly volatile and could be subject to wide fluctuations. Securities markets worldwide experience significant price and volume fluctuations. This market volatility, as well as general economic, market or political conditions, could reduce the market price of our Company Common Shares regardless of our operating performance. In addition, our operating results could be below the expectations of public market analysts and investors due to a number of potential factors, including variations in our quarterly operating results or dividends, if any, to shareholders, additions or departures of key management personnel, failure to meet analysts' earnings estimates, publication of research reports about our industry, litigation and government investigations, changes or proposed changes in laws or regulations or differing interpretations or enforcement thereof affecting our business, adverse market reaction to any indebtedness we may incur or securities we may issue in the future, changes in market valuations of similar companies or speculation in the press or investment community, announcements by our competitors of significant contracts, acquisitions, dispositions, strategic partnerships, joint ventures or capital commitments, adverse publicity about the industries we participate in or individual scandals, and in response the market price of our Company Common Shares could decrease significantly. You may be unable to resell your Company Common Shares at or above the initial public offering price.

In the past few years, stock markets have experienced extreme price and volume fluctuations. In the past, following periods of volatility in the overall market and the market price of a company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

## **ITEM 4. INFORMATION ON THE COMPANY**

### **A. History and Development of the Company**

Paysafe Limited was incorporated under the laws of Bermuda on November 23, 2020 for the purpose of effectuating the Transaction described herein and became the parent company of the combined business following the consummation of the Transaction, which was consummated on March 30, 2021. See "Explanatory Note" for further details regarding the Transaction. See "Item 5. Operating and Financial Review and Prospects" for a discussion of Paysafe's principal capital expenditures and divestitures for each of the three years in the period ended December 31, 2022. There are no material capital expenditures or divestitures currently in progress as of the date of this Report.

The mailing address of Paysafe Limited's registered office is c/o M Q Services Ltd., Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. The principal executive office is located at 25 Canada Square, 27th Floor, London, United Kingdom E14 5LQ and its telephone number is +44 (0) 207 608 8460. The Company's principal website address is [www.paysafe.com](http://www.paysafe.com). We do not incorporate the information contained on, or accessible through, the Company's websites into this Report, and you should not consider it as a part of this Report. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The SEC's website is [www.sec.gov](http://www.sec.gov).

### **B. Business Overview**

#### **Overview**

Paysafe is one of the leaders in digital commerce with over \$130 billion in volume processed in 2022 and \$122 billion processed in 2021, generating approximately \$1.5 billion in revenue in both 2022 and 2021. Our integrated payments platform offers the full spectrum of payment solutions ranging from credit and debit card processing to digital wallet, eCash and real-time banking solutions. The combination of this breadth of solutions, our sophisticated risk management and our deep regulatory expertise and deep industry knowledge across target verticals enables us to empower 19 million active users in more than 120 countries and over 250,000 SMBs to conduct secure and friction-less commerce across online, mobile, in-app and in-store channels. We primarily provide solutions in the large entertainment verticals such as iGaming (which encompasses a broad selection of online betting related to sports, e-sports, fantasy sports, poker and other casino games), travel, streaming/video gaming, retail/hospitality and digital assets. We organize our business in two segments, Digital Wallets represented approximately \$686 million or 45%, of our revenue and Merchant Solutions represented approximately \$817 million, or 55%, of our revenue (inclusive of intersegment revenue) for the year ended December 31, 2022. We believe that an increasing percentage of digital commerce around the world is becoming too complex for traditional retail payment services, many of which still use legacy business processes and technologies that were developed 10 or more years ago to address an

earlier generation of eCommerce. These legacy platforms lack the specialized functionality, sophisticated risk management and robust regulatory compliance infrastructures that we believe are required to address this large area of the market.

To address this opportunity, we have developed a suite of innovative, proprietary digital commerce solutions for Business to Business (“B2B”) and Business to Consumer (“B2C”) relationships. We believe these solutions help (1) solve the complexities of facilitating digital commerce, (2) remove significant friction and pain points from the customer experience, (3) enable our business and consumer clients to transact in a faster, safer and more convenient manner and (4) help our business customers grow their operations by bringing active users to their platforms. Our solutions extend well beyond the basic card-based payments functionality of traditional payment vendors by providing the advanced capabilities of digital wallets, alternative payment methods (“APMs”) and digital currency transactions. These include:

- *A Global Stored-Value Digital Wallet Solution*—that enables users to upload, store, withdraw, pay and send funds from a branded, or embedded, virtual account that can transact in over 14 languages and over 40 currencies and is integrated with close to 260 alternative payment methods, or APMs, from around the world;
- *An eCash Network*—that enables users to transform cash at over a million locations across over 50 countries into a proprietary digital currency accessed by a mobile app, a virtual account or a user code and used for online gaming, video games, mobile commerce, or in-app purchases; and
- *An Independent Merchant Acquiring Solution*—that enables SMBs to conduct eCommerce, software-integrated commerce and in-store commerce more effectively by utilizing our single API, proprietary gateway, data tokenization, risk management and fraud tools and over 150 integrated software vendor (“ISV”) integrations to process credit card, debit card and APM services seamlessly.

We combine key elements of our business to create distinct competitive advantages in the market, as illustrated below. These include:

1. Our global digital commerce solutions;
2. Our 20+ years of global expertise and entrepreneurial culture in solving and simplifying the complexities of digital commerce beyond traditional payments; and
3. Our global platform of capabilities, which includes:
  - *Unity*, a proprietary, cloud-based technology platform, with modular, next-generation capabilities delivered through a micro-services architecture. This provides us with a highly scalable, integrated, single point of access to our products and services and facilitates the customization and delivery of market-specific payment solutions that meet the requirements and purchasing preferences of local markets;
  - Highly sophisticated global risk management and compliance operations. In order to successfully serve our markets, we run highly sophisticated risk management and regulatory compliance operations with global capabilities. Our risk management processes include stringent operating policies, multi-layered customer onboarding procedures and best-in-class transaction monitoring capabilities. We have over 350 professionals in our compliance and risk teams and have significant expertise in managing risk and regulatory requirements across the entire payments landscape. We believe these skills are a key strategic advantage for us and will serve as part of the foundation for our continued growth and expansion; and
  - Our proven ability to source, consolidate and unlock value from emerging digital commerce solutions and ecosystems. We have successfully acquired and integrated 19 companies (including our acquisition in SafetyPay in 2022) since our foundation and have an advantaged platform for consolidation. As such we have: (a) global capabilities that enable us to source acquisition targets from a large and fragmented pool of attractive candidates that we can evaluate and learn from; (b) a “plug and play” platform infrastructure, such as *Unity*, that we can leverage to generate revenue and cost synergies from an acquired company; (c) a significant amount of deal experience and expertise across a seasoned team that enables us to source, identify, negotiate and execute deals effectively; and (d) strong integration capabilities powered by our strong entrepreneurial culture and global HR infrastructure that enable us to welcome, integrate and empower new company founders, management teams and employee bases around the world.

We believe this unique combination has enabled us to become a global leader in the global entertainment verticals, but which also have specific service requirements that are difficult for traditional vendors to provide. For example:

- **Paysafe is a global leader in iGaming payment services**, which encompasses a broad selection of online sports betting, esports, fantasy sports, poker and other casino games. This vertical is highly regulated and requires significant technology development and compliance infrastructure to facilitate cross-border commerce and the penetration of new markets, such as the United States and Latin America, which are opening due to favorable secular and regulatory trends and the increasing

use of smartphones as a primary interface. Paysafe serves around 1,500 operators across our global iGaming market. Paysafe re-launched its iGaming services in Canada in 2010 and the United States in 2013.

•**Paysafe is a global leader in payments services to eSports, console games and multi-player online games.** We support payments across the leading gaming merchants, including Sony PlayStation, Xbox/Microsoft, Google Play, Stadia, Samsung, Huawei, Steam, Wargaming.net, Riot Games, Roblox, Twitch, EPIC Games, Ubisoft, Mojang, Innogames, Facebook, Activision Blizzard and others. *paysafecard* enables these gaming merchants to accept eCash payments, resulting in higher conversion rates and new customer acquisition, which comes from a customer segment untapped by the conventional payment options. Based on the success of our eCash services, we have also begun to cross-sell our Digital wallet and merchant solutions to some of these gaming merchants, increasing the continuity of our relationships.

•**Paysafe is a leader in eCommerce payment services.** We support numerous eCommerce platforms and online marketplaces to enable them to accept various payments inside of their ecosystems. Our Skrill digital wallet supports a wide range of eCommerce platforms, including Shopify, Wix, Magento, WooCommerce, and PrestaShop. We have also integrated our services with large online marketplaces that sell their own goods and services as well as the inventories of third-party merchants. We enable *paysafecard* users to pay for content and services across various Google platforms in over 16 countries, such as the Google Play Store, YouTube and Stadia, and have enabled the push-provisioning of our Skrill prepaid and NET+ cards into Google Pay.

•**Paysafe has a strong global banking infrastructure**—Paysafe leverages a network of nearly 100 commercial banks across 30 countries. We work with top tier institutions such as J.P. Morgan Chase, Bank of America, and BBVA, BMO and PNC as well as employ a network of regional and domestic banks across the Americas, the EMEA region, and Asia to augment our reach and serve our markets locally. In addition, nine large corporate and investment banks provide us with liquidity for our foreign exchange activities, with sizeable trading capacity

Consumers in these and other verticals are also attracted to the differentiated functionality of our digital wallet and digital currency solutions that enable them to load funds onto a stored value account that can be used easily and flexibly online, through a mobile device or an integrated app. Many of our consumer clients come from the younger demographic of millennial and generation Z users, who either do not have a bank account, credit or debit card or who often prefer not to use their bank account, credit or debit cards online, are attracted to the additional security of our solutions and want to control their spending more effectively.

We go to market, serve and support our clients through an omni-channel model that leverages our global reach and our B2B and B2C relationships. This enables us to manage and serve our clients through our network of offices around the world with strong knowledge of local and regional markets, customs and regulatory environments. We sell our solutions through a combination of direct and indirect sales strategies. We have a direct sales force of approximately 90 associates who build and develop relationships with larger merchants and help them configure or develop digital and point-of-sale commerce solutions from our suite of technology services. Our enterprise sales organization is structured to match our target verticals and is enabled through sales operations, deal operations, pre-sales and demand generation. We sell our solutions online to smaller merchants using targeted marketing campaigns designed to address specific use cases across verticals, geographies and user profiles. We also leverage a network of partners, such as ISVs and independent sales organizations (“ISOs”), who integrate our solutions into their own services or resell our solutions by utilizing their own sales initiatives.

We typically generate revenue across our solutions through transaction fees that are calculated as a percentage of the transaction dollar volume, a fixed per transaction fee or a combination of both. We generate these fees when funds are loaded onto wallets or cards, when funds are used to make transactions or when we process a transaction on behalf of our merchants or partners. In certain cross-border transactions, we may also generate revenue from foreign exchange fees.

For the year ended December 31, 2022, we generated \$130 billion of total payment volume and \$1.5 billion in revenue. During the same period, we had a net loss of \$1.9 billion and generated \$410.0 million of Adjusted EBITDA. For the year ended December 31, 2021, we generated \$122 billion of total payment volume and \$1.5 billion in revenue. During the same period, we had a net loss of \$0.1 billion and generated \$443.9 million of Adjusted EBITDA See “Item 5. Operating and Financial Review and Prospects” of this Report for additional information relating to non-GAAP measures presented in this Report and for a reconciliation of such non-GAAP measures to the most directly comparable measures calculated and presented in accordance with GAAP.

### **Our Journey & Evolution as a Pioneer in Digital Commerce**

Since our foundation in 1996, we have pioneered and continue to innovate around the development of digital payment solutions that help reduce complexity and expand payment alternatives for merchants and consumers. We have evolved since then by strengthening our domain expertise, adding new capabilities and extending our market reach to build on our early mover advantages in digital commerce and establish ourselves as a scaled market leader across all of our business segments. Some of the key milestones in our evolution include:

•**Our Foundations and Pioneering of Digital Commerce**—NETBANX began in 1996 with Arsenal Football Club as the first to sign up for the system. Separately, the NETeller Group was established in 1999 in Canada to commercialize an e-Wallet concept it had been developing to fund internet-based transactions without the security risk of processing each transaction at each separate merchant site.

•**Our Expansion and Consolidation**—Adoption of the NETELLER system grew rapidly in the early 2000s as merchants and consumers benefited from the ease of use of our solutions and the growing number of funding sources and alternative payment methods that could be used to fund our digital accounts.

- In 2004, NETELLER plc conducted an initial public offering and listed its shares on the AIM Stock Exchange in 2004 and in 2005 it acquired NETBANX.

- In 2008 the company changed its name to Neovia Financial plc (“Neovia”) as part of a wider rebranding strategy to differentiate the company from its various solutions, NETELLER, NETBANX and NET+, a prepaid card product.

- In 2011, Neovia acquired substantially all of the assets of 7012985 Canada Inc. and changed its name to Optimal Payments plc (“Optimal Payments”).

- In 2014 and 2015, Optimal Payments acquired five additional companies including the Skrill Group, which included the Skrill and paysafecard businesses. In November 2015, Optimal Payments changed its name to Paysafe Group plc, incorporated in the Isle of Man.

- In December 2015, Paysafe Group plc listed its shares on the main market of the London Stock Exchange.

•**Our Privatization and Significant Investment in the Business**—In December 2017, a consortium led by CVC Capital Partners and Blackstone agreed to acquire Paysafe for approximately a \$4 billion U.S. dollar equity value and the Company’s shares were delisted from the London Stock Exchange in December 2017.

•**Our Transaction** —Paysafe Limited was incorporated under the laws of Bermuda on November 23, 2020 for the purpose of effectuating the Transaction described herein and became the parent company of the combined business following the consummation of the Transaction, which was consummated on March 30, 2021.

## Our Large & Fast-Growing Market Opportunity

We believe that an increasing percentage of digital commerce around the world is becoming too complex for traditional payment and eCommerce services providers using legacy business models, payment solutions and risk management platforms to support an aging generation of retail eCommerce solutions. These legacy platforms and vendors lack the specialized functionality, sophisticated risk management and robust regulatory compliance infrastructures required to address a large and fast-growing area of the market, which includes digital wallets, APMs and digital currency transactions. Consumers in these markets are attracted to the differentiated functionality of these next-generation solutions, which enable them to load funds or cash onto a virtual stored-value account that can be used easily and flexibly online, through a mobile device, or inside an integrated app. Many of these users come from the demographic of millennials and generation Z users, who either do not have a bank account or often prefer to use alternative payment methods as they are less comfortable sharing their financial details online. Instead they are attracted to the additional functionality and security features of these solutions, which enable them to engage in digital commerce and control their spending more effectively.

## Key Market Trends

We are positioned in key market segments:

•**Growth in Digital Wallets**—According to IBM, Covid-19 has accelerated the transition from physical stores to digital by roughly 5 years, increasing consumer and merchant appetite for digital payment methods at a much faster rate. We believe this migration will continue and stay as market demographics shift to a digital shopping experience as emerging trends including seamless commerce, blockchain in e-commerce and mobile commerce expands. Consumer adoption of digital and mobile wallets is expected to continue growing at a rapid pace with wallets capturing market share from traditional payment methods.

•**Growth in Merchant Acquiring**—SMB businesses are increasingly using more technologies at the point of sale (“POS”) to help them run their operations more effectively and satisfy consumer demand. As a result, technology companies, such as smart device vendors and ISVs, are adding more commerce-enabling features, such as payments and loyalty applications, into their core offerings. These firms are increasingly partnering with digital commerce solutions providers to integrate these features as seamlessly as possible.

- Emerging Markets** — We believe our acquisition of both Safetypay, a platform that enables eCommerce transactions in over 11 Latin American countries, and PagoEfectivo, the leading alternative payment platform and Brand in Peru, positions us to compete well in this growing market.
- Embedded Finance**— For Paysafe, embedded finance includes our white-label wallet. As an example, this would include the integration of our payment services into a consumer brand's ecosystem, allowing the consumer brand to maintain control and its identity, whilst benefiting from our financial offerings. We believe Paysafe's broad range of offerings, from payment processing of cards, APM's and pay in pay out functionality of wallets positions us to grow in this market.
- Adoption of Prepaid and eCash in the Digital World**—Prepaid and eCash payments acceptance allows merchants to access a large market of cash-based security-conscious and unbanked consumers, especially within emerging economies. We believe that we are a leading player in the eCash market, connecting merchants with millions of cash-based consumers across a number of high-growth verticals and geographies.
- Digital Leisure**—We believe consumer demand for digital goods & services are increasing, this includes leisure-related goods and services bought online, e-commerce, streamed video & audio, digital sports betting, NFTs, video game software and services and digital advertising. Given Paysafe's market positioning, we believe we are uniquely positioned to benefit from this trend.
- Digital Assets** — The digital asset space has proven to be a focus within the financial sector, growing at a rapid pace globally, despite volatility. The continued investment by financial institutions, continuing momentum within the NFT space and decentralized finance applications challenging traditional financial products, have accelerated the mainstream adoption of cryptocurrency and other digital assets. We believe the complexity of regulatory and compliance requirements and extremely high volume demands of clients in this vertical presents a good fit for Paysafe capabilities and expertise.
- Shift to Universal Commerce Engagement**—Consumer shopping habits are increasingly involving engagement across channels and the combination of payments and loyalty applications, such as digital offers and smart incentives. For example, a consumer can view items online and purchase in-store with a digital reward or buying online using targeted digital incentives. We believe these trends are incentivizing businesses to manage their customer-facing operations, including their retail presence, inventory, incentive programs, payment acceptance alternatives, returns and customer service, across all available channels—in store, online and mobile. As a result, businesses are gravitating to payments partners with the capability to provide integrated solutions that can manage across all channels with highly sophisticated engagement, payment, reporting and data management and analytics capabilities.
- The Payments Industry is Continuing to Rapidly Consolidate**—Strategic and financial buyers of payments businesses are expected to continue to pursue deals that enhance scale, technology capabilities and vertical and geographic expansion. We believe M&A will continue to be an attractive growth opportunity for the sector and believe we are well-positioned to be a leading M&A platform in the space. We have a broad and successful track-record of M&A execution and integration and believe there are a number of targets across our business segments.
- Real-Time Payments**— With our recent acquisitions of SafetyPay and PagoEfectivo we believe we are now well positioned to exploit the high growth real-time banking market in Latin America and Europe.

### ***Key Market Challenges***

As a result of these market trends, we believe businesses and consumers are facing challenges, which pose risks and opportunities for vendors in our market. These include:

- Need for Omni-Channel Engagement**—Consumers are increasingly demanding the ability to engage with businesses and merchants seamlessly across in-store, online and mobile channels, using traditional and alternative payment methods, across geographic borders, with feature-rich yet simple customer experiences. As a result, we believe businesses are looking for commerce enabling partners that can assist them with these capabilities and the advanced data and insights needed to manage their businesses more effectively, through a unified offering and a single integration.
- Need for Global Capabilities**—Businesses are increasingly demanding service providers and partners capable of serving their needs across a broad range of geographic markets and do not want to manage the complexity associated with having multiple providers and partners in separate markets. As a result, the need for global platforms with global service, support and risk management capabilities are becoming more important.
- Need for Strong Regulatory & Risk Management**—As commerce across borders, channels and technologies continues to evolve, we believe risk management and regulatory compliance requirements will become more complex. This will present both challenges and opportunities for participants and require digital commerce enabling partners to build and provide a strong regulatory compliance expertise that will not expose customers to unnecessary risks.

•**Need for Strong Security & Data Protection**—The shift to digital commerce and increasing use of data has resulted in larger amounts of sensitive information being transmitted and stored electronically by a growing number of consumers, businesses and government entities. High-profile data breaches have increased awareness, concern and regulation covering data use, storage and protection. As a result, we believe consumers and businesses are increasingly looking to engage with vendors that have strong global risk management expertise and infrastructures.

## **Our Competitive Strengths**

Over the course of our evolution, we have developed highly differentiated attributes, assets and capabilities that we combine to create powerful competitive advantages. We believe these advantages have enabled us to establish our leadership position in the market and positioned us favorably to continue to innovate, grow and expand the markets we serve. These strengths include:

### ***Global Digital Solutions & Reach***

We offer our business and consumer clients a comprehensive suite of advanced, differentiated, commerce-enabling solutions and specialized payment services to help them transact in a faster, safer and more convenient manner around the world. The advantages of our global digital solutions include:

•**Differentiated Value Propositions**—Our solutions are highly differentiated in the market and help solve the complexities of digital commerce, remove significant friction and pain points from the customer experience and enable our business and consumer clients to transact in a faster, safer and more convenient manner. We also leverage our technology, risk management expertise and compliance infrastructure to empower buyers and sellers to connect and transact in more complex verticals where traditional services do not work well, such as iGaming and gaming. We also offer more traditional services, such as eCommerce payments and SMB merchant acquiring and differentiate these by integrating new technologies to make them more powerful and convenient, such as our global gateway and smart devices to create a differentiated value proposition.

•**Superior Client Experiences**—Our solutions create superior experiences for our business and consumers across their customer journey, including in-store, online, mobile, as well as hybrid models such as pay online/pick up in-store and cash-funded online purchases. This begins in our product development phase as we prioritize solving the friction and pain points of more traditional commerce, listen to our clients' specific needs and develop tangible solutions that are designed to solve real-world problems. We also provide dedicated support to our channel partners in our Merchant Solutions segment.

•**Global Reach with Local Capabilities**—Our *Paysafe Network* enables us to reach our clients and distribute our solutions in over 120 countries around the world and across multiple digital and physical channels. This enables us to utilize a combination of global commerce expertise with a strong knowledge of local and regional markets, customs, and regulatory environments to facilitate cross-border commerce. For example, our digital wallets accommodate a wide range of funding options and allow funds to be securely sent and received instantly, empowering online gaming companies and their consumers to conduct commerce together more efficiently. Our eCash Solutions also enable online purchases for cash-pay consumers and can be purchased at over one million distribution points in over 50 countries.

### ***Unique Global Culture & Expertise***

Since we were a pioneer in the early days of eCommerce, we developed strong company characteristics over the last 20 years that we believe provide us with material advantages, including:

•**Entrepreneurial Culture and Client-Centric Focus**—We have proactively developed an entrepreneurial culture within Paysafe to foster a highly energetic, innovative and collaborative mindset for our employees by promoting four core employee value statements:

•**Pioneering**—We are curious and collaborate to find innovative ways to improve our business;

•**Focused**—We are results driven, achieving our goals by delivering relevant solutions that meet our clients' needs;

•**Open**—We are open and transparent in the way we work together, building trustworthy relationships with our colleagues, customers and shareholders; and

•**Courageous**—We encourage empowered people to be brave when challenging the status quo, and decisive when proposing and implementing the resulting change.



We believe we have curated an attractive workplace environment for employees. We encourage a strong client-centric mentality across all our functions to prioritize solving the friction and pain points that our clients experience when trying to conduct commerce online rather than trying to sell undifferentiated payment services. Together, our entrepreneurial culture and client centric focus form the core spirit of our company, which has enabled us to: (1) pioneer and establish a leadership position empowering digital commerce throughout the world; (2) develop our Paysafe Network and its various advantages and capabilities; and (3) differentiate our solutions, service quality and client relationships from the more traditional legacy payment vendors that sell increasingly commoditized products and services.

**•Deep Expertise in Solving and Simplifying the Complexity of Digital Commerce**—We have been able to learn from our experiences to develop a deep expertise in digital commerce and in highly regulated markets with complex compliance requirements. This has enabled us to develop new ways for consumers, merchants and integrated partners to conduct commerce and open new markets for commercial transactions across channels, verticals and geographies.

### ***Smart Global Platform for Growth***

We have built our integrated technology and risk management platforms into highly differentiated assets at the center of Paysafe, which provides us with powerful, distinct competitive advantages in the marketplace.

### **Our Growth Strategies**

We will leverage the leadership, scale and competitive advantages of our leading digital solutions, global expertise and global platforms to grow our business around the world. Building upon our core foundations, we will continue to grow our business by:

- optimizing our current operations to help our business and consumer clients transact more effectively;
- innovating to create new solutions that reduce friction and unlock new areas for digital commerce to flourish;
- and expanding into new markets and verticals.

In general, we have organized our growth and expansion initiatives around five key strategies. These are:

**•Sales Acceleration and Focus-** We intend to continue to generate new revenue and earnings growth from a series of initiatives that we have begun implementing to drive new volumes, revenue yield and operating efficiencies from our large, existing client base and operations. These include:

- Enterprise-Wide Sales**—we continue to focus on an enterprise-wide sales strategy and combined sales team. We are modernizing our sales organization with a holistic proposition focusing on our top tier clients.
- Cross-Sell-** we continue to focus on cross-selling the full breath of our product portfolio and we intend to focus on growth within our existing client base.

**•Product Innovation-** We intend to focus on money movement within the entertainment sector and focus on strategic partnerships for speed to market and scale opportunities. We will continue to innovate and develop new functionalities and solutions to capture greater volume and revenue opportunities. Our global gateway will enable us to integrate, market and deploy these additional capabilities quickly and more effectively into our installed base of clients and promote them to new clients. In addition, we are capitalizing on the increasing demand for integrated payments functionality and are working to make Paysafe a partner of choice for software developers by enabling them to integrate seamlessly with our *Unity* platform. We are also connecting our digital wallet gateway with our acquiring services to provide a unified and more powerful gateway solution that supports our enterprise sales and enables our business clients to secure, authorize and execute different types of transactions through a convenient and seamless service experience.

**•Customer Experience-**We intend to focus on simplification and automation of our client experience.

- Platform Optimization**—we are implementing a series of initiatives to create new synergies and greater operating efficiencies within our platform. For example:

o**Data & Insights**—we are leveraging the significant amount of data across our global ecosystem to (i) provide our business clients with valuable insights into consumer preferences and spending trends that help them grow their sales

volumes and (ii) optimize our underwriting and onboarding capabilities to increase our acceptance rates and reduce the number of declined transactions due to false positive triggers; and

o *Artificial Intelligence & Automation*—we are leveraging the implementation of A.I. and process automation technologies to optimize the speed and operating efficiencies of our technology and risk management platforms as well as our internal processes and back office systems to generate better marginal cost efficiencies.

• **International Expansion**- We believe the combination of our brand, breadth of solutions, our ability to serve both businesses and consumers, our ease of integration and our strong risk management and regulatory compliance provide us with powerful competitive advantages to capture additional market share.

• **iGaming**. We intend to continue to leverage our privileged position as the global leader of digital commerce solutions in the iGaming market to benefit from the very fast growth and large addressable market opportunity in North America iGaming.

• **Increase Share in Existing Markets**—We intend to increase our market share in key, high-growth verticals where we currently operate, such as iGaming, gaming, crypto, Remittances, Digital Trading, Property Management and Rentals, Wellness and Membership, Utilities and Subscriptions. To achieve these share gains, we will (a) continue marketing the advantages of our solutions across channels, (b) continue innovating to add vertical-specific functionalities that help drive new client adoption and (c) continue pursuing new distribution and partnerships. We will also pursue the same strategy in our Merchant Solutions segment, with a focus on growing our eCommerce volumes, growing our base of SMB merchants and ISV partners and growing our base of clients in specialized verticals, such as Petroleum stations, where we have differentiated sales and service capabilities.

• **Enter New Vertical and Geographic Markets**—We intend to enter high growth adjacent verticals, such as expanding digital assets across wallet trading, crypto payments and processing and enter new geographic markets where we can successfully leverage our competitive advantages to provide superior digital commerce solutions and gain share. For example, our recent acquisitions of SafetyPay and PagoEfectivo solidifies our position in the Latin American market. Similarly, while we are the second largest global stored-value digital wallet solution in the world, we are still in the early stages of penetrating a large and fast-growing ecosystem of eCommerce platforms. We will continue to integrate our digital commerce solutions with new eCommerce platforms to enable our approximately 19 million digital wallet active users to purchase goods and services online.

• **Pursue Strategic Acquisitions** - We will pursue acquisitions to gain access to strategically important technology, products and distribution, as well as to enter new markets or supplement our position in markets we currently serve. We have a demonstrated track record of growth through acquisitions as shown by our successful acquisition and integration of 19 companies since our foundation (including our acquisition of SafetyPay in 2022 which we continue to integrate). Since the digital commerce market is still relatively fragmented and regional in nature, we believe there are a large number of potential acquisition opportunities to evaluate and consolidate around the world. However, they represent an opportunity for us to add specific features, distribution and active users which can be incorporated into our global digital wallet solutions. Similar to this, we believe there are attractive consolidation opportunities to add distribution, capabilities and client bases in eCash, Online, APMs and iGaming value-added services around the world.

#### **Our Segments & Solutions**

We offer a broad selection of business-to-business and business-to-consumer digital commerce solutions to online businesses, small and medium sized merchants and consumers through our proprietary *Paysafe Network*. While we manage our business holistically and in an integrated manner, we provide our solutions across two business segments to optimize our management of each.

In the fourth quarter of 2022, we revised our reportable segments.

• Merchant Solutions (renamed from US Acquiring) will continue to include the Company's US Acquiring business and will also include the integrated & eCommerce (IES) business. IES was previously included within Digital Commerce.

• Digital Wallets (renamed from Digital Commerce) will continue to include the Company's digital wallets and eCash businesses.

Accordingly, our segment financial information is presented on this revised basis and financial information for the years ended December 31, 2021 and 2020 has been revised to reflect this change. Please refer to Note 21, *Operating segments*, within Item 18, Financial Statements for further details.

## Overview by Segment

### Merchant Solutions

The Merchant Solutions segment is the combination of our historical US Acquiring segment and Integrated & eCommerce Solutions business and services markets primarily in North America, Canada and Europe. For the year ended 31 December 2022, this segment generated \$110 billion of total payment volume, \$817 million in revenue (inclusive of intersegment revenue) and \$200 million in Adjusted EBITDA. We provide a comprehensive suite of payment acceptance and processing services enabling SMBs to accept payments in over 40 currencies through in store, online, or mobile channels. We sell our solutions directly and indirectly through partners, to a diverse set of merchants and integrated service providers. Our Merchant Services are targeted towards online small and medium sized merchants and software-integrated merchants with integrated payment capabilities for over 150 integrated software vendors ("ISV"). We provide a comprehensive, full-featured Online toolkit that allows merchants and ISVs in the United States, Canada and Europe to build and scale their online commerce presence. Our solution, which can easily integrate with merchant websites addresses the full range of online commerce requirements. We also offer merchants and ISVs a global turn-key payments gateway solution, providing critical connectivity between merchant online sites and payment acceptance and transaction processing providers. Through our global feature-rich gateway, we manage and provide all connections to card processing networks, acquiring banks and transaction processors. We continually expand our gateway functionality with emerging payment types to ensure that our merchant customers can serve the largest target market possible. Our solutions offer a highly flexible, feature-rich package, including: gateway connectivity, shopping carts, tokenization and encryption, fraud and risk management and support a broad selection of payment alternative. Additionally, we offer seamless integrations into leading eCommerce platforms and multiple APMs to offer targeted, localized payment methods in key markets. In the United States, we service over 200k SMB merchants and over 150 ISV partners.. In Europe, where we have our own acquiring license, our target merchants are larger e-commerce clients.

### Digital Wallets

The Digital Wallets segment is the combination of our legacy Digital Wallet and eCash solutions and services markets primarily in Europe, UK, North America and Latin America. For the year ended 31 December 2022, this segment generated \$21 billion of total payment volume, \$686 million in revenue and \$289 million in Adjusted EBITDA. Through our single API, we can offer legacy Digital Wallet and eCash solutions to customers through a single integration. Additionally, we believe we can leverage our position as a global leader of digital commerce solutions in the iGaming market to benefit from the very fast growth and large addressable market opportunity in North America iGaming.

Our proprietary digital wallet solutions are marketed under the NETELLER and Skrill brand names, as well as a proprietary pay-by-bank solution marketed in Europe under the Rapid Transfer brand. Skrill and NETELLER remove friction from complex commerce situations and dramatically simplify the complexity of traditional payment mechanisms, such as card-based payments, enabling our active users to send, spend, store and accept funds online more easily. Our Rapid Transfer solution is a pay-by-bank alternative for eCommerce applications that provides a safe, low-cost payment alternative for consumers and merchants.

Our digital wallets are an internet-based account used by merchants and consumers that enables account holders to send and receive funds instantly, conveniently and securely using a wide selection of funding options. Our digital wallets allow consumers to pay for goods and services online without exposing personal financial data, as well as to receive money from merchants, such as winnings from an internet-based gambling website or payments from an auction website. Our digital wallets support a wide selection of funding alternatives including close to 260 alternative payment method integrations, including cryptocurrency and is offered in over 120 countries, over 40 currencies and over 14 languages. The Money transfer feature allows Skrill wallet holder to transfer funds to over 40 countries. NETELLER has a significant presence and strong market share in emerging markets, including in Latin America and Asia. Our Skrill and NET+ Prepaid Mastercard are companion products enabling NETELLER and Skrill digital wallets active users to access and use stored funds anywhere that Mastercard products are accepted.

Our proprietary eCash solutions are marketed under the paysafecard and Paysafecash brands and also the viafintech, SafetyPay and PagoEfectivo brands following our recent acquisitions of these three companies. These solutions provide consumers with a safe and easy way to purchase goods and services online without the need for a bank account or credit card and allow merchants to expand their target market to include consumers who prefer to pay with cash. paysafecard and Paysafecash are available at over one million locations in 50 countries worldwide and can be used to make purchases at online stores and online platforms. They are available in various denominations in each respective country's local currency. Purchasers receive a secure 16-digit PIN code or bar code. The user receives the PIN or bar code transaction identifier that is displayed in a digital wallet, uploaded to a mobile phone, or is sent via e-mail to be printed out. The transaction is completed when the users makes a cash payment at a designated retail location authorized to accept the bar code or PIN identifier.

We also offer a *paysafecard* prepaid Mastercard that can be linked to a digital *paysafecard* account and used to make purchases anywhere in the world, online or offline, where Mastercard is accepted. The *paysafecard* Mastercard, which can be funded with cash through a fully verified digital *paysafecard* account, or with credits from online gaming merchants, is currently available to our customers in 18 countries.

In Latin America we offer SafetyPay, a platform that enables eCommerce transactions in 14 Latin American countries, and PagoEfectivo, the leading alternative payment platform and Brand in Peru which positions us to compete well in this growing market.

## Our Distribution & Sales

We reach 19 million active users in more than 120 countries and over 250 thousand merchants across North America, Latin America and Europe. In 2022, we generated approximately 55% of our revenue in North America, 33% in Europe, 7% in Latin America and 5% in the rest of the world, based on the region where a transaction was initiated or the merchant location. We go to market and reach our clients through a combination of online and physical channels that we sell into utilizing a range of direct and indirect sales strategies across our two business segments. These sales strategies include:

- **Direct Sales**—We market and sell our solutions directly to our clients through online marketing, our various branded solutions portals and a dedicated sales team.

- **Online Sales**—We sell our solutions online to consumers using targeted marketing campaigns and search engine optimization tools designed to address specific verticals, geographies and user profiles. Users can sign up for our services at one of our proprietary online portals such as *skrill.com*, *neteller.com* and *paysafecard.com*.

- **Relationship & Call Center Sales**—We have a direct sale force of 91 associates who build and develop relationships with larger merchants or respond to their inquiries via our dedicated sales centers that respond to calls or online inquiries. These sales personnel help businesses learn about our solutions and then will help configure a commercial solution for them from our suite of offerings.

- **Indirect Sales**—We have built a network of resellers and partners, such as online portals, ISVs, Payment Facilitators and ISOs, who integrate our solutions into their own services or resell our solutions by utilizing their own salesforces or online marketing initiatives.

- **Online Resellers**—We work with selected merchants and partners in specific verticals, such as iGaming and gaming, who promote our solutions or sell them in store.

- **Distribution Partners**—We work with distribution partners in over 50 countries across over one million distribution points-of-sale for Paysafecard and Paysafecash.

- **ISVs**—We work with over 150 ISVs who develop vertical-specific business management SaaS solutions for industries such as restaurants, spa/salon, gyms, charities, property managers, and field service companies, among others. These ISVs service downstream merchants in Canada, the US, the UK and the EU. We provide development tools and APIs to help these software companies integrate our payment solutions into their software to facilitate membership billing, subscriptions, online or in person payments while minimizing their PCI obligations. We also provide onboarding tools that allow the ISV to provide a seamless and embedded onboarding experience, risk tools that protect the ISV and their downstream merchants against fraud, and data and reporting services that allow the ISV to consume payment data within their own applications to offer a true *one-stop-shop* experience to their merchant customers. ISVs leveraging our payment technology can act as referral partners, be registered ISOs or registered payment facilitators. Our technology can support any of these models.

- **Independent Resellers**—We work with independent resellers, such as agents, ISOs, referral partners or bank partners who typically resell our solutions and services to SMB merchants in North America for commissions, revenue share agreements or referral fees.

- **Payment Facilitators (PayFacs)**—We work with sponsored payment facilitators in our portfolio and also help our ISO, ISV or platform clients to easily embed a custom payment solution into their offerings to create a “payfac-lite” or “payfac-in-a-box” solution. This enables our clients to get all of the features and benefits of being a PayFac without the risk, extensive underwriting and registration burdens, cash reserve requirements, or compliance and monitoring overhead.

## Our Customer Service & Support

We provide customer support services that have been designed to address the specific support issues of each of our two business segments. These include:

**Merchant Solutions Support** — We provide support through dedicated service centers in the North America and the UK. We support customers across a variety of channels including calls, email, chat and social media.

**Digital Wallets Support** — Our teams are trained and equipped with a broad range of tools including communication templates and a state-of-the-art knowledge base.

## Unity—Our Global Technology Platform

*Unity* is a proprietary, cloud-based technology platform that we have developed to manage and power our omni-channel solutions around the world in a highly scalable and efficient manner. Our Platform-as-a-Service (“PaaS”) technology model was designed with a modular, micro-services architecture and a range of next-generation automation and AI capabilities. These enable us to develop and deploy our app-based solutions efficiently so they can be plugged into our ecosystem and rolled out quickly across our *Paysafe Network* to keep up with new innovations and revenue opportunities. *Unity* enables us to:

- Configure**—Integrating, consolidating and curating functions and micro-services to facilitate the delivery of market-specific payment solutions that meet the requirements and purchasing preferences of local markets and partners. It also enables us to provide our clients with a convenient, single point of access through our *Unity API* to interface with these wide range of solutions and services;
- Transact**—Providing powerful processing capabilities through our global gateway to capture, authorize, clear and settle transactions on our own account-to-account payments network or to route and process transactions through third-party networks and alternative payment methods;
- Analyze**—Leveraging a large and growing data lake and powerful analytics platform featuring a range of internally developed AI capabilities that provide us with unique insights into transaction flows, purchasing habits and trends within our payments ecosystem. This enables us to address the increasing demand from merchants for analytics and insights that will empower them to better understand their customers and design more productive consumer engagement strategies;
- Defend**—Securing our client accounts and their transactions by utilizing a range of cybersecurity, fraud detection and risk management technologies and algorithms that we have developed in-house, integrated from best-of-breed third-party vendors, or customized through a combination of both approaches into our core technology stack; and
- Manage**—Hosting, automating and streamlining a range of client engagement technologies such as our mobile apps and back-office functions, such as our on-boarding to interact, manage and support our clients more effectively.

The *Unity* platform is continuously updated with an average of 105 new features delivered every month using agile development methodologies and app-based solutions deployed by over 300 developers in our technology organization. Combined, these features and attributes provide us with a range of operating advantages that we believe enable us to run our systems faster, more effectively and more efficiently, while optimizing our development resources to control our costs. This has enabled us to accelerate our migration to the cloud for nearly all of our core services, consolidating our digital wallets onto a single system and reducing our data centers to 4 physical sites and 2 cloud-based environments that are fully redundant and maintain a 99.99% uptime service level.

## Our Global Risk and Compliance Management Program

Paysafe’s global risk and compliance program includes the development, deployment and management of proprietary models to detect and prevent compliance risk, card scheme risk, fraud risk and credit risk. We leverage the vast amount of data in our ecosystem and the learnings derived from our global and local operating experts to continuously update and improve our compliance and risk management practices. We utilize real-time detection and prevention processes and create alerts, which are then reviewed by our risk and compliance teams to ensure we act quickly to stop any potential fraudulent behavior. The outcomes of our reviews are driven back into our machine learning models for continuous improvement in accuracy. Our risk and compliance teams are geographically aligned with our business footprint around the world and include both global and local expertise in compliance and regulatory requirements across the entire payments landscape. The focus areas of our global risk, regulatory and compliance operations include:

- Global Expertise & Policies**—We have leveraged our deep domain expertise and over 20 years of experience in solving the complexities of digital commerce to develop a series of stringent proprietary operating policies that enable us to operate a broad global business with deep local risk and regulatory compliance capabilities;

- Licenses & Certifications**—We have built a network of relationships with regulators, networks and financial institutions, undergone numerous certification and registration processes and successfully acquired numerous operating licenses that enable us to operate in multiple jurisdictions in a safe and compliant manner. We maintain strict controls over these licenses and leverage our expertise to add new ones as we move into new markets;
- Underwriting & Risk Management**—We have created sophisticated underwriting and real-time risk mitigation processes through a range of machine learning models and behavioral detection systems to identify potentially suspicious activity and reduce fraud. Our risk management infrastructure enables us to safely process billions of dollars in payments on a monthly basis.
- Credit Risk Management**—Proprietary credit risk management system that monitors the top credit risks across the enterprise and allows expert analysts to conduct periodic reviews and make recommendations to mitigate large credit exposures.
- Account On-Boarding & Monitoring**—We developed a series of multi-layered onboarding procedures to review new merchants and consumers. We validate and confirm information provided against government and other agency records or government issued documents to complete KYC checks at onboarding and then undertake further checks during the consumer lifecycle. We also employ models and monitoring rules to detect potential fraud and AML activity and report suspicious activity to the relevant government entities as appropriate as well as cooperating with any inquiries.
- Transaction Encryption & Management**—We have developed strong transaction security capabilities that enable us to secure and monitor transactions within our own wallet and digital currency networks and safely encrypt and decrypt transactions from third-party networks and alternative payment methods. We also provide automation technologies and transaction management tools to help identify and manage chargebacks and transaction reversals in a convenient and easy to use manner for our clients.
- Enterprise Risk and Risk Appetite**—We have integrated a robust enterprise risk framework to our strategic decision making, which ensures we have ongoing and reasonable assurance regarding the achievement of our strategic objectives. This framework consists of a multi-layered governance structure to identify, assess, respond to and manage risks in line with our global risk appetite. Our global risk appetite has qualitative and quantitative measures in place, to support our business with broad-based guidance on the amount and type of risk we are willing to accept in pursuit of our strategic objectives.
- Core Risk Tracking System**—We leverage governance, risk and compliance tools to track enterprise-wide risks, document improvement actions, identify accountable owners and track progress towards closure of key risks.
- Centralized Risk Repository**—We have centralized a repository of core risk policies, processes and control documentation via global risk governance and Enterprise Risk Management.

## Licensing and Regulation

Laws and regulations in jurisdictions around the world apply to many key aspects of our business. Any actual or perceived failure to comply with these requirements may result in, among other things, revocation of required licenses or registrations, loss of approved status, private litigation, regulatory or governmental investigations, administrative enforcement actions, sanctions (including public fines), civil and criminal liability, public censures and constraints on our ability to continue to operate, as well as potentially adverse effects on our brand and position with respect to competitors. It is also possible that current or future laws or regulations could be interpreted or applied in a manner that would prohibit, alter, or impair our existing or planned products and services, or that could require costly, time-consuming, or otherwise burdensome compliance measures from us. This discussion is not exhaustive, and there are numerous other regulatory agencies that have or may assert jurisdiction over our activities. The laws and regulations applicable to the payments industry in any given jurisdiction are subject to interpretation and change.

## Payments Regulation

Various laws and regulations govern the global payments industry. In Europe, certain of our subsidiaries are authorized by the FCA under the Electronic Money Regulations 2011 to perform the regulated activity of issuing e-money and the provision of payment services (which has the meaning specified in the Second Electronic Money Directive) as well as to provide account information services and payment initiation services to support our *Rapid Transfer* service. Additionally, we are authorized by the CBI under the European Communities (Electronic Money) Regulations 2011 for two of our entities in Ireland to act as e-money issuers and to provide payment services (including account information and payment initiation services to support our *Rapid Transfer* service) and have completed the necessary passporting notifications to operate in other EEA jurisdictions. E-money means electronically (including magnetically) stored monetary value, as represented by a claim on the electronic money issuer, which (a) is issued on receipt of funds for the purpose of making payment transactions; (b) is accepted by a person other than the electronic money issuer; and (c) is not excluded by regulation.

An e-money issuer is someone who issues and redeems electronic money and provides payment services in accordance with the Second Electronic Money Directive.

Both the UK and Ireland prescribe that, with respect to our payment services entities, no person may hold or acquire, alone or together with others, a direct or indirect stake of 10% or more of our shares, 10% of the voting rights attached to our shares, or exercise, directly or indirectly, significant influence over any of the regulated subsidiaries (or increase an existing holding of 10% or more of our shares or the voting rights attached to our shares crossing a control threshold (20%, 30% or 50%)) without first obtaining the prior approval of the FCA and the CBI.

Furthermore, certain of our subsidiaries are considered Foreign Money Service Businesses (“FMSBs”) under Canadian Proceeds of Crime (Money Laundering) and Terrorist Financing Act and are therefore required to hold FMSB licenses with FINTRAC, the Canadian Regulator. These licensed subsidiaries are subject to record keeping and reporting requirements for all activity involving money transferring and foreign exchange dealing. These same subsidiaries are also licensed as money service businesses with Revenu Quebec and are subject to record keeping requirements for all money transfers and foreign exchange transactions involving Quebec residents.

In the United States, Skrill USA Inc. (“Skrill USA”), is registered with FinCEN as a money services business and regarded as a money transmission business. Money transmitting businesses are subject to numerous regulations in the United States at the federal and state levels, and we have obtained or applied for money transmitter licenses (or applicable similar licenses) in all U.S. states and territories in which we are required to do so, with licenses pending. These licenses and registrations subject us, among other things, to record-keeping requirements, reporting requirements, bonding requirements, limitations on the investment of customer funds, and inspection by state and federal regulatory agencies. We are also subject to inspections, examinations, supervision, and regulation by each state in which we are licensed. Furthermore, to the extent that our activities cause us to be deemed to be engaged in other business involving digital currency activities that are regulated in any state in which we operate, we may be required to seek a license or otherwise register with a state regulator and comply with state regulations. If we are required to register in these states and comply with their individual requirements, we can expect to incur significant compliance costs, including increased legal expenses, accounting expenses and internal costs. Without a required money transmitter license, we could not engage in money transmitter activities with such state).

Since the enactment of the Dodd-Frank Act, there have been substantial reforms to the supervision and operation of the financial services industry, including numerous new regulations that have imposed compliance costs on us and our financial institution partners and clients. Among other things, the Dodd-Frank Act established the CFPB, which is empowered to conduct rule-making and supervision related to, and enforcement of, federal consumer financial protection laws. Certain money transmitters engaged in international money transfers such as Skrill USA are required to provide additional consumer information and disclosures, adopt error resolution standards and adjust refund procedures for international transactions originating in the United States, and certain money transmitters that are deemed by regulation to be “larger participants” in the international money transfer market, such as Skrill USA, are subject to direct supervision by the CFPB. In addition, the CFPB may adopt other regulations governing consumer financial services, including regulations defining unfair, deceptive, or abusive acts or practices, and new model disclosures. Skrill USA could be subject to fines or other penalties if it is found to have violated the Dodd-Frank Act’s prohibition against unfair, deceptive or abusive acts or practices or other consumer financial protection laws enforced by the CFPB. The CFPB’s authority to change regulations adopted in the past by other regulators could increase our compliance costs and litigation exposure. Skrill USA may also be liable for failure of its agents to comply with the Dodd-Frank Act. The legislation and implementation of regulations associated with the Dodd-Frank Act have increased Skrill USA’s costs of compliance and required changes in the way it and its agents conduct business. In addition, Skrill USA is subject to examination by the CFPB from time to time.

The Dodd-Frank Act also empowers state attorneys general and other state officials to enforce federal consumer protection laws under specified conditions. We, including Skrill USA, have periodically been involved in reviews, investigations, proceedings (both formal and informal), and information-gathering requests, by various government offices and agencies, including various state agencies and state attorneys general (as well as the CFPB and the U.S. Department of Justice). These examinations, inquiries and proceedings could result in, among other things, substantial fines, penalties or changes in business practices that may require us to incur substantial costs.

Although we have the licenses and authorizations referred to above, our Digital Wallets segment issues e-money to customers in over 120 countries and territories, a majority in which we are not licensed as an e-money issuer. We take the view that, in general, we are not conducting regulated activities in these other jurisdictions on the basis that our activities of issuing e-money are not conducted in each jurisdiction in which our relevant customers reside, but rather e-money is issued in jurisdictions in which we are licensed. We acknowledge that local regulators in these jurisdictions may take a different view and, as transaction volumes increase and/or the matter is brought to our attention by local regulators, we will take advice in respect of local requirements on a case-by-case basis. Failure to comply with local regulations in these jurisdictions could also lead to examinations, inquiries and proceedings that could result in, among other things, fines, penalties, prohibitions on operating in jurisdictions or changes in business practices that may require us to incur substantial costs.

Due to ongoing developments in e-money regulation, we obtain advice from outside legal counsel as required in order to assess any applicable risk and, where necessary, will limit the extent of our operations in a particular jurisdiction or will consider whether to obtain a license in such jurisdiction. We believe that the likelihood of any enforcement action by a regulator is low due to factors such as the operation of the services through the internet on a cross-border basis from a country in which the relevant entity holds a license, the limited extent of our activities in the respective jurisdictions, the lack of enforcement action against similar payment processors, the lack of a physical presence in the respective jurisdictions, and the effective management of our relationships with our customers. However, the adoption of new money transmitter statutes in other jurisdictions, changes in regulators' interpretation of existing state and federal money transmitter or money services business statutes or regulations, or disagreement by a regulatory authority with our interpretation of such statutes or regulations, could require additional registrations or licenses, limit certain of our business activities until they are appropriately licensed and expose us to financial penalties. See "Item 3.D. Risk Factors—Risks Related to Our Business and Industry—Regulatory, Legal and Tax Risks—We are subject to financial services regulatory risks."

#### ***Crypto related services***

In connection with the Skrill and NETELLER Cryptocurrency Services, we have been registered as a crypto asset business with the FCA in the UK and with the CBI in Ireland and is supervised for anti-money laundering purposes by each Regulator. Both the EU and UK are proposing changes to law that could result in additional licensing requirements and regulatory compliance obligations in respect of the provision of crypto related services which will require additional effort to analyze and comply with.

#### ***Payment Network Rules and Standards and Relationships with Partner Banks***

Payment networks, such as Visa, Mastercard and American Express, establish their own rules and standards that allocate liabilities and responsibilities among the payment networks and their participants. These rules and standards, including the Payment Card Industry Data Security Standards, govern a variety of areas, including how consumers and clients may use their cards, the security features of cards, security standards for processing, data security and allocation of liability for certain acts or omissions, including liability in the event of a data breach. With respect to the payment networks of which we are a participant, those payment networks rules apply to us directly. In addition, where we partner with a member bank to access payment networks, as described below, those payment networks' rules may apply to us indirectly, as the rules may impact the nature of our relevant bank partnership. The payment networks may change these rules and standards from time to time as they may determine in their sole discretion and with or without advance notice to their participants. These changes may be made for any number of reasons, including as a result of changes in the regulatory environment, to maintain or attract new participants, or to serve the strategic initiatives of the networks, and may impose additional costs and expenses on or be disadvantageous to certain participants. Participants are subject to audit by the payment networks to ensure compliance with applicable rules and standards. The networks may fine, penalize or suspend the registration of participants for certain acts or omissions or the failure of the participants to comply with applicable rules and standards.

In order for our Merchant Solutions business to process and settle transactions for our merchants, we have entered into sponsorship agreements with banks that are members of the payment systems. Because we are not a "member bank" as defined by the major payment networks' rules and standards, we are not permitted to access those networks directly; instead, we are required to access the payment networks through our sponsor banks. Our bank partners sponsor our adherence to the rules and standards of the payment networks and enable us to route transactions under the sponsor banks' control and BINs across the payment networks to authorize and clear transactions. Payment network rules restrict us from performing funds settlement directly and require that merchant settlement funds be in the possession of the member bank until the merchant is funded. These restrictions place the settlement assets and liabilities under the control of the member bank.

Our sponsorship agreements with our bank partners also give our sponsor banks substantial discretion in approving certain aspects of our business practices, including our solicitation, application and qualification procedures for clients and the terms of our agreements with clients, and provide them with the right to audit our compliance with the payment network rules and guidelines. We are also subject to network operating rules and guidelines promulgated by the National Automated Clearing House Association ("NACHA") relating to payment transactions we process using the Automated Clearing House Network. Like the payment networks, NACHA may update its operating rules and guidelines at any time, which could require us to take more costly compliance measures or to develop more complex monitoring systems. Similarly, our ACH sponsor banks have the right to audit our compliance with NACHA's rules and guidelines, and are given wide discretion to approve certain aspects of our business practices and terms of our agreements with ACH clients.

We have obtained Principal Membership designation from Mastercard Europe and Visa Europe to offer merchant acquiring services to merchants in the European Union. With the Principal Membership of Visa and Mastercard, Paysafe is able to act as the acquiring bank. This means that we are solely responsible for the adherence to the rules and standards of these payment networks, and it enables us to route transactions under our own payment network licenses to authorize and clear transactions. Under our payment network licenses, we are allowed to perform funds settlement directly to merchants. In addition, our European payment processing business has similar relationships with sponsor banks in order to access other European payment networks.



## ***Indirect and Direct Regulatory Requirements***

Our sponsor banks and certain of our merchants are financial institutions that are directly subject to various regulations and compliance obligations issued by their regulators and in the countries in which they operate. While these regulatory requirements and compliance obligations do not apply directly to us, many of these requirements materially affect the services we provide to our clients and us overall. For example, many regulators require financial institutions to manage their third-party service providers, including us. In turn, we also have certain direct obligations to oversee our critical suppliers. Among other things, these requirements include performing appropriate due diligence when selecting third-party service providers; evaluating the risk management, information security, and information management systems of third-party service providers; imposing contractual protections in agreements with third-party service providers (such as performance measures, audit and remediation rights, indemnification, compliance requirements, confidentiality and information security obligations, insurance requirements and limits on liability); and conducting ongoing monitoring, diligence and audit of the performance of third-party service providers. Accommodating these requirements applicable to our clients imposes additional costs and risks in connection with our relationships with financial institutions. We expect to expend significant resources on an ongoing basis in an effort to assist our clients in meeting their legal requirements. Similarly, we need to work very closely with our third-party core processors who sit between us and the payments network in the payment cycle.

## ***Unfair, Deceptive or Abusive Acts or Practices (“UDAAP”) and Other Consumer Protection Standards***

We and many of our clients are subject to laws and regulations prohibiting unfair or deceptive acts or practices in jurisdictions around the world. In the United States, this includes Section 5 of the Federal Trade Commission Act (“FTCA”) and various state laws in the United States similar in scope and subject matter thereto. In addition, laws prohibiting these activities and other laws, rules and or regulations, including the Telemarketing Sales Rule, which gives effect to the Telemarketing and Consumer Fraud and Abuse Prevention Act, and the Telephone Consumer Protection Act, may directly impact the activities of certain of our clients, and in some cases may subject us, as the client’s payment processor or provider of certain services, to investigations, fees, fines and disgorgement of funds if we are deemed to have aided and abetted or otherwise provided the means and instrumentalities to facilitate the illegal or improper activities of a client through our services. In the UK, the FCA implements, maintains and enforces a range of rules covering (among other things) management and control, market conduct, communications, financial prudence, the fair treatment of customers and the protection of vulnerable customers. These rules are contained in various sources including the FCA handbook of Rules and Guidance and the Payment Services Regulations 2017 and apply to the regulated activities we carry out. In July 2023, the FCA’s new Consumer Duty rules will come into effect which will set a higher standard of protection for consumers and microenterprise merchants that goes beyond, and delivers benefits not currently delivered by, the FCA’s current rules and principles. The Consumer Duty principle will require firms to deliver good outcomes for customers, by acting in good faith towards them, avoiding causing them foreseeable harm and supporting them to pursue their financial objectives. It identifies key outcomes in product and services design, price and value, communications, and consumer support. Breach of these rules may result in fines, public censures, customer remediation and redress and ultimately in the revocation of our regulatory license. In addition, the Consumer Rights Act 2015 sets out a framework of statutory consumer protection measures, and protects consumers in almost all purchases they make, through enforcing that products and services are of satisfactory quality, fit for purpose and are as described before the purchase. In addition, and of particular relevance to our business, the Consumer Rights Act 2015 sets out a framework for the assessment of unfair terms in consumer contracts, including a list of terms which will always be considered to be unfair and those terms which may be considered unfair. These provisions apply to our terms of business, as well as to “consumer notices” which includes items such as marketing material and pre-contractual discussions with customers. Consumers have the right to challenge unfair contract terms, such as disproportionate fees and charges, terms which create a significant imbalance between a customer’s rights and ours, as terms which may exclude any statutory duties we owe. Additionally, the FCA enforces and oversees compliance with the Consumer Rights Act 2015 in relation to regulated firms. Breach of the Consumer Rights Act 2015 may result in contracts or certain terms being unenforceable, damages liability and/or regulatory action.

In Ireland, the CBI also implements, maintains and enforces a range of rules covering (among other things) market conduct, communications with customers, the safeguarding of users’ funds and the fair treatment of consumers and other vulnerable customers. These rules are contained in various sources including the Consumer Protection Code and the European Union (Payment Services) Regulations 2018 and apply to the regulated activities we carry out from Ireland across the EEA. Breach of these rules may result in fines, public censures, customer remediation and redress and ultimately in the revocation of our regulatory licenses in Ireland.

Various regulatory enforcement agencies in jurisdictions around the world, including the Federal Trade Commission and the states attorneys general in the United States, and the FCA in the UK, have authority to take action against payment processors who violate such laws, rules and regulations. To the extent we are processing payments or providing services for a client suspected of violating such laws, rules and regulations, we may face enforcement actions and, as a result, incur losses and liabilities that may adversely affect our business. In the absence of a Federal privacy law, the Federal Trade Commission in particular has prosecuted privacy misdemeanors under Section 5 of FTCA, which are also open to prosecution by the CFPB.

The CFPB has attempted to extend certain provisions of the Dodd-Frank Act that prevent the employment of unfair, deceptive or abusive practices to payment processors. Though there is still litigation and uncertainty involving the meaning of “abusiveness” under the

Dodd-Frank Act and whether payment processing companies are subject to these provisions (and the extent of their application), these provisions may apply or be applicable to us in the future. UDAAPs could involve omissions or misrepresentations of important information to consumers or practices that take advantage of vulnerable consumers, such as elderly or low-income consumers. The CFPB has initiated enforcement actions against a variety of bank and non-bank market participants with respect to a number of consumer financial products and services that has resulted in those participants expending significant time, money and resources to adjust to the initiatives being pursued by the CFPB. Such enforcement actions may serve as precedent for how the CFPB interprets and enforces consumer protection laws, including UDAAP, which may result in the imposition of higher standards of compliance with such laws and, as a result, limit, restrict or adversely affect our business of our business. The CFPB has indicated that it is considering whether future rulemaking may clarify the meaning of “abusiveness” under the Dodd-Frank Act UDAAP rule, though the scope and content of any such future rulemaking (and the extent to which any such future rulemaking may affect our business) remains uncertain.

#### ***Anti-Money Laundering and Financial Crimes***

We are subject to various anti-money laundering and counter-terrorist financing laws and regulations that prohibit, among other things, our involvement in transferring the proceeds of criminal activities. Facilitating financial transactions over the internet creates a risk of fraud. See “Item 3.D. Risk Factors—Risks Related to Our Business and Industry—Regulatory, Legal and Tax Risks—We must comply with money laundering regulations in Bermuda, the UK, Ireland, Switzerland, the United States, Canada and elsewhere, and any failure to do so could result in severe financial and legal penalties.” Applicable money laundering regulations require firms to put preventative measures in place and to perform KYC procedures, including conducting customer identification and verification and undertaking ongoing monitoring. In addition, regulations require companies to keep records of identity and to train their staff on the requirements of the relevant money laundering regulations. We are also subject to rules and regulations imposed by, amongst others, HM Treasury and OFAC, regarding watch lists published by such bodies restricting the transfer of funds to certain specifically designated countries. If we are not in compliance with U.S. or other anti-money laundering laws, we may be subject to criminal and civil penalties and other remedial measures, which could have an adverse effect on our business, results of operations, financial condition and cash flows. Any investigation of any potential violations of anti-money laundering laws by U.S. or international authorities could harm our reputation and could have a material adverse effect on our business, prospects, results of operations, financial condition and cash flows.

Our customers are resident in over 120 countries and territories. However, we believe that we do not conduct regulated activities in all of these jurisdictions. Rather, we conduct regulated activity in only a limited number of jurisdictions, and our wider customer base accesses our services online. We are subject to anti-money laundering regulation in Bermuda, the UK, Ireland, Switzerland, the United States and in any other jurisdiction, including other member states of the EEA, where we are established and performing activities that would require that we apply anti-money laundering regulation. Our merchants are subject to due diligence in accordance with our policies and procedures before acceptance and, subject to the below, we intend for all customers to be subjected to progressive, risk-based KYC procedures with levels of identity verification through a combination of screening, monitoring of activity patterns and transaction volumes surpassing pre-set limits (in accordance with applicable regulations in Europe, the UK and in North America). Our systems are designed to have all consumer transactions be subject to strict, real-time transaction monitoring. Certain of our products and services, such as paysafecard e-vouchers, are exempted from KYC regulations due to the low monetary value of the transactions. We have put into place procedures designed to mitigate money laundering risks in these circumstances, including (i) strict, real-time transaction monitoring on the use of the vouchers, (ii) certain limitations on spending and (iii) limiting the frequency of voucher issuance in respect of a single customer or through certain points of sale or distributors. We conduct additional due diligence and verification when we detect high risk or suspicious activity. As a result, we believe that we have the appropriate processes in place to comply with the anti-money laundering laws and regulations to which we are subject and will become subject.

The UK Regulatory authorities have focused on the impact of fraudulent activity on consumers and are seeking to mitigate the perceived risk to customers through the introduction of changes to law and thematic supervisory inspections. Regulators are particularly focusing on regulated firms’ ability to identify new fraud typologies and risk of the exploitation of financial services for financial crime and to then mitigate that risk. Any perceived inherent susceptibility of a particular financial services to very high risk of financial crime will result in the Regulators forming the view that if the identified risk cannot be mitigated to an acceptable level, it should be discontinued, resulting in lost revenue.

#### ***Online Gambling Regulation***

We do not provide gambling services and, as a result, in most jurisdictions outside of the United States and Canada, do not require any gambling licenses or associated regulatory permissions. Where any associated regulatory permission is required to supply merchants in this sector we work to ensure that we hold the appropriate permission. However, our digital wallets business offers an online alternative to traditional payment methods and a large proportion of the customers and merchants of those businesses are engaged in the use or provision of online gambling services.

For the year ended December 31, 2022, we derived approximately 30% of our revenue directly or indirectly from processing transactions for merchants and customers in the online gambling sector.

Given the importance of the online gambling sector to our business, we expend significant time and resources to ensure that we have an in-depth understanding of the regulatory environment in the main territories in which our gambling industry merchants operate and customers reside, monitoring closely the developing regulatory regimes in those territories and adapting our business acceptance policies where necessary. Currently, we monitor legal and regulatory developments in all of our material markets closely and generally seek to keep abreast of legal and regulatory developments affecting the gambling industry as a whole. We adapt our regulatory policies and, therefore, the scope of our ongoing monitoring on the basis that an individual market's materiality to us may change. We have adopted a market presence policy that assesses a number of factors, including the legislative regime applicable to the relevant country, whether we have a presence in such country and the overall environment for online gambling activities in that country; we then consider whether any changes are required to the extent of our business activities in those countries. We also engage external counsel to conduct an assessment of our top 20 online gambling revenue producing countries to assist in our assessments of risk. However, we do not necessarily monitor, on a continuous basis, the laws and regulations in every jurisdiction where we facilitate payments for merchants or customers. See "Item 3.D. Risk Factors—Risks Related to Our Business and Industry—Regulatory, Legal and Tax Risks—Our business is subject to extensive regulation and oversight in a variety of areas, all of which are subject to change and uncertain interpretation, including in such ways as could criminalize certain of our activities."

The global online gambling market is characterized by regulatory inconsistencies across many jurisdictions and frequent changes in the laws and regulations governing online gambling. For instance, due to the borderless nature of online gaming and sports betting and foreign exchange trading, a merchant properly licensed in its home jurisdiction may still provide services to consumers in other jurisdictions, knowingly or unknowingly including in jurisdictions whose regulations are ambiguous or where gaming, sports betting and/or foreign exchange trading are prohibited. For example, the Latvian Financial and Capital Market Commission (the "Commission") notified us of their belief that we were in breach of Latvian law as a result of processing gambling payments between Latvian customers and gambling operators that do not have a local license. Following engagement with the Commission, we asserted that we were not in breach of Latvian law and currently have not received a response. See "Item 3.D. Risk Factors—Risks Related to Our Business and Industry—Regulatory, Legal and Tax Risks—We generate a significant portion of our revenue by processing online payments for merchants and customers engaged in the online gambling and foreign exchange trading sectors."

#### ***Risk Assessment Process***

We have designed risk management systems to identify the geographic locations of our customers, identify the regulatory system to which such customers are subject and then determine whether such customers should be permitted to transact payments for online gambling through our system. Where we have made a decision for legal and/or policy reasons not to accept gambling transactions from customers in particular territories, we endeavor to implement those decisions rigorously using our risk management platform.

Before we accept business from merchants or customers for gambling activities, we are careful to assess the risk for us of accepting such business. Our determination as to whether or not to permit online gambling customers in a given jurisdiction to access our services is based on a number of factors. These factors include, among others, our understanding of:

- what licenses are held by our merchants and the strength of their legal position that the licenses permit their activities or that no license is required;
- the laws and regulations of the jurisdiction where the merchants and customers are located, interpreted in accordance with applicable law;
- the approach to the application or enforcement of such laws and regulations by regulatory and other authorities, including the approach of such authorities to the extraterritorial application and enforcement of such laws;
- the willingness of online gambling merchants and other e-money and/or payment processing businesses to offer their services for gambling purposes in a particular jurisdiction;
- the willingness of financial institutions in our network (principally banks and card payment companies) and our competitors to process funds in relation to online gambling by customers in a particular jurisdiction; and
- the potential for a challenge of a local licensing regime based on the Treaty of the Functioning of the European Union ("TFEU").

When the legal position is unclear, we will consider the above factors and make a decision whether to do business based on a review and weighting of the above factors. We re-evaluate our assessment of individual jurisdictions as required and the categorization applied and may change our view. For example, we consider planned changes to legislation or court judgments which may affect our categorization of any jurisdiction and our willingness to transact gambling payments for customers located there. Such reviews take place as soon as practicable after becoming aware of them and when a review can meaningfully be undertaken. These reviews comprise the solicitation of legal advice (and updated advice) as well as the assessment of market intelligence, which are then assessed and

determined by our Market Presence Committee. Other gambling operators, regulators and other payments businesses and financial institutions may, however, take a different view of the legal environment in any particular jurisdiction. In this regard, we have created and used the following categories of classification for the Group:

- *Banned countries.* We currently regard seventeen countries and territories as “banned,” in respect of our services, as a result of certain factors but primarily geographic sanctions imposed by the U.S. Department of Treasury’s Office of Foreign Asset Control. Where we classify a market as banned, such as Cuba, Iran, Iraq, Libya, North Korea and Syria, we decline any customers in that market (irrespective of whether the end user intends to use the products and services for gambling) and customers resident in other countries should not be able to access their accounts when present in any of the banned countries. We have a policy in place to screen our customers upon customer account registration against the Specially Designated Nationals list published by OFAC and the HM Treasury sanctions list. Decisions to add or remove countries from our banned country list are taken on a country-by-country basis and we adopt a risk based approach when making such decisions and, among other things, will conduct an assessment of the legal environment.
- *Non-Serviced countries and territories.* We designate certain countries and territories as non-serviced, which could either mean we do not provide any of our services in that particular country or territory or that we do not provide payment services in relation to a particular industry such as online gambling in that country or territory. A decision to classify a country or territory or an industry as non-serviced is made after a careful analysis of business risks associated with such activity.
- *Limited service countries.* In certain countries we are prepared to provide payment services in relation to a particular industry but subject to certain requirements or restrictions (e.g., we accept online gambling business in these types of countries provided the merchant is licensed). Those countries have introduced regulations that permit online gambling merchants provided that they are licensed by the regulator in that country (as in Italy, France, UK and Spain). In some jurisdictions, we have also agreed not to support certain black-listed gambling operators after an assessment of the relevant regulatory regime.
- *Accepted markets.* Where the market is not classified as either banned, non-serviced or limited service, we categorize it as accepted and support processing payments in relation to online gambling from such jurisdictions. An example of an accepted market is a market in which an online gambling licensing regime has been implemented where we believe that the regime could be subject to challenge under EU law, such as where only a limited number of operators have been granted licenses or impediments exist in the application process for which there is no obvious market justification. We closely monitor the regulatory position in the major markets that we have categorized as accepted markets to ensure that the level of risk to us, our merchants and customers is acceptable. To implement this monitoring process, we have created an experienced team with in-depth industry knowledge, who take a number of measures in order to ensure that they are well placed to make decisions to accept or decline business in particular jurisdictions and to deploy our technology platform in order to best apply these decisions. These measures include taking specific legal advice, attending conferences and industry meetings, reviewing market studies on what banks and other payment processors do, exploring the regulatory position with others in the sector (including competitors and their own merchant base), and continually developing our technology platform in order to best implement our business acceptance policies. We augment this review with risk mitigation in ensuring that our operations, people and assets are not located in jurisdictions (even temporarily) where it is not clear that online gambling is legal.

In making the assessment for each relevant country, we will assess the risk in the market, the approach of our competitors and the likelihood of enforcement action being taken. We regularly review our categorization of jurisdictions of existing gambling merchants and customers as the regulatory environment within countries changes over time which may, along with a potential change in our attitude towards risk, result in us reconsidering our approach. It is also possible that, while our assessment of a jurisdiction may not change, enforcement action could still be taken against us and/or our executive officers or directors, depending upon the local laws in the relative jurisdiction. Although we have designed these systems with the intention of effectively assessing risk, our risk assessment processes may not always be effective. See “Item 3.D. Risk Factors—Risks Related to Our Business and Industry—We may become an unwitting party to fraud or be deemed to be handling proceeds resulting from the criminal activity of our customers.”

#### ***Regulatory Change: Trends and Outlook***

Although the general trend in gambling regulation over the last ten years has been to seek to restrict the activities of online-based operators, in the EU this has generally resulted in a move towards controlled regulation, rather than absolute prohibition. For example, the regimes in Italy and France have both moved away from state-run monopoly-based markets to controlled regulation and Germany has moved from prohibition to controlled regulation. Not all regimes license all types of gambling products. Changes in the regulation of online gambling in the markets described above and elsewhere may impact us both positively (where the markets are liberalized or become regulated) and negatively (where markets are restricted or become prohibited). See “Item 3.D. Risk Factors—Risks Related to Our Business and Industry—Regulatory, Legal and Tax Risks—Our business is subject to extensive regulation and oversight in a variety

of areas, all of which are subject to change and uncertain interpretation, including in such ways as could criminalize certain of our activities.”

#### **Data Protection and Information Security**

We process personal data, some of which may be sensitive, as part of our business and are subject to increasingly complex regulations related to privacy, data protection and information security in the jurisdictions in which we do business. Ensuring customer data security, privacy, and ongoing compliance with applicable regulations requires significant capital expenditure. Moreover, these regulations could result in negative impacts to our business. In the EU, we are also subject to enhanced compliance and operational requirements under the GDPR, which became effective in May 2018. The GDPR expands the scope of the EU data protection law to all foreign companies processing personal data of EU residents anywhere in the world imposes a strict data protection compliance regime with severe penalties of up to the greater of 4% of worldwide turnover or €20 million, and includes new rights such as the “portability” of personal data. Although the GDPR applies across the EU without a need for local implementing legislation, each EU member state has the ability to interpret the GDPR opening clauses, which permit country-specific data protection legislation and has created inconsistencies, on a country-by-country basis.

Since 2016, we have engaged in a large, transformative program regarding data privacy in connection with GDPR compliance requirements. However, policymakers around the globe are using these requirements as a reference to adopt new or updated privacy laws that could result in similar or stricter requirements in other jurisdictions. In the United States, the Gramm-Leach-Bliley Act of 1999 (along with its implementing regulations) restricts certain collection, processing, storage, use and disclosure of personal financial information, requires notice to individuals of privacy practices and provides individuals with certain rights to prevent the use and disclosure of certain nonpublic or otherwise legally protected information. These rules also impose requirements for the safeguarding and proper destruction of such information through the issuance of data security standards or guidelines. Within Canada, the Personal Information Protection and Electronic Documents Act (“PIPEDA”) law is under consultation review in order to align more closely to GDPR and ensure continuation of its adequacy status from the European Commission and the provincial Quebec privacy law is being amended in 2023.

In addition, there are state laws in the United States governing the collection of personal information (including, as of January 1, 2020, the California Consumer Privacy Act of 2018 (the “CCPA”) and, as of March 2, 2021, the Virginia Consumer Data Protection Act (“VCDPA”), which will become effective January 1, 2023), including those restricting the ability to collect and use certain types of information such as Social Security and driver’s license numbers. The CCPA imposes stringent data privacy and data protection requirements for the data of California residents, and provides for penalties for noncompliance of up to \$7,500 per violation, if willful, and provides for a private right of action in the event of a data breach affecting specified personal information of California residents. Implementing regulations for the CCPA were released in August 2020, and on November 3, 2020, California voters approved a new law, the California Privacy Rights Act (“CPRA”). The CPRA expands the rights of consumers and establishes the California Privacy Protection Agency, providing the agency with investigative, enforcement and rule-making powers. Certain other state laws impose or are in the process of imposing similar privacy obligations, including Virginia, Colorado, Utah and Connecticut. Some USA State laws, like GDPR, are extra-territorial in nature and thus apply outside the USA. Certain other state laws impose similar privacy obligations as well and, in addition, all 50 states have laws with varying obligations to provide notification of security breaches of computer databases that contain personal information to affected individuals, state officers and others. Additionally, the use or generation of biometric data as an aid to fraud prevention is becoming increasingly regulated through a patchwork of laws in both the EU and across the United States, with a number of state laws now requiring consent to such use. See “Item 3.D. Risk Factors—Risks Related to Our Business and Industry—Regulatory, Legal and Tax Risks—We are subject to current and proposed regulation addressing both consumer and business privacy and data use, which could adversely affect our business, financial condition and results of operations.”

#### **Section 13(r) Disclosure**

Pursuant to Section 219 of the Iran Threat Reduction and Syria Human Rights Act of 2012, which added Section 13(r) of the Exchange Act, the Company hereby incorporates by reference herein Exhibit 99.1 of this report, which includes disclosures made to Blackstone by Atlantia S.p.A, which may be considered our affiliate.

#### **Intellectual Property and R&D**

We rely upon a combination of copyrights, trade secrets, trademarks, license agreements, confidentiality policies and procedures, nondisclosure agreements and technical measures designed to protect the intellectual property and commercially valuable confidential information and data used in our business in jurisdictions around the world. We seek to protect our intellectual property rights by relying on applicable laws and regulations in the United States and internationally, as well as a variety of administrative procedures. We also rely on contractual restrictions to protect our proprietary rights when offering or procuring products and services. We have not applied for any patents in respect of our electronic payment processing systems and cannot give assurances that any patent applications will be made by us or that, if they are made, they will be granted. Additionally, it is possible that third parties, including our competitors, may

obtain patents relating to technologies that overlap or compete with our technology. If third parties obtain patent protection with respect to such technologies, they may assert that our technology infringes their patents and seek to charge us a licensing fee or otherwise preclude us from using our technology.

The steps we have taken to protect our copyrights, trade secrets, trademarks and other intellectual property may not be adequate, and third parties could infringe, misappropriate or misuse our intellectual property. If this were to occur, it could harm our reputation and adversely affect our competitive position or results of operations.

We also license from third parties a variety of content, data and other intellectual property. Although we believe that alternative technologies and work-arounds are likely to be available should these agreements terminate or expire, there is no guarantee that third-party technologies will continue to be available to us on commercially reasonable terms or that work-arounds would be readily available for deployment in a commercially reasonable time frame. See “Item 3.D. Risk Factors—Risks Related to Our Business and Industry—Regulatory, Legal and Tax Risks—We may not be able to adequately protect or enforce our intellectual property rights, or third parties may allege that we are infringing their intellectual property rights;” “Item 3.D. Risk Factors—Risks Related to Our Business and Industry—Regulatory, Legal and Tax Risks—Our use of open source software could compromise our ability to offer our products or services and subject us to possible litigation” and “Item 3.D. Risk Factors—Risks Related to Our Business and Industry—Regulatory, Legal and Tax Risks—If we fail to comply with our obligations under license or technology agreements with third parties, we may be required to pay damages and we could lose license rights that are critical to our business.”

Our total research and development expense for the year ended December 31, 2022 and 2021 was \$7,377 and \$8,574, respectively.

## **Competition**

The global payments industry is highly competitive, rapidly changing, highly innovative and increasingly subject to regulatory scrutiny and oversight. We compete against a wide range of businesses, including businesses that are larger than we are, have a dominant and secure position, or offer other products and services to consumers and merchants that we do not offer, as well as smaller companies that may be able to respond more quickly to regulatory and technological changes than we can. We compete against all forms of payments, including credit and debit cards; automated clearing house and bank transfers; other online payment services, local alternative payment methods, and digital wallets; mobile payments; cryptocurrencies and distributed ledger technologies; and offline payment methods, including cash and check. We also compete against banks, merchant acquirers, and third-party payment processors, including Chase Merchant Services, Bank of America Merchant Services, Wells Fargo Merchant Services, U.S. Bank’s Elavon division, Fiserv, FIS, Global Payments, PayPal and Square. We compete primarily on the basis of brand recognition; distribution network and channel options; convenience; variety of payment methods; product and service offerings; customer service for both consumers and merchants; trust and reliability; speed; data protection and security; price; and innovation.

## **Employees**

As of December 31, 2022, we had approximately 3,300 employees globally. None of these employees are represented by a labor union and we consider our relationship with our employees to be good.

## **Properties**

The mailing address of Paysafe Limited’s registered office is c/o M Q Services Ltd., Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. The principal executive office of the Company is located at 25 Canada Square, 27th Floor, London, United Kingdom, E14 5LQ. During 2022, we signed an agreement to early terminate the London lease in May 2023 (previously expired on September 3, 2025). We also lease a number of operations, business, data center and sales offices and facilities which include 17 offices in 17 countries and 7 data centers in countries. Our business is not capital intensive. We believe that our facilities are generally adequate for our current anticipated and future use, although we may from time to time lease additional facilities or vacate existing facilities as our operations require.

## **Seasonality**

Our business is subject to seasonal influences. Both of the Company’s Merchant Solutions and Digital Wallets businesses historically experience increased activity during the traditional holiday period and around other nationally recognized holidays, when certain of our game’s operators may run promotions, consumers enjoy more leisure time and younger consumers may receive our products as gifts. Our Digital Wallets segment experiences increased activity based on the occurrence and timing of sporting events.

## **Legal Proceedings**

We are, from time to time, party to general legal proceedings and claims, which arise in the ordinary course of business. We may be and in some cases have been subject to claims, lawsuits, government or regulatory investigations, subpoenas, inquiries or audits, and other proceedings involving areas such as online gambling regulation, intellectual property, consumer protection, privacy, data protection, labor and employment, immigration, import and export practices, product labeling, competition, accessibility, securities, tax, marketing and communications practices, commercial disputes, anti-money laundering, anti-corruption, counter-terrorist financing, sanctions and other matters.

On December 10, 2021, a class action complaint, *Lisa Wiley v Paysafe Limited f/ka/Foley Trasimene Acquisition Corp. II*, Richard N Massey, Bryan D. Coy, Philip McHugh and Ismail (Izzy) Dawood, was filed in the United States District Court for the Southern District of New York, naming among others the Company, our former Chief Executive Officer and our former Chief Financial Officer, as defendants. The complaint asserts claims, purportedly brought on behalf of a class of shareholders, under Sections 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, and allege that the Company and individual defendants made false and misleading statements to the market regarding the Company's financial outlook in light of gambling regulations in key European markets, performance challenges in the company's Digital Wallets segment and the modified scope and timing of new eCommerce customer agreements. In addition, the complaint asserts claims against the individual defendants, under Sections 20(a) of the Exchange Act, alleging that the individual defendants filed false financial statements, misled the public and induced the public to buy shares. On January 21, 2022, a related complaint was brought by John Paul O'Brien also in the Southern District of New York which additionally named William P. Foley II as a defendant. We expect these complaints to be consolidated. The complaints seek unspecified damages and an award of costs and expenses, including reasonable attorneys' fees, on behalf of a purported class of purchasers of our ordinary shares between December 7, 2020 and November 10, 2021.

We believe that the allegations contained in the complaint are without merit and intend to defend the complaint vigorously. We cannot predict at this point the length of time that this action will be ongoing or the liability, if any, which may arise therefrom.

While it is not possible to quantify the financial impact or predict the outcome of all pending claims and litigation, management does not anticipate that the outcome of any current proceedings or known claims, either individually or in aggregate, will have a material adverse effect upon our financial position, results of operations or cash flows.

### **C. Organizational Structure**

Paysafe Limited was incorporated by PGHL under the laws of Bermuda on November 23, 2020 for the purpose of effectuating the Transaction and became the parent company of the combined business following the consummation of the Transaction, which was consummated on March 30, 2021. A list of the significant subsidiaries of the Company is included in Exhibit 8.1 to this Report.

Each of the Founder, Cannae LLC, the CVC Investors and the Blackstone Investors, to whom we refer collectively as the "Principal Shareholders," are party to the Shareholders Agreement described in "Certain Relationships and Related Person Transactions—Certain Relationships and Related Person Transactions—Paysafe—Shareholders Agreement," set forth in this report, pursuant to which, among other things, they have each agreed to vote in favor of their respective nominees to the Company Board. Accordingly, the Principal Shareholders constitute a group within the meaning of Section 13(d) of the Exchange Act representing approximately 47.5% of the outstanding voting securities of the Company. See "Item 7.A. Major Shareholders" and "Item 8.A. Consolidated Statements and Other Financial Information—Unaudited Pro Forma Combined Financial Information" for additional information.

### **D. Property, Plants and Equipment**

"Item 4.B. Information on the Company—Business Overview—Properties" for additional information

### **ITEM 4A. UNRESOLVED STAFF COMMENTS**

None / Not applicable.

### **ITEM 5. OPERATING AND FINANCIAL REVIEW AND PROSPECTS**

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our Paysafe Consolidated Financial Statements included elsewhere in this Report.*

*In addition to historical information, the following discussion contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause such differences are discussed in "Cautionary Note Regarding Forward-Looking Statements" and "Risk Factors."*

*A discussion regarding our financial condition and results of operation for the fiscal year ended December 31, 2022, compared to the fiscal year ended December 31, 2021, is presented below. A discussion regarding our financial condition and results of operations for fiscal year ended December 31, 2021, compared to the fiscal year ended December 31, 2020, unless otherwise noted, can be found under Item 5 in our Annual Report on Form 20-F for the fiscal year ended December 31, 2021, filed with the SEC on March 28, 2022, which is available on the SEC's website at [www.sec.gov](http://www.sec.gov) and on the SEC Filings section of the Investors section of our website at: <https://ir.paysafe.com/regulatory-filings>.*

*Any reference to "we," "us," "Paysafe," the "Company," "management" and "our" as used herein refer to Pi Jersey Holdco 1.5 Limited and its subsidiaries prior to the consummation of the Transaction and Paysafe Limited subsequent to the consummation of the Transaction. Amounts preceded with a dollar sign are denominated in U.S. dollars in thousands, unless otherwise noted.*

## **A. Operating Results**

### **Our Company**

Paysafe is a leading, global pioneer in digital commerce with over \$130 billion in volume processed in 2022 and \$122 billion processed in 2021, generating \$1.5 billion in revenue in both 2022 and 2021. Our specialized, integrated payments platform offers the full spectrum of payment solutions ranging from credit and debit card processing to digital wallet, prepaid card and real-time banking solutions. The combination of this breadth of solutions, our sophisticated risk management and our deep regulatory expertise and deep industry knowledge across specialized verticals enables us to empower 19 million active users in more than 120 countries and over 250,000 SMBs to conduct secure and friction-less commerce across online, mobile, in-app and in-store channels. We also provide digital commerce solutions for specialized industry verticals, including iGaming (which encompasses a broad selection of online betting related to sports, e-sports, fantasy sports, poker and other casino games), gaming, digital goods, cryptocurrencies, travel and financial services, as well as Merchant Solutions services for SMBs and direct marketing clients.

We go to market, serve and support our clients through an omni-channel model that leverages our global reach and our B2B and B2C relationships. This enables us to manage and serve our clients through our network of offices around the world with strong knowledge of local and regional markets, customs and regulatory environments. We sell our solutions through a combination of direct and indirect sales strategies. We have a direct sales force of approximately 90 associates who build and develop relationships with larger merchants and help them configure or develop digital and point-of-sale commerce solutions from our suite technology services. We sell our solutions online to smaller merchants using targeted marketing campaigns designed to address specific use cases across verticals, geographies and user profiles. We also leverage a network of partners, such as ISVs and independent sales organizations ("ISOs"), who integrate our solutions into their own services or resell our solutions by utilizing their own sales initiatives.

We operate across two business segments, which provide our digital commerce solutions to different end markets: our Merchant Solutions Segment and our Digital Wallets Segment.

In the fourth quarter of 2022, we revised our reportable segments, which are the same as our operating segments, as a result of a change in our Chief Operating Decision Maker ("CODM") and how our CODM regularly reviews financial information to allocate resources and assess performance. Our new reportable segments are Merchant Solutions and Digital Wallets. In the prior year, the Company operated, and was organized, as two separate segments: US Acquiring and Digital Wallets. Merchant Solutions (renamed from US Acquiring) will continue to include the Company's US Acquiring business and will also include the integrated & eCommerce (IES) business. IES was previously included within Digital Commerce. Digital Wallets (renamed from Digital Commerce) will continue to include the Company's digital wallets and eCash businesses. The prior year information has been revised to reflect this change.

*Merchant Solutions:* Merchant Solutions is marketed under the *Paysafe* and *Petroleum Card Services* brands. These solutions include a full range of PCI-compliant payment acceptance and transaction processing solutions for merchants and integrated service providers including merchant acquiring, transaction processing, gateway solutions, fraud and risk management tools, data and analytics, point of sale systems and merchant financing solutions, as well as comprehensive support services that we provide to our independent distribution partners.

*Digital Wallets:* Our Digital Wallets is marketed under multiple brand names including the *NETELLER*, *Skrill*, *paysafecard*, *Paysafecash*, as well as a proprietary pay-by-bank solution marketed in Europe under the *Rapid Transfer* brand. *Skrill* and *NETELLER* remove friction from complex commerce situations and dramatically simplify the complexity of traditional payment mechanisms, such as card-based payments, enabling our active users to send, spend, store and accept funds online more easily. The *Paysafecard* and *Paysafecash* brands provide consumers with a safe and easy way to purchase goods and services online without the need for a bank account or credit card and allow merchants to expand their target market to include consumers who prefer to pay with cash.



## **Trends and Factors Affecting Our Future Performance**

Significant trends and factors that we believe may affect our future performance include the items noted below. For a further discussion of trends, uncertainties and other factors that could affect our operating results see the section entitled “Information on the Company – Business Overview” and “Risk Factors” in this Report.

### *Global and regional economic conditions*

Our operations and performance depend significantly on global and regional economic conditions. Uncertainty about global and regional economic events and conditions may impact our ability to conduct business in certain areas and may result in consumers and businesses postponing or lowering spending. This includes the impact of acts of war and terrorism, such as the military hostilities commenced in Ukraine during the first quarter of 2022. Operations within Russia and Ukraine represented approximately 1% of our revenues in the prior year and were predominantly within the Digital Wallets segment. For year ended December 31, 2022, we have experienced a decline in revenues from there impact of war-regions on the Digital Wallets segment.

### *Foreign currency impact*

Our revenues and expenses are subject to changes in foreign currencies against the U.S. dollar which can impact our results of operations. It is difficult to predict the fluctuations of foreign currency exchange rates and how those fluctuations will impact our consolidated statements of comprehensive income / (loss) in the future. As a result of the relative size of our international operations, these fluctuations may be material. During the year ended December 31, 2022, our Digital Wallets segment was impacted by unfavorable foreign exchange. On a net basis, foreign exchange gains on external debt offset operational foreign exchange losses.

### *Fair value gain / (loss) on warrant liabilities*

The Company’s warrants represent the right to purchase one share of the Company’s common shares at a price of \$138.00 per share. The warrants were initially recorded as a liability at fair value on the closing date of the Transaction (March 30, 2021) based on the public warrants listed trading price (NYSE: PSFE.WS) and are subsequently remeasured at the balance sheet date with the changes in fair value recognized within “Other income, net” within the consolidated statements of comprehensive income / (loss). It is difficult to predict the fluctuations in public share price and how those fluctuations will impact our Consolidated Statements of Comprehensive Loss in the future. As a result of the number of warrants held, subsequent changes in fair value may result in a material gain or loss that is recognized in the consolidated statements of comprehensive income / (loss).

### *Public company costs*

We incur additional costs associated with operating as a public company. These costs include additional personnel, legal, consulting, regulatory, insurance, accounting, investor relations and other expenses that were not incurred as a private company. While at the time of this filing we qualify as a foreign private issuer under the Exchange Act, this status is subject to change pending our ability to qualify in the future. The Sarbanes-Oxley Act, as well as rules adopted by the SEC and national securities exchanges, requires public companies to implement specified corporate governance practices that were not applicable to us as a private company. These additional rules and regulations have increased our legal, regulatory and financial compliance costs and have made certain activities more costly.

### *Impact of COVID-19*

In March 2020, an outbreak of a novel strain of the coronavirus (referred to as COVID-19) occurred and developed such that on March 11, 2020, the World Health Organization has characterized the outbreak as a pandemic. As a result of the COVID-19 pandemic, we experienced slowed growth or decline in new demand for our products and services and lower demand from our existing merchants, which contributed, in part, to intangible impairments and an increase in expected credit losses in the prior year. The Company continues to revise and update the carrying values of its assets or liabilities based on estimates, judgments and circumstances of which it is aware. While the COVID-19 pandemic may continue to have ongoing global effects, for the year ended December 31, 2022, there have been no material impacts on our estimates, but facts and circumstances could change and impact our estimates and affect our results of operations in future periods.

## **Recent Company Initiatives and Events**

### *Recent events*

On April 7, 2022, Paysafe announced that Bruce Lowthers was appointed as CEO and a Director on the Board. He joined the Company on May 1, 2022, succeeding Philip McHugh, who stepped down as CEO and as a member of the Board.

On August 30, 2022, the Company announced that Alexander Gersh was appointed as CFO. He joined the Company on October 3, 2022, succeeding Ismail Dawood, who stepped down as CFO.

On December 8, 2022, the Company announced that its Board of Directors and shareholders had approved a reverse stock split of the Company's common stock at a ratio of 1-for-12 (the "Reverse Stock Split"). The Reverse Stock Split was effective 4:01 p.m. (ET) on December 12, 2022, and the Common Shares began trading on a split-adjusted basis when the New York Stock Exchange (the "NYSE") opened for trading on Tuesday, December 13, 2022. Accordingly, at the Effective Time, every 12 issued and outstanding common shares of the Company's common stock were converted into one share of the Company's common stock.

For the year ended December 31, 2022, the Company renamed and realigned its two reportable segments as follows:

- Merchant Solutions (renamed from US Acquiring) will continue to include the Company's US Acquiring business and will also include the integrated & eCommerce (IES) business.
- Digital Wallets (renamed from Digital Commerce) will continue to include the Company's digital wallets and eCash businesses.

On February 9, 2023, the Company announced that Chirag Patel was stepping down as President of Digital Wallets.

#### *Recent acquisitions*

In January 2022, the Company completed the acquisition of SaftPay Inc. ("SafetyPay") with the goal of furthering the expansion of alternative payment methods and direct bank integration in the Latin America market, as well as creating additional revenue opportunities for both of our segments. This acquisition was accounted for as business combination and the operating results have been included in the Company's consolidated financial statements since the date of the acquisition. Refer to Note 14, *Business Combinations*, within Item 18, Financial Statements elsewhere in this Report for further information.

### **Components of Our Operating Results**

#### *Revenue*

Revenue consists primarily of fees derived from transaction processing services through two main lines of business: Merchant Solutions and Digital Wallets. Substantially all of our Merchant Solutions revenue stream is earned by charging merchants processing fees for facilitating payment processing transactions. The Digital Wallets revenue streams are almost entirely derived from charging merchants fees for allowing payments on their platforms using our services or from charging customers on a transactional basis for using our services.

The Company's promise to stand ready to provide electronic payment services is not based on a specified number of transactions, but rather is a promise to process all the transactions needed each day. Therefore, we measure revenue for our payment service daily based on the services that are performed on that day. We recognize revenue net of taxes collected from customers. These taxes are subsequently remitted to governmental authorities.

#### *Cost of services (excluding depreciation and amortization)*

Cost of services (excluding depreciation and amortization) consists primarily of the cost of transaction processing systems through two main lines of business: Merchant Solutions and Digital Wallets. Cost of services (excluding depreciation and amortization) for Merchant Solutions consists primarily of merchant residual payments to our network of independent sales organizations, as well as other fees incurred by the Company in the processing of transactions. Cost of services (excluding depreciation and amortization) does not include interchange fees charged by the card issuing financial institutions and fees charged by payment networks in this segment, which are presented net within revenue. Cost of services (excluding depreciation and amortization) for Digital Wallets consists primarily of commission paid to distributors, and the costs to accept a customer's funding source of payment and subsequent withdrawals from the wallet. These costs include fees paid to payment processors and other financial institutions. These expenses exclude any depreciation or amortization, which is described below.

#### *Selling, general and administrative*

Selling, general and administrative consists primarily of employee related costs, including salaries and benefits, credit losses, information technology expenses and other administrative costs as noted below. Selling expenses are comprised of sales and marketing personnel-related costs, including salaries, and benefits. General and administrative expenses are comprised of expenses associated with

operational and supporting personnel-related costs, including salaries and benefits, as well as credit losses on financial assets, corporate management, information technology, office infrastructure, external professional services and other activities.

#### *Depreciation and amortization*

Depreciation and amortization consist of depreciation and amortization expenses related to computer and communication equipment, furniture and equipment, right-of-use assets, leasehold improvements, acquired and internally developed software, customer relationships and other intangible assets. Research and development costs for software development projects are capitalized when it is probable that the project will be completed, and the software will be used to perform the function intended. These costs are amortized over their useful life.

#### *Impairment expense on goodwill and intangible assets*

Impairment expense on goodwill and intangible assets relates to loss on impairment of goodwill and intangible assets.

#### *Restructuring and other costs*

Restructuring and other costs include acquisition costs related to the Company's merger and acquisition activity, restructuring costs, provision related to customer payments and professional consulting and, in prior years, advisory fees related to public company readiness activities. This includes certain professional advisory costs, office closure costs and resulting severance payments to certain executives.

Transaction costs that are incremental and directly attributable to an equity transaction are deferred and charged against the gross proceeds received upon completion of the equity transaction.

#### *Loss / (gain) on disposal of subsidiaries and other assets, net*

During the year ended December 31, 2022, PAYS Services UK Limited, a subsidiary of the Company, disposed of 100% of the equity interest of Pay Services India, LLC. The loss on disposal of subsidiaries recognized in 2022 relates to the sale of Pay Services India, LLC.

During the year ended December 31, 2020, Skrill Capital UK Limited, an indirect subsidiary of the Company, disposed of 100% of the share capital of Payolution GmbH. The gain on disposal of subsidiaries recognized in 2020 relates to the gain on sale of Payolution GmbH.

#### *Other (expense)/income, net*

Other (expense)/income, net consists primarily of foreign exchange gains and losses, gains on loan note repurchases and fair value movement in contingent consideration, derivative instruments and warrants.

#### *Interest expense, net*

Interest expense, net primarily consists of the interest associated with our outstanding debt obligations and the amortization of debt issuance costs.

#### *Income tax (benefit)/expense*

Income tax (benefit)/expense represents income taxes generated in the United Kingdom and numerous foreign jurisdictions. These foreign jurisdictions have different statutory tax rates than the United Kingdom. Our effective tax rates will vary depending on the relative proportion of foreign to domestic income, interest, penalties, changes in the valuation of our deferred tax assets and liabilities, changes in uncertain tax positions, and changes in tax laws.

### **Key Performance Indicators**

We regularly monitor the following key performance indicators to evaluate our business and trends, measure our performance, prepare financial projections and make strategic decisions. We believe that these key performance indicators are useful in understanding the underlying trends in the Company's businesses.

There are limitations inherent in key performance indicators. Investors should consider any key performance indicator together with the presentation of our results of operations and financial condition under GAAP, rather than as an alternative to GAAP financial measures. These measures may not be comparable to other performance measures used by the Company's competitors.

#### Volume and Take Rate

Gross dollar volume is calculated as the dollar value of payment transactions processed by the Company. To reflect the distinct nature of our products across each segment, this includes, but is not limited to, the following:

- For Merchant Solutions: Credit card and debit card transactions
- For Digital Wallets: Deposits, withdrawals, transfers to merchants from consumers, transfers from merchants to consumers, wallet-to-wallet transfers, pre-paid Mastercard, and vouchers redeemed at merchants transactions

Volume (also known as gross dollar volume) is a meaningful indicator of our business and financial performance, as we typically generate revenue across our solutions based on per transaction fees that are calculated as a percentage of transaction dollar volume. In addition, volume provides a measure of the level of payment traffic we are handling for our consumers and merchants. Many marketing initiatives are focused on driving more volume, either through encouraging greater adoption of our payment products or increasing activity through existing merchants or consumers.

Take rate is calculated as operating segment revenue divided by gross dollar volume. Take-rate is a meaningful indicator of our business and financial performance as it describes the percentage of revenue collected by Paysafe on the volume of transactions processed. This is used by management as an indication of pricing or product mix trends over time rather than absolute pricing within each segment, due to the mix of product types and pricing agreements that will be in place with specific merchants. It will also factor in revenue from fees that are not directly linked to volume-based transactions, such as inactivity fees charged on dormant accounts.

The following table sets forth our gross dollar volume and take rate for the years ended December 31, 2022 and 2021:

(U.S. dollars in millions)		For the year ended December 31, 2022				Total
		Merchant Solutions	Digital Wallets	Intersegment		
Gross dollar volume <sup>(1)</sup>	\$	110,080	\$ 20,603	\$ (541 )	\$	130,142
Take Rate		0.7 %	3.3 %	1.4 %		1.1 %

(U.S. dollars in millions)		For the year ended December 31, 2021				Total
		Merchant Solutions	Digital Wallets	Intersegment		
Gross dollar volume <sup>(1)</sup>	\$	100,001	\$ 23,070	\$ (718 )	\$	122,353
Take Rate		0.7 %	3.3 %	1.2 %		1.2 %

(U.S. dollars in millions)		Increase / (Decrease) - 2022 vs 2021				Total
		Merchant Solutions	Digital Wallets	Intersegment		
Gross dollar volume <sup>(1)</sup>	\$	10,079	\$ (2,467 )	\$ 177	\$	7,789
Take Rate		0.0 %	0.0 %	0.2 %		(0.1 )%

(1)Volumes for the year ended December 31, 2022 exclude embedded finance related volumes of \$37.5 billion.

#### Non-GAAP Financial Measure

We report our financial results in accordance with GAAP, which includes the standards, conventions, and rules accountants follow in recording and summarizing transactions and in the preparation of financial statements. In addition to reporting financial results in accordance with GAAP, we have provided Adjusted EBITDA as a non-GAAP financial measure.

We include a non-GAAP measure in this Report because it is a basis upon which our management assess our performance and we believe it reflects the underlying trends and an indicator of our business. Although we believe the non-GAAP measure is useful for investors for the same reasons, the measure is not a substitute for GAAP financial measures or disclosures.

Our non-GAAP measure may not be comparable to other similarly titled measures used by other companies and has limitations as analytical tools and should not be considered in isolation or as a substitute for analysis of the operating results as reported under GAAP.

An explanation of the relevance of the non-GAAP measure, a reconciliation of the non-GAAP measure to the most directly comparable measure calculated and presented in accordance with GAAP is set out below. The non-GAAP measure has limitations in that it does not reflect all of the amounts associated with our results of operations as determined in accordance with GAAP. We do not regard the non-GAAP measure as a substitute for, or superior to, the equivalent measure calculated and presented in accordance with GAAP or the one calculated using a financial measure that is calculated in accordance with GAAP.

### *Adjusted EBITDA*

Adjusted EBITDA is defined as net income/(loss) before the impact of income tax (benefit)/expense, interest expense, net, depreciation and amortization, share-based compensation expense, impairment expense on goodwill and intangible assets, restructuring and other costs, loss/(gain) on disposal of subsidiaries and other assets, net, and other (expense)/income, net. These adjustments include certain costs and transactions that are not reflective of the underlying operating performance of the Company. Management believes these adjustments improve the comparability of operating results across reporting periods.

For the year ended December 31, 2022 and 2021, Adjusted EBITDA excludes the impact of share-based compensation expense. No share-based compensation expense was recognized for the year ended December 31, 2020.

We use Adjusted EBITDA as our measure of segment profitability to assess the performance of our businesses. Additionally, we believe it is important to consider our profitability on a basis that is consistent with that of our operating segments. Adjusted EBITDA reported for our segments is not, however, considered a non-GAAP measure as it is presented in conformity with Accounting Standards Codification 280, *Segment Reporting*, and is excluded from the definition of a non-GAAP measure under the Securities and Exchange Commission's Regulation G and Item 10(e) of Regulation S-K. We believe that Adjusted EBITDA should be made available to securities analysts, investors and other interested parties to assist in their assessment of the performance of our businesses.

Despite the importance of this measure in analyzing our business, measuring and determining incentive compensation and evaluating our operating performance, as well as the use of Adjusted EBITDA by securities analysts, lenders and others in their evaluation of companies, Adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation, or as a substitute for net income (loss) or other methods of analyzing our results as reported under GAAP. We do not use or present Adjusted EBITDA as a measure of liquidity or cash flow.

Some of the limitations of Adjusted EBITDA are:

- It does not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments;
- It does not reflect changes in, or cash requirements for, our working capital needs;
- It does not reflect the interest expense or the cash requirements to service interest or principal payments on debt;
- It does not reflect income tax payments we are required to make;
- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized often will have to be replaced in the future and Adjusted EBITDA does not reflect any cash requirements for such replacements; and
- Other companies in our industry may calculate Adjusted EBITDA differently, limiting its usefulness as a comparative measure.

### **Results of Operations**

#### ***Year Ended December 31, 2022 Compared to Year Ended December 31, 2021***

The following table sets forth our results of operations for the years ended December 31, 2022 and 2021:

(U.S. dollars in thousands)	Year ended December 31,		Variance	
	2022	2021	\$	%
<b>Revenue</b>	1,496,137	1,487,013	9,124	0.6 %
Cost of services (excluding depreciation and amortization)	614,025	599,778	14,247	2.4 %
Selling, general and administrative	534,515	545,107	(10,592 )	(1.9 )%
Depreciation and amortization	266,819	261,372	5,447	2.1 %
Impairment expense on goodwill and intangible assets	1,887,223	324,145	1,563,078	482.2 %
Restructuring and other costs	64,132	25,883	38,249	147.8 %
Loss on disposal of subsidiaries and other assets, net	1,359	—	1,359	n/m
<b>Operating loss</b>	<b>(1,871,936 )</b>	<b>(269,272 )</b>	<b>(1,602,664 )</b>	<b>n/m</b>
Other income, net	83,778	239,661	(155,883 )	(65.0 )%
Interest expense, net	(126,628 )	(165,827 )	39,199	(23.6 )%
<b>Loss before taxes</b>	<b>(1,914,786 )</b>	<b>(195,438 )</b>	<b>(1,719,348 )</b>	<b>n/m</b>
Income tax benefit	(52,502 )	(85,110 )	32,608	(38.3 )%
<b>Net loss</b>	<b>(1,862,284 )</b>	<b>(110,328 )</b>	<b>(1,751,956 )</b>	<b>n/m</b>
Less: net income attributable to non-controlling interest	371	626	(255 )	(40.7 )%
<b>Net loss attributable to the Company</b>	<b>(1,862,655 )</b>	<b>(110,954 )</b>	<b>(1,751,701 )</b>	<b>n/m</b>

#### Revenue

Revenue increased by \$9,124, or 0.6%, to \$1,496,137 for the year ended December 31, 2022 from \$1,487,013 for the year ended December 31, 2021. The increase was driven by \$72,009, or 9.7%, additional revenue in our Merchant Solutions segment due to higher volumes, offset by a decrease of \$63,860 or 8.5%, in our Digital Wallets segment due to the unfavorable impact of foreign exchange rates, as well as resulting from impact of war-regions, regulatory changes in Europe, and lower promotional activity, partly offset by recent acquisition activity. For further detail on our segments, see “Analysis by Segments” below.

#### Cost of services (excluding depreciation and amortization)

Cost of services (excluding depreciation and amortization) increased \$14,247, or 2.4%, to \$614,025 for the year ended December 31, 2022 from \$599,778 for the year ended December 31, 2021. The increase is largely attributable to an increase of \$46,259, or 12.5% in our Merchant Solutions segment due to the increase in volume and revenue as noted above, partially offset by a decrease of \$32,987, or 13.9%, in our Digital Wallets segment due to the reduction in revenue noted above as well as a change in channel and customer mix.

#### Selling, general and administrative

Selling, general and administrative expenses decreased \$10,592, or 1.9%, to \$534,515 for the year ended December 31, 2022 from \$545,107 for the year ended December 31, 2021. This movement is primarily driven by a decrease in share-based compensation expense of \$39,416 which was largely driven by the full vesting of equity awards in March 2021, partially offset by higher credit losses as a result of higher volumes in Merchant Solutions and higher VAT expense resulting from historic refunds and release of provisions during the year ended December 31, 2021, as well as higher technology costs and travel related expenses.

#### Depreciation and amortization

Depreciation and amortization increased \$5,447, or 2.1%, to \$266,819 for the year ended December 31, 2022 from \$261,372 for the year ended December 31, 2021. This increase was attributable to increased amortization due to acquisitions, partially offset by the impact of assets becoming fully depreciated and amortized during 2021 and the impact of the impairment on intangible assets recognized during the year ended December 31, 2021.

#### Impairment expense on goodwill and intangible assets

Impairment expense on goodwill and intangible assets increased by \$1,563,078 or 482.2%, to \$1,887,223 for the year ended, December 31, 2022 from \$324,145 for the year ended December 31, 2021. Due to a sustained decline in stock price and market capitalization, as well as current market and macroeconomic conditions, goodwill impairment expense of \$1,159,145 and \$723,042 was recognized in Merchant Solutions and Digital Wallets, respectively during the year ended December 31, 2022. The indicators of impairment were identified in the first half of 2022 and no such events or circumstances were identified as of December 31, 2022. For the year ended December 31, 2021, a majority of the impairment expense relates to intangible assets in the Digital Wallets segment, as a result of decreased revenue associated with certain legacy merchant relationships as well as reduced future forecasted cash flows associated with these merchants.

#### Restructuring and other costs

Restructuring and other costs increased \$38,249, or 147.8%, to \$64,132 for the year ended December 31, 2022 from \$25,883 for the year ended December 31, 2021. The increase was primarily driven by a \$33,603 provision recorded during the year ended December 31, 2022 related to certain customer payments and an increase in restructuring costs of \$2,746 during the year ended December 31, 2022.

*Loss on disposal of subsidiaries and other assets, net*

Loss on disposal of subsidiaries and other assets, net was \$1,359 for the year ended December 31, 2022 which was related to the disposal of Pay Services India, LLC. The Company did not incur any gain or loss on disposal of subsidiaries and other assets, net for the year ended December 31, 2021.

*Other income, net*

Other income, net decreased \$155,883, or 65.0%, to an income of \$83,778 for the year ended December 31, 2022 from an income of \$239,661 for the year ended December 31, 2021. The decrease was primarily driven by a decrease in the fair value gain on the Company's warrant liabilities from \$222,611 to \$32,481 and decrease in fair value on contingent consideration from a gain of \$13,443 to a loss of \$9,075, partially offset by an increase in fair value gain on derivative financial instruments from \$8,585 to \$17,321, an increase in foreign exchange gain of \$7,122 to \$38,289, mainly due to foreign denominated debt and gain on debt repurchases of \$11,534.

*Interest expense, net*

Interest expense, net decreased by \$39,199, or 23.6%, to \$126,628 for the year ended December 31, 2022 from \$165,827 for the year ended December 31, 2021. The decrease in interest expense, net was due to accelerated debt fees expensed during the prior year ended December 30, 2021 following the debt repayments and the debt refinancing in June 2021, partially offset by an increase in interest rates and additional drawdowns to finance the SafetyPay acquisition.

*Income tax benefit*

The income tax benefit was \$52,502 for the year ended December 31, 2022 compared to \$85,110 for the year ended December 31, 2021. This resulted in an effective tax rate of 2.7% for the year ended December 31, 2022 and 43.5% for the year ended December 31, 2021. The U.K. statutory tax rate will increase from 19% to 25% effective April 1, 2023. The change in the effective tax rate for the year ended December 31, 2022 compared to year ended December 31, 2021 is primarily due to non-deductible component of the goodwill impairment charge and changes to our valuation allowance related to our recoverability of deferred tax assets on restricted interest carry-forwards. A reconciliation between the statutory income tax rate and the income tax benefit / provision reported in the Consolidated Statements of Comprehensive Loss is summarized in Note 4, *Taxation*, within Item 18, Financial Statements included elsewhere in this Report.

*Net loss*

Net loss increased by \$1,751,956 to \$1,862,284 for the year ended December 31, 2022 from \$110,328 for the year ended December 31, 2021. The increase in net loss was largely driven by the increase in goodwill impairment expense and restructuring and other cost, as well as a decrease in other income, net and income tax benefit. This was partially offset by a decrease in interest expense, net as described above.

*Non-GAAP financial measure*

Adjusted EBITDA

Adjusted EBITDA for the Company decreased by \$33,947, or 7.6%, to \$409,951 for the year ended December 31, 2022 from \$443,898 for the year ended December 31, 2021. This decrease was driven by the unfavorable impact of foreign exchange rates, increased cost of sales of \$14,247, as well as higher credit losses resulting from increased volumes, higher VAT expense resulting from historic refunds and release of provisions in the year ended December 31, 2021, as well as higher technology costs and travel related expenses. For further explanation on the year-over-year change on these financial statement line items, please refer to the commentary above in "Results of Operations."

A reconciliation of Net loss to Adjusted EBITDA is as follows for the years ended December 31, 2022 and 2021:

	Year Ended December 31,	
	2022	2021
(U.S. dollars in thousands)		
<b>Net Loss</b>	<b>\$ (1,862,284 )</b>	<b>\$ (110,328 )</b>
Income tax benefit	(52,502 )	(85,110 )
Interest expense, net	126,628	165,827
Depreciation and amortization	266,819	261,372
Share-based compensation	62,354	101,770
Impairment expense on goodwill and intangible assets	1,887,223	324,145
Restructuring and other costs <sup>(1)</sup>	64,132	25,883
Loss on disposal of subsidiaries and other assets, net	1,359	—
Other income, net <sup>(2)</sup>	(83,778 )	(239,661 )
<b>Adjusted EBITDA</b>	<b>\$ 409,951</b>	<b>\$ 443,898</b>

(1)As noted above, restructuring and other costs include acquisition costs related to the Company's merger and acquisition activity and restructuring costs. This includes certain professional advisory costs, office closure costs and resulting severance payments to employees. For the year ended December 31, 2022, restructuring costs were \$13,393, inclusive of CEO severance costs, and other costs were \$50,739, which primarily consisted of a \$33,603 provision related to certain customer payments and acquisition costs. For the year ended December 31, 2021, restructuring and strategic transformation costs amounted to \$10,647. Other costs primarily consisted of advisory fees related to public company readiness activities as well as other advisory fees incurred on merger and acquisition activity and the Company's Brexit planning.

(2)As noted above, other income, net, consists primarily of foreign exchange gains and losses and fair value movement in contingent consideration, derivative instruments and warrants, as well as gains on debt repurchases. For the year ended December 31, 2022, other expense, net includes fair value gain of warrant liabilities of \$32,481, gain on foreign exchange of \$38,289, fair value loss on contingent consideration of \$9,075, fair value gain on derivative instruments of \$17,321, gain on debt repurchases of \$11,534 and other costs of \$6,772. For the year ended December 31, 2021, other expense, net includes fair value gain of warrant liabilities of \$222,611, gain on foreign exchange of \$7,122, fair value gain on contingent consideration of \$13,443, fair value gain on derivative instruments of \$8,585 and other costs of \$12,100.

### Analysis by Segment

We operate in two operating segments: Merchant Solutions and Digital Wallets. Our reportable segments are the same as our operating segments. Adjusted EBITDA at the segment level is reported to the Chief Operating Decision Maker for purposes of making decisions about allocating resources to the segments and assessing their performance. Adjusted EBITDA of each operating segment includes the revenues of the segment less ordinary operating expenses that are directly related to those revenues and an allocation of shared costs. For this reason, Adjusted EBITDA, as it relates to our segments, is presented in conformity with Accounting Standards Codification 280, Segment Reporting, and is excluded from the definition of non-GAAP financial measures under the Securities and Exchange Commission's Regulation G and Item 10(e) of Regulation S-K.

The Company allocates shared costs to the two segments. Shared costs are the cost of people and other resources consumed in activities that provide a benefit across more than one segment. Shared costs are allocated to each segment primarily based on applicable drivers including headcount, revenue and Adjusted EBITDA.

### Year Ended December 31, 2022 Compared to Year Ended December 31, 2021

Our results by operating segment for the year ended December 31, 2022 comprised of the following:

(U.S. dollars in thousands)	Merchant Solutions		Digital Wallets		Corporate <sup>(2)</sup>		Intersegment		Total
Revenue	\$	817,353	\$	686,165	\$	—	\$	(7,381 )	\$ 1,496,137
Adjusted EBITDA <sup>(1)</sup>	\$	200,304	\$	289,413	\$	(79,766 )	\$	—	\$ 409,951

(1)For a reconciliation of the Company's net loss to Adjusted EBITDA for the period presented, see "Results of Operations."

(2)Corporate consists of corporate overhead and unallocated shared costs of people and other resources consumed in activities that provide a benefit across the Company.

Our results by operating segment for the year ended December 31, 2021 comprised of the following:

(U.S. dollars in thousands)	Merchant Solutions		Digital Wallets		Corporate <sup>(2)</sup>		Intersegment		Total
Revenue	\$	745,344	\$	750,025	\$	—	\$	(8,356 )	\$ 1,487,013
Adjusted EBITDA <sup>(1)</sup>	\$	186,878	\$	332,090	\$	(75,070 )	\$	-	\$ 443,898

(1)For a reconciliation of the Company's net loss to Adjusted EBITDA for the period presented, see "Results of Operations."

(2)Corporate consists of corporate overhead and unallocated shared costs of people and other resources consumed in activities that provide a benefit across the Company



The increase (decrease) in results by operating segment is shown in the following table:

<i>(U.S. dollars in thousands)</i>	<b>Merchant Solutions</b>		<b>Digital Wallets</b>		<b>Corporate <sup>(2)</sup></b>		<b>Intersegment</b>		<b>Total</b>	
Revenue	\$	72,009	\$	(63,860 )	\$	—	\$	975	\$	9,124
Adjusted EBITDA <sup>(1)</sup>	\$	13,426	\$	(42,677 )	\$	(4,696 )	\$	-	\$	(33,947 )

(1) For a reconciliation of the Company's net loss to Adjusted EBITDA for the period presented, see "Results of Operations."

(2) Corporate consists of corporate overhead and unallocated shared costs of people and other resources consumed in activities that provide a benefit across the Company.

#### *Merchant Solutions*

Revenue increased by \$72,009, or 9.7%, to \$817,353 for the year ended December 31, 2022 from \$745,344 for the year ended December 31, 2021. This increase was due to higher volumes and inflationary pressures resulting in higher processing fees.

Adjusted EBITDA increased by \$13,426 or 7.2%, to \$200,304 for the year ended December 31, 2022 from \$186,878 for the year ended December 31, 2021. This increase was due to an increase in revenue as noted above, as well as a reduction in legal and professional fees and personnel costs. This increase was offset by an increase in cost of services (excluding depreciation and amortization) of \$46,259, or 12.5% for the year ended December 31, 2022 largely due to higher volumes as well as higher technology costs and credit losses.

#### *Digital Wallets*

Revenue decreased by \$63,860, or 8.5%, to \$686,165 for the year ended December 31, 2022 from \$750,025 for the year ended December 31, 2021. This decrease was primarily due to the unfavorable impact of foreign exchange rates, as well as resulting from impact of war-regions, regulatory changes in Europe, and lower promotional activity, partly offset by recent acquisition activity.

Adjusted EBITDA decreased by \$42,677 or 12.9%, to \$289,413 for the year ended December 31, 2022 from \$332,090 for the year ended December 31, 2021. This decrease was largely due to reduced revenues as noted above as well as an increase in personnel costs from acquisitions, and higher technology costs, partly offset by a decrease in cost of services (excluding depreciation and amortization) by \$32,987 or 13.9% for the year ended December 31, 2022 and a decrease in marketing expenses.

#### *Corporate*

Corporate Adjusted EBITDA comprising of corporate overhead decreased \$4,696 or 6.3% to a loss of \$79,766 for the year ended December 31, 2022 from a loss of \$75,070 for the year ended December 31, 2021. This reduced Adjusted EBITDA was primarily driven by higher VAT expense during the year ended December 31, 2022, as a result of historic refunds and release of provisions in the prior year, Director & Officer insurance costs subsequent to becoming a public company, and higher travel related expenses.

#### **Seasonality**

We have experienced in the past, and expect to continue to experience, seasonal fluctuations in our business. For instance, both of the Company's Merchant Solutions and Digital Wallets businesses historically experience increased activity during the traditional holiday period and around other nationally recognized holidays, when certain of our game's operators may run promotions, consumers enjoy more leisure time and younger consumers may receive our products as gifts. Our Digital Wallets segment experiences increased activity based on the occurrence and timing of sporting events. Volatility in our revenue, key operating metrics or their rates of growth could result in fluctuations in our financial condition or results of operations.

#### **Quantitative and Qualitative Disclosure about Market Risk**

Our market risk includes the potential loss arising from adverse changes in foreign currency exchange rates and interest rates. We monitor risk exposures on an ongoing basis. The Company utilizes derivative financial instruments to manage interest rate risk on its variable rate debt facilities and term loans. The company does not apply hedge accounting for its derivative financial instruments.

#### *Interest Rate Risk*

We are exposed to interest rate risk relating to our borrowings and investment revenue. The Company actively manages interest rate risk through the use of interest rate swaps and caps. Interest rate swaps convert floating rates to fixed, and interest rate caps limit the potential impact of rising interest rates.

As of December 31, 2022, an increase of 100 basis points in interest rates offered on the bank borrowings would result in a \$17.4 million unfavorable impact on net loss and a decrease of 100 basis points would result in a \$17.4 million favorable impact on net earnings related to the Company's borrowings. Due to the interest rate floors within the Company's facility agreement of 0.5% on USD LIBOR and 0% on EURIBOR, we may not realize the benefit of a decrease of 100 basis points in the applicable interest rates.

As of December 31, 2021, an increase of 100 basis points in interest rates offered on the bank borrowings would result in a \$18.2 million unfavorable impact on net loss while a decrease of 100 basis points would result in a \$18.2 million favorable impact on net earnings related to the Company's borrowings. Due to the interest rate floors within the Company's facility agreement of 0.5% on USD LIBOR and 0% on EURIBOR, we may not realize the benefit of a decrease of 100 basis points in the applicable interest rates.

#### *Foreign Currency Risk*

We have global operations and trade in various foreign currencies, primarily the Great British Pound, Euro, Canadian Dollar, Norwegian Krone, Swiss Franc, Swedish Krona and Polish Zloty. In addition, we are exposed to currency risk associated with translating our functional currency financial statements into its reporting currency, which is the U.S. dollar. As a result, we are exposed to movements in the exchange rates of various currencies against the U.S. dollar.

We manage the exposure to currency risk by commercially transacting materially in U.S. dollars, Euros and Great British Pounds, the currencies in which we materially incur operating expenses. We limit the extent to which we incur operating expenses in other currencies, wherever possible, thereby minimizing the realized and unrealized foreign exchange gain/(loss). The currency of the Company's borrowings is in part matched to the currencies expected to be generated from the Company's operations. Intercompany funding is typically undertaken in the functional currency of the operating entities or undertaken to ensure offsetting currency exposures.

As of December 31, 2022, had the U.S. dollar strengthened by 1% in relation to all the other currencies, with all other variables held constant, the net assets of the Company would have decreased by \$2.5 million. A weakening of the U.S. dollar by 1% against the above currencies would have had an equal and opposite effect.

As of December 31, 2021, had the U.S. dollar strengthened by 1% in relation to all the other currencies, with all other variables held constant, the net assets of the Company would have decreased by \$2.3 million. A weakening of the U.S. dollar by 1% against the above currencies would have had an equal and opposite effect.

#### *Credit Risk*

Credit risk is the risk of financial loss if a consumer or merchant counterparty to a financial instrument fails to meet its contractual obligations, and arises principally from our cash and cash equivalents, settlement receivables, restricted cash in respect to customer accounts, and trade receivables.

The Company is also exposed to potential losses from merchant-related chargebacks. A chargeback occurs when a dispute between a cardholder and a merchant, including a claim for non-delivery of the product or service by the merchant, is not resolved in favor of the merchant and the transaction is charged back to the merchant resulting in a refund of the purchase price to the cardholder. If the Company is unable to collect this chargeback amount from the merchant due to closure, bankruptcy or other reasons, the Company bears the loss for the refund paid to the cardholder. The risk of chargebacks is typically greater for those merchants that promise future delivery of goods and services rather than delivering goods or rendering services at the time of payment.

The cash and cash equivalents and restricted cash in respect to customer accounts are deposited with different banking partners with a variety of credit ratings. Credit exposures are regularly monitored and managed by the Group's Treasury function with oversight from the Group Safeguarding and Treasury Committee ("STC").

Settlement receivables primarily relate to receivables from third party payment institutions arising in both our Merchant Solutions and Digital Wallets businesses, as well as receivables from distribution partners arising in our Digital Wallets business. These receivables are closely monitored on an ongoing basis. The Digital Wallets business utilizes credit limits and insurance to limit its overall gross exposure to distribution partners.

Credit quality of a customer and distributor is assessed based on their industry, geographical location and financial background, with credit risk managed based on this assessment (i.e. trading limits, shortened payment period and/or requiring collateral, usually in the form of bank guarantees, insurance or cash deposits or holdbacks which can legally be claimed by the Group to cover unpaid receivables). Outstanding trade receivables are regularly monitored to flag any unusual activities such as chargebacks. Having a significant number of consumers and merchants across multiple geographies and industries helps mitigate the Group's exposure to concentration risk. Through the Group's global credit risk framework we forecast, under normal business conditions, the probability of the occurrence of credit events before they occur. Customer credit risk is managed by each business unit subject to our established customer credit risk management policies, procedures and controls.

### *Liquidity Risk*

Liquidity risk is the risk that we may be unable to meet our financial obligations as they fall due. We control and monitor both cash levels and cash flow on a regular basis, including forecasting future cash flows. Our objective to managing liquidity is to ensure that, as far as possible, we always have sufficient liquidity to meet our liabilities as they become due.

In order to mitigate short-term liquidity risk and fund future merger and acquisition activity, we have a \$305,000 revolving credit facility available, from which we make draw downs and repayments throughout the period. The balance drawn on the revolving credit facility as of December 31, 2022 and 2021 was \$21,408 and \$28,423, respectively.

As of December 31, 2022 and 2021, the total principal amount of our external borrowings was \$2,658,023 and \$2,794,108. Subject to the limits contained in the credit agreements that govern our credit facilities, we may be able to incur substantial additional debt from time to time to finance working capital, capital expenditures, investments or acquisitions, or for other purposes. All interest and mandatory debt repayments were satisfied during the years ended December 31, 2022 and 2021.

Our key debt covenant governing these facilities is financial and is monitored monthly. Our primary financial covenant is to maintain a first lien debt ratio below 7.5x a Last Twelve Months EBITDA measure adjusted for certain items as stipulated in the company's facilities agreement. As of December 31, 2022 and 2021, the Company was in compliance with all financial covenants associated with its debt.

In addition, the Company is required to maintain minimum levels of liquidity within its regulated businesses within the United Kingdom and Ireland in accordance with our regulatory requirements. We monitor liquidity levels within our regulated entities on an ongoing basis, in accordance with our liquidity and capital adequacy assessment framework.

### **B. Liquidity and Capital Resources**

Our primary sources of liquidity have been funds generated from operations, issuance of debt, the use of our revolving credit facilities and a line of credit. We assess our liquidity through an analysis of our working capital together with our other sources of liquidity. As of December 31, 2022 and 2021, we had \$260,219 and \$313,439 in cash and cash equivalents. Furthermore, we had \$283,592 available under our \$305,000 Revolving Credit Facility as of December 31, 2022. We had \$276,577 available under our Revolving Credit Facility as of December 31, 2021.

In connection with the Transaction, we underwent a series of transactions that impacted our financial position and overall liquidity profile. This included the cash consideration for the Pi Jersey acquisition of \$2,448,799, debt repayment of \$1,155,743 in connection with the Transaction and payment of transaction costs of \$151,722. These transactions were offset by the \$1,616,673 in net proceeds from the merger with FTAC and \$2,000,000 in proceeds from private placement ("PIPE Investment").

We have various contractual obligations in the normal course of our operations and financing activities. Our most significant contractual obligations relate to the principal outstanding amount of the Company's debts, including interest payments, and operating lease obligations. For further information on these contractual obligations, see Note 9, *Debt*, and Note 18, *Leases*, within Item 18, Financial Statements included elsewhere in this Report.

As discussed in Note 4, *Taxation*, within Item 18, Financial Statements as of December 31, 2022 the Company has \$16,769 of liabilities associated with uncertain tax positions in the various jurisdictions in which the Company conducts operations. Due to the uncertain and complex application of the tax regulations, combined with the difficulty in predicting when tax audits throughout the world may be concluded, the Company cannot make precise estimates of the timing of cash outflows relating to these liabilities.

During the years ended December 31, 2022 and 2021, we did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K, other than letters of credit and financial guarantee contracts entered into in the ordinary course of business.

In addition to our cash and cash equivalents on our Consolidated Statements of Financial Position, we expect to continue to generate cash from our normal operations as well as the ability to draw down on our credit facilities, disclosed below, as required. We believe that we have sufficient financial resources to fund our activities and execute our business plans during the next 12 months.

### *Debt*

For further discussion regarding our debt facilities, refer to *Note 9, Debt*, within Item 18, Financial Statements.

As market conditions warrant, we and/or our majority equity holders, Blackstone, CVC and/or our respective affiliates, may from time to time, seek to repurchase securities that we have issued or loans that we have borrowed in privately negotiated or open market transactions, by tender offer or otherwise. Subject to any applicable limitations contained in the agreements governing our indebtedness,

any such purchases may be funded by existing cash or by incurring new secured or unsecured debt, including borrowings under our credit facilities. The amounts involved in any such purchase transactions, individually or in the aggregate, may be material. Any such purchases may relate to a substantial amount of a particular tranche of debt, with a corresponding reduction, where relevant, in the trading liquidity of that debt. In addition, any such purchases made at prices below the “adjusted issue price” (as defined for U.S. federal income tax purposes) may result in taxable cancellation of indebtedness income to us, which may be material, and result in related adverse tax consequences to us.

### Cash Flow

The following table presents the summary consolidated cash flow information for the period presented.

(U.S. dollars in thousands)	For the year ended December 31,	
	2022	2021
Net cash flows provided by operating activities	\$ 924,078	\$ 224,468
Net cash flows used in investing activities	(575,594 )	(411,269 )
Net cash flows (used in) / provided by financing activities	(80,542 )	483,281
Effect of foreign exchange rate changes	(112,465 )	(88,614 )
<b>Increase in cash and cash equivalents, including customer accounts and other restricted cash</b>	<b>\$ 155,477</b>	<b>\$ 207,866</b>

### Comparison of Cash Flows

The Company’s regulatory obligations include the requirement to safeguard customer funds that have been received either in exchange for electronic money (“e-money”) issued or within the transaction settlement cycle to merchants. Such amounts are recorded in customer accounts and other restricted cash in our Consolidated Statements of Financial Position. The Company includes customer accounts and other restricted cash in the cash and cash equivalents balance reported in the Consolidated Statements of Cash Flows.

#### Operating Activities

Net cash flows provided by (used in) operating activities mainly consists of our net loss adjusted for non-cash items and movements in working capital.

Non-cash items usually arise as a result of timing differences between expenses recognized and actual cash costs incurred or as a result of other non-cash income or expenses. Non-cash items include: depreciation and amortization; unrealized foreign exchange gain/(loss); deferred tax (expense)/benefit; shared-based compensation, non-cash interest expense, net; other (expense)/income, net; impairment expense on goodwill and intangible assets; allowance for credit losses; gain/(loss) on disposal of subsidiaries and other assets, net; and non-cash lease expense.

Movements in working capital include the movements in: accounts receivable, net; prepaid expenses, other current assets and related party receivables; settlement receivables, net; accounts payable, other liabilities, related party payables; funds payable and amounts due to customers; and income tax payable / (receivable). Movements in working capital are affected by several factors including the timing of month-end and transaction volume.

The Company’s regulatory obligations in the United Kingdom and Ireland include the requirement to safeguard customer funds that have been received either in exchange for electronic money (“e-money”) issued or within the transaction settlement cycle to merchants. Such amounts are recorded as an asset in our Consolidated Statements of Financial Position, in customer accounts and other restricted cash which is presented as part of cash, cash equivalents, customer accounts and other restricted cash as reported in the Consolidated Statements of Cash Flows. As such, movements in customer accounts and other restricted cash are not presented as part of movements in working capital as described above.

The Company also has a corresponding liability to its customers recognized in our Consolidated Statements of Financial Position as funds payable and amounts due to customers, as well as settlement receivables, net, that represent timing differences in the Group’s settlement process between the cash settlement of a transaction and the recognition of the associated liability. The movements in these account balances are presented as part of movements in working capital as described above.

The amounts of these balances in our Consolidated Statements of Financial Position as of December 31, 2022 and 2021 are summarized in the table below.

	For the year ended December 31,	
(U.S. dollars in thousands)	2022	2021
Customer accounts and other restricted cash	1,866,976	1,658,279
Settlement receivables, net of allowances for doubtful accounts	147,774	149,852
Funds payable and amounts due to customers	1,997,867	1,400,057

Net cash flows provided by operating activities increased by \$699,610 to an inflow of \$924,078 for the year ended December 31, 2022 from an inflow of \$224,468 for the year ended December 31, 2021. The key reason for the increase is due to the cash inflow from the movement in funds payable and amounts due to customers of \$698,855 for the year ended December 31, 2022, from an outflow of \$95,890 for the year ended December 31, 2021. As noted above, the corresponding amounts that have been received in respect of this liability are largely included in customer accounts and other restricted cash, which are not presented within net cash flows provided by operating activities.

For the year ended December 31, 2022, net cash flows provided by operating activities of \$924,078 primarily consists of a net loss of \$1,862,284 adjusted for non-cash items of \$2,112,202, largely driven by depreciation and amortization of \$266,819 and impairment expense on goodwill and intangible assets of \$1,887,223, and share-based compensation of \$62,354, offset by deferred tax benefit of \$82,876. This was partly offset by cash outflows of \$674,160 in working capital mainly relating to movements in funds payable and amounts due to customers of \$698,855.

For the year ended December 31, 2021, net cash flows provided by operating activities of \$224,468 primarily consists of a net loss of \$110,328 adjusted for non-cash items of \$461,045, largely driven by depreciation and amortization of \$261,372 and impairment expense on goodwill and intangible assets of \$324,145, offset by other income, net of \$232,539. This was partly offset by cash outflows of \$126,249 in working capital mainly relating to movements in funds payable and amounts due to customers of \$95,890.

#### Investing Activities

Net cash used in investing activities increased \$164,325 to \$575,594 for the year ended December 31, 2022 from \$411,269 for the year ended December 31, 2021. This increase is primarily attributed to net cash outflow on acquisition of subsidiaries of \$424,722 for the year ended December 31, 2022, from an outflow of \$263,520 for the year ended December 31, 2021. This is further driven by an increase in the purchase of other intangibles related to software development, partially offset by a decrease in purchases of merchant portfolios.

#### Financing Activities

Net cash provided used in / provided by financing activities changed \$563,823 to an outflow of \$80,542 for the year ended December 31, 2022 from an inflow of \$483,281 for the year ended December 31, 2021. This change primarily resulted from the prior year net cash inflow from reorganization and recapitalization, partially offset by the net impact of repayments of the Company's borrowing facilities related to the prior year debt refinancing. The net cash inflow from reorganization and recapitalization was \$1,167,874 for the year ended December 31, 2021. Borrowings and repayments on all facilities were \$917,269 and \$920,519, respectively, for the year ended December 31, 2022 and \$3,562,112, and \$4,033,206, respectively for the year ended December 31, 2021.

We believe that our current level of cash and borrowing capacity under debt facilities, together with future cash flows from operations will be sufficient to meet the needs of our existing operations and planned requirements for the foreseeable future.

#### Commitments and Contingencies

From time to time we enter into certain types of contracts that contingently require us to indemnify parties against certain categories of losses they might incur including as a result of third-party claims. The contracts primarily relate to: (i) certain bank sponsor agreements, under which we may be required to provide indemnification to the bank in respect of losses they may incur as a result of processing card payments for relevant merchants; (ii) certain merchant and vendor agreements where we may be required to indemnify the merchant or vendor against any third party claims resulting from a violation of intellectual property rights or for any breach of the representations, warranties, obligations, or covenants in the agreement or against losses resulting from a data breach suffered by the Company; (iii) certain business purchase agreements, under which we may provide customary indemnification to the seller of the business being acquired; and (iv) certain real estate leases, under which we may be required to indemnify property owners for environmental and other liabilities, and other claims arising from our use of the applicable premises.

The terms of such obligations vary by contract and in most instances a specific or maximum dollar amount is not explicitly stated therein. Generally, amounts under these contracts cannot be reasonably estimated until a specific claim is asserted. Consequently, no liabilities have been recorded for these obligations on our Consolidated Statements of Financial Position for any of the periods presented.

We periodically become a party to litigation proceedings arising in the normal course of our business operations. The Company maintains liabilities for losses from legal actions that are recorded when they are determined to be both probable in their occurrence and can be reasonably estimated.

Additionally, the Company has contingent consideration payables associated with several historical acquisitions. Such contingent consideration payable was recognized at fair value on the acquisition date and is remeasured each reporting period. Amounts payable by the Company are contingent upon the achievement of certain financial performance targets. The Company also recognizes contingent consideration receivables associated with the disposal of a previous subsidiary. Such contingent consideration receivable was recognized at fair value on the acquisition date and is remeasured each reporting period. The contingent consideration to be received is based on the future distributable cash generated by the disposed subsidiary.

### **C. Research and Development, patents and licenses, etc.**

For further discussion regarding research and development refer to Item 4.B. Information on the Company—Business Overview, and Note 1, *Basis of Presentation and Summary of Significant Accounting Policies*, within Item 18, Financial Statements.

### **D. Trend Information**

Other than as disclosed elsewhere in this annual report, we are not aware of any trends, uncertainties, demands, commitments or events for the year ended December 31, 2022 that are reasonably likely to have a material and adverse effect on our net revenues, income, profitability, liquidity or capital resources, or that would cause the disclosed financial information to be not necessarily indicative of future results of operations or financial conditions

### **E. Critical Accounting Estimates**

Our consolidated financial statements have been prepared in accordance with GAAP, which often require us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses, and related disclosures. We evaluate our critical estimates and assumptions on an ongoing basis. Our estimates are based on historical experience, current conditions and various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

The critical accounting estimates, assumptions, and judgments that we believe to have the most significant impact on our consolidated financial statements are described below.

#### *Business Combinations*

The valuation of assets acquired in a business combination requires the use of significant estimates and assumptions. The acquisition method of accounting for business combinations requires us to estimate the fair value of assets acquired and liabilities assumed to properly allocate purchase price consideration between assets that are amortized and goodwill. Although we believe the assumptions and estimates we have made are reasonable, they are based in part on historical experience, market conditions and information obtained from management of the acquired companies and are inherently uncertain. Examples of critical estimates in valuing acquired assets and assumed liabilities include but are not limited to:

- Future expected cash flows;
- Historical and expected customer attrition rates and anticipated growth in revenue from acquired customers;
- Expected use of acquired assets; and
- Discount rates

When a business combination involves contingent consideration, we record a liability for the estimated cost of such contingencies when expenditures are probable and reasonably estimable. A significant amount of judgment is required to estimate and quantify the potential liability in these matters. We engage outside experts as deemed necessary or appropriate to assist in the calculation of the liability, however management is responsible for evaluating the estimate. We measure our contingent liabilities at fair value on a recurring basis using significant unobservable inputs classified within Level 3 of the fair value hierarchy. We reassess the estimated fair value of the contingent consideration each financial reporting period over the term of the arrangement. Any resulting changes identified subsequent to the measurement period are recognized in earnings and could have a material effect on our results of operations. In the current year, the Company completed one business combination resulting in \$223,300 of intangible asset additions and \$284,239 of goodwill (prior to purchase price adjustments).

## *Revenue Recognition*

Application of the accounting principles in GAAP related to the measurement and recognition of revenue requires us to make judgments and estimates. Complex arrangements with nonstandard terms and conditions may require significant contract interpretation to determine the appropriate accounting.

An area of significant judgment for the Company is the determination of the principal agent consideration. For the Company's Merchant Solutions segment, the Company has concluded that its promise to customers to provide payment services is distinct from the services provided by the card issuing financial institutions and payment networks in connection with payment transactions. The Company does not have the ability to direct the use of and obtain substantially all the benefits from the services provided by the card issuing financial institutions and payment networks before those services are transferred to the customer. As a result, the Company presents revenue for its Merchant Solutions segment net of the interchange fees charged by the card issuing financial institutions and the fees charged by the payment networks.

Another area of significant judgment involves determining whether goods and services are considered distinct performance obligations that should be accounted for separately, or together as one performance obligation. The primary services offered by the Company to its customers comprise a series of distinct performance obligations that are substantially similar with the same pattern of transfer. Hence, these services are considered a single performance obligation and revenue is recognized as the Company satisfies its performance obligation by transferring control over the service to a customer.

## *Allowance for credit losses*

The Company has exposure to credit losses for financial assets including customer accounts and other restricted cash, settlement receivables, accounts receivable, and financial guarantee contracts to the extent that a chargeback claim is made against the Company directly or to the Company's merchants on card purchases.

We utilize a combination of aging and probability of default methods to develop an estimate of credit losses, depending on the nature and risk profile of the underlying asset pool. A broad range of information is considered in the estimation process, including historical loss information adjusted for current conditions and expectations of future trends. The estimation process also includes consideration of qualitative and quantitative risk factors associated with the age of asset balances, expected timing and probability of default, loss given default, exposure at default, merchant risk profiles, and relevant macro-economic factors. Determining the appropriate current expected credit loss allowance is an inherently uncertain process requiring significant judgment and ultimate losses may vary from the current estimates. More specifically, a significant change in the estimate of the probability of default or loss given default for financial guarantee contracts could result in a material change to the allowance. While there has not been a significant change in assumptions during the year, the allowance for credit losses and associated credit loss expense has declined due to factors described in further detail in Note 8, *Allowance for credit losses*, of Item 18, Financial Statements.

## *Income Taxes*

We are subject to income tax in most of the jurisdictions in which we operate. Management is required to exercise significant judgment in determining our provision for income taxes. The provision for income taxes is determined taking into account guidance related to uncertain tax positions. Judgment is required in assessing the timing and amounts of deductible and taxable items. Deferred tax assets are amounts available to reduce income taxes payable on taxable income in future years and are initially recognized at enacted tax rates. To the extent deferred tax assets are not expected to be realized, we record a valuation allowance. Recognized income tax positions are measured at the largest amount that has a greater than 50% likelihood of being realized upon settlement. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

As of December 31, 2022, we had \$34,481 of net deferred tax assets in the UK. At this time, we consider it more likely than not that we will have sufficient taxable income in the future to allow us to realize these deferred tax assets. However, it is possible that some or all of these DTAs will not be realized, especially if we incur losses in the UK in the future. Therefore, unless we are able to generate sufficient taxable income from our operations, a substantial valuation allowance to reduce our UK deferred tax assets may be required, which materially increase our expenses in the period in which we recognize the allowance and have a materially adverse impact on our consolidated financial statements. The exact timing and amount of the valuation allowance recognition are subject to change on the basis of the net income that we are able to actually achieve. We will continue to evaluate the possible recognition of a valuation allowance on a quarterly basis.

Although we believe that we have adequately reserved for our uncertain tax positions, we can provide no assurance that the final tax outcome of these matters will not be materially different. We make adjustments to these reserves when facts and circumstances change, such as the closing of a tax audit or the refinement of an estimate. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences may affect the provision for income taxes in the period in which such determination is made and could have a material impact on our financial condition and results of operations.

## *Goodwill*

Goodwill is tested for impairment at least annually at the reporting unit level by first performing a qualitative assessment to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying value. If the reporting unit does not pass the qualitative assessment, then quantitative assessment is performed to compare the reporting unit's carrying value to its fair value. Alternatively, we are permitted to bypass the qualitative assessment and proceed directly to performing the quantitative assessment. Goodwill is considered impaired if the carrying value of the reporting unit exceeds its fair value. The fair value of the reporting unit is based on a discounted cash flow model involving several assumptions which require significant judgment.

The key assumptions include cash flow growth, discount rate and exit multiples. Cash flow growth is based on management estimates of future outcomes considering past experience and market participant assumptions. The exit multiples are determined based on comparable companies' transaction multiples and discounted based on business-specific considerations. Discount rate assumptions are based on determining a cost of debt and equity, followed by an assessment as to whether there are risks not adjusted for in the future cash flows of the respective reporting unit. The impairment test results are corroborated by comparing to an alternative market approach.

During the year ended December 31, 2022, \$1,882,187 of goodwill impairment expense was recognized within the Merchant Solutions and Digital Wallets segments.

The estimated fair value of each reporting unit exceeded its carrying value as of the latest annual goodwill impairment test date of October 1, 2022. The reporting units with a fair value not substantially in excess of their carrying value included US Acquiring and IES (within the Merchant Solutions segment), and Digital Wallet (within the Digital Wallets segment), which had goodwill balances of \$576,898, \$60,548, and \$282,657, respectively as of December 31, 2022. The percentage by which the fair value of the US Acquiring, IES and Digital Wallet reporting units exceeded the carrying value is 3%, 9%, and 3%, respectively based on the most recent goodwill impairment analysis performed.

Changes in assumptions or circumstances, including increases in the discount rate, decreases in the exit multiple or a sustained decline in our stock price, could result in a material impairment of goodwill in future periods.

## *Finite-lived Intangible Assets*

We regularly review finite-lived intangible assets, such as brands, computer software and customer relationships, for impairment. If events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable and the expected undiscounted future cash flows attributable to the asset are less than the carrying amount of the asset group, an impairment loss equal to the excess of the asset groups carrying value over its fair value is recorded.

Fair values are determined based on a discounted cash flow analysis. Assumptions and estimates about future values and remaining useful lives are complex and often subjective. They can be affected by a variety of factors, including industry and economic trends, and internal factors such as changes in our business strategy and our internal forecasts. Key assumptions often include revenue growth rate, EBITDA margin, attrition rates, royalty rates, estimated useful-lives and discount rates. These valuations are considered to be Level 3 in the fair value hierarchy due to the inputs often being unobservable.

For the years ended December 31, 2022 and 2021, intangible asset impairments of \$5,036 and \$324,145 were recognized within the Merchant Solutions and Digital Wallets segments. Failure to achieve expected cash flows, obsolescence or other factors may result in additional material impairments of intangible assets in future periods.

## *Litigation provision*

Through the normal course of the Company's business, the Company is subject to a number of litigation proceedings both brought against and brought by the Company. The Company maintains liabilities for losses from legal actions that are recorded when they are determined to be both probable in their occurrence and can be reasonably estimated.

The Company vigorously defends its position on all open cases. While the Company considers a material outflow for any one individual case unlikely, it is noted that there is uncertainty over the final timing and amount of any potential settlements. These claims require management judgment in the assessment of the potential outcome and the impact on the Company's assets and liabilities. The actual outcome of these claims or liabilities could materially differ to management judgments.

## *Accounting Pronouncements Not Yet Adopted*

Recently issued accounting pronouncements that may be relevant to our operations but have not yet been adopted are outlined in Note 1, *Basis of Presentation and Summary of Significant Accounting Policies*, within Item 18, Financial Statements appearing elsewhere in this Report.



## ITEM 6. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

### A. Directors and Executive Officers

The following table sets forth the names, ages and positions of our executive officers and directors as of March 1, 2023.

Name	Age	Position
Bruce Lowthers	57	Chief Executive Officer and Director
Alexander Gersh	59	Chief Financial Officer
Roy Aston	44	Chief Operating Officer
Robert Gatto	58	Chief Revenue Officer
Richard Swales	50	Chief Risk Officer
Nick Walker	49	Chief Human Resources Officer
Elliott Wiseman	49	General Counsel
Afshin Yazdian	50	President, Merchant Solutions
Daniel Henson	61	Chairman of the Board of Directors
Mark Brooker	51	Director
Matthew Bryant	39	Director
Anthony Jabbour	55	Director
Dagmar Kollmann	58	Director
Jonathan Murphy	39	Director
James Murren	61	Director
Eli Nagler	37	Director
Peter Rutland	43	Director
Hilary Stewart-Jones	61	Director

**Bruce Lowthers** has been our Chief Executive Officer since May 2022. He has also served as Executive Director on the Paysafe Board since May 2022. A high profile payments and fintech executive, Mr. Lowthers joined Paysafe following a 15-year tenure at FIS, a Fortune 500 company operating in the payments, merchant solutions and banking space. While at FIS, Mr. Lowthers most recently served as President, responsible for growing the global organization. Earlier executive roles in FIS saw Mr. Lowthers leading and modernizing some of the company's largest businesses including the Banking and Merchant Solutions and Payments businesses. Before FIS, Mr. Lowthers was an executive at eFunds, an electronic payments company, where he was responsible for all payment and risk products. Before eFunds, he was a serial entrepreneur and successfully co-founded and led four start-up companies and two payments industry associations -namely the Board for American Transaction Processors Coalition (ATPC) and Payments 20 (P20), the global payments body. Mr. Lowthers holds a bachelor's degree in business administration from the University of Massachusetts and began his career as a certified public accountant.

**Alexander Gersh** has been our Chief Financial Officer since October 2022. Mr. Gersh joined Paysafe from Sportradar, a leading global sports technology company creating immersive experiences for sports fans and bettors. Earlier in his career he spent six years in the online betting industry, most recently as CFO and Board Director of Paddy Power Betfair plc, which was formed in February 2016 following the merger of Paddy Power plc and Betfair Group plc - two online betting operators. Before entering the online betting industry, Mr. Gersh spent nearly eight years as CFO for NDS Group London, a leading global provider of digital pay TV software solutions. In his earlier career, Mr. Gersh held finance leadership roles for high profile organizations in the telecommunications industry including British Telecom and Motorola. Mr. Gersh is a certified public accountant (CPA) and holds a degree in business administration from the City University of NY (Baruch College), US.

**Roy Aston** has been our Chief Operating Officer since October 2022 and he joined Paysafe in February 2019 as our Chief Information Officer. Mr. Aston has global responsibility for leading Paysafe's technology and operations functions. As part of this, his remit includes global IT strategy, cyber security, transformation and running our 24/7 technology and customer operations. Before joining Paysafe, Mr. Aston gained extensive experience in IT and operations working for various high profile global financial services organizations and smaller UK-based fintech. His prior role was working for Barclays where he held the position of Group CIO Barclaycard since April 2013. Before that he held senior roles at Citi, where he was Director of Business and Technology Transformation, as well as egg, where his extensive Agile IT Development skills were deployed to help build the UK's leading online digital bank.

**Robert Gatto** has been our Chief Revenue Officer since July 2022. In his role, Mr. Gatto is charged with spearheading Paysafe's international sales function across a range of sectors including gaming, travel, entertainment, digital assets including crypto, and fintech. Mr. Gatto brings 30+ years' experience of delivering transformational growth and 'go to market' functions for both private and public businesses of all sizes. Before Paysafe, he co-founded and served as President of Ureka Inc. a community to help small businesses go to market and grow rapidly. Before that, he held senior roles for a wide range of high-performing technology companies including COO at Tubemogul, a programmatic video platform acquired by Adobe Systems for \$540m; SVP, Global Sales at NeuStar, Inc., a cloud-based, information services company; CEO at PointRoll, Inc., a leading provider of digital marketing

technology; and Vice President Sales for ShopLocal Inc. known for its innovative, localized digital marketing solutions for retailers. Rob holds a Bachelor of Science in Communications from Northern Illinois University, U.S.A.

**Richard Swales** has been our Chief Risk Officer since October 2019 and became our Chief Compliance Officer in October 2022. Mr. Swales has global responsibility for Risk, Compliance, Regulatory Affairs and ESG Reporting. Mr. Swales brings extensive knowledge of these various disciplines gained during a 30+ year career which has seen him work in Europe, Asia and the US. He started his career working in the public sector as an Officer for the UK's HM Customs & Excise followed by more than 25 years in banking, commercial finance, insurance, telecoms and payments with a focus on risk management, compliance, operational effectiveness, regulatory affairs, strategy and business development. Before Paysafe he worked for PayPal where he spent nine years leading their global risk and compliance strategy and was instrumental in supporting significant growth for the business.

**Nick Walker** has been our Chief Human Resources Officer since August 2015. Mr. Walker has global responsibility for HR, corporate communications, culture and wellbeing, and CSR. He has been with the company since 2012 during which time he has helped the executive team navigate multiple M&A integrations and other corporate transactions including IPO's in the UK and the U.S. Before Paysafe, Mr. Walker has worked in multiple international HR roles within the technology industry including stints living and working in Malaysia and Paris; carving out a niche in international HR, acquisition, transformation and change.

**Elliott Wiseman** has been our General Counsel since October 2011. Mr. Wiseman has responsibility for legal, privacy, internal audit, M&A and company secretarial matters. Mr. Wiseman started life as a corporate lawyer working at a number of different London-based law firms principally on mergers, acquisitions and other corporate transactions. He made his first move in-house in 2008 when he became Senior Legal Counsel at MoneyGram with responsibility for legal affairs in their Northern Europe and Asia Pacific regions. He also serves as Non-Executive Director at Seedrs Ltd. Mr. Wiseman holds a Master's Degree in Geography from Oxford University in the UK.

**Afshin Yazdian** has been our Chief Executive Officer, U.S. Acquiring since July 2020. Prior to joining Paysafe, he served as President & CEO of Cynergy Data from September 2013 until the company's merger with Priority Payment Systems, and then continued to serve as President of Priority until January 2020. Prior to that, Mr. Yazdian served as President of TouchSuite from April 2012 to September 2013 and EVP & General Counsel of iPayment, Inc. from its founding in January 2001 until December 2011. Mr. Yazdian graduated from Emory University Goizueta School of Business with a BBA in 1994 and graduated with honors from the University of Miami School of Law in 1997.

**Daniel Henson** has served as a member of the Company Board since 2022. Mr. Henson currently serves as non-executive chairman of IntraFi Network (formerly Promontory Intrafinancial Network), a leading provider of deposit placement services operating in the Washington D.C. area. He also serves as a Director of Alight Solutions. Previously, Mr. Henson served as non-executive chairman of Tempo Holdings until its merger and subsequent listing as Alight Inc in July of 2021. He also served as non-executive chairman of Exeter Finance, a leading auto finance company headquartered in Irving, TX. Previously, Mr. Henson served as a Director of Healthcare Trust of America and OnDeck Capital. Mr. Henson worked with the General Electric Company for 29 years and held a variety of senior positions at GE and GE Capital, including Chief Marketing Officer of GE and Six Sigma Quality Leader at GE Capital. He also served as the CEO of a number of GE Capital's financial services businesses in the U.S. and internationally. Starting in 2008, Mr. Henson was responsible for all GE Capital commercial leasing and lending businesses in North America. From 2009 to 2015, Mr. Henson also oversaw capital markets activities at GE Capital and GE Capital's industrial loan company bank in Utah. Mr. Henson holds a B.B.A. in Marketing from George Washington University.

**Mark Brooker** has served as a member of the Company Board since 2021. Mr. Brooker was previously Chief Operating Officer for Trainline, Europe's largest independent retailer of rail and coach tickets. Before Trainline, he was Chief Operating Officer of Betfair Group PLC, a leading online gambling operator and now part of Flutter Entertainment. In his earlier career, Mark spent 17 years in investment banking working for Morgan Stanley, Merrill Lynch, NatWest and NM Rothschild & Sons. Mark also brings a diverse range of Non-Executive Board Director experience and currently sits on the boards of Findmypast, a leader in online genealogy, where he is Chairman; Future PLC, a global platform for specialist media and member of the FTSE250; eCogra Holdings Limited and Heathrow Airport Holdings Limited. He also recently served as a Non-Executive Director of William Hill PLC, one of the largest gambling operators in the UK, before the Board was dissolved following its acquisition by Caesars Entertainment in April 2021 and was a director at Seedrs Ltd. Mark holds a Master's Degree in Engineering, Economics and Management from Oxford University in the UK.

**Matthew Bryant** has served as a member of the Company Board since 2019. Mr. Bryant is a Senior Managing Director at CVC, based in London. He joined CVC in 2019 and is a member of the financial services group. Prior to joining CVC, he was an investor at Bain Capital from May 2009 until April 2019. Prior to that, he was a Senior Associate Consultant at L.E.K. Consulting. Mr. Bryant holds a master's degree in Physics from the University of Oxford.

**Anthony Jabbour** has served as a member of the Company Board since 2021. Mr. Jabbour has also served as the Chief Executive Officer and a director of Dun & Bradstreet (and its predecessors), a leading global provider of business decision data and analytics, since February 2019. In May 2022, Mr. Jabbour became the Executive Chairman of Black Knight, Inc., a premier provider of software and data analytics to the mortgage and consumer loan, real estate and capital markets verticals. He previously served as Chairman and CEO of Blacknight. Prior to joining Black Knight, Mr. Jabbour served as Corporate Executive Vice President and Co-Chief Operating Officer of FIS from December 2015 through December 2017. Mr. Jabbour served as Corporate Executive Vice President of the Integrated Financial Solutions segment of FIS from February 2015 until December 2015. He served as Executive Vice President of the North America Financial Institutions division of FIS from February 2011 to February 2015. Prior to that, Mr. Jabbour held positions of increasing responsibility in operations and delivery from the time he joined FIS in 2004. Prior to joining FIS, Mr. Jabbour worked for Canadian Imperial Bank of Commerce and for IBM's Global Services group managing complex client projects and relationships. Mr. Jabbour holds a bachelor's degree in electrical engineering from the University of Toronto.

**Dagmar Kollmann** has served as a member of the Company Board since 2021. Ms. Kollmann is Chairperson of Citigroup Global Markets Europe AG and Audit Committee Chair. She is a member of the Supervisory Board and Chairperson of the Audit Committee of Deutsche Telekom AG, member of the Supervisory Boards of Unibail-Rodamco-Westfield SE and of Coca Cola Europacific Partners. Previously, she has been Deputy Chairperson of the Supervisory Board and Chairperson of the Audit Committee of Deutsche Pfandbriefbank AG, Deputy Chairperson of the Supervisory Board as well as Chairperson of the Audit Committee of Hypo Real Estate Holding AG, and a member of the Supervisory Boards of KfW-IPEX Bank GmbH and Bank Gutmann AG. Dagmar is a Commissioner in the Monopolies Commission in Germany, a permanent and independent expert committee, which advises the German government and legislature in the areas of competition policy-making, competition law and regulation. Its reports are published. Previously, Dagmar was CEO of Morgan Stanley Bank AG in Frankfurt. In addition to her role as CEO and Country Head for Germany and Austria, she was a member of the Boards of Directors of Morgan Stanley International Ltd. and Morgan Stanley & Co International, Ltd. in London. Prior to joining Morgan Stanley, Dagmar worked at UBS Philips & Drew Ltd, both in M&A and subsequently in the Equities Division. Past mandates include a membership in the Advisory Board of the EUREX Group and the role of "Sherpa" in the "Initiative Finanzplatz Deutschland." She holds a Master Degree in Law from the University of Vienna.

**Jonathan Murphy** has served as a member of the Company Board since 2021. Mr. Murphy joined Blackstone in 2021 and is a Managing Director in the firm's Private Equity Group, where he focuses on investments in the technology and financial technology industries. Prior to Blackstone, Mr. Murphy spent over eight years at Francisco Partners, a U.S.-based private equity fund that focuses on investments in the technology industry. While at Francisco Partners, Mr. Murphy was involved in the firm's investments in Civitas Learning, Dynamo Software, eFront, Lucidworks and Operative. Before joining Blackstone, Mr. Murphy worked at CPPIB in the Direct Investment Group and Morgan Stanley in the Investment Banking Division. Mr. Murphy received a Bachelor of Commerce from University College Dublin where he graduated with First Class Honors.

**James Murren** has served as a member of the Company Board since 2021. Mr. Murren was appointed to lead the Nevada COVID-19 Response, Relief and Recovery Task Force in March 2020 by Governor Steve Sisolak. He served on the National Infrastructure Advisory Council from December of 2013 to September of 2020, and has been a member of the Board of Trustees for Howard University since 2016. Mr. Murren first joined MGM Resorts International in 1998 as the Chief Financial Officer and served as the former Chairman and CEO of MGM Resorts International from December 2008 to February 2020. He also served as Chairman of the American Gaming Association from 2014 to 2017 and was on the Board of Trustees of the Brookings Institution from 2011 to 2018. In 2003, Mr. Murren co-founded the Nevada Cancer Institute, which was the official cancer institute for the state of Nevada until 2013. Mr. Murren is also a founding contributor to Nevada's first Fisher House which provides housing for military and Veterans' families, which was founded in February of 2016. He also served as a member of the Business Roundtable, an association of CEOs of leading U.S. companies. Mr. Murren received his Bachelor of Arts from Trinity College.

**Eli Nagler** has served as a member of the Company Board since 2018. Mr. Nagler is a Senior Managing Director in the Private Equity Group of Blackstone, where he focuses on investments in the Technology and Financial Services sectors. Since initially joining Blackstone in 2007, Mr. Nagler has been involved in the execution of the firm's investments in Alight Solutions, BankUnited, Bayview Asset Management, Ellucian, Exeter Finance, IntraFi Network, Lendmark Financial Services, MB Aerospace, Paysafe, Refinitiv, Sphera, Tradeweb, Viva Capital, Vivint, and Vivint Solar. In addition to the Company, he currently serves as a Director of Ellucian, IntraFi Network, Renaissance Learning, and Sphera. Before rejoining Blackstone after the completion of an MBA, Mr. Nagler worked at the United States Treasury Department in the Office of Capital Markets. Mr. Nagler received an AB magna cum laude from Harvard College and an MBA with distinction from Harvard Business School, where he graduated as a John L. Loeb Fellow. He is also a Term Member of the Council on Foreign Relations.

**Peter Rutland** has served as a member of the Company Board since 2017. Mr. Rutland joined CVC in 2007 and is Head of CVC's Financial Services Group and a Managing Partner. Prior to joining CVC, he worked for Advent International and Goldman Sachs. Mr. Rutland holds an MA Degree from the University of Cambridge and an MBA from INSEAD.

**Hilary Stewart-Jones** has served as a member of the Company Board since 2021. Ms. Stewart-Jones is a practicing UK lawyer at Harris Hagan who has specialized in assisting gambling companies and associated businesses since 1995 both in house and in private practice. She headed sector teams as a partner at BLP and DLA UK LLP, where she was able to leverage an international network to help support the burgeoning multi-jurisdictional online gambling industry from 2000-2013. From 2013 to 2015 she sat on the board of Playtech PLC, the LSE Main Market listed software house, becoming Deputy Chairman in 2014. Ms. Stewart-Jones has maintained a solicitor's practicing certificate for 33 years and continues to give legal advice to a wide portfolio of clients on a broad range of gambling related commercial and regulatory issues. She holds an LLB from Queen Mary College, London and an LLM from Queen Mary, Kings, UCL and LSE (London inter-collegiate). She also holds a Personal Management Licence from the Gambling Commission.

Per the Shareholders Agreement, the CVC Investors, the Blackstone Investors and Cannae LLC jointly designated Dagmar Kollmann and Mark Brooker as independent directors, the CVC Investors designated Matthew Bryant and Peter Rutland as directors, the Blackstone Investors designated Jonathan Murphy and Eli Nagler as directors and the FTAC Investors designated Daniel Henson, Anthony Jabbour, James Murren and Hilary Stewart-Jones as directors. See "C. Board Practices—Composition of the Board of Directors" and "Item 7.B. Related Party Transactions" of this Report for additional information.

## **B. Compensation**

### ***Non-Executive Directors***

We do not currently pay our directors who are either employed by CVC or Blackstone, any compensation for their service as directors. Our non-executive directors who receive compensation receive an annual cash fee ranging from \$90,000 to \$150,000, committee and chairmanship fees ranging from \$5,000 to \$40,000 and are eligible to participate in the Paysafe equity program with annual equity grants ranging from \$125,000 to \$350,000, granted at the Annual General Meeting. In addition, certain directors may receive one-time grants upon joining the Board. The aggregate compensation paid in cash and equity to non-executive directors in 2022 was \$1,956,742 and \$2,093,439, respectively. In addition, all of our directors receive reimbursement for all reasonable and properly documented expenses.

### ***Senior Management***

For the year ended December 31, 2022, our senior management team consisted of Philip McHugh (through April 2022) Bruce Lowthers (as of May 2022), Ismail Dawood (through September 2022), Alexander Gersh (as of October 2022), Rob Gatto (as of July 2022), Udo Mueller (through July 2022), Paulette Rowe (through July 2022), Elliott Wiseman, Nick Walker, Roy Aston, Richard Swales, Afshin Yazdian, and Chirag Patel. The aggregate amount of compensation, including cash, equity awards and other benefits, paid to our senior management team for the year ended December 31, 2022 was \$54,285,502, \$16,373,010 million of which was related to an Executive's employment and/or termination agreement and not part of their normal compensation programs. The Cash compensation for our senior management team in 2022 consisted of aggregate base salary of \$5,888,673. The description below provides detail on the equity grants.

### **Annual Bonus Program**

The Executive Short-Term Bonus Program is an incentive program based on the achievement of performance targets which are measured over a one-year period. Performance targets are based on group and business unit financial metrics, including Revenue and Adjusted EBITDA, and individual goals. The bonus program is intended to strengthen the connection between individual compensation and Company success, reinforce our pay-for-performance philosophy by awarding higher bonuses to higher performing executives and help ensure that our compensation is competitive. Under the terms of the performance bonus program, the Compensation Committee will approve the final bonus pay-out based on the achieved objectives.

The annual target level is determined as a percentage of the base salary. In 2022, the Compensation Committee chose to award the annual incentive program in the form of a Performance-Based Restricted Stock Unit under the Omnibus Incentive Plan, as described below, with a performance period of January 1, 2022 to December 31, 2022. In aggregate the value of these awards granted in 2022 was \$3,763,199.

The Compensation Committee determines if the bonus is to be paid at target, under target or above target for the CEO, and approves the CEO's proposal for the remaining Executive Management members. Depending on achieved performance, the incentive can be paid above or below target depending on performance to targets.

### **Long-Term Incentive Program**

The Compensation Committee met several times to discuss the 2022 Long-Term Incentive Program of the Company for the executives and other employees under the Omnibus Incentive Program. After careful consideration of the current economy, retention concerns and

company stock performance, the Compensation Committee approved the granting of time-based restricted stock units vesting annually over a three-year period. The Long-Term Incentive Program was created to align the interests of executives with the interests of our shareholders while also allowing for a more longer-term focus on key business objectives.

The annual grant value target level of the long-term incentive program is determined as a percentage of target earnings, or base salary plus the annual incentive at target level payout. With Management's recommendations, the Compensation Committee shall determine the approved program parameters related to the grant value allocation, vesting, the conditions and deadlines for the exercise thereof, and any retention periods or conditions of expiration. It may provide that, contingent upon the occurrence of certain events determined in advance, such as a change in control or the termination of an employment relationship, that the conditions and deadlines for the exercise of rights, or retention periods, or vesting conditions are to be shortened or canceled, that remuneration is to be paid based on an assumption of the achievement of target values, or that remuneration is to be forfeited. Long term variable compensation may be awarded in the form of restricted shares units, stock options or equivalent instruments or units.

In aggregate, the value of the long-term incentive awards granted to executives is equal to \$44,239,385 for the year ended December 31, 2022. As mentioned above, due to the number of changes in our executive staff, the Committee awarded additional equity throughout the year as part of the recruitment of the new executives and other grants to encourage long-term retention for the other executives. Grant values for 2022 included the following programs:

Grant Type		Value at Grant (\$)
2022 Annual RSU Grant	\$	30,667,903
2022 Executive Bonus Performance RSU		3,763,199
Retention RSU		3,526,299
New Hire RSU		6,281,984

We also maintained a Stock Ownership Guideline program that consists of executives holding ownership of Paysafe equity ranging from 1x to 5x depending on the level of the executive.

### Retirement Programs

We utilize defined contribution plans in accordance with the local conditions and practices in the countries in which we operate.

### Material Terms of the Omnibus Incentive Plan

**Purpose.** The purpose of the Omnibus Incentive Plan is to provide a means through which to attract and retain key personnel and to provide a means whereby our directors, officers, employees, consultants and advisors can acquire and maintain an equity interest in us, or be paid incentive compensation, including incentive compensation measured by reference to the value of Company Common Shares, thereby strengthening their commitment to our welfare and aligning their interests with those of our shareholders.

**Eligibility.** Eligible participants are any (i) individual employed by the Company or any of its subsidiaries, which shall be collectively referred to herein as the "Company Group"; provided, however, that no employee covered by a collective bargaining agreement will be eligible to receive awards under the Omnibus Incentive Plan unless and to the extent that such eligibility is set forth in such collective bargaining agreement or in an agreement or instrument relating thereto; (ii) director or officer of any member of the Company Group; or (iii) consultant or advisor to any member of the Company Group who may be offered securities registrable pursuant to a registration statement on Form S-8 under the Securities Act, who, in the case of each of clauses (i) through (iii) above, has entered into an award agreement or who has received written notification from the Compensation Committee (as defined below) or its designee that they have been selected to participate in the Omnibus Incentive Plan. As of the date of this registration statement, there were approximately 3,300 such persons eligible to participate in the programs to be approved under the Omnibus Incentive Plan.

**Administration.** The Omnibus Incentive Plan will be administered by the compensation committee of the Company's Board, or such other committee of the Company's Board to which it has properly delegated power, or if no such committee or subcommittee exists, the Company's Board (such administering body referred to herein, for purposes of this description of the Omnibus Incentive Plan, as the "Committee"). Except to the extent prohibited by applicable law, the Compensation Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any part of its responsibilities and powers to any person or persons selected by it in accordance with the terms of the Omnibus Incentive Plan. The Compensation Committee is authorized to: (i) designate participants; (ii) determine the type or types of awards to be granted to a participant; (iii) determine the number of Company Common Shares to be covered by, or with respect to which payments, rights or other matters are to be calculated in connection with, awards; (iv) determine the terms and conditions of any award; (v) determine whether, to what extent and under what circumstances awards may be settled in, or exercised for, cash, Company Common Shares, other securities, other awards or other property, or canceled, forfeited or suspended and the method or methods by which awards may be settled, exercised, canceled, forfeited or suspended; (vi) determine whether, to what extent, and under what circumstances the delivery of cash, Company Common Shares, other securities, other awards, or other property and other amounts payable with respect to an award will be deferred either automatically or at the election of

the participant or of the Compensation Committee; (vii) interpret, administer, reconcile any inconsistency in, correct any defect in, and/or supply any omission in the Omnibus Incentive Plan and any instrument or agreement relating to, or award granted under, the Omnibus Incentive Plan; (viii) establish, amend, suspend, or waive any rules and regulations and appoint such agents as the Compensation Committee may deem appropriate for the proper administration of the Omnibus Incentive Plan; (ix) adopt sub-plans; and (x) make any other determination and take any other action that the Compensation Committee deems necessary or desirable for the administration of the Omnibus Incentive Plan. Unless otherwise expressly provided in the Omnibus Incentive Plan, all designations, determinations, interpretations and other decisions under or with respect to the Omnibus Incentive Plan or any award or any documents evidencing awards granted pursuant to the Omnibus Incentive Plan are within the sole discretion of the Compensation Committee, may be made at any time, and are final, conclusive and binding upon all persons or entities, including, without limitation, us, any participant, any holder or beneficiary of any award and any of the Company's shareholders.

*Awards Subject to the Omnibus Incentive Plan.* The Omnibus Incentive Plan provides that the total number of Company Common Shares that may be issued under the Omnibus Incentive Plan is 10,580,754, or the "Absolute Share Limit"; provided, however, that the Absolute Share Limit shall be increased on the first day of each fiscal year beginning with the 2022 fiscal year in an amount equal to the least of (x) 5,290,377 Company Common Shares, (y) 7.5% of the total number of Company Common Shares outstanding on the last day of the immediately preceding fiscal year, and (z) a lower number of Company Common Shares as determined by the Company's Board. Of this amount, the maximum number of Company Common Shares for which incentive share options may be granted is 10,580,754. Except for "Substitute Awards" (as described below), to the extent that an award expires or is canceled, forfeited, terminated, settled in cash, or otherwise is settled without issuance to the participant of the full number of Company Common Shares to which the award related, the unissued shares will again be available for grant under the Omnibus Incentive Plan. Company Common Shares withheld in payment of the exercise price, or taxes relating to an award, and shares equal to the number of shares surrendered in payment of any exercise price, or taxes relating to an award, shall be deemed to constitute shares not issued; provided, however, that such shares shall not become available for issuance if either: (i) the applicable shares are withheld or surrendered following the termination of the Omnibus Incentive Plan or (ii) at the time the applicable shares are withheld or surrendered, it would constitute a material revision of the Omnibus Incentive Plan subject to shareholder approval under any then-applicable rules of the national securities exchange on which the Company Common Shares are listed. No award may be granted under the Omnibus Incentive Plan after the tenth anniversary of the Effective Date (as defined in the Omnibus Incentive Plan), but awards granted before then may extend beyond that date. Awards may, in the sole discretion of the Compensation Committee, be granted in assumption of, or in substitution for, outstanding awards previously granted by an entity directly or indirectly acquired by the Company or with which the Company combines, or Substitute Awards, and such Substitute Awards will not be counted against the Absolute Share Limit, except that Substitute Awards intended to qualify as "incentive share options" will count against the limit on incentive share options described above.

*Grants.* All awards granted under the Omnibus Incentive Plan will vest and become exercisable in such manner and on such date or dates or upon such event or events as determined by the Compensation Committee, including, without limitation, attainment of Performance Conditions. For purposes of this annual report, "Performance Conditions" means specific levels of performance of any member of the Company Group (and/or one or more of its divisions or operational and/or business units, product lines, brands, business segments, administrative departments, or any combination of the foregoing), which may be determined in accordance with GAAP or on a non-GAAP basis on, without limitation, the following measures: (i) net earnings, net income (before or after taxes), adjusted net income after capital charges or consolidated net income; (ii) basic or diluted earnings per share (before or after taxes); (iii) net revenue or net revenue growth; (iv) gross revenue or gross revenue growth, gross profit or gross profit growth; (v) net operating profit (before or after taxes); (vi) return measures (including, but not limited to, return on investment, assets, capital, employed capital, invested capital, equity, or sales); (vii) cash flow measures (including, but not limited to, operating cash flow, free cash flow, or cash flow return on capital), which may be but are not required to be measured on a per share basis; (viii) actual or adjusted earnings before or after interest, taxes, depreciation, and/or amortization (including EBIT and EBITDA) or earnings before taxes, interest, depreciation, amortization and restructuring costs (EBITDAR); (ix) gross or net operating margins; (x) productivity ratios; (xi) share price (including, but not limited to, growth measures and total shareholder return); (xii) expense targets or cost reduction goals, general and administrative expense savings; (xiii) operating efficiency; (xiv) objective measures of customer/client satisfaction; (xv) working capital targets; (xvi) measures of economic value added or other 'value creation' metrics; (xvii) enterprise value; (xviii) sales; (xix) shareholder return; (xx) customer/client retention; (xxi) competitive market metrics; (xxii) employee satisfaction, employment practices and employee benefits or employee retention; (xxiii) supervision of litigation and information technology; (xxiv) objective measures of personal targets, goals, or completion of projects (including, but not limited to, succession and hiring projects, completion of specific acquisitions, dispositions, reorganizations, divestitures of subsidiaries and/or other affiliates or joint ventures, other monetization or liquidity events relating to subsidiaries, or other corporate transactions or capital-raising transactions, expansions of specific business operations, and meeting divisional or project budgets); (xxv) comparisons of continuing operations to other operations; (xxvi) market share; (xxvii) cost of capital, debt leverage, year-end cash position, book value, book value per share, tangible book value, tangible book value per share, cash book value or cash book value per share; (xxviii) strategic objectives; or (xxix) any combination of the foregoing. Any one or more of the aforementioned performance criteria may be stated as a percentage of another performance criteria, or used on an absolute or relative basis to measure the performance of one or more members of the Company Group as a whole or any divisions or operational and/or business units, product lines, brands, business segments, or administrative departments of the applicable member of the Company Group

or any combination thereof, as the Compensation Committee may deem appropriate, or any of the above performance criteria may be compared to the performance of a selected group of comparison companies, or a published or special index that the Compensation Committee, in its sole discretion, deems appropriate, or as compared to various stock market indices.

*Options.* Under the Omnibus Incentive Plan, the Compensation Committee may grant non-qualified share options and incentive share options with terms and conditions determined by the Compensation Committee that are not inconsistent with the Omnibus Incentive Plan; provided, that all share options granted under the Omnibus Incentive Plan are required to have a per share exercise price that is not less than 100% of the fair market value of the Company Common Shares underlying such share options on the date such share options are granted (other than in the case of options that are Substitute Awards), and all share options that are intended to qualify as “incentive stock options” must be granted pursuant to an award agreement expressly stating that the options are intended to qualify as “incentive stock options,” and will be subject to the terms and conditions that comply with the rules as may be prescribed by Section 422 of the Code. The maximum term for share options granted under the Omnibus Incentive Plan will be ten years from the initial date of grant, or with respect to any share options intended to qualify as “incentive stock options,” such shorter period as prescribed by Section 422 of the Code. However, if a non-qualified share option would expire at a time when trading of the Company Common Shares is prohibited by the Company’s insider trading policy (or “blackout period” imposed by us), the term will automatically be extended to the 30th day following the end of such period. The purchase price for the Company Common Shares as to which a share option is exercised may be paid to us, to the extent permitted by law (i) in cash, check, cash equivalent and/or Company Common Shares valued at the fair market value at the time the option is exercised; provided, that such Company Common Shares are not subject to any pledge or other security interest and have been held by the participant for at least six months (or such other period as established from time to time by the Compensation Committee in order to avoid adverse accounting treatment applying generally accepted accounting principles or (ii) by such other method as the Compensation Committee may permit in its sole discretion, including, without limitation: (a) in other property having a fair market value on the date of exercise equal to the exercise price, (b) if there is a public market for the Company Common Shares at such time, by means of a broker-assisted “cashless exercise” pursuant to which the Company delivered (including telephonically to the extent permitted by the Compensation Committee) a copy of irrevocable instructions to a stockbroker to sell the Company Common Shares otherwise issuable upon the exercise of the option and to deliver promptly to Company Common Shares an amount equal to the exercise price or (c) a “net exercise” procedure effected by withholding the minimum number of Company Common Shares otherwise issuable in respect of an option that is needed to pay the exercise price. Any fractional Company Common Shares shall be settled in cash.

*Share Appreciation Rights.* The Compensation Committee may grant SARs under the Omnibus Incentive Plan, with terms and conditions determined by the Compensation Committee that are not inconsistent with the Omnibus Incentive Plan. The Compensation Committee may award SARs in tandem with or independent of any option. Generally, each SAR will entitle the participant upon exercise to an amount (in cash, Company Common Shares or a combination of cash and shares, as determined by the Compensation Committee) equal to the product of (i) the excess of (a) the fair market value on the exercise date of one Company Common Share over (b) the strike price per Company Common Share covered by the SAR, times (ii) the number of Company Common Shares covered by the SAR, less any taxes that are statutorily required to be withheld. The strike price per Company Common Share covered by a SAR will be determined by the Compensation Committee at the time of grant but in no event may such amount be less than 100% of the fair market value of a Company Common Share on the date the SAR is granted (other than in the case of SARs granted in substitution of previously granted awards).

*Restricted Shares and Restricted Share Units.* The Compensation Committee may grant restricted Company Common Shares or restricted share units, representing the right to receive, upon vesting and the expiration of any applicable restricted period, one Company Common Share for each restricted share unit, or, in the sole discretion of the Compensation Committee, the cash value thereof (or any combination thereof). As to restricted Company Common Shares, subject to the other provisions of the Omnibus Incentive Plan, the holder will generally have the rights and privileges of a shareholder as to such restricted Company Common Shares, including, without limitation, the right to vote such restricted Company Common Shares.

*Other Equity-Based Awards and Other Cash-Based Awards.* The Compensation Committee may grant other equity-based or cash-based awards under the Omnibus Incentive Plan, with terms and conditions determined by the Compensation Committee that are not inconsistent with the Omnibus Incentive Plan.

*Effect of Certain Events on the Omnibus Incentive Plan and Awards.* In the event of (i) any dividend (other than regular cash dividends) or other distribution (whether in the form of cash, Company Common Shares, other of the Company’s securities or other property), recapitalization, share split, reverse share split, reorganization, merger, consolidation, split-up, split-off, spin-off, combination, repurchase or exchange of Company Common Shares or other securities, issuance of warrants or other rights to acquire Company Common Shares or other of the Company’s securities, or other similar corporate transaction or event that affects the Company Common Shares (including a “Change in Control,” as defined in the Omnibus Incentive Plan); or (ii) unusual or nonrecurring events affecting us, including changes in applicable rules, rulings, regulations, or other requirements, that the Compensation Committee determines, in its sole discretion, could result in substantial dilution or enlargement of the rights intended to be granted to, or available for, participants (any event in (i) or (ii), an “Adjustment Event”), the Compensation Committee will, in respect of any such Adjustment Event, make

such proportionate substitution or adjustment, if any, as it deems equitable, to any or all of (a) the Absolute Share Limit, or any other limit applicable under the Omnibus Incentive Plan with respect to the number of awards which may be granted thereunder; (b) the number of other Company Common Shares or other of the Company's securities (or number and kind of other securities or other property) which may be issued in respect of awards or with respect to which awards may be granted under the Omnibus Incentive Plan; and (c) the terms of any outstanding award, including, without limitation, (x) the number of Company Common Shares or other of the Company's securities (or number and kind of other securities or other property) subject to outstanding awards or to which outstanding awards relate; (y) the exercise price or strike price with respect to any award; or (z) any applicable performance measures; provided, that in the case of any "equity restructuring" (within the meaning of the FASB ASC Topic 718 (or any successor pronouncement thereto)), the Compensation Committee will make an equitable or proportionate adjustment to outstanding awards to reflect such equity restructuring. In connection with any Adjustment Event, the Compensation Committee may, in its sole discretion, provide for any one or more of the following: (i) substitution or assumption of awards, acceleration of the exercisability of, lapse of restrictions on, or termination of, awards or a period of time for participants to exercise outstanding awards prior to the occurrence of such event (and any such award not so exercised will terminate upon the occurrence of such event); and (ii) subject to any limitations or reductions as may be necessary to comply with Section 409A of the Code, cancellation of any one or more outstanding awards and payment to the holders of such awards that are vested as of such cancellation (including, without limitation, any awards that would vest as a result of the occurrence of such event but for such cancellation or for which vesting is accelerated by the Compensation Committee in connection with such event) the value of such awards, if any, as determined by the Compensation Committee (which value, if applicable, may be based upon the price per Company Common Share received or to be received by other holders of Company Common Shares in such event), including, without limitation, in the case of share options and SARs, a cash payment equal to the excess, if any, of the fair market value of the Company Common Shares subject to the option or SAR over the aggregate exercise price or strike price thereof, or, in the case of restricted Company Common Shares, restricted share units, or other equity-based awards that are not vested as of such cancellation, a cash payment or equity subject to deferred vesting and delivery consistent with the vesting restrictions applicable to such award prior to cancellation of the underlying shares in respect thereof.

*Amendment and Termination.* The Company's Board may amend, alter, suspend, discontinue or terminate the Omnibus Incentive Plan or any portion thereof at any time; provided, that no such amendment, alteration, suspension, discontinuance or termination may be made without shareholder approval if (i) such approval is required under applicable law; (ii) it would materially increase the number of securities which may be issued under the Omnibus Incentive Plan (except for adjustments in connection with certain corporate events); or (iii) it would materially modify the requirements for participation in the Omnibus Incentive Plan; provided, further, that any such amendment, alteration, suspension, discontinuance or termination that would materially and adversely affect the rights of any participant or any holder or beneficiary of any award will not to that extent be effective without such individual's consent.

The Compensation Committee may, to the extent consistent with the terms of any applicable award agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any award granted or the associated award agreement, prospectively or retroactively (including after a Termination); provided, that, except as otherwise permitted in the Omnibus Incentive Plan, any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would materially and adversely affect the rights of any participant with respect to such award will not to that extent be effective without such individual's consent; provided, further, that without shareholder approval, except as otherwise permitted in the Omnibus Incentive Plan, (i) no amendment or modification may reduce the exercise price of any option or the strike price of any SAR; (ii) the Compensation Committee may not cancel any outstanding option or SAR and replace it with a new option or SAR (with a lower exercise price or strike price, as the case may be) or other award or cash payment that is greater than the value of the canceled option or SAR; and (iii) the Compensation Committee may not take any other action which is considered a "repricing" for purposes of the shareholder approval rules of any securities exchange or inter-dealer quotation system on which the Company's securities are listed or quoted.

*Dividends and Dividend Equivalents.* The Compensation Committee in its sole discretion may provide as part of an award dividends or dividend equivalents, on such terms and conditions as may be determined by the Compensation Committee in its sole discretion. Any dividends payable in respect of restricted share awards that remain subject to vesting conditions shall be retained by the Company and delivered to the participant within 15 days following the date on which such restrictions on such restricted share awards lapse and, if such restricted share is forfeited, the participant shall have no right to such dividends. Dividends attributable to restricted share units shall be distributed to the participant in cash or, in the sole discretion of the Compensation Committee, in Company Common Shares having a fair market value equal to the amount of such dividends, upon the settlement of the restricted share units and, if such restricted share units are forfeited, the participant shall have no right to such dividends.

*Clawback/Repayment.* All awards are subject to reduction, cancellation, forfeiture or recoupment to the extent necessary to comply with (i) any clawback, forfeiture or other similar policy adopted by the Company's Board or the Compensation Committee and as in effect from time to time and (ii) applicable law. Unless otherwise determined by the Compensation Committee, to the extent that a participant receives any amount in excess of the amount that the participant should otherwise have received under the terms of the award for any reason (including, without limitation, by reason of a financial restatement, mistake in calculations or other administrative error), the participant will be required to repay the Company any such excess amount.



*Detrimental Activity.* If a participant has engaged in any detrimental activity, as defined in the Omnibus Incentive Plan, as determined by the Compensation Committee, the Compensation Committee may, in its sole discretion and to the extent permitted by applicable law, provide for one or more of the following: (i) cancellation of any or all of such participant's outstanding awards or (ii) forfeiture and repayment to the Company on any gain realized on the vesting, exercise or settlement of any awards previously granted to such participant.

*Tax Consequences.* The following is a brief summary of the principal U.S. federal income tax consequences of transactions under the Omnibus Incentive Plan based on current U.S. federal income tax laws. This summary is not intended to be exhaustive, does not constitute tax advice and, among other things, does not describe state, local or foreign tax consequences.

*Non-Qualified Options.* No taxable income is realized by a participant upon the grant of a share option. Upon the exercise of a nonqualified share option, the participant will recognize ordinary compensation income in an amount equal to the excess, if any, of the fair market value of the Company Common Shares for which the option is exercised over the aggregate option exercise price. Income and payroll taxes are required to be withheld by the participant's employer on the amount of ordinary income resulting to the participant from the exercise of a share option. The amount recognized as income by the participant is generally deductible by the participant's employer for federal income tax purposes, subject to the possible limitations on deductibility of compensation paid to some executives under Section 162(m). The participant's tax basis in Company Common Shares acquired by exercise of a share option will be equal to the exercise price plus the amount taxable as ordinary income to the participant.

Upon a sale of the Company Common Shares received by the participant upon exercise of the share option, any gain or loss will generally be treated for federal income tax purposes as long-term or short-term capital gain or loss, depending upon the holding period of that share. The participant's holding period for shares acquired upon the exercise of a share option begins on the date of exercise of that share option.

*Incentive Share options.* No taxable income is realized by a participant upon the grant or exercise of an incentive share option; however, the exercise of an incentive share option will give rise to an item of tax preference that may result in alternative minimum tax liability for the participant. If Company Common Shares are issued to a participant after the exercise of an incentive share option and if no disqualifying disposition of those shares is made by that participant within two years after the date of grant or within one year after the receipt of those shares by that participant, then:

- upon the sale of those shares, any amount realized in excess of the option exercise price will be taxed to that participant as a long-term capital gain;
- and the applicable member of the Company Group will be allowed no deduction.

If Company Common Shares acquired upon the exercise of an incentive share option are disposed of prior to the expiration of either holding period described above, that disposition would be a "disqualifying disposition," and generally:

- the participant will realize ordinary income in the year of disposition in an amount equal to the excess, if any, of the fair market value of the shares on the date of exercise, or, if less, the amount realized on the disposition of the shares, over the option exercise price; and
- the applicable member of the Company Group will be entitled to deduct that amount.

Any other gain realized by the participant on that disposition will be taxed as short-term or long-term capital gain and will not result in any deduction to us. If an incentive share option is exercised at a time when it no longer qualifies as an incentive share option, the option will be treated as a nonqualified option. Subject to some exceptions for disability or death, an incentive share option generally will not be eligible for the federal income tax treatment described above if it is exercised more than three months following a termination of employment.

*Share Appreciation Rights.* Upon the exercise of a SAR, the participant will recognize compensation income in an amount equal to the cash received plus the fair market value of any Company Common Shares received from the exercise. The participant's tax basis in the Company Common Shares received on exercise of the SAR will be equal to the compensation income recognized with respect to the Company Common Shares. The participant's holding period for shares acquired after the exercise of a SAR begins on the exercise date. Income and payroll taxes are required to be withheld on the amount of compensation attributable to the exercise of the SAR, whether the income is paid in cash or shares. Upon the exercise of a SAR, the participant's employer will generally be entitled to a deduction in the amount of the compensation income recognized by the participant, subject to the requirements of Section 162(m) of the Code, if applicable.

*Restricted Shares, Restricted Share Units and Other Share-Based Awards.* Restricted Company Common Shares that are subject to a substantial risk of forfeiture generally result in income recognition by the participant in an amount equal to the excess of the fair market value of the shares over the purchase price, if any, of the restricted Company Common Shares at the time the restrictions lapse. However,

if permitted by the Company, a recipient of restricted Company Common Shares may make an election under Section 83(b) of the Code to instead be taxed on the excess of the fair market value of the shares granted, measured at the time of grant and determined without regard to any applicable risk of forfeiture or transfer restrictions, over the purchase price, if any, of such restricted shares. A participant who has been granted Company Common Shares that are not subject to a substantial risk of forfeiture for federal income tax purposes will realize ordinary income in an amount equal to the fair market value of the shares at the time of grant. A recipient of restricted share units, performance awards or other share-based awards (other than restricted shares) will generally recognize ordinary income at the time that the award is settled in an amount equal to the cash and/or fair market value of the shares received at settlement. In each of these cases, the applicable member of the Company Group will have a corresponding tax deduction at the same time the participant recognizes such income, subject to the limitations of Section 162(m) of the Code, if applicable.

On January 2, 2018, Pi Topco adopted its memorandum of association and entered into a management investment agreement with certain members of senior management which authorized certain executive officers and other senior managers of the Company to invest in A ordinary shares and B ordinary shares. A ordinary shares have been purchased by members of management only, while B ordinary shares are held by certain executives and senior managers, as well as investor shareholders of Pi Topco. All management shareholders of Pi Topco are bound by its charter and the management investment agreement. In the case of certain managers (other than executive officers/senior management), they are also bound by restricted share award agreements with Pi Topco (the “RSAAAs”). The total number of authorized A ordinary shares under the Pi Topco memorandum of association is 600,000.

The A ordinary shares include a service-based vesting condition for all holders. The B ordinary shares held by certain managers (other than executive officers/senior management) are also subject to a service-based vesting condition. Vesting for these managers is subject to continuous service until the achievement of an Exit (as defined in the applicable RSAA, which includes the Transactions). Vesting for executive officers/senior management is subject to (i) the achievement of an Exit and (ii) the Investors (as defined below) receiving at least one times their cost.

In addition, the A ordinary shares are subject to a ratchet in connection with the Transactions (and upon subsequent receipts of proceeds by the CVC Investors and the Blackstone Investors, whom we refer to as the “Investors”) which allows management to participate in a greater share of returns if certain IRR (i.e., total internal rate of return achieved by the Investors in relation to their investment) thresholds are satisfied. To the extent that the IRR is equal to or less than 22.5%, the A ordinary shares, including those held by the executive officers and non-executive directors, will not participate in a greater share of returns. To the extent that upon the operation of the ratchet the IRR is greater than 22.5% and the total return to the Investors is greater than or equal to 2.25 times their cost, the A ordinary shares will participate in up to an additional percentage equal to 50% of the fully diluted ordinary share capital represented by the A ordinary shares issue immediately prior to the Transactions.

The equity in Pi Topco held by our executive officers and non-executive directors will be governed by the Management Investment Agreement (as defined below). Please see “Certain Relationships and Related Persons Transactions—Paysafe—Management Investment Agreement” for additional information.

## **C. Board Practices**

### **Composition of the Board of Directors**

Our business and affairs are managed under the direction of the Company Board. The Company Bye-laws provide for a classified board of directors, with three directors in Class I (Bruce Lowthers, James Murren and Jonathan Murphy), four directors in Class II (Matthew Bryant, Mark Brooker, Dagmar Kollmann and Hilary Stewart-Jones) and four directors in Class III (Daniel Henson, Anthony Jabbour, Eli Nagler and Peter Rutland). The Company Board has determined that Daniel Henson, Anthony Jabbour, James Murren, Dagmar Kollmann, Mark Brooker and Hilary Stewart-Jones qualify as independent directors under the NYSE listing standards. We entered into the Shareholders Agreement with our Principal Shareholders in connection with the Transaction. This agreement grants our Principal Shareholders the right to designate nominees to the Company Board subject to the maintenance of certain ownership requirements in us. For additional information, see “Item 7.B. Related Party Transactions” of this Report.

### **Foreign Private Issuer Status**

We were founded in the UK in 1996 and were previously listed on the London Stock Exchange. U.S. residents do not comprise a majority of our executive officers or directors, and most of our assets are located, and our business is principally administered, outside of the United States. As a result, we report under the Exchange Act as a non-U.S. company with foreign private issuer status. Under Rule 405 of the Securities Act, the determination of foreign private issuer status is made annually on the last business day of an issuer’s most recently completed second fiscal quarter and, accordingly, the next determination will be made with respect to us on June 30, 2023. For so long as we qualify as a foreign private issuer, we will be exempt from certain provisions of the Exchange Act that are applicable to U.S. domestic public companies, including:

- the sections of the Exchange Act regulating the solicitation of proxies, consents or authorizations in respect of a security registered under the Exchange Act;
- the sections of the Exchange Act requiring insiders to file public reports of their stock ownership and trading activities and imposing liability for insiders who profit from trades made within a short period of time;
- the rules under the Exchange Act requiring the filing with the SEC of an annual report on Form 10-K (although we will file annual reports on a corresponding form for foreign private issuers), quarterly reports on Form 10-Q containing unaudited financial and other specified information (although we will file semi-annual reports on a current reporting form for foreign private issuers), or current reports on Form 8-K, upon the occurrence of specified significant events (although we may file the occurrence of certain corporate developments on a current reporting form for foreign private issuers); and
- Regulation Fair Disclosure or Regulation FD, which regulates selective disclosure of material non-public information by issuers.

Accordingly, there may be less publicly available information concerning our business than there would be if we were a U.S. public company. Additionally, certain accommodations in the NYSE corporate governance standards allow foreign private issuers, such as us, to follow “home country” corporate governance practices in lieu of the otherwise applicable corporate governance standards. The Company Bye-laws do not require shareholder approval for the issuance of authorized but unissued shares, including (i) in connection with the acquisition of stock, shares or assets of another company; (ii) when it would result in a change of control; (iii) when a share option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which shares may be acquired by officers, directors, employees, or consultants; or (iv) in connection with certain private placements. To this extent, our practice varies from the requirements of the corporate governance standards of the NYSE, which generally requires an issuer to obtain shareholder approval for the issuance of securities in connection with such events. While we do not currently intend to rely on any other home country accommodations related to the foregoing corporate governance standards, for so long as we qualify as a foreign private issuer, we may take advantage of them.

## **Board Committees**

The Company Board has established the following committees: an audit committee, a compensation committee, a nominating and corporate governance committee and a risk oversight committee. The composition and responsibilities of each committee are described below. The Company Board may also establish from time to time any other committees that it deems necessary or desirable. Members serve on these committees until their resignation or until otherwise determined by the Company Board.

### ***Audit Committee***

Our audit committee consists of Dagmar Kollmann, Mark Brooker, and Hilary Stewart-Jones, with Dagmar Kollmann serving as chair and Dagmar Kollmann serving as the audit committee financial expert. The Company Board has determined that Dagmar Kollmann, Mark Brooker and Hilary Stewart-Jones qualify as independent directors under the independence standards of Rule 10A-3 of the Exchange Act, and that Dagmar Kollmann qualifies as an “audit committee financial expert” as such term is defined in the rules of the SEC. Our audit committee is responsible for, among other thing:

- selecting and hiring our independent auditors, and approving the audit and non-audit services to be performed by our independent auditors;
- assisting the Company Board in evaluating the qualifications, performance and independence of our independent auditors;
- assisting the Company Board in monitoring the quality and integrity of our financial statements and our accounting and financial reporting;
- assisting the Company Board in monitoring our compliance with legal and regulatory requirements;
- reviewing the adequacy and effectiveness of our internal control over financial reporting processes;
- assisting the Company Board in monitoring the performance of our internal audit function;
- monitoring the performance of our internal audit function;
- reviewing with management and our independent auditors our annual and quarterly financial statements; and
- establishing procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal accounting controls or auditing matters and the confidential, anonymous submission by our employees of concerns regarding questionable accounting or auditing matters.

### ***Compensation Committee***

Our compensation committee consists of James Murren and Mark Brooker, with James Murren serving as chair. The compensation committee is responsible for, among other things:

- reviewing and approving corporate goals and objectives relevant to the compensation of our CEO, evaluating our CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the board of directors), determining and approving our CEO's compensation level based on such evaluation;
- reviewing and approving, or making recommendations to the Company Board with respect to, the compensation of our other executive officers, including annual base salary, bonus and equity-based incentives and other benefits;
- reviewing and recommending the compensation of the Company Board;
- reviewing and discussing annually with management our compensation disclosure required by SEC rules; and
- reviewing and making recommendations with respect to our equity compensation plans.

### ***Nominating and Corporate Governance Committee***

Our nominating and corporate governance committee consists of James Murren and Mark Brooker with Mark Brooker serving as chair. The nominating and corporate governance committee is responsible for, among other things:

- assisting the Company Board in identifying prospective director nominees and recommending nominees to the Company Board;
- overseeing the evaluation of the Company Board and management;
- reviewing developments in corporate governance practices and developing and recommending a set of corporate governance guidelines; and
- recommending members for each committee of the Company Board.

### ***Risk Oversight Committee***

In addition to the above committees, the Company Board has established a risk oversight committee. The risk oversight committee consists of Hilary Stewart-Jones, Dagmar Kollmann, Jonathan Murphy and Matthew Bryant, with Hilary Stewart-Jones serving as chair. The risk oversight committee is responsible for the oversight of risk assessment, including with respect to enterprise risks, relevant to the business and operations of the Company, risk governance and internal control systems (other than internal control over financial reporting, that sits with the audit committee). In addition to operational risks, the risk oversight committee routinely reviews the material risks and mitigations of the Company, including cybersecurity and human capital management. The risk oversight committee regularly receives updates from the Company's Chief Risk and Compliance Officer. The review of environmental risks currently sits with the full Board.

### **Compensation Committee Interlocks and Insider Participation**

None of our executive officers currently serves, or has served during the last completed fiscal year as a member of the board of directors or compensation committee (or other committee performing equivalent functions) of any entity that has one or more executive officers serving on the Company Board or our compensation committee. We are party to certain transactions with affiliates of our Principal Shareholders described in "Item 7.B. Related Party Transactions" of this Report.

### **Code of Ethics**

The Company has adopted the Paysafe Code, which applies to all of our officers, directors and employees and sets forth our Company's values as well as certain policies and procedures related to, among other things, risk management and control, information management, privacy, information security, conflicts of interest, anti-corruption and financial reporting. We also adopted a Code of Business Conduct and Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer and controller, or persons performing similar functions, each of which will be posted on our website. Our Code of Business Conduct and Ethics is a "code of ethics," as defined in Item 406(b) of Regulation S-K. We will make any legally required disclosures regarding amendments to, or waivers of, provisions of our Code of Business Conduct and Ethics on our website. The information contained on, or accessible from, our website is not part of this Report by reference or otherwise.

### **D. Employees**

As of December 31, 2022, we had approximately 3,300 employees globally.

None of these employees are represented by a labor union and we consider our relationship with our employees to be good.

## E. Share Ownership

Ownership of Company Common Shares by the directors and executive officers of Paysafe is set forth in “Item 7.B. Related Party Transactions” of this Report.

## ITEM 7. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

### A. Major Shareholders

The following table sets forth information regarding the actual beneficial ownership of Company Common Shares as of March 1, 2023:

- each person known to us to be the beneficial owner of more than 5% of Company Common Shares;
- each of our directors and Company Officers; and
- all our directors and Company Officers as a group.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, and includes shares underlying options and shares underlying the Company Warrants that are currently exercisable or exercisable within 60 days.

Unless otherwise indicated, we believe that all persons named in the table below have sole voting and investment power with respect to all Company Common Shares beneficially owned by them. Except as otherwise indicated, the address for each shareholder listed below is 25 Canada Square, 27th Floor, London, United Kingdom E14 5LQ.

Name and Address of Beneficial Owner	Number <sup>(1)</sup> of Company Common Shares	Percentage of Company Common Shares
Company Officers, Directors and 5% Holders		
Parties to our shareholders agreement as a group <sup>(2)</sup>	28,932,366	47.5 %
CVC <sup>(3)</sup>	12,999,682	21.3 %
Blackstone <sup>(4)</sup>	10,914,696	17.9 %
Cannae <sup>(5)</sup>	3,379,887	5.5 %
FNF Holders <sup>(6)</sup>	3,750,000	6.2 %
William P. Foley II <sup>(7)</sup>	1,638,101	2.7 %
Bruce Lowthers	*	*
Alexander Gersh	*	*
Elliott Wiseman	*	*
Afshin Yazdian	*	*
Roy Aston	*	*
Nick Walker	*	*
Richard Swales	*	*
Daniel Henson	*	*
Mark Brooker	*	*
Matthew Bryant	*	*
Anthony Jabbour	*	*
Dagmar Kollmann	*	*
Jonathan Murphy	*	*
James Murren	*	*
Eli Nagler	*	*
Peter Rutland	*	*
Hilary Stewart-Jones	*	*
All Company directors and executive officers as a group	*	*

\*Less than 1%.

(1)Numbers have been updated to reflect the reverse stock split

(2)Shareholders Agreement means the agreement entered into by the Company, Pi Topco, PGHL, the Founder, Cannae LLC, the CVC Investors and the Blackstone Investors.

(3)Based on the most recently available Schedule 13D filed with the SEC on January 3, 2022, as of December 31, 2022. The “CVC Investors” shall refer to Pi Holdings Jersey Limited and Pi Syndication LP. Reflects 8,158,241 Company Common Shares directly held by Pi Holdings Jersey Limited and 4,841,431 Company Common Shares directly held by Pi Syndication LP. The registered address for each CVC Investor is c/o Saltgate Limited, 27 Esplanade, St Helier, Jersey, JE1 1SG, United Kingdom.

(4)Based on the most recently available Schedule 13D filed with the SEC on January 3, 2022, as of December 31, 2022. Reflects 8,402,943 Company Common Shares directly held by BCP Pi Aggregator (Cayman) L.P., 1,490,243 Company Common Shares directly held by Blackstone Pi Co-Invest (Cayman) L.P., 378,290 Company Common Shares directly held by BCP VII Co-Invest—Star (Cayman) L.P., and 39,055 Company Common Shares directly held by Blackstone Family Investment Partnership (Cayman) VII-ESC L.P. The “Blackstone Funds” shall refer to BCP Pi Aggregator (Cayman) L.P., Blackstone Pi Co-Invest (Cayman) L.P., BCP VII Co-Invest—Star (Cayman) L.P., and Blackstone Family Investment Partnership (Cayman) VII-ESC L.P. The general partner of BCP Pi Aggregator (Cayman) L.P. is BCP VII Holdings Manager (Cayman) L.L.C. Blackstone Management Associates (Cayman) VII L.P. is the managing member of BCP VII Holdings Manager (Cayman) L.L.C. and the general partner of each of Blackstone Pi Co-Invest (Cayman) L.P. and BCP VII Co-Invest—Star (Cayman) L.P. The general partners of Blackstone Management Associates (Cayman) VII L.P. and Blackstone Family Investment Partnership (Cayman) VII-ESC L.P. are BCP VII GP L.L.C. and Blackstone LR Associates (Cayman) VII Ltd., with BCP VII GP L.L.C. controlling Blackstone Management Associates (Cayman) VII L.P. with respect to all matters other than voting of securities of underlying portfolio companies, which power is held by the Class B shareholders of Blackstone LR Associates (Cayman) VII Ltd., who are certain senior personnel of Blackstone. Blackstone Holdings III L.P. is the sole member of BCP VII GP L.L.C. and the sole Class A shareholder of Blackstone LR Associates (Cayman) VII Ltd. Blackstone Holdings III GP L.P. is the general partner of Blackstone Holdings III L.P. Blackstone Holdings III GP Management L.L.C. is the general partner of Blackstone Holdings III GP L.P. Blackstone Inc. is the sole member of Blackstone Holdings III GP Management L.L.C. The sole holder of the Series II preferred common stock of Blackstone Inc. is Blackstone Group Management L.L.C. Blackstone Group Management L.L.C. is wholly owned by Blackstone’s senior managing directors and controlled by its founder, Stephen A. Schwarzman. Each of such Blackstone entities and Mr. Schwarzman may be deemed to beneficially own the shares beneficially owned by the Blackstone Funds directly or indirectly controlled by it or him, but each (other than the Blackstone Funds to the extent of their direct holdings) disclaims beneficial ownership of such shares. The address of each of the entities listed in this footnote is c/o Blackstone Inc., 345 Park Avenue, New York, New York 10154

(5)Based on the most recently available Schedule 13D/A filed with the SEC on November 15, 2022, as of December 31, 2022. “Cannae” shall refer to Cannae Holdings, Inc., a Delaware corporation (“CHI”); and Cannae Holdings, LLC, a Delaware limited liability company and wholly-owned subsidiary of CHI (“CHL”). Reflects 3,379,887 Company Common Shares directly held by Cannae Holdings, LLC. The address of each of the entities listed in this footnote is 1701 Village Center Circle, Las Vegas, Nevada 89134.

(6)Based on the most recently available Schedule 13G/A filed with the SEC on February 13, 2023, as of December 31, 2022. “Fidelity” shall refer to (i) Fidelity National Financial, Inc. (“FNF”), a Delaware corporation, (ii) Commonwealth Land Title Insurance Company (“CLTIC”), a Florida corporation, (iii) Fidelity National Title Insurance Company (“FNTIC”), a Florida corporation, (iv) Chicago Title Insurance Company (“CTIC”), a Florida corporation, and (v) Fidelity & Guaranty Life Insurance Company (“FGLIC”, and collectively with FNF, CLTIC, FNTIC and CTIC, the “FNF Investors”), an Iowa corporation. Reflects 1,251,725 Company Common Shares directly held by Chicago Title Insurance Company, 1,431,608 Company Common Shares directly held by Fidelity National Title Insurance Company, 650,000 Company Common Shares directly held by Commonwealth Land Title Insurance Company, and 416,667 Company Common Shares directly held by Fidelity & Guaranty Life Insurance Company. Each of the FNF Holders shares the power to vote and the power to dispose of the Company Common Shares held by it with FNF, and as such, FNF may be deemed to beneficially own the securities held by each of the FNF Investors. The address of FNF, CLTIC, FNTIC, and CTIC is 601 Riverside Ave, Jacksonville, Florida 32204. The address of FGLIC is 801 Grand Ave., Suite 2600, Des Moines, Iowa 50309

(7)Based on the most recently available Schedule 13D/A filed with the SEC on November 15, 2022, as of December 31, 2022. Reflects 1,638,101 Company Common Shares. Trasimene Capital FT, LLC II has sole voting and dispositive power over the Company Common Shares owned by Trasimene Capital FT, LP II. William P. Foley, II is the sole member of Trasimene Capital FT, LLC II, and therefore may be deemed to beneficially own the Company Common Shares described in this footnote, and ultimately exercises voting and dispositive power over such shares held by Trasimene Capital FT, LP II. Mr. Foley disclaims beneficial ownership of these shares except to the extent of any pecuniary interest therein. The address of William Foley, II and each entity listed in this footnote is 1701 Village Center Circle, Las Vegas, Nevada 89134.

Please refer to “B. Related Party Transactions” and the Paysafe Consolidated Financial Statements for further information related to the Transaction. Other than the various rights set forth in such sections, the major shareholders set forth in the table above do not have different voting rights on their Company Common Shares.

## **B. Related Party Transactions**

### **Policies and Procedures for Related Person transactions**

The Company Board has adopted a written related person transaction policy that sets forth the following policies and procedures for the review and approval or ratification of related person transactions. A “Related Person Transaction” is a transaction, arrangement or relationship in which the post-combination company or any of its subsidiaries was, is or will be a participant, the amount of which involved exceeds \$120,000, and in which any related person had, has or will have a direct or indirect material interest. A “Related Person” means:

- any person who is, or at any time during the applicable period was, one of the post-combination company’s executive officers or one of the post-combination company’s directors;
- any person who is known by the post-combination company to be the beneficial owner of more than 5% of Paysafe’s voting stock;
- any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of a director, executive officer or a beneficial owner of more than 5% of Paysafe’s voting stock, and any person (other than a tenant or employee) sharing the household of such director, executive officer or beneficial owner of more than 5% of Paysafe’s voting stock; and
- any firm, corporation or other entity in which any of the foregoing persons is a partner or principal or in a similar position or in which such person has a 10% or greater beneficial ownership interest.

Paysafe has policies and procedures designed to minimize potential conflicts of interest arising from any dealings it may have with its affiliates and to provide appropriate procedures for the disclosure of any real or potential conflicts of interest that may exist from time to time. Specifically, pursuant to its audit committee charter, the audit committee has the responsibility to review related party transactions.

## **Certain Relationships and Related Person Transactions**

### ***Shareholders Agreement***

In connection with the Transaction, concurrently with the Closing, the Company, Pi Topco, PGHL, Cannae LLC, the Founder, the CVC Investors and the Blackstone Investors entered into the Shareholders Agreement. Pursuant to the Shareholders Agreement, each of the Principal Shareholders are entitled to nominate a certain number of directors to the Company Board, based on each such holder’s ownership of the voting securities of the Company. The number of directors that each of (i) the CVC Investors, (ii) the Blackstone Investors and (iii) Cannae LLC and the Founders (the “FTAC Investors”) will separately be entitled to designate to the Company Board increases and/or decreases on a sliding scale.

The Shareholders Agreement requires us to, among other things, nominate a number of individuals designated by the CVC Investors or the Blackstone Investors, as applicable, for election as directors of the Company Board as follows: (i) if the CVC Investors or the Blackstone Investors, as the case may be, collectively directly hold or indirectly, as set forth in the books and records of PGHL or Pi Topco, as applicable, are attributed at least 7.5% of the aggregate outstanding Company Common Shares, such applicable investors will be entitled to designate two directors; and (ii) if the CVC Investors or the Blackstone Investors, as the case may be, collectively directly hold or indirectly, as set forth in the books and records of PGHL or Pi Topco, as applicable, are attributed at least 2.5% (but less than 7.5%) of the aggregate outstanding Company Common Shares, such applicable investors will be entitled to designate one director (which director may be a U.S. citizen or resident) (in each case, each such person a “CVC Designee” or a “Blackstone Designee,” as applicable). In addition, if the CVC Investors or the Blackstone Investors, as the case may be, collectively directly hold or indirectly, as set forth in the books and records of PGHL or Pi Topco, as applicable, are attributed at least 7.5% of the aggregate outstanding Company Common Shares, the CVC Investors or the Blackstone Investors, as the case may be, shall have the right, but not the obligation, to (i) jointly with Cannae and the Blackstone Investors (in the case of the CVC Investors) or the CVC Investors (in the case of the Blackstone Investors), designate two directors (such two directors, the “Jointly Designated Directors”) and (ii) consent to any individual nominated for election as a director to the Company Board seat initially occupied by the Chief Executive Officer of PGHL.

Additionally, for so long as the FTAC Investors collectively continue to hold at least 50% of the aggregate outstanding Company Common Shares held by the FTAC Investors as of the Closing Date, the Shareholders Agreement will require us to, among other things, nominate four individuals designated by FTAC for election as directors of the Company Board, and Cannae shall have the right, but not the obligation, to (i) jointly with the CVC Investors and the Blackstone Investors, designate the Jointly Designated Directors and (ii) consent to any individual nominated for election as a director to the Company Board seat initially occupied by the Chief Executive Officer of PGHL. If the FTAC Investors collectively hold less than 50% of the aggregate outstanding Company Common Shares held by the FTAC Investors as of the Closing Date, the Shareholders Agreement requires us to, among other things, nominate a number of individuals designated by FTAC for election as directors of the Company Board as follows: (i) if the FTAC Investors collectively hold at least 7.5% of the aggregate outstanding Company Common Shares, four directors; (ii) if the FTAC Investors collectively hold at least 6.25% (but less than 7.5%) of the aggregate outstanding Common Shares, two directors; and (iii) if the FTAC Investors collectively

hold at least 2.5% (but less than 6.25%) of the aggregate outstanding Common Shares, one director, which director may be a U.S. citizen or resident (in each case, each such person a "FTAC Designee"). In addition, if the FTAC Investors collectively hold at least 7.5% of the aggregate outstanding Company Common Shares, Cannae shall have the right, but not the obligation, to (i) jointly with the CVC Investors and the Blackstone Investors, designate the Jointly Designated Directors and (ii) consent to any individual nominated for election as a director to the Company Board seat initially occupied by the Chief Executive Officer of PGHL. Further, for so long as the Company remains a "foreign private issuer" as defined in Rule 3b-4 under the Exchange Act, at any time FTAC has the right under the Shareholders Agreement to appoint more than one director to the Company Board, at least one of the FTAC Designees shall be neither a citizen nor a resident of the United States.

For so long as the Shareholders Agreement remains in effect, directors designated by a Principal Shareholder may be removed only with the consent of the Principal Shareholder that nominated such director. In the case of a vacancy on the Company Board created by the removal or resignation of a director designed by a Principal Shareholder, the Shareholders Agreement requires the Company to nominate an individual designated by the Principal Shareholder that nominated such director for election to fill the vacancy. Additionally, any increase in the total number of directors on the Company Board to greater than eleven will require the consent of (i) the CVC Investors, for so long as the CVC Investors collectively directly hold or indirectly, as set forth in the books and records of PGHL or Pi Topco, as applicable, are attributed at least 7.5% of the aggregate outstanding Company Common Shares, (ii) the Blackstone Investors, for so long as the Blackstone Investors collectively directly hold or indirectly, as set forth in the books and records of PGHL or Pi Topco, as applicable, are attributed at least 7.5% of the aggregate outstanding Company Common Shares, and (iii) FTAC, for so long as the FTAC Investors collectively hold at least 7.5% of the aggregate outstanding Company Common Shares.

Per the Shareholders Agreement, the CVC Investors, the Blackstone Investors and Cannae LLC jointly designated Dagmar Kollmann and Mark Brooker as independent directors, the CVC Investors designated Matthew Bryant and Peter Rutland as directors, the Blackstone Investors designated Jonathan Murphy and Eli Nagler as directors and the FTAC Investors designated Daniel Henson, Anthony Jabbour, James Murren and Hilary Stewart-Jones as directors.

The Shareholders Agreement also provides each Principal Shareholder with basic information and management rights, as well as detailed venture capital operating company covenants. In addition, the Shareholders Agreement provides that each Principal Shareholder may, without the consent of the Company or any other person, assign its rights to designate directors to the Company Board to any transferee of Company Common Shares so long as any right to designate directors to the Company Board will not result in the transferee receiving the right to designate more than two directors where such designation rights would result in the transferee receiving the right to designate a percentage of the total number of directors on the Company Board that is greater than the percentage of the aggregate outstanding Company Common Shares held by such transferee after giving effect to such transfer. The Principal Shareholders are otherwise not able to assign their rights and obligations under the agreement, in whole or in part, without the prior written consent of the Company.

Furthermore, the Shareholders Agreement also requires the Company to cooperate with the Principal Shareholders in connection with certain future pledges, charges, hypothecations, grants of security interest in or transfers (including to third party investors) of any or all of the Company Common Shares held by the Principal Shareholders, including to banks or financial institutions as collateral or security for loans, advances or extensions of credit.

#### ***Registration Rights Agreement***

In connection with the Transaction, concurrently with the Closing, the Company, Pi Topco, PGHL, Cannae LLC, the Founder, the CVC Party and the Blackstone Investors entered into the Restated Registration Rights Agreement. Pursuant to the Registration Rights Agreement, the Company filed a registration statement to permit the public resale of all of the registrable securities held by the Principal Shareholders from time to time. In addition, pursuant to the Registration Rights Agreement, upon the demand of any Principal Shareholder, the Company is required to facilitate a registered offering of the Company Common Shares requested by such Principal Shareholder to be included in such offering. Any demanded registered offering will also include registrable shares to be sold by holders that exercise their related piggyback rights in accordance with the Registration Rights Agreement, subject to customary cut-backs. Within 60 days (in the case of a demand for a registration on Form F-1) or 30 days (in the case of a demand for a registration on Form F-3) after receipt of a demand for such registration, the Company will file a registration statement relating to such demand and use its best efforts to cause such registration statement to be declared effective by the SEC as soon as practicable thereafter. In certain circumstances, Principal Shareholders will be entitled to piggyback registration rights in connection with the demand of a registered offering.

In addition, the Registration Rights Agreement entitles the Principal Shareholders to demand and be included in a shelf registration when the Company is eligible to sell its Company Common Shares in a secondary offering on a delayed or continuous basis in accordance with Rule 415 of the Securities Act. Within 30 days of the Company becoming qualified to register the offer and sale of securities under the Securities Act pursuant to a registration statement on Form F-3, the Company will file a registration statement that covers all registrable securities then outstanding and use its best efforts to cause such shelf registration statement to be declared effective



by the SEC as soon as practicable thereafter. Moreover, upon the demand of a Principal Shareholder, the Company is required to facilitate in the manner described in the Registration Rights Agreement a “takedown” off of an effective shelf registration statement of registrable shares requested by such Principal Shareholder.

The Registration Rights Agreement also provides that the Company pay certain expenses relating to such registrations and indemnify the registration rights holders against (or make contributions in respect of) certain liabilities which may arise under the Securities Act.

#### ***Consortium Agreement***

In connection with the Transaction, concurrently with the Closing, the existing consortium agreement related to Pi Topco between Pi Holdings Jersey Limited (the “CVC Party”), BCP Pi Aggregator (Cayman) L.P. and Blackstone Family Investment Partnership (Cayman) VII—ESC L.P. (together, the “Blackstone Parties”), and BCP VII Co-Invest—Star (Cayman) L.P., Blackstone Pi Co-Invest L.P., Pi Syndication LP, Francisco Partners IV, L.P., Francisco Partners IV-A, L.P., Chatham Holdings II, LLC, AB High Income Fund, Inc., AB Bond Fund, Inc.—AB Income Fund, AllianceBernstein Global High Income Fund, Inc., AB FCP I—Global High Yield Portfolio (together, the “Co-Investors”) and Paysafe Group Holdings Limited and Pi Topco (together, the “Holdcos”) was amended and restated (such amended and restated agreement being the “Consortium Agreement”).

The Consortium Agreement sets out provisions related to the governance of the Holdcos, which cross-refer to the governance provisions in the Management Investment Agreement. The Co-Investors will not take part in the management or control of the business or affairs of the Holdcos. In addition, the Consortium Agreement provides that the terms of the management equity plan (comprising the securities that certain employees of the Paysafe group of companies will hold in Pi Topco) shall be governed by the Management Investment Agreement (and related documents).

The Consortium Agreement also sets out provisions to allow the CVC Party, the Blackstone Parties and the Co-Investors to automatically “flip-down” their holdings of securities in Pi Topco so that they hold shares directly in Pubco upon expiry of the lock-up undertakings imposed on their holdings of securities in Pi Topco or earlier so long as the Pubco shares remain subject to such lock-up undertakings. When the “flip-down” mechanic is operated, PGHL shall (and Pi Topco shall procure that PGHL shall), subject to applicable law, transfer (whether by distribution or otherwise) such number of Company Common Shares in Paysafe Limited to Pi Topco to enable Pi Topco to transfer such shares to the CVC Party, the Blackstone Parties and the Co-Investors in exchange for the requisite number of securities in Pi Topco held by them. If reasonably required by the CVC Party and the Blackstone Parties, the CVC Party and the Blackstone Parties may elect to “flip-down” their holdings of securities in Pi Topco at or prior to or any time following closing. In addition, the Holdcos are obliged to reimburse the Lead Investors (as defined in the Consortium Agreement) and, with the consent of the Lead Investors, any other Co-Investor for their costs and expenses incurred in connection with their holdings of securities in Pi Topco from time to time. Similar provisions are also included in the Management Investment Agreement (described below).

Finally, the Consortium Agreement imposes standard confidentiality undertakings on the parties to the agreement (and standard permitted disclosure rights). The Holdcos are also required to comply with obligations and information requests in connection with the Lead Investors’ U.S. tax requirements.

#### ***Management Investment Agreement***

In connection with the Transaction, concurrently with the Closing, the management investment agreement related to Pi Topco between certain employees of the Paysafe group of companies (the “Managers”), the CVC Party, the Blackstone Parties, SJT Limited (in its capacity as trustee of the Pi Employee Benefit Trust) (the “EBT”), SJT Limited (in its capacity as trustee of the Pi Shareholder Benefit Trust) (the “SBT”) and each Holdco was amended and restated (such amended and restated agreement being the “Management Investment Agreement”).

The Management Investment Agreement sets out provisions related to the governance of the Holdcos. Each Holdco board (and any committee thereof) shall be comprised of up to three persons appointed by each of the CVC Party and Blackstone. The Managers are obliged to procure that such directors are promptly appointed to the boards and committees as required from time to time. In addition, the CVC Party and the Blackstone Parties are entitled at any time to appoint a non-executive director to the Paysafe Group Holdings Limited board who shall be the chairman of the board. The quorum requirements for each board require at least one director appointed by each of the CVC Party and the Blackstone Parties.

The Managers shall provide a customary tax indemnity in respect of their holdings of securities in any Holdco. In addition, the Managers, the EBT and the SBT are obliged to provide such cooperation or assistance as the CVC Party and the Blackstone Parties may require in connection with any transfer of their securities in Pi Topco or a winding-up of Pi Topco.

The Management Investment Agreement also provides that, until the CVC Party and the Blackstone Parties realize a 1 times return on their original investment in the Paysafe group of companies:

- If a Manager becomes a Bad Leaver (as defined in the Management Investment Agreement) by reason of voluntary resignation, the Manager's securities that derive from the Manager's holdings of A ordinary shares prior to the amendment of the Management Investment Agreement can be acquired by the CVC Party and the Blackstone Parties (or such person nominated by them) at fair market value for vested securities and at the lower of FMV and cost for unvested securities.
- If a Manager becomes a Bad Leaver by reason of fraud, summary dismissal or breach of restrictive covenant, the Manager's securities that derive from the Manager's holdings of A ordinary shares prior to the amendment of the Management Investment Agreement can be acquired by the CVC Party and the Blackstone Parties (or such person nominated by them) at the lower of fair market value and cost.

Securities subject to this repurchase right are considered vested as follows:

- First anniversary of acquisition of A Ordinary Shares—20%
- Each additional quarter—5%
- Up to a maximum of 80%

In connection with the Transactions, the equity held by Managers are fully vested other than with respect to the repurchase right described above. The Management Investment Agreement also includes provisions that entitle the Managers who held A ordinary shares prior to the amendment of the Management Investment Agreement to additional value if the CVC Party and the Blackstone Parties receive a certain level of liquid return on their investment. Please see Item 6.B. "Compensation—Equity Program" for additional information.

In addition, the Management Investment Agreement also sets out provisions such that the Managers will automatically "flip-down" their holdings of securities in Pi Topco so that they hold Company Common Shares directly upon expiry of the lock-up undertakings imposed on their holdings of securities in Pi Topco. If reasonably required by the CVC Party and the Blackstone Parties, the CVC Party and the Blackstone Parties may elect to "flip-down" their holdings of securities in Pi Topco at or prior to or any time following closing. When the "flip-down" mechanic is operated, PGHL shall (and Pi Topco shall procure that PGHL shall), subject to applicable law, transfer (whether by distribution or otherwise) such number of Company Common Shares in Paysafe Limited to Pi Topco to enable Pi Topco to transfer such shares to the Managers in exchange for the requisite number of securities in Pi Topco held by them. The CVC Party and the Blackstone Parties will have the flexibility to require the Managers to "flip-down" prior to expiry of the lock-up undertakings. To the extent that any Managers are required to "flip-down" prior to the expiry of the lock-up period, any Company Common Shares held by such Manager will be subject to the same lock-up undertakings that applied to the securities held by such Manager in Pi Topco prior to the "flip-down."

#### ***Other related party transactions***

The Company has provided and purchased services to and from various affiliates of certain directors or entities under common control, this includes entities under the common control of CVC and Blackstone.

In September 2021, we entered into a 10-year license and risk management agreement with Dun & Bradstreet. Pursuant to the agreement, Dun & Bradstreet will provide data license and risk management solution services to Paysafe. The agreement is cancellable by either party without penalty at each annual anniversary of the contract effective date by providing written notice not less than 90 days prior to the anniversary date. Additionally, in December 2022, we entered into a 63 month lease agreement in Jacksonville, Florida, with Dun & Bradstreet, as lessor. Both agreements were approved by our Audit Committee. In 2022, we spent \$11.4 million with Dun & Bradstreet in connection with the license and risk management agreement. Mr. Jabbour is the Chief Executive Officer and a director of Dun & Bradstreet. In addition, Dun & Bradstreet is an affiliate of Cannae.

For additional information on related party transactions, see Note 22, *Related party transactions*, within Item 18, Financial Statements appearing elsewhere in this Report.

#### ***Loans Granted to Members of the Board or Executive Management***

As of the date of this annual report, Paysafe has no outstanding loan or guarantee commitments to members of the board or Executive Management.

#### ***Indemnification Agreements***

We entered into indemnification agreements with our directors and executive officers. These agreements will require us to indemnify these individuals to the fullest extent permitted by Bermuda law against liabilities that may arise by reason of their service to us, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors or executive officers, we have been informed that in the opinion of the SEC such indemnification is against public policy and is therefore unenforceable.

#### **C. Interests of Experts and Counsel**

Not applicable.

### **ITEM 8. FINANCIAL INFORMATION**

#### ***Financial Statements***

The financial statements of the Company are set forth in “Item 18. Financial Statements” of this Report.

#### ***Legal Proceedings***

Information regarding legal proceedings is set forth in “Item 4.B. Information on the Company—Business Overview—Legal Proceedings” of this Report.

#### ***Dividend Policy***

We have no current plans to pay cash dividends. The declaration, amount and payment of any future dividends on our Company Common Shares will be at the sole discretion of our board of directors. Our board of directors may take into account general and economic conditions, our financial condition and results of operations, our available cash and current and anticipated cash needs, capital requirements, contractual, legal, tax and regulatory restrictions and implications on the payment of dividends by us to our shareholders or by our subsidiaries to us and such other factors as our board of directors may deem relevant. In addition, our ability to pay dividends is limited by our credit facilities and may be limited by covenants of other indebtedness we or our subsidiaries incur in the future. As a result, you may not receive any return on an investment in our Company Common Shares unless you sell your Company Common Shares for a price greater than that which you paid for it.

#### **B. Significant Changes**

None / Not applicable.

### **ITEM 9. THE OFFER AND LISTING**

#### **A. Offer and Listing Details**

Company Common Shares and Company Warrants have been listed on the NYSE under the symbols “PSFE” and “PSFE.WS”, respectively, since March 31, 2021. Holders of Company Common Shares and Company Warrants should obtain current market quotations for their securities. A description of Paysafe’s securities is set forth in Exhibit 2.3 “Description of Securities” of this Report and is incorporated herein by reference.

#### **B. Plan of Distribution**

Not applicable.

#### **C. Markets**

Information related to markets is set forth in “Item 9.A. The Offer and Listing -- Offer and Listing Details” of this Report.

#### **D. Selling Shareholders**

Not applicable.

**E. Dilution**

Not applicable.

**F. Expenses of the Issue**

Not applicable.

**ITEM 10. ADDITIONAL INFORMATION****A. Share Capital**

Not applicable.

**B. Memorandum and Articles of Association**

The memorandum of association of the Company (the “Company Charter”) is filed as Exhibit 1.1 to this Report and the information set forth in Exhibit 2.3 “Description of Securities” of this Report is incorporated herein by reference.

**C. Material Contracts**

Information pertaining to Paysafe’s material contracts is set forth in the in the sections entitled “Item 5. Operating and Financial Review and Prospects” and “Item 7. Major Shareholders and Related Party Transactions,” each of which is incorporated herein by reference.

**D. Exchange Controls**

Information pertaining to exchange controls is set forth in this Report in the section entitled “Item 10. Additional Information—B. Memorandum and Articles of Association—Description of the Company’s Securities—Transfer of Shares” and “—Certain Provisions of Bermuda Law”, each of which is incorporated herein by reference.

**E. Taxation****Material U.S. Federal Income Tax Considerations**

The following is a discussion of the material U.S. federal income tax considerations to U.S. holders (as defined below) relating to the ownership and disposition of Company Common Shares and Company Warrants (collectively, the “Company’s Securities”). This discussion only applies to holders of Company Securities that hold their Company Securities as capital assets for U.S. federal income tax purposes and does not describe all of the tax consequences that may be relevant to holders of Company Securities in light of their particular circumstances, including alternative minimum tax and Medicare contribution tax consequences, or holders who are subject to special rules, such as:

- banks, thrifts, mutual funds and other financial institutions or financial services entities;
- insurance companies;
- tax-exempt organizations, pension funds or governmental organizations;
- regulated investment companies and real estate investment trusts;
- U.S. expatriates and former citizens or former long-term residents of the United States;
- persons that acquired securities pursuant to an exercise of employee share options, in connection with employee incentive plans or otherwise as compensation;
- dealers or traders subject to a mark-to-market method of tax accounting with respect to the Company Securities;
- brokers or dealers in securities or foreign currency;
- individual retirement and other deferred accounts;
- persons holding their Company Securities as part of a “straddle,” hedge, conversion, constructive sale or other risk reducing transactions;

- persons who purchase or sell their shares as part of a wash sale for tax purposes;
- grantor trusts;
- U.S. holders whose functional currency is not the U.S. dollar;
- partnerships or other pass-through entities for U.S. federal income tax purposes or investors in such entities;
- holders that are “controlled foreign corporations” or “passive foreign investment companies,” referred to as “PFICs,” and corporations that accumulate earnings to avoid U.S. federal income tax;
- persons subject to the alternative minimum tax;
- a person required to accelerate the recognition of any item of gross income with respect to Company Securities as a result of such income being recognized on an applicable financial statement;
- U.S. holders actually or constructively owning 5% or more of the Company Common Shares; or
- a person who owns or is deemed to own 10% or more (by vote or value) of the Company Common Shares.

This discussion does not consider the tax treatment of entities that are partnerships or other pass-through entities for U.S. federal income tax purposes or persons who hold our securities through such entities. If a partnership or other pass-through entity for U.S. federal income tax purposes is the beneficial owner of Company Securities, the U.S. federal income tax treatment of partners of the partnership will generally depend on the status of the partners and the activities of the partner and the partnership.

This discussion is based on the Code, administrative pronouncements, judicial decisions and final, temporary and proposed regulations, including proposed and temporary regulations, promulgated under the Code (“Treasury Regulations”), all as of the date hereof, changes to any of which subsequent to the date hereof may affect the tax consequences described herein. This discussion does not take into account potential suggested or proposed changes in such tax laws which may impact the discussion below and does not address any aspect of State, local or non-U.S. taxation, or any U.S. federal taxes other than income taxes. Each of the foregoing is subject to change, potentially with retroactive effect. Holders of Company Securities are urged to consult their tax advisors with respect to the application of U.S. federal tax laws to their particular situation, as well as any tax consequences arising under the laws of any State, local or non-U.S. jurisdiction.

For purpose of this discussion, a “U.S. holder” is a beneficial owner of Company Securities who or that is for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any State thereof or the District of Columbia;
- an estate the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust if (1) a U.S. court can exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in place to be treated as a U.S. person.

ALL HOLDERS OF COMPANY SECURITIES SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF THE OWNERSHIP AND DISPOSITION OF COMPANY SECURITIES TO THEM, INCLUDING THE EFFECTS OF U.S. FEDERAL, STATE, LOCAL, NON-U.S. AND OTHER TAX LAWS.

#### *Passive Foreign Investment Company Rules*

Certain adverse U.S. federal income tax consequences could apply to a U.S. holder if Paysafe is treated as a PFIC for any taxable year during which the U.S. holder holds Company Securities. A non-U.S. corporation, such as Paysafe, will be classified as a PFIC for U.S. federal income tax purposes for any taxable year in which, after applying certain look-through rules, either (i) 75% or more of its gross income for such year consists of certain types of “passive” income or (ii) 50% or more of the value of its assets (determined on the basis of a quarterly average) during such year produce or are held for the production of passive income. Passive income generally includes dividends, interest, royalties, rents, annuities, net gains from the sale or exchange of property producing such income and net foreign currency gains. For purposes of the PFIC income test and asset test described above, if Paysafe owns, directly or indirectly, 25% or more of the total value of the outstanding shares of another corporation, Paysafe will be treated as if it (a) held a proportionate share of the assets of such other corporation and (b) received directly a proportionate share of the income of such other corporation.

Paysafe is not currently expected to be treated as a PFIC for U.S. federal income tax purposes for this taxable year or for foreseeable future taxable years. This conclusion is a factual determination, however, that must be made annually at the close of each taxable year and, thus, is subject to change. There can be no assurance that Paysafe will not be treated as a PFIC for any taxable year.

If Paysafe were to be treated as a PFIC, U.S. holders holding Company Securities could be subject to certain adverse U.S. federal income tax consequences with respect to gain realized on a taxable disposition of such Company Securities (or shares of any Paysafe subsidiaries that are PFICs) and certain distributions received on such Company Securities (or shares of any Paysafe subsidiaries that are PFICs). Certain elections (including a mark-to-market election) may be available to U.S. holders to mitigate some of the adverse tax consequences resulting from PFIC treatment. U.S. holders should consult their tax advisors regarding the application of the PFIC rules to their investment in Company Securities.

#### *Taxation of Distributions*

A U.S. holder generally will be required to include in gross income the amount of any cash distribution paid on the Company Common Shares treated as a dividend. A cash distribution on such shares generally will be treated as a dividend for U.S. federal income tax purposes to the extent the distribution is paid out of Paysafe's current or accumulated earnings and profits (as determined under U.S. federal income tax principles). Such dividends paid by Paysafe will be taxable to a corporate U.S. holder at regular rates and will not be eligible for the dividends-received deduction generally allowed to domestic corporations in respect of dividends received from other domestic corporations.

Distributions in excess of such earnings and profits generally will be applied against and reduce the U.S. holder's basis in such holder's shares (but not below zero), and any excess will be treated as gain from the sale or exchange of such shares as described below under "—Gain or Loss on Sale, Taxable Exchange or Other Taxable Disposition of Company Common Shares and Company Warrants." It is not expected that Paysafe will determine earnings and profits in accordance with U.S. federal income tax principles. Therefore, U.S. holders should expect that a distribution will generally be treated as a dividend.

Any dividends received by a U.S. holder (including any withheld taxes) will be includible in such U.S. holder's gross income as ordinary income on the day actually or constructively received by such U.S. holder. Such dividends received by a non-corporate U.S. holder will not be eligible for the dividends received deduction allowed to corporations under the Code. With respect to non-corporate U.S. holders, certain dividends, referred to as "qualified dividend income," received from a "qualified foreign corporation" may be subject to reduced rates of taxation. A qualified foreign corporation includes a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States that the U.S. Treasury Department determines to be satisfactory for these purposes and that includes an exchange of information provision. A foreign corporation is also treated as a "qualified foreign corporation" with respect to dividends paid by that corporation, on shares that are readily tradable on an established securities market in the United States. U.S. Treasury Department guidance indicates that Company Common Shares, which are intended to be listed on the NYSE, will be readily tradable on an established securities market in the United States. There can be no assurance, however, that Company Common Shares will be considered readily tradable on an established securities market in later years or that Paysafe will be eligible for the benefits of such a treaty. Non-corporate U.S. holders that do not meet a minimum holding period requirement during which they are not protected from the risk of loss or that elect to treat the dividend income as "investment income" pursuant to Section 163(d)(4) of the Code will not be eligible for the reduced rates of taxation regardless of Paysafe's status as a qualified foreign corporation. In addition, the rate reduction will not apply to dividends if the recipient of a dividend is obligated to make related payments with respect to positions in substantially similar or related property. This disallowance applies even if the minimum holding period has been met. U.S. holders should consult their own tax advisors regarding the application of these rules to their particular circumstances.

Non-corporate U.S. holders will not be eligible for reduced rates of taxation on any dividends received from Paysafe if it is a PFIC in the taxable year in which such dividends are paid or in the preceding taxable year (see "—Passive Foreign Investment Company Rules" above).

#### *Gain or Loss on Sale, Taxable Exchange or Other Taxable Disposition of Company Common Shares and Company Warrants*

Upon a sale or other taxable disposition of Company Securities and subject to the PFIC rules discussed above, a U.S. holder generally will recognize capital gain or loss in an amount equal to the difference between the amount realized and the U.S. holder's adjusted tax basis in the Company Securities. Any such capital gain or loss generally will be long-term capital gain or loss if the U.S. holder's holding period for the Company Securities so disposed of exceeds one year. Long-term capital gains recognized by non-corporate U.S. holders will be eligible to be taxed at reduced rates. The deductibility of capital losses is subject to limitations. Generally, the amount of gain or loss recognized by a U.S. holder is an amount equal to the difference between (i) the sum of the amount of cash and the fair market value of any property received in such disposition and (ii) the U.S. holder's adjusted tax basis in its Company Common Securities so disposed of.

#### *Exercise or Lapse of a Company Warrant*

Except as discussed below with respect to the cashless exercise of a Company Warrant, a U.S. holder generally will not recognize gain or loss upon the acquisition of a Company Common Share on the exercise of a Company Warrant for cash. A U.S. holder's tax basis in a Company Common Share received upon exercise of the Company Warrant generally will be an amount equal to the sum of the U.S. holder's tax basis in the Company Warrant exchanged therefor and the exercise price. The U.S. holder's holding period for a Company Common Share received upon exercise of the Company Warrant will begin on the date following the date of exercise (or possibly the date of exercise) of the Company Warrant and will not include the period during which the U.S. holder held the Company Warrant. If a Company Warrant is allowed to lapse unexercised, a U.S. holder generally will recognize a capital loss equal to such holder's tax basis in such Company Warrant.

The tax consequences of a cashless exercise of a Company Warrant are not clear under current tax law. A cashless exercise may be tax-free, either because the exercise is not a gain realization event or because the exercise is treated as a recapitalization for U.S. federal income tax purposes. In either tax-free situation, a U.S. holder's basis in the Company Common Shares received would equal the holder's basis in the Company Warrants exercised therefor. If the cashless exercise were treated as not being a gain realization event, a U.S. holder's holding period in the Company Common Shares would be treated as commencing on the date following the date of exercise (or possibly the date of exercise) of the Company Warrants. If the cashless exercise were treated as a recapitalization, the holding period of the Company Common Shares would include the holding period of the Company Warrants exercised therefore. It is also possible that a cashless exercise of a Company Warrant could be treated in part as a taxable exchange in which gain or loss would be recognized. In such event, a U.S. holder would recognize gain or loss with respect to the portion of the exercised Company Warrants treated as converted to pay the exercise price of the Company Warrants (the "converted Company Warrants"). The U.S. holder would recognize capital gain or loss with respect to the converted Company Warrants in an amount generally equal to the difference between (i) the fair market value of the Company Common Shares that would have been received with respect to the converted Company Warrants in a regular exercise of the Company Warrants and (ii) the sum of the U.S. holder's tax basis in the converted Company Warrants and the aggregate cash exercise price of such Warrants (if they had been exercised in a regular exercise). In this case, a U.S. holder's tax basis in the Company Common Shares received would equal the U.S. holder's tax basis in the Company Warrants exercised plus (or minus) the gain (or loss) recognized with respect to the converted Company Warrants. A U.S. holder's holding period for the Company Common Shares would commence on the date following the date of exercise (or possibly the date of exercise) of the Company Warrants.

Due to the absence of authority on the U.S. federal income tax treatment of a cashless exercise of Company Warrants, there can be no assurance which, if any, of the alternative tax consequences and holding periods described above would be adopted by the IRS or a court of law. Accordingly, U.S. holders should consult their tax advisors regarding the tax consequences of a cashless exercise of Company Warrants.

#### *Possible Constructive Distributions*

The terms of each Company Warrant provide for an adjustment to the number of Company Common Shares for which the Company Warrant may be exercised or to the exercise price of the Company Warrant in certain events. An adjustment which has the effect of preventing dilution generally is not taxable. A U.S. holder of a Company Warrant would, however, be treated as receiving a constructive distribution from the Company if, for example, the adjustment increases the holder's proportionate interest in the Company's assets or earnings and profits (e.g., through an increase in the number of Company Common Shares that would be obtained upon exercise of such Company Warrant) as a result of a distribution of cash to the holders of the Company Common Shares which is taxable to the U.S. holders of such shares as described under "—Taxation of Distributions" above. Such constructive distribution would be subject to tax as described under that section in the same manner as if the U.S. holder of such Company Warrant received a cash distribution from the Company equal to the fair market value of such increased interest.

#### *FATCA Reporting*

Under FATCA, a 30% U.S. federal withholding tax may apply to payments of U.S.-source dividends paid to "foreign financial institutions" (which is broadly defined for this purpose and in general includes investment vehicles) and certain other non-U.S. entities unless various U.S. information reporting and due diligence requirements (generally relating to ownership by U.S. persons of interest in or accounts with those entities) have been satisfied, or an exemption applies. An intergovernmental agreement between the United States and the entity's jurisdiction may modify these requirements. If FATCA withholding is imposed, a beneficial owner that is not a foreign financial institution generally will be entitled to a refund of any amounts withheld by filing a U.S. federal income tax return containing the required information (which may entail significant administrative burden). Non-U.S. Holders are urged to consult their tax advisors regarding the application of FATCA to a redemption of Company Common Shares.

#### *Reporting and Backup Withholding*

Dividend payments with respect to the Company Common Shares and proceeds from the sale, exchange or redemption of the Company Securities may be subject to information reporting to the IRS and possible U.S. backup withholding. Backup withholding will not apply,

however, to a U.S. holder who furnishes a correct taxpayer identification number and makes other required certifications, or who is otherwise exempt from backup withholding and establishes such exempt status. Backup withholding is not an additional tax. Amounts withheld as backup withholding may be credited against a U.S. holder's U.S. federal income tax liability, and a holder generally may obtain a refund of any excess amounts withheld under the backup withholding rules by timely filing the appropriate claim for refund with the IRS and furnishing any required information.

Individuals and certain domestic entities that are U.S. holders will be required to report information with respect to such U.S. holder's investment in "specified foreign financial assets" on IRS Form 8938, subject to certain exceptions. An interest in Paysafe constitutes a specified foreign financial asset for these purposes. Persons who are required to report specified foreign financial assets and fail to do so may be subject to substantial penalties. U.S. holders are urged to consult with their tax advisors regarding the foreign financial asset reporting obligations and their application to Company's securities.

THE FOREGOING IS A SUMMARY OF THE MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE OWNERSHIP AND DISPOSITION OF COMPANY SECURITIES WITHOUT REGARD TO THE PARTICULAR FACTS AND CIRCUMSTANCES OF EACH HOLDER OF COMPANY SECURITIES. HOLDERS OF COMPANY SECURITIES ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE SPECIFIC TAX CONSEQUENCES TO THEM INCLUDING THE APPLICABILITY AND EFFECT OF U.S. FEDERAL, STATE, LOCAL, NON-U.S. AND OTHER TAX LAWS.

#### **Certain United Kingdom Tax Considerations**

The following statements are of a general nature and do not purport to be a complete analysis of all potential United Kingdom ("UK") tax consequences of acquiring, holding, and disposing of Company Common Shares and Company Warrants (collectively, the "Company Securities"). They are based on current UK tax law (including rates of tax) and on the current published practice of Her Majesty's Revenue and Customs ("HMRC") (which may not be binding on HMRC), as of the date hereof, all of which are subject to change, possibly with retrospective effect. They are intended to address only certain UK tax consequences for holders of Company Securities who are not tax resident in the UK, who are the absolute beneficial owners of their Company Securities (and any dividends paid on them) and who hold their Company Securities as investments (other than in an individual savings account or a self-invested personal pension). They do not address the UK tax consequences which may be relevant to certain classes of holders of Company Securities such as traders, brokers, dealers, banks, financial institutions, insurance companies, investment companies, collective investment schemes, tax-exempt organizations, trustees, persons connected with Paysafe or any member of a group of which Paysafe forms part, persons holding their Company Securities as part of hedging or conversion transactions, shareholders who have (or are deemed to have) acquired their Company Securities by virtue of an office or employment, and shareholders who are or have been officers or employees of Paysafe or a company forming part of a group of which Paysafe forms part. The statements do not apply to any shareholder who directly or indirectly holds or controls 10% or more of Paysafe's share capital (or class thereof), voting power or profits.

The following is intended only as a general guide and is not intended to be, nor should it be considered to be, legal or tax advice to any particular prospective subscriber for, or purchaser of, Company Securities.

Accordingly, prospective subscribers for, or purchasers of, Company Securities who are in any doubt as to their tax position regarding the acquisition, ownership or disposition of Company Securities or who are tax resident in the UK should consult their own tax advisers.

#### **The Company**

It is the intention that the affairs of Paysafe will be conducted so that the central management and control of Paysafe is exercised in the UK and, as a result, that it will be treated as a resident in the UK for UK tax purposes.

#### **Taxation of dividends paid on Company Common Shares**

##### *Withholding tax*

Paysafe will not be required to withhold UK tax at source when paying dividends.

##### *Income tax*

An individual holder of Company Common Shares who is not resident for tax purposes in the UK should not be chargeable to UK income tax on dividends received from Paysafe, unless he or she carries on (whether solely or in partnership) any trade, profession, or vocation in the UK through a branch or agency in the UK to which their Company Common Shares are attributable. There are certain exceptions for trading in the UK through independent agents, such as some brokers and investment managers.

##### *Corporation tax*



Corporate holders of Company Common Shares who are not resident for tax purposes in the UK but who are carrying on a trade in the UK through a permanent establishment in the UK in connection with which Company Common Shares are used or held, should not be subject to UK corporation tax on any dividend received from Paysafe so long as the dividends qualify for exemption and certain conditions are met (including anti-avoidance conditions). Corporate holders of Company Common Shares who are not resident in the UK and who are not carrying on a trade in the UK through a permanent establishment in the UK in connection with which Company Common Shares are used or held or acquired will not generally be subject to UK corporation tax on dividends.

A holder of Company Common Shares who is resident outside the UK may be subject to non-UK taxation on dividend income under local law.

#### **Taxation of Disposal of Company Securities**

Holders of Company Securities who are not resident in the UK and, in the case of an individual shareholder, not temporarily non-resident, should not be liable for UK tax on capital gains realized on a sale or other disposal of Company Securities unless such Company Securities are used, held or acquired for the purposes of a trade, profession or vocation carried on in the UK through a branch or agency in the UK or, in the case of a corporate holder of Company Securities used, held, or acquired for the purposes of a trade carried on in the UK through a permanent establishment in the UK. Holders of Company Securities who are not resident in the UK may be subject to non-UK taxation on any gain under local law.

Generally, an individual holder of Company Securities who has ceased to be resident in the UK for UK tax purposes for a period of five years or less and who disposes of Company Securities during that period may be liable on their return to the UK to UK taxation on any capital gain realized (subject to any available exemption or relief).

#### **UK Stamp Duty (“stamp duty”) and UK Stamp Duty Reserve Tax (“SDRT”)**

The statements in this section are intended as a general guide to the current position relating to UK stamp duty and SDRT and apply to any holders of Company Securities irrespective of their place of tax residence.

No stamp duty or SDRT will be payable on the issue of Company Common Shares (including the issue of Company Common Shares upon exercise of the Company Warrants).

Stamp duty will technically be payable on any instrument of transfer of Company Securities that is executed in the UK or that relates to any property situated, or to any matter or thing done or to be done, in the UK and the stamp duty position for any transfer will therefore depend on the circumstances of transfer. An exemption from stamp duty is available on an instrument transferring Company Securities where the amount or value of the consideration is £1,000 or less and it is certified on the instrument that the transaction effected by the instrument does not form part of a larger transaction or series of transactions in respect of which the aggregate amount or value of the consideration exceeds £1,000. Holders of Company Securities should be aware that, even where an instrument of transfer is technically subject to stamp duty, stamp duty is not required to be paid unless it is necessary to rely on the instrument for legal purposes, for example to register a change of ownership or in litigation in a UK court. As a practical matter, so long as the register of holders of Company Securities is maintained outside the UK, generally, a purchaser of the Company Securities may not have to pay stamp duty.

Paysafe currently does not intend that any register of holders of the Company Securities will be maintained in the UK and it does not intend that the Company Securities will be paired with any shares issued by a UK incorporated company. Whilst this remains the case, any agreement to transfer Company Securities will not be subject to SDRT.

#### **F. Dividends and Paying Agents**

Not applicable.

#### **G. Statement by Experts**

Not applicable.

#### **H. Documents on Display**

We are subject to certain of the informational filing requirements of the Exchange Act. As a foreign private issuer, we are not subject to all of the disclosure requirements applicable to public companies organized within the United States. For example, we are exempt from certain rules under the Exchange Act that regulate disclosure obligations and procedural requirements related to the solicitation of proxies, consents or authorizations applicable to a security registered under the Exchange Act, including the U.S. proxy rules under Section 14 of the Exchange Act. In addition, our officers and directors are exempt from the reporting and “short-swing” profit recovery provisions of Section 16 of the Exchange Act and related rules with respect to their purchases and sales of our securities. Moreover,

while we expect to submit quarterly interim consolidated financial data to the SEC under cover of the SEC's Form 6-K, we will not be required to file periodic reports and financial statements with the SEC as frequently or as promptly as U.S. public companies and will not be required to file quarterly reports on Form 10-Q or current reports on Form 8-K under the Exchange Act. The SEC maintains a website at <http://www.sec.gov> that contains reports and other information that we file with or furnish electronically with the SEC.

#### **I. Subsidiary Information**

Not applicable.

#### **J. Annual Report to Security Holders**

Not applicable.

### **ITEM 11. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to the market risks described in "Risk Factors," "Forward-Looking Statements" and elsewhere in this annual report. We are also exposed to a variety of risks in the ordinary course of our business, including foreign currency exchange risk, interest rate risk, customer and credit risk and liquidity risk. We regularly assess each of these risks to minimize any adverse effects on our business as a result of those factors. The information pertaining to quantitative and qualitative disclosures about market risk is set forth in "Item 5. Operating and Financial Review and Prospects—Quantitative and Qualitative Disclosure about Market Risk" of this Report.

### **ITEM 12. DESCRIPTION OF SECURITIES OTHER THAN EQUITY SECURITIES**

#### **A. Debt Securities**

Not applicable.

#### **B. Warrants and Rights**

A description of Paysafe's warrants is set forth in this Report, in Exhibit 2.3 "Description of Securities" of this Report and is incorporated herein by reference.

#### **C. Other Securities**

Not applicable.

#### **D. American Depositary Shares**

Not applicable.

## **PART II**

### **ITEM 13. DEFAULTS, DIVIDEND ARREARAGES AND DELINQUENCIES**

None.

### **ITEM 14. MATERIAL MODIFICATIONS TO THE RIGHTS OF SECURITY HOLDERS AND USE OF PROCEEDS**

The memorandum of association of the Company is filed as Exhibit 1.1

#### **E. Use of Proceeds**

None.

### **ITEM 15. CONTROL AND PROCEDURES**

#### **A. Disclosure Controls and Procedures**

We maintain disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act) designed to provide reasonable assurance that information required to be disclosed in the Company's reports under the Exchange Act, as amended, is recorded, processed, summarized and reported within the time period specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Our management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, has performed an evaluation of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report.

Based on such evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2022.

## **B. Management's Report on Internal Controls over Financial Reporting**

Management of the Company is responsible for establishing and maintaining internal control over financial reporting as defined in Rules 13a-15(f) and 15(d)-15(f) of the Securities Exchange Act of 1934. The Company's internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes maintaining records that in reasonable detail accurately and fairly reflect our transactions; providing reasonable assurance that transactions are recorded as necessary for preparation of our financial statements; providing reasonable assurance that receipts and expenditures are made in accordance with management authorization; and providing reasonable assurance that unauthorized acquisition, use or disposition of Company assets that could have a material effect on our financial statements would be prevented or detected on a timely basis. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with policies or procedures may deteriorate. Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2022. In making this assessment management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control - Integrated Framework (2013). Based on our assessment and the criteria discussed above, management has concluded that the Company's internal control over financial reporting is effective as of December 31, 2022.

## **C. Attestation Report of Registered Public Accounting Firm**

### **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the shareholders and the Board of Directors of Paysafe Limited

#### **Opinion on Internal Control over Financial Reporting**

We have audited the internal control over financial reporting of Paysafe Limited and subsidiaries (the "Company") as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2022, of the Company and our report dated March 15, 2023, expressed an unqualified opinion on those financial statements.

#### **Basis for Opinion**

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying *Management's Report on Internal Control Over Financial Reporting*. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

#### **Definition and Limitations of Internal Control over Financial Reporting**

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ *DELOITTE & TOUCHE LLP*

Houston, Texas

March 15, 2023

#### **D. Effect of Changes in Internal Controls Over Financial Reporting**

There were no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under Exchange Act) that occurred during the period covered by this Annual Report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### **Item 16A. Audit Committee Financial Expert**

Our Board of Directors has determined that Dagmar Kollmann is an "audit committee financial expert" as defined in Item 16A of Form 20-F under the Exchange Act and that Ms. Kollmann satisfies the "independence" requirements set forth in Rule 10A-3 under the Exchange Act and NYSE listing standards.

#### **Item 16B. Code of Ethics**

We have adopted the Paysafe Code, which applies to all of our officers, directors and employees and sets forth our Company's values as well as certain policies and procedures related to, among other things, risk management and control, information management, privacy, information security, conflicts of interest, anti-corruption and financial reporting. We also adopted a Code of Business Conduct and Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer and controller, or persons performing similar functions, each of which will be posted on our website. Our Code of Business Conduct and Ethics is a "code of ethics," as defined in Item 406(b) of Regulation S-K. We will make any legally required disclosures regarding amendments to, or waivers of, provisions of our Code of Business Conduct and Ethics on our website. The information contained on, or accessible from, our website is not part of this prospectus by reference or otherwise.

#### **ITEM 16C. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

##### ***Fees Paid to Independent Registered Public Accounting Firm***

The following table represents aggregate fees billed to us for professional services rendered by Deloitte & Touche, our independent registered public accounting firm, for the fiscal year ended December 31, 2022 and 2021.

	For the Year Ended December 31, 2022		For the Year Ended December 31, 2021	
	(\$ in thousands)		(\$ in thousands)	
Audit Fees	\$	7,275	\$	6,833
Audit-Related Fees		300		125
Total	\$	7,575	\$	6,958

Audit fees of Deloitte & Touche for the fiscal year ended December 31, 2022 and 2021 reflect professional services rendered regarding statutory audits of the Company and its subsidiaries, audits of annual consolidated financial statements and review of interim financial statements.

#### ***Audit Committee Pre-Approval***

The Audit Committee has adopted a policy regarding pre-approval of any audit and permissible non-audit services. Under this policy, the Audit Committee preapproves all audit and permissible non-audit services to be provided by the independent registered public accounting firm. These services may include audit services, audit-related services, tax services and other services. The Audit Committee Chair may also pre-approve particular services on a case-by-case basis within a de minimis threshold. All services provided by Deloitte US in 2022 and 2021 were pre-approved by the Audit Committee.

#### **ITEM 16D. EXEMPTIONS FROM THE LISTING STANDARDS FOR AUDIT COMMITTEES**

We do not rely on any exemptions from the independence standards for our audit committee.

#### **ITEM 16E. PURCHASES OF EQUITY SECURITIES BY THE ISSUER AND AFFILIATED PURCHASERS.**

During the fiscal period ended December 31, 2022 no purchases of our equity securities were made by or on behalf of the Company or any affiliated purchaser.

#### **ITEM 16F. CHANGE IN REGISTRANT’S CERTIFYING ACCOUNTANT**

Not applicable.

#### **ITEM 16G. CORPORATE GOVERNANCE**

We are a “foreign private issuer” under applicable U.S. federal securities laws. As a result, we are permitted to follow certain corporate governance rules that conform to Bermuda requirements in lieu of certain NYSE corporate governance rules. The Company Bye-laws do not require shareholder approval for the issuance of authorized but unissued shares, including (i) in connection with the acquisition of shares, stock or assets of another company; (ii) when it would result in a change of control; (iii) when a share option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which shares may be acquired by officers, directors, employees, or consultants; or (iv) in connection with certain private placements. To this extent, our practice varies from the requirements of the corporate governance standards of NYSE, which generally requires an issuer to obtain shareholder approval for the issuance of securities in connection with such events. While we do not currently intend to rely on any other home country accommodations, for so long as we qualify as a foreign private issuer, we may take advantage of them. In addition, unlike the corporate governance requirements of the NYSE, our “home country” corporate governance practices do not require us to (i) have a board that is composed of a majority of “independent directors” as defined under the rules of the NYSE; (ii) have a compensation committee that is composed entirely of independent directors; and (iii) have a nominating and corporate governance committee that is composed entirely of independent directors. For as long as we qualify as a foreign private issuer, we may take advantage of these exemptions.

#### **Item 16H. Mine Safety Disclosure**

Not applicable.

#### **Item 16I. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections**

Not applicable.

### **PART III**

#### **TEM 17. FINANCIAL STATEMENTS**

Not applicable.

#### **TEM 18. FINANCIAL STATEMENTS**

The financial statements are filed as part of this Report beginning on page F-1.

## ITEM 19. EXHIBITS

The agreements and other documents filed as exhibits to this Report are not intended to provide factual information or other disclosure other than with respect to the terms of the agreements or other documents themselves, and you should not rely on them for that purpose. In particular, any representations and warranties made by us in these agreements or other documents were made solely within the specific context of the relevant agreement or document and for the benefit of the other parties to the agreements and they may not describe the actual state of affairs as of the date they were made or at any other time.

The exhibit index attached hereto is incorporated herein by reference.

### EXHIBIT INDEX

Exhibit No.	Description
1.1	<a href="#"><u>Memorandum of Association of Paysafe Limited (incorporated by reference to Exhibit 3.1 to the Form F-4 filed on December 21, 2020 (file no. 333-251552)).</u></a>
1.2	<a href="#"><u>Seconded Amended Bye-Laws of Paysafe Limited (incorporated by reference to Exhibit 99.1 to the Form 6-K filed on December 12, 2022 (file no. 001-40302).</u></a>
2.1	<a href="#"><u>Warrant Agreement, dated August 21, 2020, by and between Foley Trasimene Acquisition Corp. II and Continental Stock Transfer &amp; Trust Company, as warrant agent (incorporated by reference to Exhibit 4.1 to the Quarterly Report on Form 10-Q filed November 6, 2020).</u></a>
2.2	<a href="#"><u>Warrant Assumption Agreement, dated March 30, 2021, among Foley Trasimene Acquisition Corp. II, Paysafe Limited and Continental Stock Transfer &amp; Trust Company, as warrant agent (incorporated by reference to Exhibit 2.2 to the Form 20-F filed on April 1, 2021 (file no. 001-40302)).</u></a>
2.3	<a href="#"><u>Description of Paysafe Securities.*</u></a>
4.1	<a href="#"><u>Agreement and Plan of Merger, dated as of December 7, 2020, by and among Foley Trasimene Acquisition Corp. II, Paysafe Limited, Paysafe Merger Sub Inc., Paysafe Bermuda Holding LLC, Pi Jersey Holdco 1.5 Limited and Paysafe Group Holdings Limited (incorporated by reference to Exhibit 2.1 to the Form F-4 filed on December 21, 2020 (file no. 333-251552)).</u></a>
4.2	<a href="#"><u>Shareholders Agreement, dated as of March 30, 2021, among Paysafe Limited, Pi Jersey Topco Limited, Paysafe Group Holdings Limited and each of the shareholders party thereto (incorporated by reference to Exhibit 4.2 to the Form 20-F filed on April 1, 2021 (file no. 001-40302)).</u></a>
4.3	<a href="#"><u>Amended and Restated Registration Rights Agreement, dated as of March 30, 2021, among Paysafe Limited, Pi Jersey Topco Limited, Paysafe Group Holdings Limited and each investor party thereto (incorporated by reference to Exhibit 4.3 to the Form 20-F filed on April 1, 2021 (file no. 001-40302)).</u></a>
4.4	<a href="#"><u>Form of Subscription Agreement (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed December 7, 2020).</u></a>
4.5	<a href="#"><u>Investment Management Trust Agreement, dated August 21, 2020, by and between FTAC and Continental Stock Transfer &amp; Trust Company as Trustee (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q filed November 6, 2020).</u></a>
4.6	<a href="#"><u>Indenture, dated as of June 28, 2021, by and among Paysafe Finance PLC and Paysafe Holdings (US) Corp as the issuers, the guarantors named therein, Lucid Trustee Services Limited, as trustee and security agent, The Bank of New York Mellon, London Branch, as Dollar and Euro paying agent and The Bank of New York Mellon SA/NV, Dublin Branch as Dollar and Euro transfer agent and registrar. (incorporated by reference to Exhibit 4.11 to the Form 20-F filed on April 1, 2021 (file no. 001-40302).</u></a>
4.7	<a href="#"><u>Senior Facilities Agreement, dated as of June 24, 2021, by and among Paysafe Group Holdings II Limited, Paysafe Group Holdings III limited and JP Morgan Securities PLC, Credit Suisse AG, London Branch and Credit Suisse Loan Funding LLC, as arrangers and bookrunners, JP Morgan AG, as agent and Luci Trustee Services Limited, as security agent.*</u></a>
4.8	<a href="#"><u>Intercreditor Agreement, dated as of June 24, 2021, by and among J.P. Morgan AG, as senior facility agent, the companies named therein and Lucid Trustee Services Limited, as security agent.*</u></a>

4.9	<a href="#"><u>US Collateral Agreement, dated as of June 24, 2021, by and among Paysafe US Holdco Limited, Paysafe Holdings (US) Corp, and each other Grantor party thereto and Lucid Trustee Services Limited, as Security Agent.*</u></a>
4.10	<a href="#"><u>Debenture, dated as of June 24, 2021, by and among Paysafe Group Holdings II Limited and each of the entities listed on Schedule 1, as the original chargors.*</u></a>
4.11	<a href="#"><u>Security Accession Deed, dated as of June 25, 2021, by and between Paysafe Finance PLC and Lucid Trustee Services Limited, as security agent.*</u></a>
4.12	<a href="#"><u>Third Party Security Agreement, dated as of June 24, 2021, by and between Paysafe Group Limited and Lucid Trustee Services Limited, as security agent.*</u></a>
8.1	<a href="#"><u>List of Subsidiaries of Paysafe Limited*</u></a>
12.1	<a href="#"><u>Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002*</u></a>
12.2	<a href="#"><u>Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 *</u></a>
13.1	<a href="#"><u>Certification by the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*</u></a>
13.2	<a href="#"><u>Certification by the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002*</u></a>
15.1	<a href="#"><u>Consent Deloitte &amp; Touche LLP.*</u></a>
15.2	<a href="#"><u>Consent Deloitte LLP.*</u></a>
99.1	<a href="#"><u>Section 13 (r) Disclosure</u></a>
101.INS	Inline XBRL Instance Document*
101.SCH	Inline XBRL Taxonomy Extension Schema Document*
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document*
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document*
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document*
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document*
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)*

\* Filed herewith



## SIGNATURES

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this Report on its behalf.

March 15, 2023

### PAYSAFE LIMITED

By: /s/ Bruce Lowthers  
Name: Bruce Lowthers  
Title: Chief Executive Officer

## INDEX TO FINANCIAL STATEMENTS

### Paysafe Limited

#### Audited Financial Statements

	<u>Page No.</u>
<a href="#">Report of Independent Registered Public Accounting Firm (PCAOB ID No. 34)</a>	F-2
<a href="#">Report of Independent Registered Public Accounting Firm (PCAOB ID No. 01147)</a>	F-4
<a href="#">Consolidated Statements of Comprehensive Loss for the Years Ended December 31, 2022, 2021, and 2020</a>	F-5
<a href="#">Consolidated Statements of Financial Position as of December 31, 2022 and 2021</a>	F-6
<a href="#">Consolidated Statements of Shareholder's Equity</a>	F-7
<a href="#">Consolidated Statements of Cash Flows for the Years Ended December 31, 2022, 2021 and 2020</a>	F-10
<a href="#">Notes to the Consolidated Financial Statements</a>	F-12

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of Paysafe Limited

### Opinion on the Financial Statements

We have audited the accompanying consolidated statements of financial position of Paysafe Limited and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of comprehensive loss, shareholders' equity, and cash flows, for the years then ended, and the related notes (collectively referred to as the "financial statements"). In our opinion, the 2022 and 2021 financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The financial statements of the Company for the year ended December 31, 2020, before the effects of the retrospective adjustments to the disclosures for a change in the composition of reportable segments discussed in Note 21 to the financial statements and a change to net loss per share attributable to the Company discussed in Note 3 to the financial statements, were audited by other auditors whose report, dated March 29, 2021, expressed an unqualified opinion on those statements. We also have audited the adjustments to the 2020 financial statements to retrospectively adjust the disclosures for a change in the composition of reportable segments in 2022 as discussed in Note 21 to the financial statements and the recasting of net loss per share attributable to the Company in 2020 as discussed in Note 3 to the financial statements. Our procedures included evaluating the appropriateness of the new segment classification, comparing the adjustment amounts of segment revenues and Adjusted EBITDA to the Company's underlying analysis, testing the mathematical accuracy of the reconciliations of segment amounts to the financial statements, comparing the net loss per share and all share and per-share amounts of the Company's common stock disclosed throughout the financial statements attributable to the Company disclosures for 2020 to the Company's underlying analysis and testing the underlying analysis. In our opinion, such retrospective adjustments are appropriate and have been properly applied. However, we were not engaged to audit, review, or apply any procedures to the 2020 financial statements of the Company other than with respect to the retrospective adjustments, and accordingly, we do not express an opinion or any other form of assurance on the 2020 financial statements taken as a whole.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 15, 2023, expressed an unqualified opinion on the Company's internal control over financial reporting.

### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

### Goodwill — Refer to Notes 1 and 5 to the financial statements

### *Critical Audit Matter Description*

As described in Note 5 to the financial statements, the Company's consolidated balance of goodwill was \$2.0 billion as of December 31, 2022 and the Company recorded impairment during the year amounting to \$1.9 billion. Goodwill is tested for impairment as of October 1st, or when events and circumstances have occurred that would indicate the carrying amount of goodwill exceeds its fair value. The impairment test involves comparing the fair value of a reporting unit with its book value. The Company uses a combination of the income and market approaches to estimate reporting unit fair value.

Under the market approach, fair value is estimated by comparing the business to similar businesses, or guideline companies. The selection of comparable businesses is based on the markets in which the reporting units operate considering risk profiles, size, geography, and diversity of products and services.

Under the income approach, the Company uses a discounted cash flow ("DCF") model where cash flows anticipated over future periods, plus a terminal value at the end of that time horizon, are discounted to their present value using an appropriate discount rate that is commensurate with the risk inherent within the reporting unit. The rate used to discount to present value includes an unsystematic risk premium, which is intended to address uncertainty related to the reporting unit's future cash flow projections. Significant assumptions inherent in estimating the fair values include revenue growth assumptions, discount rate and exit multiples used to determine the present value of cash flows (or estimated fair value). Changes in these assumptions could have a significant impact on either the carrying value of goodwill, the amount of any impairment charge, or both. We identified the impairment evaluation of goodwill as a critical audit matter because of the significant judgements involved in estimating the fair value, including the projected revenues related to cash flow growth, exit multiples, and discount rates and auditing such estimates required significant auditor judgement and extensive audit effort to evaluate the reasonableness of those estimates, including the involvement of internal fair value specialists.

### *How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to projected revenues, exit multiples, and discount rates used by management to estimate the fair value of the reporting units included the following, among others:

- We tested the effectiveness of controls over management's goodwill impairment evaluation, including those over the determination of the fair value for the reporting units, such as controls related to management's forecasts of future revenues, discount rates and exit multiples.
- We performed sensitivity analyses to evaluate the change in fair value resulting from changes in assumptions.
- We evaluated management's ability to accurately forecast future revenues by comparing actual results to management's historical forecasts.
- We evaluated the reasonableness of management's projected revenues by comparing to (1) internal communications to management, (2) forecasted information included in Company press releases and (3) analyst and industry reports for the Company and companies in its peer group.
- With the assistance of our fair value specialists, we evaluated the reasonableness of the valuation methodology, and reasonableness of the discount rates and exit multiples by:
  - Testing the source information underlying the determination of the discount rates and the mathematical accuracy of the calculation.
  - Testing the source information underlying the determination of the exit multiples and the mathematical accuracy of the calculation, and comparing the multiples selected by management to its guideline companies.
  - Developing a range of independent estimates and comparing those to the discount rates and exit multiples selected by management.

/s/ DELOITTE & TOUCHE LLP

Houston, Texas  
March 15, 2023

We have served as the Company's auditor since 2021.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of Pi Jersey Holdco 1.5 Limited (predecessor of Paysafe Limited) and subsidiaries.

### Opinion on the Financial Statements

We have audited, before the effects of the retrospective adjustments to the disclosures for changes in the composition of reportable segments discussed in Note 21 to the consolidated financial statements, the reallocations of goodwill among reporting units discussed in Note 5 to the consolidated financial statements, and the impacts of the Reverse Stock Split and the Transaction on net loss per share attributable to the Company discussed in Note 3 to the consolidated financial statements, the consolidated statement of financial position of Pi Jersey Holdco 1.5 Limited and subsidiaries (the "Company") as of December 31, 2020, the related consolidated statements of comprehensive loss, shareholder's equity, and cash flows, for the year ended December 31, 2020, and the related notes (collectively referred to as the "financial statements") (the 2020 financial statements before the effects of the retrospective adjustments discussed in Notes 3, 5 and 21 to the financial statements are not presented herein). In our opinion, the 2020 financial statements, before the effects of the retrospective adjustments to the disclosures for changes in the composition of reportable segments discussed in Note 21 to the financial statements, the reallocations of goodwill among reporting units discussed in Note 5 to the consolidated financial statements, and the impacts of the Reverse Stock Split and the Transaction on net loss per share attributable to the Company discussed in Note 3 to the consolidated financial statements, present fairly, in all material respects, the financial position of the Company as of December 31, 2020, and the results of its operations and its cash flows for the year ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

We were not engaged to audit, review, or apply any procedures to the adjustments to retrospectively apply the changes in the composition of reportable segments discussed in Note 21 to the financial statements, the reallocations of goodwill among reporting units discussed in Note 5 to the consolidated financial statements, and the impacts of the Reverse Stock Split and the Transaction on net loss per share attributable to the Company discussed in Note 3 to the consolidated financial statements, and accordingly we do not express an opinion or any other form of assurance about whether such retrospective adjustments are appropriate and have been properly applied. Those retrospective adjustments were audited by other auditors.

### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audit provide a reasonable basis for our opinion.

/s/ Deloitte LLP

London, United Kingdom  
March 29, 2021

We began serving as the Company's auditor in 2017. In 2021 we became the predecessor auditor.

**Paysafe Limited**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
(U.S. dollars in thousands, except per share data)

	For the Year Ended December 31,		
	2022	2021	2020
Revenue	\$ 1,496,137	\$ 1,487,013	\$ 1,426,489
Cost of services (excluding depreciation and amortization)	614,025	599,778	534,823
Selling, general and administrative	534,515	545,107	465,897
Depreciation and amortization	266,819	261,372	268,166
Impairment expense on goodwill and intangible assets	1,887,223	324,145	130,420
Restructuring and other costs	64,132	25,883	20,640
Loss / (gain) on disposal of subsidiaries and other assets, net	1,359	—	(13,137 )
<b>Operating (loss) / income</b>	<b>(1,871,936 )</b>	<b>(269,272 )</b>	<b>19,680</b>
Other income / (expense), net	83,778	239,661	(40,805 )
Interest expense, net	(126,628 )	(165,827 )	(164,788 )
<b>Loss before taxes</b>	<b>(1,914,786 )</b>	<b>(195,438 )</b>	<b>(185,913 )</b>
Income tax benefit	(52,502 )	(85,110 )	(59,199 )
<b>Net loss</b>	<b>\$ (1,862,284 )</b>	<b>\$ (110,328 )</b>	<b>\$ (126,714 )</b>
Less: net income attributable to non-controlling interest	371	626	1
<b>Net loss attributable to the Company</b>	<b>\$ (1,862,655 )</b>	<b>\$ (110,954 )</b>	<b>\$ (126,715 )</b>
<b>Net loss</b>	<b>\$ (1,862,284 )</b>	<b>\$ (110,328 )</b>	<b>\$ (126,714 )</b>
Other comprehensive loss, net of tax of \$0:			
Loss on foreign currency translation	(34,251 )	(1,406 )	(1,817 )
<b>Total comprehensive loss</b>	<b>\$ (1,896,535 )</b>	<b>\$ (111,734 )</b>	<b>\$ (128,531 )</b>
Less: comprehensive income attributable to non-controlling interest	371	626	1
<b>Total comprehensive loss attributable to the Company</b>	<b>\$ (1,896,906 )</b>	<b>\$ (112,360 )</b>	<b>\$ (128,532 )</b>

The Company's basic and diluted net loss per share attributable to the Company is included in Note 3.

The accompanying notes are an integral part of these Consolidated Financial Statements.

**Paysafe Limited**  
**CONSOLIDATED STATEMENTS OF FINANCIAL POSITION**  
(U.S. dollars in thousands, except share data)

	As of December 31,	
	2022	2021
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 260,219	\$ 313,439
Customer accounts and other restricted cash, net of allowance for credit losses of \$0 and \$673, respectively	1,866,976	1,658,279
Accounts receivable, net of allowance for credit losses of \$10,558 and \$8,642, respectively	159,324	147,780
Settlement receivables, net of allowance for credit losses of \$5,398 and \$4,049, respectively	147,774	149,852
Prepaid expenses and other current assets	60,810	64,497
Related party receivables – current	—	6,492
Contingent consideration receivable – current	—	2,842
<b>Total current assets</b>	<b>2,495,103</b>	<b>2,343,181</b>
Deferred tax assets	104,538	21,926
Property, plant and equipment, net	11,947	14,907
Operating lease right-of-use assets	35,509	33,118
Derivative asset	17,321	—
Intangible assets, net	1,291,458	1,202,204
Goodwill	1,999,132	3,650,037
Other assets – non-current	2,048	1,856
<b>Total assets</b>	<b>\$ 5,957,056</b>	<b>\$ 7,267,229</b>
<b>Liabilities and equity</b>		
<b>Current liabilities</b>		
Accounts payable and other liabilities	\$ 241,529	\$ 211,841
Short-term debt	10,190	10,190
Funds payable and amounts due to customers	1,997,867	1,400,057
Operating lease liabilities – current	7,953	8,845
Income taxes payable	11,325	11,041
Contingent and deferred consideration payable – current	18,171	13,673
Liability for share-based compensation – current	11,400	3,360
<b>Total current liabilities</b>	<b>2,298,435</b>	<b>1,659,007</b>
Non-current debt	2,633,269	2,748,178
Operating lease liabilities – non-current	29,913	28,008
Deferred tax liabilities	118,791	64,886
Warrant liabilities	3,094	35,575
Liability for share-based compensation – non-current	4,942	6,664
Contingent and deferred consideration payable – non-current	8,975	17,142
<b>Total liabilities</b>	<b>5,097,419</b>	<b>4,559,460</b>
<b>Shareholder's equity</b>		
Common shares - \$0.012 par value; 1,600,000,000 shares authorized; 60,788,816 and 60,309,596 shares issued and outstanding as of December 31, 2022 and 2021, respectively	730	723
Additional paid in capital / Share premium	3,136,426	2,949,654
Accumulated deficit	(2,239,443 )	(376,788 )
Accumulated other comprehensive loss	(38,076 )	(3,825 )
<b>Shareholder's equity in the Company</b>	<b>859,637</b>	<b>2,569,764</b>
Non-controlling interest	—	138,005
<b>Total shareholder's equity</b>	<b>859,637</b>	<b>2,707,769</b>
<b>Total liabilities and shareholder's equity</b>	<b>\$ 5,957,056</b>	<b>\$ 7,267,229</b>

The accompanying notes are an integral part of these Consolidated Financial Statements.

**Paysafe Limited**  
**CONSOLIDATED STATEMENTS OF SHAREHOLDER'S EQUITY**  
**(U.S. dollars in thousands)**

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	Common shares / Share capital	Additional paid in capital / Share premium	Accumulated Deficit	Accumulated other comprehensive loss	Shareholder's equity in the Company	Non-controlling interest	Total Shareholder's equity
<b>January 1, 2020</b>	<b>\$ 1,252</b>	<b>\$ 2,188,706</b>	<b>\$ (131,610 )</b>	<b>\$ (602 )</b>	<b>\$ 2,057,746</b>	<b>\$ 5,961</b>	<b>\$ 2,063,707</b>
Cumulative adjustment for adoption of ASC 326 Financial Instruments - Credit Losses	—	—	(7,509 )	—	(7,509 )	—	(7,509 )
Net (loss) / income	—	—	(126,715 )	—	(126,715 )	1	(126,714 )
Loss on foreign currency translation, net of tax of \$0	—	—	—	(1,817 )	(1,817 )	—	(1,817 )
Contributions from non-controlling interest holders	—	—	—	—	—	5,336	5,336
<b>December 31, 2020</b>	<b>\$ 1,252</b>	<b>\$ 2,188,706</b>	<b>\$ (265,834 )</b>	<b>\$ (2,419 )</b>	<b>\$ 1,921,705</b>	<b>\$ 11,298</b>	<b>\$ 1,933,003</b>
Net (loss) / income	—	—	(110,954 )	—	(110,954 )	626	(110,328 )
Loss on foreign currency translation, net of tax of \$0	—	—	—	(1,406 )	(1,406 )	—	(1,406 )
Contributions from non-controlling interest holders (see Note 22)	—	—	—	—	—	26,000	26,000
Contribution from Topco (see Note 2)	—	1,648	—	—	1,648	—	1,648
Capital injection in Legacy Paysafe (See Note 22)	2	10,692	—	—	10,694	—	10,694
Shared based compensation	—	90,007	—	—	90,007	—	90,007
Share issuance, net of transaction expenses, for the Transaction (See Note 2)	200	1,848,078	—	—	1,848,278	—	1,848,278
Capital reorganization (See Note 2)	(921 )	(2,447,879 )	—	—	(2,448,800 )	—	(2,448,800 )
Merger recapitalization (See Note 2)	190	1,258,401	—	—	1,258,591	100,081	1,358,672
Restricted stock units issued	—	—	—	—	—	—	—
Shares issued upon warrants exercised	—	1	—	—	1	—	1
<b>December 31, 2021</b>	<b>\$ 723</b>	<b>\$ 2,949,654</b>	<b>\$ (376,788 )</b>	<b>\$ (3,825 )</b>	<b>\$ 2,569,764</b>	<b>\$ 138,005</b>	<b>\$ 2,707,769</b>
Net (loss) / income	—	—	(1,862,655 )	—	(1,862,655 )	371	(1,862,284 )
Loss on foreign currency translation, net of tax of \$0	—	—	—	(34,251 )	(34,251 )	—	(34,251 )
Shared based compensation	—	48,400	—	—	48,400	—	48,400
Restricted stock units issued	5	(5 )	—	—	—	—	—
Shares issued upon warrants exercised	1	2	—	—	3	—	3
Reverse stock split (Note 1)	1	(1 )	—	—	—	—	—
LLC Units Surrendered (Note 2)	—	100,081	—	—	100,081	(100,081 )	—
Contributions from non-controlling interest holders (Note 1)	—	38,295	—	—	38,295	(38,295 )	—
<b>December 31, 2022</b>	<b>\$ 730</b>	<b>\$ 3,136,426</b>	<b>\$ (2,239,443 )</b>	<b>\$ (38,076 )</b>	<b>\$ 859,637</b>	<b>\$ -</b>	<b>\$ 859,637</b>

The accompanying notes are an integral part of these Consolidated Financial Statements.

**Paysafe Limited**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(U.S. dollars in thousands)

	For the Year Ended December 31,		
	2022	2021	2020
<b>Cash flows from operating activities</b>			
Net loss	\$ (1,862,284 )	\$ (110,328 )	\$ (126,714 )
Adjustments for non-cash items:			
Depreciation and amortization	266,819	261,372	268,166
Unrealized foreign exchange (gain) / loss	(44,157 )	4,383	(5,450 )
Deferred tax benefit	(82,876 )	(96,993 )	(61,142 )
Interest expense, net	24,394	74,282	12,492
Share-based compensation	62,354	101,770	—
Other (income) / expense, net	(45,489 )	(232,539 )	21,957
Impairment expense on goodwill and intangible assets	1,887,223	324,145	130,420
Allowance for credit losses and other	35,541	15,102	54,217
Loss / (gain) on disposal of subsidiaries and other assets, net	1,359	—	(13,137 )
Non-cash lease expense	7,034	9,523	10,562
Movements in working capital:			
Accounts receivable, net	(34,224 )	(42,592 )	(46,493 )
Prepaid expenses, other current assets, and related party receivables	(13,085 )	3,456	18,171
Settlement receivables, net	(11,978 )	58,896	37,640
Accounts payable, other liabilities, and related party payables	17,400	(25,733 )	(27,767 )
Funds payable and amounts due to customers	698,855	(95,890 )	135,037
Income tax payable / (receivable)	17,192	(24,386 )	1,150
<b>Net cash flows provided by operating activities</b>	<b>924,078</b>	<b>224,468</b>	<b>409,109</b>
<b>Cash flows from investing activities</b>			
Purchase of property, plant & equipment	(4,543 )	(5,616 )	(5,386 )
Purchase of merchant portfolios	(56,438 )	(63,906 )	(21,047 )
Purchase of other intangible assets	(89,065 )	(78,227 )	(60,486 )
Acquisition of businesses, net of cash acquired	(424,722 )	(263,520 )	(9,180 )
Net cash (outflow) / inflow on disposal of subsidiaries	(826 )	—	44,877
<b>Net cash flows used in investing activities</b>	<b>(575,594 )</b>	<b>(411,269 )</b>	<b>(51,222 )</b>
<b>Cash flows from financing activities</b>			
Cash settled equity awards	(990 )	—	—
Repurchases of shares withheld for taxes	(6,937 )	—	—
Proceeds from exercise of warrants	3	—	—
Net cash inflow from reorganization and recapitalization	—	1,167,874	—
Payment of equity issuance costs	—	(151,722 )	—
Repurchases of borrowings	(45,511 )	-	—
Proceeds from loans and borrowings	120,669	2,962,112	270,481
Repayment of loans and borrowings	(148,919 )	(3,433,206 )	(361,991 )
Cash outflow on foreign exchange forward contract	—	(6,504 )	—
Payment of debt issuance costs	(6,781 )	(7,077 )	—
Proceeds under line of credit	796,600	600,000	353,867
Repayments under line of credit	(771,600 )	(600,000 )	(328,230 )
Receipts / (payments) under derivative financial instruments	137	(48,457 )	(3,907 )
Contingent consideration received	2,621	7,942	—
Contingent and deferred consideration paid	(19,834 )	(7,681 )	(5,689 )
<b>Net cash flows (used in) / provided by financing activities</b>	<b>(80,542 )</b>	<b>483,281</b>	<b>(75,469 )</b>
Effect of foreign exchange rate changes	(112,465 )	(88,614 )	99,073
<b>Increase in cash and cash equivalents, including customer accounts and other restricted cash, net during the year</b>	<b>155,477</b>	<b>207,866</b>	<b>381,491</b>
Cash and cash equivalents, including customer accounts and other restricted cash, net at beginning of the year	1,971,718	1,763,852	1,382,361
<b>Cash and cash equivalents, including customer accounts and other restricted cash, net at end of the year</b>	<b>\$ 2,127,195</b>	<b>\$ 1,971,718</b>	<b>\$ 1,763,852</b>

	For the Year Ended December 31,		
	2022	2021	2020
<b>Supplemental cash flow disclosures:</b>			
Cash paid for interest	\$ 102,230	\$ 91,545	\$ 154,373
Cash paid for Income taxes, net	\$ (13,182 )	\$ 36,269	\$ 793

The table below reconciles cash, cash equivalents, customer accounts and other restricted cash as reported in the Consolidated Statements of Financial Position to the total of the same amounts shown in the Consolidated Statements of Cash Flows:

	For the Year Ended December 31,		
	2022	2021	2020
Cash and cash equivalents	\$ 260,219	\$ 313,439	\$ 387,616
Customer accounts and other restricted cash, net	1,866,976	1,658,279	1,376,236
Total cash and cash equivalents, including customer accounts and other restricted cash, net	<u>\$ 2,127,195</u>	<u>\$ 1,971,718</u>	<u>\$ 1,763,852</u>

The accompanying notes are an integral part of these Consolidated Financial Statements.

**Paysafe Limited**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
**(U.S. dollars in thousands)**

**1. Basis of presentation and summary of significant accounting policies**

***Description of the Business and Basis of Presentation***

In these Consolidated Financial Statements and related notes, Paysafe Limited and its consolidated subsidiaries are referred to collectively as “Paysafe,” “we,” “us,” and “the Company” unless the context requires otherwise. Paysafe is a leading global provider of end-to-end payment solutions. Our core purpose is to enable businesses and consumers to connect and transact seamlessly through our payment platforms.

Paysafe Limited was originally incorporated as an exempted limited company under the laws of Bermuda on November 23, 2020 for purposes of acquiring Foley Trasimene Acquisition Corp. II (“FTAC”). FTAC was originally incorporated in the State of Delaware on July 15, 2020 as a special purpose acquisition company for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, recapitalization, reorganization or similar transaction with one or more businesses. FTAC completed its Initial Public Offering (“IPO”) in August 2020.

On December 7, 2020, Paysafe Limited, FTAC, Merger Sub Inc., (a Delaware corporation and direct, wholly owned subsidiary of Paysafe Limited, herein referred to as “Merger Sub”), Paysafe Bermuda Holding LLC (a Bermuda exempted limited liability company and direct, wholly owned subsidiary of Paysafe Limited, herein referred to as “LLC”), Pi Jersey Holdco 1.5 Limited (a private limited company incorporated under the laws of Jersey, Channel Islands on November 17, 2017, herein referred to as “Legacy Paysafe” or “Accounting Predecessor”), and Paysafe Group Holdings Limited (a private limited company incorporated under the laws of England and Wales, herein referred to as “PGHL”), entered into a definitive agreement and plan of merger which was consummated on March 30, 2021. This is further discussed in Note 2 under Reorganization and Recapitalization (the “Transaction”). In connection with the Transaction, the Company’s common shares and warrants were listed on the New York Stock Exchange under the symbols PSFE and PSFE.WS, respectively.

Prior to the Transaction, Legacy Paysafe was a direct, wholly owned subsidiary of Paysafe Group Holdings Limited and was primarily owned by funds advised by affiliates of CVC Capital Partners (such funds collectively, “CVC”) and The Blackstone Group Inc. (“Blackstone”). This ownership was through the ultimate parent entity, Pi Jersey Topco Limited (“Topco” or the “Ultimate Parent”), who directly wholly owns PGHL. As a result of the Transaction, Legacy Paysafe is a wholly owned subsidiary of the Company. Subsequent to the Transaction, Topco, CVC and Blackstone retain ownership in the Company.

The accompanying Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

***Reverse Stock Split (“RSS”)***

On December 12, 2022, we effected a 1-for-12 reverse stock split of our issued and outstanding common stock (the “Reverse Stock Split”). As a result of the Reverse Stock Split, each issued and outstanding share of our common stock, and the per share exercise price of and number of shares of our common stock underlying our outstanding equity awards, were automatically proportionally adjusted based on the 1-for-12 Reverse Stock Split ratio. No fractional shares of common stock were issued in connection with the reverse stock split, and all such fractional interests were rounded up to the nearest whole number.

Except as otherwise provided herein, all share and per-share amounts of our common stock, equity awards, warrants and other outstanding equity rights have been adjusted to give effect to the Reverse Stock Split for all periods presented. The Reverse Stock Split amended the par value of our common stock to \$0.012 per share, but did not modify any voting rights or other terms of our common stock.

***COVID-19 Impacts***

In March 2020, an outbreak of a novel strain of the coronavirus (referred to as COVID-19) occurred and developed such that on March 11, 2020, the World Health Organization has characterized the outbreak as a pandemic. As a result of the COVID-19 pandemic, we experienced slowed growth or decline in new demand for our products and services and lower demand from our existing merchants, which contributed, in part, to intangible impairments and an increase in expected credit losses in the prior year. The Company continues to revise and update the carrying values of its assets or liabilities based on estimates, judgments and circumstances of which it is aware. While the COVID-19 pandemic may continue to have ongoing global effects, for the year ended December 31, 2022, there have been

no material impacts on our estimates, but facts and circumstances could change and impact our estimates and affect our results of operations in future periods.

### ***Principles of consolidation***

The accompanying consolidated financial statements for the year ended December 31, 2022 and 2021 include the accounts of the Company, and its subsidiaries after giving effect to the transaction with FTAC completed on March 30, 2021. The comparative financial information for the year ended December 31, 2020 is based upon the accounts of Pi Jersey Holdco 1.5 Limited as included on Form 20-F filed on April 1, 2021, prior to giving effect to the Transaction. Prior to the Transaction, Paysafe Limited had no material operations, assets or liabilities.

All intercompany transactions have been eliminated in consolidation. In the opinion of management, all adjustments, consisting of normal recurring adjustments, necessary for the fair statement of the Company's financial position, results of operations and cash flows have been included. Certain prior year amounts have been reclassified for consistency with the current year presentation.

### ***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the reported period. Actual results could differ materially from those estimates.

The Company's significant estimates relate to allocation of the purchase price paid for acquired businesses, revenue recognition, impairment testing of goodwill and intangible assets, credit losses, income taxes, and litigation provision.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

### ***Variable Interest Entities***

A variable interest entity ("VIE") is an entity in which the equity investors as a group lack the power through voting or similar rights to direct the activities of such entity that most significantly impact such entity's economic performance or the equity investment at risk is insufficient to finance that entity's activities without additional subordinated financial support.

The Company will be considered to have a controlling financial interest and will consolidate a VIE if it has both (i) the power to direct the activities of the VIE that most significantly impact the VIE's economic performance and (ii) the obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE.

Prior to January 1, 2022, the Company had a variable interest in Skrill USA, a company that provides digital wallet services to U.S. customers. Under the terms of a 2015 agreement for the sale and purchase of the original family of Skrill-related entities, Skrill USA was fully separated from Paysafe ownership as a result of U.S. regulatory considerations. Skrill Ltd, an entity of Paysafe, has a market support arrangement which supports the business and operations of Skrill USA for the purpose of expanding the Skrill brand and business in the U.S. market. In addition, Skrill Ltd and Optimal Payment Services Inc., both Paysafe entities, have an outsourcing arrangement with Skrill USA for a license to offer money transfer and related services in the U.S. market. Through these arrangements, the Company assumes all or a portion of the risk and cost of the operations of Skrill USA representing a variable interest. These arrangements also provide the Company with economic interest in Skrill USA, as well as implied power in making significant decisions through its partnerships with certain products, overall strategic advice, operating support, and use of Company technology. As a result, Skrill USA was determined to be a VIE and the Company deemed the primary beneficiary. The assets, liabilities, and results of operations of Skrill USA are consolidated in the Company's consolidated financial statements.

However, as the Company had no direct equity ownership in Skrill USA, 100% of the equity (net assets) and results of operations were presented as a non-controlling interest in the Company's consolidated financial statements prior to January 1, 2022. Non-controlling interests include the portion of equity (net assets) in a subsidiary not attributable, directly or indirectly, to the Company.

During the first quarter of 2022, the Company completed its agreement with Skrill-related entities by which it acquired 100% of the equity interest of Skrill USA. As a result, Skrill USA has been accounted for as a wholly owned subsidiary and no longer represents a VIE or non-controlling interest to the Company subsequent to December 31, 2021. The change in ownership was accounted for as an

equity transaction, with no gain or loss recognized. The carrying amount of the non-controlling interest was adjusted to reflect the change in ownership interest and is reflected as a capital contribution in the Consolidated Statements of Shareholder's Equity.

#### ***Customer accounts and other restricted cash, net***

Under the Company's regulatory requirements, the Company is required to safeguard customer funds that have been received either in exchange for electronic money ("e-money") issued or within the transaction settlement cycle to merchants. Such amounts are recorded in Customer accounts and other restricted cash in our Consolidated Statements of Financial Position, as described below.

Depending on the underlying regulations, the Company may satisfy these safeguarding requirements by either placing qualifying liquid assets in a segregated bank account, by insuring the funds with an authorized insurer or by obtaining guarantees from authorized credit institution. Customer accounts and other restricted cash include cash on hand and liquid investments with a maturity of three months or less when purchased.

As of December 31, 2021, \$387,456 of cash held in escrow related to the draw down of the USD Incremental Term Loan is presented within "Customer accounts and other restricted cash." This cash was restricted from use until the completion of the SafetyPay acquisition which completed in the first quarter of 2022 (See Note 14). This has been presented as a financing inflow in the Consolidated Statements of Cash Flows.

#### ***Settlement receivables, net***

Settlement receivables, net include balances arising from timing differences in the Company's settlement process between the cash settlement of a transaction and the recognition of the associated liability (for example, liabilities to customers and merchants). These balances mainly arise in the Digital Wallets segment. When customers fund their digital wallet account using their bank account or a credit card or debit card, there is a clearing period before the cash is received or settled, usually within 5 business days.

Settlement receivables, net also includes receivables from distribution partners within Digital Wallets. These receivables represent amounts collected by the distribution partners in exchange for the issuance of a prepaid payment voucher, prior to settlement with the Company.

The Company had settlement receivables, net from the following parties:

	<b>As of December 31,</b>	
	<b>2022</b>	<b>2021</b>
Third party payment processors	\$ 75,573	\$ 78,058
Distribution partners	72,201	71,794
<b>Total</b>	<b>\$ 147,774</b>	<b>\$ 149,852</b>

Settlement receivables are initially measured at fair values and subsequently measured at their amortized cost less allowance for credit losses. Refer to *Allowance for credit losses* below for the measurement of the allowance for credit losses.

#### ***Accounts receivable***

Accounts receivable includes receivables mainly from Merchant Solutions merchants that represent processing revenues earned but not yet collected. Accounts receivable are classified as current assets if receipts are due within one year or less. If not, they are presented as non-current assets. Accounts receivable, net are initially measured at fair value and subsequently measured at their amortized cost less allowance for expected credit losses. Refer to *Allowance for credit losses* below for the measurement of the allowance for credit losses.

#### ***Allowance for credit losses***

The Company has exposure to credit losses for financial assets including customer accounts and other restricted cash, settlement receivables, accounts receivable, and financial guarantee contracts to the extent that a chargeback claim is made against the Company directly or to the Company's merchants on card purchases.

The Company adopted Accounting Standard Update ("ASU") 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, on January 1, 2020. We utilize a combination of aging and probability of default methods to develop an estimate of credit losses, depending on the nature and risk profile of the underlying asset pool. A broad range of information is considered in the estimation process, including historical loss information adjusted for current conditions and expectations of future trends. The estimation process also includes consideration of qualitative and quantitative risk factors associated

with the age of asset balances, expected timing and probability of default, loss given default, exposure at default, merchant risk profiles, and relevant macro-economic factors.

Financial assets are presented net of the allowance for credit losses in the Consolidated Statements of Financial Position. The allowance for credit losses related to financial guarantees and merchant overdrafts are recorded as a liability and included within "Accounts payable and other liabilities" within the Consolidated Statements of Financial Position.

The measurement of the allowance for credit losses is recognized through current expected credit loss expense. Current expected credit loss expense is included as a component of "Selling, general and administrative" in the Consolidated Statements of Comprehensive Loss. Write-offs are recorded in the period in which the asset is deemed to be uncollectible.

Recoveries from freestanding credit enhancements, such as certain credit insurance contracts, are not included in the estimate of expected credit losses. An insurance recovery asset is recognized in "Prepaid expenses and other current assets" in the Consolidated Statements of Financial Position at the time an incurred loss and the recovery of the receivable is probable. Recoveries are recognized within "Selling, general & administrative" within the Consolidated Statements of Comprehensive Loss.

*Credit risk characteristics and concentration*

Customer accounts and other restricted cash are deposited with different banking partners with a variety of credit ratings and credit exposure are regularly monitored and managed by the Company's Safeguarding and Treasury Committee ("STC"). Management considers the risk of loss from these financial instruments to be low.

Settlement receivables primarily relate to receivables from third party payment institutions arising in both the Company's Merchant Solutions and Digital Wallets businesses, as well as receivables from distribution partners arising in the Company's Digital Wallets business. These receivables are closely monitored on a regular basis and are not considered to give rise to material credit risk. The Digital Wallets business utilizes insurance and credit limits with its distribution partners to limit its overall gross exposure. Credit quality of a customer and distributor is assessed based on their industry, geographical location and financial background, with credit risk managed based on this assessment (i.e. trading limits, shortened payment period and/or requiring collateral usually in the form of bank guarantees, insurance or cash deposits or holdbacks which can legally be claimed by the Company to cover unpaid receivables).

Accounts Receivable balances are regularly monitored to flag any unusual activities such as chargebacks. Having a significant number of consumers and merchants which are geographically widespread and the merchants active in various industries, the exposure to concentration risk is also mitigated. The global credit risk framework allows the Company to forecast under normal business conditions the probability of the occurrence of credit events before they occur. Customer credit risk is managed by each business unit subject to the Company's established policy, procedures and controls relating to customer credit risk management.

The Company issues financial guarantee contracts to its sponsor banks mainly within its Merchant Solutions business for which the Company is exposed to losses from potential chargeback claims. A significant portion of the Company's exposure to credit risk arises from the threat of chargeback claims against Paysafe directly or Paysafe merchants on card purchases. Chargebacks result in credit exposure to Paysafe when either the merchant or other partners become bankrupt or are otherwise unable to meet their financial obligation. The Company manages the exposure to credit risk by employing various online identification verification techniques, enacted transaction limits, reserves or guarantees held and a number of credit risk management and monitoring tools such as an internally developed credit risk calculator, early warning system and daily credit agency and other third party alerts where potential signs of financial stress on merchants and partners are flagged.

***Property, plant and equipment***

Property, plant and equipment is stated at cost less accumulated depreciation and any impairment loss. Depreciation is recognized over the estimated useful lives of the corresponding assets, using the straight-line method, on the following basis:

Computer and communication equipment	2 - 5 years
Furniture and other equipment	3 - 5 years

Other assets are depreciated over their estimated useful lives, using the straight-line method, on the following basis:

Leasehold improvements	Over the lesser of the lease term or 10 years
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Depreciation expense is recorded in the Consolidated Statements of Comprehensive Loss in “Depreciation and amortization.” The gain or loss arising on the disposal or retirement of an asset is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized in the Consolidated Statements of Comprehensive Loss.

### **Leases**

The Company determines whether an arrangement is a lease at inception. The Company has operating leases for offices, data centers, and corporate apartments. Leases have remaining lease terms of less than one year to ten years, some of which have the option to extend the lease term for an additional five years. Certain leases also include the option to terminate the lease within one year. We recognize lease extension and termination options that we are reasonably certain to exercise when determining the lease term used to establish our right-of-use assets and lease liabilities. As of December 31, 2022, the Company is not aware of any unrecognized leases. The Company’s lease agreements do not contain any residual value guarantees or restrictive covenants.

For short term leases, the Company recognizes lease payments on a straight-line basis in the Consolidated Statements of Comprehensive Loss in the period in which the obligation is incurred. During the year ended December 31, 2022, short term lease expense was not significant. For the Company’s data center leases, where the consideration for lease and non-lease components is not separated, we apply the practical expedient to combine the lease and non-lease components.

The Company recognizes a right-of-use asset and a corresponding lease liability with respect to all lease arrangements in which it is the lessee. The lease liability is initially measured at the present value of the lease payments that are not paid at the commencement date, discounted by using the rate implicit in the lease. If this rate cannot be readily determined, the Company uses its incremental borrowing rate. Lease payments included in the measurement of the lease liability comprise, fixed lease payments (including in-substance fixed payments) less any lease incentives received and receivable, and variable lease payments that depend on an index or rate, initially measured using the index or rate at the commencement date. During the years ended December 31, 2022, 2021 and 2020 the amount of variable lease expense incurred was not significant.

The right-of-use asset is initially measured at the amount equal to the lease liability, adjusted for any lease payments made at or before lease commencement, lease incentives and any initial direct costs. Subsequently, the right-of-use asset is subject to amortization which is recognized on a straight-line basis over the lease term in the Consolidated Statements of Comprehensive Loss in “Selling, general and administrative.”

The lease liabilities are presented as separate lines in the Consolidated Statements of Financial Position. The lease liability is subsequently measured by increasing the carrying amount to reflect interest on the lease liability (using the effective interest method) and by reducing the carrying amount to reflect the lease payments made. The interest on the lease liability is recognized in the Consolidated Statements of Comprehensive Loss in “Selling, general and administrative.” The Company remeasures the lease liability (and makes a corresponding adjustment to the related right-of-use asset) whenever:

- The lease term has changed, in which case the lease liability is remeasured by discounting the revised lease payments using a revised discount rate.
- A lease contract is modified and the lease modification is not accounted for as a separate lease, in which case the lease liability is remeasured based on the lease term of the modified lease by discounting the revised lease payments using a revised discount rate at the effective date of the modification.
- When a lease term has changed or been modified, variable lease payments that depend on an index or a rate shall be remeasured using the index or rate as of the date the remeasurement is required.

### **Finite-lived intangible assets**

Acquired computer software is stated at cost less accumulated amortization and accumulated impairment losses. Other intangible assets, including customer relationships and brands that are acquired by the Company and have finite useful lives, are recognized at fair value at the acquisition date and amortized using the straight-line method over the estimated useful life of the intangible asset. Amortization expense is recorded in the Consolidated Statements of Comprehensive Loss in “Depreciation and amortization.”

In addition to customer relationships that are derived from the acquisition of a business, customer relationships also include acquisitions of merchant portfolios. An intangible asset is recorded for the acquisition of the merchant portfolio when: 1) the merchant portfolio acquired is identifiable and has a contract in place that provides the rights and obligations related to the merchant relationship, 2) the legal rights to future revenues from the acquired merchant portfolios can be obtained, and 3) future economic benefits will be generated from the merchant portfolio. Customer relationships relating to acquisitions of merchant portfolios are initially measured at their acquisition date fair values and subsequently measured at carrying amount less accumulated amortization and accumulated impairment losses. On occasion, the cost of a merchant portfolio will include both an initial (“up-front”) and a contingent element of the

consideration. The Company assesses the fair value of the contingent consideration at each reporting period and any adjustments are recognized as an adjustment to the cost of the asset.

In estimating the useful lives of customer relationships, the Company considers the expected use of the asset; legal, regulatory and contractual provisions; historical attrition rates of the customer relationships, as well as the Company's historical experience in renewing or extending similar customer relationships; and economic factors. Management reassesses the estimated useful lives of our intangible assets on an annual basis. See Note 6 for further information.

Intangible assets are amortized using the straight-line method over the expected life of the intangible asset on the following basis:

Brands	3 - 14 years
Computer Software	3 - 10 years
Customer Relationships	2 - 20 years

#### *Software development costs*

The Company develops software that is used in providing services to customers. Costs incurred during the preliminary project stage are expensed as incurred. Capitalization of costs begins when both of the following occur: 1) the preliminary project stage is completed, and 2) management, with the relevant authority, authorizes and commits to funding the project and it is probable that the project will be completed and the software will be used to perform the function intended. Capitalization of costs ceases when the software is substantially complete and ready for its intended use. Capitalized costs include payroll and payroll-related costs, including external consulting fees. Capitalized costs incurred to develop software for internal use are amortized on a straight-line basis over an estimated useful life of three to ten years and are recorded as "Depreciation and amortization" on the Consolidated Statements of Comprehensive Loss. Costs related to maintenance of internal use software are expensed as incurred.

Expenses for research and development activities (except for certain computer software and web site development costs) are expensed as incurred unless the expenditure relates to an item with an alternative future use. Research and development expense for the year ended December 31, 2022, 2021 and 2020 were \$7,377, \$8,574 and \$7,952, respectively.

#### *Impairment of finite-lived intangible and long-lived assets*

The Company regularly evaluates whether events and circumstances have occurred that indicate the carrying amount of long-lived assets and finite-lived intangible assets may not be recoverable. When factors indicate that these assets should be evaluated for possible impairment, the Company assesses the potential impairment by determining whether the carrying amount of the asset group will be recovered through the future undiscounted cash flows expected from use of the asset group and its eventual disposition. If the carrying amount of the asset group is determined not to be recoverable, a write-down to fair value is recorded as "Impairment expense on goodwill and intangible assets" within the Consolidated Statements of Comprehensive Loss. Fair values are determined based on a discounted cash flow analysis. The Company also regularly evaluates whether events and circumstances have occurred that indicate the useful lives of long-lived assets and finite-lived intangible assets may warrant revision. See Note 6 for further information regarding the Company's impairment review of finite-lived intangible assets.

#### *Goodwill*

Goodwill is required to be allocated to reporting units which are either (1) an operating segment or (2) components of an operating segment that are one level below and for which discrete financial information is prepared and regularly reviewed by segment management. The Company considers its reporting units to be at the operating segment level for Digital Wallets and one level below for Merchant Solutions.

Goodwill is tested for impairment at a minimum on an annual basis on October 1; and more frequently when there is an indicator of impairment. Goodwill is tested for impairment at the reporting unit level by first performing a qualitative assessment to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying value. If the reporting unit does not pass the qualitative assessment, then the reporting unit's carrying value is compared to its fair value. Goodwill is considered impaired if the carrying value of the reporting unit exceeds its fair value.

The fair value of the reporting unit is based on the weighting of an income approach and market approach. See Note 5 for further information.

### ***Business combinations***

The Company performs a two-step analysis to determine whether a transaction will be considered as the acquisition of a business or the acquisition of an asset. First, an initial screening test is performed, which determines whether substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identified assets. If this initial test is not met, an acquired asset cannot be considered a business unless it includes an input and a substantive process that together significantly contribute to the ability to create output.

Asset acquisition is accounted for using a cost accumulation model. The acquired assets including related transaction costs are recorded at cost when cash consideration is used. If the consideration is non-cash, then the recording of the assets is based on the fair value of the assets acquired. Direct and incremental acquisition costs are included in the cost of the acquisition. Contingent consideration that is accounted for as a derivative is recognized at fair value. Otherwise, such consideration generally is recognized when it becomes probable and reasonably estimable. Any excess of the cost of the acquisition over the fair value of the net assets acquired is allocated to assets on the basis of relative fair values. Goodwill is not recognized. Asset acquisitions generally consist of the purchase of merchant portfolios which are accounted for as intangible assets.

Business combinations are accounted for using the acquisition method. The consideration transferred in a business combination is measured at fair value, which is calculated as the sum of the acquisition date fair values of the assets transferred by the Company, liabilities incurred by the Company to the former owners of the acquiree and the equity interest issued by the Company in exchange for control of the acquiree.

At the acquisition date, the identifiable assets acquired, and the liabilities assumed are recognized at their fair value. Goodwill is measured as the excess of the sum of the consideration transferred over the net of the acquisition date amounts of the identifiable assets and liabilities assumed. When the consideration transferred by the Company in a business combination includes assets or liabilities resulting from a contingent consideration arrangement, the contingent consideration is measured at its acquisition date fair value and included as part of the consideration transferred in a business combination. Payments related to contingent consideration made on or within three months of the business combination date is viewed as an extension of the business combination, and such payments are classified as investing activities in the Consolidated Statements of Cash Flows. Payments that are made more than three months after business combination date to settle the contingent consideration liability recognized at fair value as of the acquisition date (including measurement-period adjustments) less payments made on or within three months of the business combination date are classified as financing activities in the Consolidated Statements of Cash Flows. Payments that are made more than three months after business combination date that exceed those classified as financing activities are classified as operating activities in the Consolidated Statements of Cash Flows.

### ***Funds Payable and Amounts Due to Customers***

The Company recognizes a liability upon the issuance of e-money to its customers and merchants equal to the amount of electronic money that has been issued. In addition, where the Company is in the flow of funds in the transaction settlement cycle, a liability is recognized for the amount to be settled to merchants.

These amounts are presented as “Funds payable and amounts due to customers” in the Company’s Consolidated Statements of Financial Position.

### ***Revenue recognition***

The Company has prepared these financial statements under Accounting Standard Codification (“ASC”) 606, *Revenue From Contracts With Customers* and ASC 340-40, *Other Assets and Deferred Costs - Contracts With Customers* (collectively referred to as the “Revenue Standard”). The Revenue Standard provides a five-step framework to determine when and how revenue is recognized, based on the core principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The Revenue Standard also requires additional disclosures regarding the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers.

The Company provides payment solutions through two primary lines of business: Merchant Solutions and Digital Wallets. The Merchant Solutions revenue streams are earned by charging merchants processing fees for facilitating payment processing transactions. The Digital Wallets revenue streams are almost entirely derived from charging merchants’ fees for allowing payments on their platforms using our products or from charging customers on a transactional basis for using our services. Due to the concentration of economic factors, products and services in each of the business lines, the Company has presented disaggregated revenue at both the segment and reporting unit level (See Note 21).

For each primary source of revenue within these business lines, the Company's main performance obligation is to stand ready to provide payment services to merchants and consumers. Some of the Company's contracts with customers include promises to transfer multiple goods and services. The primary goods offered by the Company are point of sale terminals that are offered in the Merchant Solutions segment.

The Company recognizes revenue net of taxes collected from customers. These taxes are subsequently remitted to governmental authorities.

Our contracts with customers have different durations across our business segments, depending on the nature of the good or service provided and whether the contracts are with consumers or merchants. The Company's primary consumer facing revenue streams are within the Digital Wallets business line in which our consumer facing contracts are online terms and conditions that the consumers agree on as terms of business; these are typically open ended and can be terminated without penalty by either party. Therefore, our contracts in this segment are essentially defined at the transaction level and there is no commitment to provide further services beyond the services already provided. Our merchant contracts in the Digital Wallets segment are formal written contractual agreements with merchants who accept our services on their platforms. These contracts are longer-term relationships structured as open-ended contracts and are typically cancellable by either party with 30-60-day written notice.

The Company does not contract directly with consumers within our Merchant Solutions segment; as such, our contracts in this segment are all written contractual agreements primarily in two main categories. The first category includes contracts with our sponsor banks and processing partners, which are typically long-term contractual relationships with durations of 5 years, but continuing in effect with automatic renewals of a year or longer. These agreements usually have termination clauses requiring written notice and 90 to 180-day notice periods. The second category is our contracts with merchants. The contracts with merchants are tri-party agreements, usually between the Company, the merchants and sponsor banks with durations of 3 years followed by annual auto-renewals at the end of the terms. Termination clauses generally require 30 days written notice. While the duration of contacts may differ, the primary source of revenue is consistent across segments and consumer base.

*Significant judgments:*

An area of significant judgment for the Company is the determination of the principal agent consideration under the Revenue Standard. For the Company's Merchant Solutions segment, the Company has concluded that its promise to customers to provide payment services is distinct from the services provided by the card issuing financial institutions and payment networks in connection with payment transactions. The Company does not have the ability to direct the use of and obtain substantially all the benefits from the services provided by the card issuing financial institutions and payment networks before those services are transferred to the customer. As a result, the Company presents revenue for its Merchant Solutions segment net of the interchange fees charged by the card issuing financial institutions and the fees charged by the payment networks.

Another area of significant judgment involves determining whether goods and services are considered distinct performance obligations that should be accounted for separately, or together as one performance obligation. This includes determining whether distinct services are part of a series of distinct services that are substantially the same. The Company has determined that the primary services offered to its customers comprise a series of distinct performance obligations, that are substantially similar with the same pattern of transfer. Hence, these services are considered a single performance obligation. The Company also concluded that the goods offered in our contracts, comprising primarily of point of sale terminals, were not material individually or in the aggregate to the contract and no allocation of consideration was made to those goods. The Company recognizes revenue as it satisfies a performance obligation by transferring control over the service to a customer for which the timing and quantity of transactions to be processed is not determinable at the inception of the contract.

The Company's promise to stand ready to provide electronic payment services is not based on a specified number of transactions, but rather is a promise to process all the transactions needed each day. As such the nature of the promise is that of a series of distinct services that are substantially the same and have the same pattern of transfer to the customer over time. Accordingly, the promise to stand ready is accounted for as a single-series performance obligation for which the measure of progress is time.

The majority of our payment services are priced as a percentage of transaction value or a specified fee per transaction. We also charge other fixed fees based on specific services that may be unrelated to the number of transactions or transaction value. Given the nature of the promise and that the underlying transaction fees are based on unknown quantities of transactions or outcomes of services to be performed over the contract term, the total consideration for each primary source of revenue is determined to be variable. The Company allocates the variable fees to the individual day in which the services were wholly performed and for which it has the contractual right to bill those wholly performed services under the contract. Therefore, we measure revenue for our payment service daily based on the services that are performed on that day.

### *Merchant Solutions*

Merchant Solutions services are primarily derived from processing credit and debit card transactions for merchants. Revenue is earned by charging merchants either as a percentage-based fee of the payment volumes processed or as a charge per transaction, pursuant to the respective merchant agreements, as well as certain fixed charges for various ancillary items and services on a monthly or annual basis.

The fee revenue can include charges to process transactions, foreign exchange services for settling foreign currency transactions, gateway services, fraud and risk management services and charges for accepting alternative payments.

Within our Merchant Solutions segment, the nature of our billing depends on whether we are in the flow of the funds. When we are in the flow of funds, we can direct debit our fees and settle with our customers on a net basis. When the Company does not have direct access to debit our customer accounts, we typically collect by billing our merchant banking partners on a monthly basis, and our invoices are due immediately upon receipt.

### *Digital Wallets*

Digital Wallets services are offered through the NETELLER and Skrill brands. Consumer and merchant revenues are earned either as a fee calculated as a percentage of funds processed or as a charge per transaction, pursuant to the respective consumer and merchant agreements, as well as fees from cross-currency transactions. We typically have the authority to directly debit our consumers' pre-funded digital wallet accounts and the merchant wallet accounts, as such, when we earn revenue from transaction fees we are not required to separately bill for amounts earned and collectability is reasonably assured.

In addition, the Digital Wallets services are also offered through the paysafecard prepaid payment vouchers, which are sold directly to customers through third party distributors and paysafecard online payment accounts. The third-party distributors are a network of sales points from which customers may purchase prepaid vouchers; the Company pays a sales commission to its distributors for this service. The revenue is earned from fees charged to merchants accepting payments made using the paysafecard services as well as fees charged to customers on a transactional basis. When a customer purchases a prepaid payment voucher, consideration is collected by the distribution partner prior to settlement with the Company. The redemption of the voucher is the point we earn the revenue and collectability of our revenue is reasonable assured. These services are offered under the paysafecard, paysafecash, Safety Pay and Pago brands.

### *Interest revenue*

Interest revenue is earned on the funds held on behalf of customers and is accrued on a monthly basis, by reference to the principal outstanding and at the effective interest rate applicable. While this is not revenue earned from contracts with customers, interest revenue on consumer funds held by the Company is presented in *Revenue* since it is earned on funds that are held as part of the Company's revenue generating activities.

### *Cost to obtain and fulfill a contract*

The Revenue Standard requires the Company to capitalize certain incremental contract acquisition costs and the Company has determined that sales commissions for new contract acquisitions payable to employees of Paysafe in the sales function, meet this requirement. The Company recognizes incremental sales commission costs of obtaining a contract as an expense when the amortization period for those assets is one year or less per the practical expedient under the Revenue Standard. Incremental sales commission costs with an amortization period of more than one year and sales commissions for contract renewals are not material.

We capitalize incremental costs incurred to fulfil our contracts that (i) relate directly to the contract, (ii) are expected to generate resources that will be used to satisfy our performance obligation under the contract, and (iii) are expected to be recovered through revenue generated under the contract. Incremental costs to fulfill customer contracts are not material.

### *Contract balances*

We do not have any material contract balances associated with our contracts with customers.

#### *Remaining performance obligation*

The Revenue Standard requires disclosure of the aggregate amount of the transaction price allocated to unsatisfied performance obligations; however, as permitted by the Revenue Standard, the Company has elected to exclude disclosing any contracts with an original duration of one year or less and any variable consideration that meets specified criteria. As described above, the Company's most significant performance obligations consist of variable consideration under a stand-ready series of distinct days of service, which typically represent all or almost all of the total transaction price for the related contract. The variable consideration that will be allocated to future days of service is not required to be disclosed as these days of services are wholly unsatisfied at the Company's reporting date. The aggregate fixed consideration portion of customer contracts with an initial contract duration greater than one year is not material.

#### *Cost of services (excluding depreciation and amortization)*

Cost of services (excluding depreciation and amortization) primarily relate to fees incurred by the Company in the processing and settlement of transactions.

*Merchant Solutions:* Cost of services (excluding depreciation and amortization) consists primarily of merchant residual payments to our network of Independent Sales Organizations ("ISOs") and Integrated Software Vendors ("ISV") and other fees incurred by the Company in processing of transactions. Cost of services (excluding depreciation and amortization) does not include interchange fees charged by the card issuing financial institutions and fees charged by payment networks in this line of business, which are presented net within revenue.

*Digital Wallets:* Cost of services (excluding depreciation and amortization) in connection with the services offered under the NETELLER and Skrill brands as described above is primarily composed of the costs the company incurs to accept a customer's funding source of payment and subsequent withdrawals from the wallet. These costs include fees paid to payment processors and other financial institutions in order to draw funds from a customer's credit or debit card, bank account, or other funding source they have stored in their digital wallet accounts. Cost of services (excluding depreciation and amortization) in relation to the paysafecard and paysafecash brands is primarily comprised of commissions paid to distributors.

#### *Restructuring and other costs*

Restructuring and other costs include acquisition costs related to the Company's merger and acquisition activity, restructuring costs, provision related to customer payments and professional consulting and, in prior years, advisory fees related to public company readiness activities. This includes certain professional advisory costs, office closure costs and resulting severance payments to certain executives.

#### *Deferred equity costs*

Transactions costs that are incremental and directly attributable to an equity transaction are deferred and charged against the gross proceeds received upon completion of the equity transaction. For the year ended December 31, 2020 deferred equity costs related to the Transaction (See Note 2) were \$9,545, and were included in "Prepaid expenses and other current assets" within the Statements of Financial Position. The cash outflows associated with these costs are classified as financing cash outflows. There were no deferred equity costs for the year ended December 31, 2022 or 2021.

#### *Employee benefits*

Short-term employee benefits are expensed as the related service is provided. A liability is recognized for the amount expected to be paid if the Company has a present legal or constructive obligation to pay the amount as a result of past service provided by the employee and the obligation can be estimated reliably. The Company operates a defined contribution plan for its employees. Payments to defined contribution plans are recognized as an expense when employees have rendered the service entitling them to the contributions. Expense recognized for defined contribution plans for the year ended December 31, 2022, 2021 and 2020 was \$5,654, \$5,782 and \$5,417, respectively.

### ***Advertising costs***

Advertising costs are expensed as incurred. Advertising expense for the year ended December 31, 2022, 2021 and 2020 was \$35,280, \$38,509 and \$39,788, respectively.

### ***Foreign currencies***

The Company has operations in foreign countries whose currency differs from the functional currency of the Company and its subsidiaries. Gains and losses on transactions denominated in currencies other than the functional currency are included in determining net income (loss) for the period. Foreign exchange gains and losses are included within "Other (expense) / income, net".

The assets and liabilities of subsidiaries whose functional currency is a foreign currency are translated at the period end exchange rate into United States Dollars ("USD"), the Company's reporting currency. Income statement items are translated at the average monthly rates prevailing during the year. The resulting translation adjustment is recorded as a component of other comprehensive income and is included in "Accumulated Other Comprehensive Loss".

### ***Income Taxes***

The provision for income taxes is determined using the asset and liability approach considering guidance related to uncertain tax positions. Tax laws require items to be included in tax filings at different times than the items are reflected in the financial statements. A current liability is recognized for the estimated taxes payable for the current year. Deferred taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid. Deferred taxes are initially recognized at enacted tax rates and are adjusted for any enacted changes in tax rates and tax laws. Subsequent changes to deferred taxes originally recognized in equity are recognized in income. Valuation allowances are recorded to reduce deferred tax assets when it is more likely than not that a tax benefit will not be realized.

The income tax effects from an uncertain tax position are recognized when it is more likely than not that the position will be sustained based on its technical merits and consideration of the tax authorities widely understood administrative practices and precedents. Recognized income tax positions are measured at the largest amount that has a greater than 50% likelihood of being realized upon settlement. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company records interest and penalties related to uncertain tax positions in the provision for "Income tax (benefit) / expense" on the Consolidated Statements of Comprehensive Loss.

### ***Fair value measurements***

The Company follows ASC 820, *Fair Value Measurements*, which defines fair value as the price to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The determination of fair value is based on the principal or most advantageous market in which the Company could participate and considers assumptions that market participants would use when pricing the asset or liability, such as inherent risk, transfer restrictions, and risk of non-performance. Also, determination of fair value assumes that market participants will consider the highest and best use of the asset.

The Company uses the hierarchy prescribed in the aforementioned accounting guidance for fair value measurements, based on the available inputs to the valuation and the degree to which they are observable or not observable in the market.

The three levels of the hierarchy are as follows:

- Level 1 Inputs—Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date,
- Level 2 Inputs—Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability if it has a specified or contractual term, and
- Level 3 Inputs—Unobservable inputs for the asset or liability used to measure fair value allowing for inputs reflecting the Company's assumptions about what other market participants would use in pricing the asset or liability, including assumptions about risk.

There were no material transfers of account balances between the three levels of hierarchy for the years ended December 31, 2022 and 2021.

### ***Financial instruments***

Financial instruments measured at fair value through profit or loss are measured at fair value with changes in fair value recognized in the Consolidated Statements of Comprehensive Loss. These financial instruments include contingent consideration receivable, deferred and contingent consideration payable, share-based compensation liabilities, warrant liabilities and derivative financial assets and liabilities.

Financial assets measured at amortized cost include cash and cash equivalents, customer accounts and other restricted cash, accounts receivable and settlement receivables. Financial liabilities measured at amortized cost include debt, accounts payable and other liabilities, and funds payable and amounts due to customers.

Financial liabilities are classified as current liabilities if payment is due within one year or less. If not, they are presented as non-current liabilities. Finance costs are charged to the Consolidated Statements of Comprehensive Loss using the effective interest rate method.

### ***Offsetting***

Financial assets and liabilities are offset and the net amount presented in the Consolidated Statements of Financial Position when, and only when, the Company has a legally enforceable right to set off the amounts and intends either to settle on a net basis or to realize the asset and settle the liability simultaneously.

Income and expenses are presented on a net basis only when permitted by the accounting standards.

### ***Derivative instruments***

The Company accounts for derivatives in accordance with ASC 815, *Derivatives and Hedging*, which provides accounting and reporting guidance for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. All derivatives, whether designated in hedging relationships or not, are required to be recorded on the Consolidated Statements of Financial Position at fair value. The Company's derivatives balances in the financial statements are classified as current or non-current, dependent on their respective maturities. The Company enters into derivative financial instruments to manage its interest rate risk related to its financing operations. Payments under our derivative financial instruments are included in financing cash flows in the Consolidated Statements of Cash Flows. The Company does not enter into derivative financial instruments for speculative purposes.

### ***Warrants***

The Company accounts for warrants as derivative liabilities under ASC 815-40, *Derivatives and Hedging: Contracts in Entity's Own Equity*, as they are freestanding instruments with provisions that preclude them from being indexed to the Company's stock. The warrants were initially recorded at fair value on the closing date of the Transaction (March 30, 2021 as described in Note 2) based on the public warrants listed trading price (NYSE: PSFE.WS) and are subsequently remeasured at the balance sheet date with the changes in fair value recognized within "Other income / (expense), net" in the Consolidated Statements of Comprehensive Loss. As of December 31, 2022, the warrants consisted solely of public warrants. For the year ended December 31, 2021, the publicly quoted price of the public warrants was used for valuing the private warrants on the basis that they cannot be transferred without losing their private warrant features, the only exit market in which they would be sold would be the public market and it is not likely that a market participant would pay a price different to that observed for the public warrants.

### ***Share-based compensation***

The Company accounts for share-based compensation plans in accordance with ASC 718, *Compensation - Stock Compensation*, which requires the recognition of expense related to the grant date fair value of share-based compensation awards.

The grant date fair value of the A ordinary shares and B ordinary shares was determined using a Monte Carlo method. The determination of the grant date fair value was affected by assumptions regarding a number of complex and subjective variables, including expected stock price volatility over the expected term of the award, the risk-free interest rate for the expected term of the award and expected dividends. The awards were subject to a service condition, a performance condition and a market condition. As of December 31, 2022, the share-based compensation was fully expensed as the vesting conditions were met upon completion of the Transaction (See Note 2 and 16).

The grant date fair value of the restricted stock units is determined using the Company's stock price on the date of grant. These awards are subject to a service condition or a performance condition. The awards with a service condition vest ratably over three years and the share-based compensation expense is recognized over this requisite service period using the straight-line method. The awards with a



performance condition vest at the end of one- or three-years and the number of stock units that vest is variable depending upon the probability of achievement of certain internal performance targets and may vest between 0% and 200% of the target share amount. Share-based compensation expense for these awards are recognized over the requisite service period and as the performance targets are considered probable of being achieved.

The grant date fair value of the stock options is determined using a Black Scholes model. The determination of the grant date fair value was affected by assumptions including expected stock price volatility over the expected term of the award, the risk-free interest rate for the expected term of the award, time expected to expiration and expected dividends. The options have a contractual ten-year life and vest annually in equal increments over three years. Compensation expense is recognized on a straight line basis over the vesting period.

The Company accounts for forfeitures as they occur.

### ***Earnings per share***

Basic earnings per share is computed by dividing net income (loss) attributable to the Company by the weighted average shares outstanding during the period. Diluted earnings per share is computed by dividing net income (loss) attributable to the Company, adjusted as necessary for the impact of potentially dilutive securities, by the weighted-average shares outstanding during the period including all potentially dilutive securities as determined under the treasury stock method. In periods when we have a net loss, all potentially dilutive securities are excluded from our calculation of earnings per share as their inclusion would have an antidilutive effect.

### ***Recently Adopted Accounting Pronouncements***

#### ***Convertible Debt Instruments***

In August 2020, the FASB issued ASU 2020-06, *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. This update reduces the number of accounting models for convertible debt instruments resulting in fewer embedded conversion features being separately recognized from the host contract as compared with current GAAP. Convertible instruments that continue to be subject to separation models are (1) those with embedded conversion features that are not clearly and closely related to the host contract, that meet the definition of a derivative, and that do not qualify for a scope exception from derivative accounting and (2) convertible debt instruments issued with substantial premiums for which the premiums are recorded as paid-in-capital. In addition, this update also makes targeted changes to the disclosures for convertible instruments and earnings-per-share guidance. This guidance may be adopted through either a modified retrospective or fully retrospective method of transition and will take effect for public companies with fiscal years, and interim periods within those fiscal years, beginning after December 15, 2021. The Company adopted this new guidance effective January 1, 2022. This new guidance did not have an effect on our consolidated financial statements.

### ***Accounting Standards Issued but not yet Adopted***

#### ***Reference Rate Reform***

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848)*, which provides optional expedients and exceptions to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. The amendments in this update apply only to contracts, hedging relationships, and other transactions that reference London Inter-bank Offered Rate ("LIBOR") or another reference rate expected to be discontinued because of reference rate reform. The expedients and exceptions provided by the amendments do not apply to contract modifications made and hedging relationships entered into or evaluated after December 31, 2022, except for hedging relationships existing as of December 31, 2022 for which an entity has elected certain optional expedients and which are retained through the end of the hedging relationship. The amendments in this update also include a general principle that permits an entity to consider contract modifications due to reference rate reform to be an event that does not require contract remeasurement at the modification date or reassessment of a previous accounting determination. If elected, the optional expedients for contract modifications must be applied consistently for all eligible contracts or eligible transactions within the relevant ASC Topic or Industry Subtopic that contains the guidance that otherwise would be required to be applied. The amendments in this update were effective upon issuance and may be applied prospectively to contract modifications made and hedging relationships entered into or evaluated on or before December 31, 2022.

In January 2021, the FASB issued ASU 2021-01, *Reference Rate Reform (Topic 848)*: Scope, which clarified the scope of ASU 2020-04 indicating that certain optional expedients and exceptions included in ASU 2020-04 are applicable to derivative instruments affected by the market-wide change in interest rates used for discounting, margining, or contract price alignment. Our exposure to London Interbank Offered Rate ("LIBOR") is limited to our New Term Loan Facility (USD).

In December 2022, the FASB issued ASU 2022-06, *Reference Rate Reform (Topic 848)*, which defers the sunset date of Topic 848 from December 31, 2022, to December 31, 2024, after which entities will no longer be permitted to apply the relief in Topic 848.

The Company plans to adopt this optional expedient during the year ended December 31, 2023. The Company does not expect the adoption of this standard to have a material impact as the standard allows the change in rate to be accounted for prospectively.

#### *Business Combinations*

In October 2021, the FASB issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. This update improves the accounting for acquired revenue contracts with customers in a business combination by addressing diversity in practice and inconsistency related to 1) recognition of an acquired contract liability and 2) payment terms and their effect on subsequent revenue recognized by the acquirer. This guidance will take effect for public companies with fiscal years, and interim periods within those fiscal years, beginning after December 15, 2022 and is applied prospectively to acquisitions occurring after the effective date. The Company adopted this new guidance effective January 1, 2023. This new guidance is not expected to have a material impact on our consolidated financial statements.

#### *Supplier Finance Programs*

In September 2022, the FASB issued ASU No. 2022-04 *Liabilities - Supplier Finance Programs*. This update enhances transparency about an entity's use of supplier finance programs. The buyer in a supplier finance program is required to disclose information about the key terms of the program, outstanding confirmed amounts as of the end of the period, a roll-forward of such amounts during each annual period, and a description of where in the financial statements outstanding amounts are presented. The amendments in this update will take effect for public companies with fiscal years, and interim periods within those fiscal years, beginning after December 15, 2022. Early adoption is permitted. The Company adopted this new guidance effective January 1, 2023. This new guidance is not expected to have a material effect on our consolidated financial statements.

## **2.Reorganization and Recapitalization (the "Transaction")**

On December 7, 2020, Paysafe Limited, FTAC, Merger Sub, Paysafe Bermuda Holding LLC, Legacy Paysafe and PGHL entered into a definitive agreement and plan of merger to effectuate the Transaction which was completed on March 30, 2021. In order to effectuate the Transaction, PGHL created a newly formed wholly owned entity, Paysafe Limited, which acquired all of the shares of the Accounting Predecessor on March 30, 2021. Immediately following the acquisition of the Accounting Predecessor's shares, Paysafe Limited merged with FTAC, which was effectuated through a merger between Merger Sub and FTAC. Merger Sub is a newly formed wholly owned subsidiary of Paysafe Limited. FTAC survived the merger. The Accounting Predecessor and FTAC are indirect wholly owned subsidiaries of Paysafe Limited following the Transaction. Prior to the Transaction, Paysafe Limited had no material operations, assets or liabilities.

The acquisition of the Accounting Predecessor was accounted for as a capital reorganization whereby Paysafe Limited was the successor to Pi Jersey 1.5 Holdco Limited. The capital reorganization was immediately followed by the merger with FTAC. As FTAC was not recognized as a business under GAAP given it consisted primarily of cash held in a trust account, the merger was treated as a recapitalization. Under this method of accounting, the ongoing financial statements of Paysafe Limited reflect the net assets of the Accounting Predecessor and FTAC at historical cost, with no additional goodwill recognized.

The Accounting Predecessor was determined to be the accounting acquirer based on evaluation of the following facts and circumstances: (i) the Accounting Predecessor's shareholder group has the largest portion of relative voting rights in Paysafe Limited; (ii) the Accounting Predecessor was significantly larger than FTAC by total assets and total cash and cash equivalents; (iii) the senior management team of the Accounting Predecessor are continuing to serve in such positions with substantially similar responsibilities and duties at Paysafe Limited following consummation of the Transaction; and (iv) the purpose and intent of the Transaction was to create an operating public company, with management continuing to use the Paysafe platform to grow the business.

In connection with the Transaction, Paysafe Limited, PGHL and FTAC entered into subscription agreements with certain investors (the "PIPE Investors"). Simultaneously with the consummation of the Transaction, Paysafe Limited issued to the PIPE Investors 200,000,000 shares of common stock at a price of \$10.00 per share for aggregate gross proceeds of \$2,000,000. The Company incurred direct and incremental costs of approximately \$151,722 related to the Transaction, consisting primarily of advisory, banking, printing, legal, and accounting fees, which were recorded to "Additional paid-in capital" as a reduction of these share issuance proceeds (collectively "Share issuances, net of proceeds").

Paysafe Limited acquired from PGHL all of the Accounting Predecessor's shares in exchange for cash consideration of \$2,448,799 and share consideration of 333,419,924 common shares ("Capital reorganization").

The FTAC merger was completed by: (i) Paysafe Bermuda Holdings LLC issuing 20,893,780 LLC membership equity interests ("LLC Units") in exchange for the FTAC Founder's FTAC Class C shares outstanding immediately prior to the Transaction; (ii) Paysafe Limited issuing 190,292,458 common shares in exchange for the FTAC's shareholders shares outstanding immediately prior to the Transaction; and (iii) Paysafe Limited assuming the FTAC's warrants outstanding immediately prior to the Transaction, consisting of 48,901,025 public warrants (the "Public Warrants") and 5,000,000 private warrants (the "Private Warrants"), which were modified to entitle the holder to acquire, on the same terms, Company common shares instead of FTAC common stock (the "Warrants") (collectively, "Merger recapitalization"). The cash flows related to these activities have been classified as "Net cash inflow from reorganization and recapitalization" within the Consolidated Statements of Cash Flows, consisting of cash outflows related to the cash consideration for the Pi Jersey acquisition of \$2,448,799, offset by the \$1,616,673 in net proceeds from the merger with FTAC and \$2,000,000 in proceeds from the share issuance.

#### *Non-controlling interest*

The LLC units contained an exchange right which entitled the FTAC Founder to exchange its LLC Units for, at the option of the LLC, cash or shares of Paysafe Limited (the "Exchange right"). The Exchange Right could not be exercised until 12 months after the Transaction. Thereafter, it could be exercised at any time up until the fifth year following the close of the Transaction; at which time the LLC Units would be mandatorily exchangeable into cash or shares at the LLC's option. The Exchange Right is considered embedded in the LLC Units, which represent an equity host contract, as it cannot be exercised separately from the LLC units. As the Exchange Right can be settled by the Company in its own shares, it is considered clearly and closely related to the LLC Units, and therefore is not considered an embedded derivative to be accounted for separately. At the time of the Transaction, the LLC Units were accounted for as permanent equity and presented as non-controlling interest, as they were held by the FTAC Founder and entitled to participate in tax distributions.

On initial recognition, the non-controlling interest was recorded at the value of the FTAC Class C shares that the LLC received in exchange for the LLC Units it issued to the FTAC Founder. Immediately prior to the Transaction, the FTAC Founder held FTAC warrants that were exchanged for the FTAC Class C shares. As such, the value of the FTAC Class C shares was based on the value of such warrants, which was calculated based on the publicly listed trading price of the Warrants (NYSE: PSFE.WS) at the Transaction date. Subsequently, the non-controlling interest amount varies based on the LLC's tax distributions attributable to the FTAC Founder.

During the fourth quarter of 2022, the Company was notified that 100% of the LLC Units were surrendered by the FTAC Founder and were subsequently cancelled. There was no consideration provided to the FTAC Founder by the Company in lieu of surrendering or cancelling the LLC Units. As a result, as of December 31, 2022, we have eliminated the non-controlling interest and recorded a capital contribution from a related party in an equivalent amount. There is no impact to the statement of comprehensive income as a result of the cancellation as there was no benefit or consideration provided in exchange for cancelling the LLC units.

#### *Warrants*

The Warrants represent the right to purchase one share of the Company's common shares at a price of \$138.00 per share. The Warrants became exercisable on August 21, 2021 and will expire on the fifth anniversary of the Transaction, or upon an earlier redemption. Refer to Note 1 for initial recognition, subsequent measurement and impact of the RSS on the Warrants.

As of December 31, 2022, all warrants were considered Public Warrants and no warrants were held by a related party.

#### *Share-based compensation*

Certain employee equity-based awards issued by the Accounting Predecessor included performance conditions that vested upon a qualifying Exit Event (defined as an IPO whereby Blackstone and CVC retain less than 50% of the B ordinary shares they held immediately prior to the IPO through one or multiple transactions, winding-up or completion of a sale), which was not deemed probable in prior periods. These awards vested in connection with the completion of the Transaction, resulting in the full recognition of share-based compensation for the year ended December 31, 2022, which is included in "Selling, general and administrative" on the Consolidated Statements of Comprehensive Loss.

In addition, these awards were modified in conjunction with the Transaction. Their settlement terms changed such that instead of Topco's A ordinary shares and B ordinary shares, the awardees received Paysafe Limited common shares as well as Topco's shares. The modification resulted in a change in the classification of the modified awards, with the Topco shares being accounted for as a liability-classified share-based payment award under ASC 718 as they will be settled in cash. The corresponding liability was measured at fair

value at the modification date (i.e. the Transaction date), and subsequently it will be remeasured at fair value at each reporting date, with changes in its value reported as share-based compensation expense. The awards settled in Paysafe Limited common shares continue to be accounted for as equity-based awards.

For the year ended December 31, 2021, the Company recognized \$101,770 of share-based compensation, of which \$71,630 related to these awards that vested upon completion of the Transaction and \$6,550 related to their modification and subsequent remeasurement. The majority of the remaining share-based compensation relates to restricted stock units granted under the 2021 Plan (see Note 16).

In connection with the modification described above, an initial share-based compensation liability of \$13,124 was recognized with \$5,123 reclassified from “Additional paid in capital” and the remainder expensed in the current period. During the year ended December 31, 2021, the liability was reduced by fair value adjustments of \$1,452 and the redemption of a certain number of shares for \$1,648 which was accounted for as a capital contribution from Topco. At December 31, 2021, the share-based compensation liability was \$10,024.

At December 31, 2022, the share-based compensation liability was \$9,237 which was reduced during the year due to fair value adjustments and foreign exchange. The liability is classified as a current or non-current liability within the Consolidated Statements of Financial Position based on the expected timing of the redemption of shares. Refer to Note 16 for further information on all share-based compensation liabilities.

#### *Repayment of debt*

In connection with the Transaction, certain third-party debt was settled in cash in the first quarter in 2021. The Company repaid \$416,700 and €204,500 under the USD First Lien Term Loan and EUR First Lien Term Loan, respectively, and fully repaid the second lien term loan facility which consisted of a \$250,000 USD Facility (“USD Second Lien Term Loan”) and a €212,459 EUR Facility (“EUR Second Lien Term Loan”). Both debt repayments occurred contemporaneously with the closing of the Transaction. As a result, the Company expensed capitalized debt fees of \$21,724, which are included in “Interest expense, net” on the Consolidated Statements of Comprehensive Loss. Refer to Note 9 for further information on all debt transactions.

### **3.Net loss per share attributable to the Company**

The following table sets forth the computation of the Company’s basic and diluted net loss per share attributable to the Company. The weighted average shares calculation for the years ended December 31, 2022 and 2021 reflects the outstanding common shares of Paysafe Ltd from the closing date of the Transaction. The historical outstanding shares of the Accounting Predecessor prior to the Transaction have been recast for comparability purposes (See Note 2). In addition, the historical outstanding shares have been recast to give effect to the Reverse Stock Split (See Note 1).

The Company uses the treasury stock method of calculating diluted net loss per share attributable to the Company. For the years ended December 31, 2022, 2021 and 2020, we excluded all potentially dilutive restricted stock units and LLC units in calculating diluted net loss per share attributable to the Company as the effect was antidilutive.

The following table sets forth the computation of the Company’s basic and diluted net loss per ordinary share attributable to the Company.

	Year ended December 31,		
	2022	2021	2020
<b>Numerator</b>			
Net loss attributable to the Company - basic	\$ (1,862,655 )	\$ (110,954 )	\$ (126,715 )
Net loss attributable to the Company - diluted	\$ (1,862,655 )	\$ (110,954 )	\$ (126,715 )
<b>Denominator</b>			
Weighted average shares – basic	60,519,640	60,309,384	60,309,366
Weighted average shares – diluted	60,519,640	60,309,384	60,309,366
<b>Net loss per share attributable to the Company</b>			
Basic	\$ (30.78 )	\$ (1.84 )	\$ (2.10 )
Diluted	\$ (30.78 )	\$ (1.84 )	\$ (2.10 )

### **4.Taxation**

In accordance with ASC Topic 740, *Income Taxes*, (“ASC 740”) income taxes are recognized for the amount of taxes payable for the current year and for the impact of deferred tax liabilities and assets, which represent future tax consequences of events that have been

recognized differently in the financial statements than for tax purposes. Deferred tax assets and liabilities are established using the enacted statutory tax rates and are adjusted for any changes in such rates in the period of change.

### *Income tax benefit*

The components of loss before taxes for the years ended December 31, 2022, 2021 and 2020 consisted of the following:

	For the Year Ended December 31,		
	2022	2021	2020
United Kingdom	\$ (620,591 )	\$ (447,808 )	\$ (83,049 )
United States	(993,786 )	(73,789 )	(177,582 )
Foreign Other	(300,409 )	326,159	74,718
Loss from operations before taxes	\$ (1,914,786 )	\$ (195,438 )	\$ (185,913 )

Income tax benefit comprises current and deferred tax. Current tax and deferred tax are recognized in the Consolidated Statements of Comprehensive Loss except to the extent that they relate to a business combination or items recognized directly in equity or in other comprehensive income. The income tax benefit consists of the following:

	For the Year Ended December 31,		
	2022	2021	2020
Current:			
United Kingdom	\$ 4,638	\$ (4,364 )	\$ (1,041 )
United States	3,004	(25,926 )	(16,698 )
Foreign Other	22,732	42,173	19,682
<b>Total</b>	<b>30,374</b>	<b>11,883</b>	<b>1,943</b>
Deferred:			
United Kingdom	(25,416 )	(90,345 )	(3,664 )
United States	(52,225 )	4,468	(42,911 )
Foreign Other	(5,235 )	(11,116 )	(14,567 )
<b>Total</b>	<b>(82,876 )</b>	<b>(96,993 )</b>	<b>(61,142 )</b>
<b>Income tax benefit</b>	<b>\$ (52,502 )</b>	<b>\$ (85,110 )</b>	<b>\$ (59,199 )</b>

The effective tax rate for the years ended December 31, 2022, 2021 and 2020 was 2.7%, 43.5% and 31.8%, respectively. The reconciliation of the statutory income tax rate to the Company's effective income tax rate is as follows:

	For the Year Ended December 31,		
	2022	2021	2020
United Kingdom corporate tax rate	19.0 %	19.0 %	19.0 %
Changes in respect of prior periods	0.4 %	8.2 %	11.1 %
Rate change	0.3 %	1.8 %	(5.7 )%
Expenses not deductible for tax purposes	(0.4 )%	(9.4 )%	—
Impairment losses not deductible for tax purposes	(15.8 )%	—	—
Gains and losses not subject to income tax	0.2 %	0.6 %	—
Foreign tax on capital gains	(0.4 )%	—	—
Movement in deferred tax not recognized	(1.8 )%	1.4 %	(2.5 )%
Tax losses not recognized	0.1 %	—	0.5 %
Foreign income taxed at different rates	1.1 %	21.3 %	6.8 %
Other	—	0.6 %	2.6 %
Effective tax rate	2.7 %	43.5 %	31.8 %

### *Uncertain tax positions*

Accounting for taxes involves some estimation because the tax law is uncertain, and the application requires a degree of judgment, which authorities may dispute. Management periodically evaluates positions taken in tax returns with respect to situations in which applicable tax regulation is subject to interpretation. The Company establishes reserves for uncertain tax positions where appropriate, based on amounts expected to be paid to the tax authorities.

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits for uncertain tax positions is as follows:

	For the Year Ended December 31,		
	2022	2021	2020
Beginning unrecognized tax benefits	\$ 16,744	\$ 18,784	\$ 24,593
Increases related to prior year tax positions	-	4,451	1,956
Decreases related to prior year tax positions	(66 )	(3,912 )	(8,034 )
Increases related to current year tax provisions	562	589	286
Decreases related to current year tax positions	-	(1,013 )	(17 )
Decreases related to settlement with tax authorities	(471 )	(2,155 )	—
Closing unrecognized tax benefits	<u>\$ 16,769</u>	<u>\$ 16,744</u>	<u>\$ 18,784</u>

The total amount of unrecognized tax benefits that, if recognized, would affect the effective tax rate for the years ended December 31, 2022, 2021 and 2020 is \$16,769, \$16,744 and \$18,784, respectively, which is recorded within “Accounts payable and other liabilities” within the Consolidated Statements of Financial Position (See Note 11). This is the amount held in respect of uncertain tax positions across all jurisdictions for all periods where the statutes of limitation have not closed. The Company classifies interest and penalties on income taxes as a component of the provision for income taxes. The total amount of interest and penalties accrued as of December 31, 2022 was \$1,620 and \$164, respectively, and as of December 31, 2021 were \$1,276 and \$166, respectively, and as of December 31, 2020 were \$2,677 and \$390, respectively.

There are no events anticipated within the next 12 months that would significantly increase or decrease the total amount of unrecognized tax benefits.

We conduct business globally and file income tax returns in the United Kingdom, United States and other foreign jurisdictions. In the normal course of business, we are subject to examination by taxing authorities around the world. The Company is no longer subject to income tax examinations by tax authorities in the United Kingdom, United States and other foreign jurisdictions for tax years before 2015.

#### *Recognition of deferred tax assets and liabilities*

Deferred tax assets and liabilities reflect the effect of the differences between the financial reporting and income tax bases of assets and liabilities based on tax rates (and laws) enacted by the balance sheet date and which are expected to apply when the related deferred tax asset is realized, or the deferred tax liability is settled.

The realization of deferred tax assets is dependent on generating sufficient taxable income in future periods in which the tax benefits are deductible or creditable. We review the realization of deferred tax assets at each reporting date by estimating future taxable income of the relevant group entities. A valuation allowance is provided in respect of those assets where we do not expect to realize a benefit. All available evidence is considered in determining the amount of the required valuation allowance using a “more likely than not” threshold. Our assessment considers both positive and negative evidence and the extent to which that evidence can be objectively verified. Such evidence includes: (i) net earnings or losses in recent years; (ii) the likelihood of future, sustainable net earnings; (iii) the carry forward periods of tax losses and the impact of relevant reversing temporary differences; and (iv) any available tax planning strategies.

There are certain foreign subsidiaries for which deferred taxes have not been recognized on outside basis difference on the basis that they are indefinitely reinvested or distributable earnings may be repatriated tax-free. As of December 31, 2022, 2021 and 2020, the amount of such taxable temporary differences totaled \$680,616, \$811,957 and \$651,851, respectively, and the amount of any unrecognized deferred income tax liability on this temporary difference is \$2,720, \$2,441 and \$4,042, respectively.

Deferred taxes have been recognized for certain foreign subsidiaries where the permanently reinvested assertion has not been applied. As of December 31, 2022, 2021 and 2020, the amount of such taxable temporary difference totaled \$27,792, \$0 and \$0, respectively, and the amount of deferred tax liability recognized on this temporary difference is \$1,390, \$0 and \$0, respectively.

For our domestic subsidiaries in the United Kingdom, the Company has no intention of remitting earnings and/or no withholding tax would be imposed and therefore no deferred tax has been provided.

The principal components of deferred tax were as follows:

	For the Year Ended December 31,	
	2022	2021
Deferred tax assets:		
Property and equipment	\$ 3,607	\$ 9,043
Intangible assets	127,556	50,634
Carry forward tax losses	146,358	129,994
Excess interest carry forward	101,547	77,049
Accrued and unpaid expenses	14,010	13,094
Financial instruments	10,465	14,943
Other	14,605	9,298
Total deferred tax assets	418,148	304,055
Valuation allowance	(92,019 )	(51,976 )
Net deferred tax assets	326,129	252,079
Deferred tax liabilities:		
Property and equipment	(5,445 )	(1,857 )
Intangible assets	(319,167 )	(287,278 )
Other	(15,770 )	(5,904 )
Total deferred tax liabilities	(340,382 )	(295,039 )
Net deferred tax liabilities	\$ (14,253 )	\$ (42,960 )

Accounting for income taxes under U.S. GAAP requires that individual tax-paying entities offset all deferred tax assets and liabilities within each particular tax jurisdiction and present them net as non-current in the Statement of Consolidated Financial Position. As of December 31, 2022, \$221,591 of the \$326,129 deferred tax assets arose in the same taxable entities or consolidated tax groups as deferred tax liabilities where there is a legally enforceable right to offset current tax assets against current tax liabilities. As of December 31, 2021, \$230,153 of the \$252,079 deferred tax assets arose in the same taxable entities or consolidated tax groups as deferred tax liabilities where there is a legally enforceable right to offset current tax assets against current tax liabilities. Therefore, the net differences of \$104,538 and \$21,926 are reflected as "Deferred tax assets" within the Consolidated Statements of Financial Position as of December 31, 2022 and 2021, respectively.

As of December 31, 2022, the gross deferred tax liability of \$340,382 is presented on the Consolidated Statements of Financial Position on a net basis with \$221,591 of deferred tax assets, reflected as a deferred tax liability of \$118,791. As of December 31, 2021, the gross deferred tax liability of \$295,039 is presented on the Consolidated Statements of Financial Position on a net basis with \$230,153 of deferred tax assets, reflected as a deferred tax liability of \$64,886.

As of December 31, 2022, 2021 and 2020, the Company has net operating loss carry forwards of \$554,695, \$508,434 and \$508,729, respectively. As of December 31, 2022, \$197,775 of those carry forwards will expire between December 31, 2022 and December 31, 2050 if not utilized. The remaining balance of \$356,920 are indefinite loss carry forwards with no expiry date.

A valuation allowance is provided against deferred tax assets when it is more likely than not that some portion or all of the deferred tax assets will not be realized. For the years ended December 31, 2022 and 2021, the valuation allowance for the Company was \$92,019 and \$51,976, respectively. The current movement primarily relates to the increase of the valuation allowance on excess interest expenses carried forward in the US. The increase in the valuation allowance during the year ended December 31, 2022 was \$40,043 and the decrease in the valuation allowance during the year ended December 31, 2021 was \$5,067.

## 5. Goodwill

As a result of our change in segments (Note 21) during the year ended December 31, 2022, the prior period goodwill balances have been revised to reflect this change. The prior periods have been recast to reflect this change.

Changes in the carrying amount of goodwill are as follows:

	Merchant Solutions	Digital Wallets	Total
December 31, 2020 <sup>(1)</sup>	1,774,763	1,707,053	3,481,816
Additions <sup>(2)</sup>	21,828	194,292	216,120
Foreign exchange	—	(47,899 )	(47,899 )
December 31, 2021	\$ 1,796,591	\$ 1,853,446	\$ 3,650,037
Additions <sup>(3)</sup>	—	284,239	284,239
Purchase price adjustment <sup>(4)</sup>	—	(11,938 )	(11,938 )
Foreign exchange	—	(41,019 )	(41,019 )
Impairment	(1,159,145 )	(723,042 )	(1,882,187 )
December 31, 2022	\$ 637,446	\$ 1,361,686	\$ 1,999,132

- (1) In 2021, a change in segments was reported. In connection with this change, \$271,456 of goodwill was reallocated to Digital Commerce (former Digital Wallets) using a fair value allocation methodology. The prior periods were recast to reflect this change in the year ended December 31, 2021. Following the current year reevaluation of our reporting units, this portion of goodwill was reallocated back to Merchant Solutions (previously US Acquiring).
- (2) Additions to goodwill within the Merchant Solutions segment relate to the acquisition of ICS (See Note 14) and additions to goodwill within the Digital Wallets segment relate to the acquisition of PagoEfectivo and viaFintech.
- (3) Additions to goodwill within the Digital Wallet segment related to SafetyPay (See Note 14).
- (4) Purchase price adjustments mainly related to deferred tax asset on SafetyPay net operating losses.

The Company performs its annual goodwill impairment test for all reporting units as of October 1st, or when events and circumstances have occurred that would indicate the carrying amount of goodwill exceeds its fair value. Due to a sustained decline in stock price and market capitalization, reduction in the fair value of debt, as well as current market and macroeconomic conditions, we concluded that an impairment indicator of goodwill was present in both the Merchant Solutions and Digital Wallets segments as of March 31, 2022 and June 30, 2022.

We performed a goodwill impairment test as of the respective reporting periods, including the annual impairment test date, using a weighting of both market and income approaches. The market approach was based on guideline comparable companies and the key assumptions included selected Earnings Before Interest Tax Depreciation and Amortization ("EBITDA") multiples. The income approach was based on a discounted cash flow model and the key assumptions included the discount rate and future cash flows such as long term growth rates.

Selected multiples were determined based on guideline comparable companies' and discounted based on business-specific considerations. The cash flow forecast, including long term growth rates, considers past experience and future market expectations. Discount rate assumptions are based on determining a cost of debt and equity and an assessment as to whether there are risks not adjusted for in the future cash flows of the respective reporting unit. Failure to achieve the future cash flows, changes in key assumptions or further decline in the stock price or the fair value of our debt may cause a future impairment of goodwill at the reporting unit level.

Based on the analysis performed, the Company recognized a goodwill impairment for the year ended December 31, 2022 of \$1,159,145 and \$723,042 in the Merchant Solutions and Digital Wallets segments, respectively. Accumulated impairment of goodwill as of December 31, 2022 and 2021 was \$1,882,187 and \$0, respectively. Other than the continued decline in stock price, there have been no other events or changes in circumstances subsequent to the testing date that would indicate further impairment of these reporting units.

## 6. Intangible assets

As of December 31, 2022 and 2021, the Company's intangible assets consisted of the following:

	As of December 31,	
	2022	2021
Brands	\$ 165,283	\$ 167,761
Software development costs	787,492	720,750
Customer relationships	1,505,839	1,243,030
Computer software	38,857	35,257
Gross carrying value	<b>2,497,471</b>	<b>2,166,798</b>
Brands	83,317	69,407
Software development costs	472,791	371,555
Customer relationships	624,756	505,732
Computer software	25,149	17,900
Accumulated amortization	<b>1,206,013</b>	<b>964,594</b>
Intangible assets, net	<b>\$ 1,291,458</b>	<b>\$ 1,202,204</b>

During the years ended December 31, 2022 and 2021 we recorded intangible assets of \$64,606 and \$69,242, respectively, related to the acquisition of merchant portfolios which were accounted for as asset acquisitions, inclusive of contingent consideration payable. During the year ended December 31, 2022 and 2021, we recorded intangible assets of \$223,300 and \$129,036, related to business combinations. We had unpaid capital expenditure purchases of approximately \$852 and \$4,123 at December 31, 2022 and 2021, respectively which was included in "Accounts payable and other liabilities" within the Consolidated Statements of Financial Position. Capital expenditure purchases are recorded as cash outflows from investing activities in the Company's Consolidated Statements of Cash Flows in the period they are paid.

Intangible assets acquired by the Company during the year ended December 31, 2022 and 2021 had the following expected weighted-average useful lives:



	2022	2021
Brands	5 years	7 years
Software development costs	3 years	3 years
Customer relationships	10 years	7 years
Computer software	3 years	3 years
Total weighted-average useful life	6.9 years	5.4 years

Amortization expense on intangible assets for the years ended December 31, 2022, 2021 and 2020 was \$260,328, \$252,202 and \$253,751, respectively. We perform an annual reassessment of estimated useful lives of intangible assets. There were no material revisions to useful lives of intangible assets during the years ended December 31, 2022, 2021 and 2020.

The estimated amortization expense of intangible assets for the next five years is as follows:

2023	252,152
2024	250,681
2025	212,686
2026	125,220
2027	123,272

The Company performs an impairment analysis on intangibles assets with finite lives when events and circumstances have occurred that would indicate the carrying amount of intangible assets may not be recoverable.

For the year ended December 31, 2022, due to the goodwill impairment recognized (see Note 5), we concluded that an impairment indicator for certain asset groups was present within these segments. An impairment analysis was performed for the impacted asset groups as of each reporting period which was based on an undiscounted cash flow model. As a result of the analysis, the assets were concluded to be recoverable and no impairment charge was recorded. For the year ended December 31, 2022, \$5,036 of impairment expense was recognized related to specifically identified software development costs, a majority of which were fully impaired. This impairment was predominantly in the Merchant Solutions segment.

For the year ended December 31, 2021, due to reduced forecasted cash flows within the Digital Wallets segment, we concluded that an impairment indicator for certain intangible assets was present within this segment during the year ended December 31, 2021. Digital Wallets experienced decreased revenues associated with certain legacy merchant relationships and also reduced their forecasted cash flows associated with these merchants due to changes in expected merchant mix resulting from new strategic initiatives within the segment. As a result, an impairment analysis on Digital Wallets intangible assets was performed during the year ended December 31, 2021 and based on an undiscounted cash flow model, it was determined that certain of these assets were not recoverable. In calculating the impairment loss, management determined the fair value of these individual assets based on a discounted cash flow model for merchant relationships and relief from royalty method for certain brands using Level 3 inputs. Failure to achieve the expected cash flows due to higher than estimated attrition, obsolescence or other factors may cause a future impairment of intangible assets. Management's key assumptions in determining the fair value include expected cash flows, discount rate and royalty rate. The Company recognized an impairment loss of \$324,145 for the year ended December 31, 2021, the majority of which relates to the impairment described above. The impairment loss is recognized in the Consolidated Statements of Comprehensive Loss under "Impairment expense on goodwill and intangible assets" and is primarily related to the Digital Wallets segment.

For the year ended December 31, 2020, the Company recognized an impairment loss of \$42,981 for certain software development costs resulting from shortening an asset's estimated useful life following accelerated retirement of a legacy IT platform, and \$59,894 for customer relationships acquired in the past acquisitions of Paysafe Group Limited resulting from the deterioration in the assets' forecasted cash flows and anticipated merchant and consumer attrition rates. An additional impairment loss of \$27,545 was recognized for certain acquired merchant portfolios due to deterioration in anticipated merchant attrition rates observed since the assets' acquisition. The discount rate utilized for purposes of determining the fair value of intangible assets impaired as of the year ended December 31, 2020 was 8.6%.

## 7. Property, plant and equipment

A summary of the Company's property, plant and equipment is as follows:

	Estimated Useful Lives in years	As of December 31,	
		2022	2021
Computer and communication equipment	2-5	\$ 23,502	\$ 26,211
Furniture and other equipment	3-5	12,555	13,199
Leasehold improvements	1-10	4,322	4,427
Accumulated depreciation		(28,432)	(28,930)
<b>Property, plant and equipment, net</b>		<b>\$ 11,947</b>	<b>\$ 14,907</b>

Depreciation expense related to property, plant and equipment for the year ended December 31, 2022, 2021 and 2020 was \$6,491, \$9,170 and \$14,415, respectively.

## 8. Allowance for credit losses

The Company has exposure to credit losses for financial assets including customer accounts and other restricted cash, settlement receivables, accounts receivable, and financial guarantee contracts to the extent that a chargeback claim is made against the Company directly or to the Company's merchants on card purchases.

The following table summarizes the expected credit allowance activity for customer accounts and other restricted cash; settlement receivables, net; accounts receivable, net; and financial guarantee contracts and other, for the years ended December 31, 2022 and 2021, and 2020:

	Customer accounts and other restricted cash	Accounts receivable, net	Settlement receivables, net <sup>(2)</sup>	Financial guarantee contracts and other	Total allowance for credit losses
Balance at December 31, 2020	4,096	25,035	5,859	7,800	42,790
Credit loss expense	(3,528)	15,628	3,551	(549)	15,102
Write-Offs	—	(31,929)	(4,722)	—	(36,651)
Other <sup>(1)</sup>	105	(92)	(639)	(324)	(950)
<b>Balance at December 31, 2021</b>	<b>\$ 673</b>	<b>\$ 8,642</b>	<b>\$ 4,049</b>	<b>\$ 6,927</b>	<b>\$ 20,291</b>
Credit loss expense	(641)	25,222	7,213	5,350	37,144
Write-Offs	—	(22,929)	(5,691)	(126)	(28,746)
Other <sup>(1)</sup>	(32)	(377)	(173)	(85)	(667)
<b>Balance at December 31, 2022</b>	<b>\$ -</b>	<b>\$ 10,558</b>	<b>\$ 5,398</b>	<b>\$ 12,066</b>	<b>\$ 28,022</b>

(1) Other mainly relates to the impact of foreign exchange.

(2) During the year ended December 31, 2022, recoveries from freestanding credit enhancements related to Settlement receivables, net were \$1,603 which are recorded in "Selling, general and administrative" in the Consolidated Statements of Comprehensive Loss. These recoveries are not recognized against expected credit losses (See Note 1).

Increase in credit loss expense in 2022 compared to 2021 was mainly a result of higher volumes in Merchant Solutions which results in higher chargebacks, as well as a specific merchant reserve in the Digital Wallets segment.

The decrease in write offs year over year is mainly attributable to higher than normal write offs in 2021. Write-offs of accounts receivable in 2021 was primarily attributable to the write-off of specific credit loss allowances recognized in the prior year for an individual merchant within the Merchant Solutions segment. This was offset by a decrease in write offs for settlement receivables net, within Digital Wallets.

## 9. Debt

### *Current Debt Facilities*

On June 28, 2021, Paysafe refinanced its former debt facilities by entering into the following debt facilities:

- \$305,000 senior secured revolving credit facility (the “Revolving Credit Facility”);
- \$1,018,000 aggregate principal amount senior secured USD first lien term loan facility (the “Term Loan Facility (USD)”) (comprising the original \$628,000 and incremental \$390,000 facility entered into on September 28, 2021 as described below);
- €710,000 aggregate principal amount senior secured EUR first lien term loan facility (the “Term Loan Facility (EUR)”) (comprising the original €435,000 and an incremental €275,000 facility entered into on September 28, 2021 as described below); and
- \$400,000 aggregate principal amount of USD secured notes and €435,000 aggregate principal amount of EUR secured notes (“Secured Notes”).

The \$390,000 senior secured incremental USD term loan facility (“USD Incremental Term Loan”) and the €275,000 senior secured incremental EUR term loan facility (“EUR Incremental Term Loan”) were entered into on September 28, 2021 in connection with the SafetyPay and viaFintech acquisitions, respectively. As of December 31, 2021, the USD Incremental Term Loan and EUR Incremental Term Loan were fully drawn. As the SafetyPay acquisition had not been completed as of December 31, 2021, the cash drawn was held in escrow and was presented within “Customer accounts and other restricted cash” in the Consolidated Statements of Financial Position. Debt issuance costs of \$16,765 were recorded in connection with the transaction which is reported as a deduction from the debt, presented under “Non-current debt” in the Consolidated Statements of Financial Position, and amortized using the effective interest rate method.

The Company used the proceeds from the Term Loan Facility and the Secured Notes as well as \$35,000 drawn down under the Revolving Credit Facility to fully repay the former debt facilities. Debt issuance costs of \$24,474 were recorded in connection with the Refinancing, for which a majority are reported as a deduction from the debt, presented under “Non-current debt” in the Consolidated Statements of Financial Position, and amortized using the effective interest rate method.

As of December 31, 2022 and 2021, \$21,408 and \$28,423 was drawn down on the Revolving Credit Facility.

### *Former Debt Facilities*

As of December 31, 2020, the Company's debt facilities consisted of a first lien term loan, a second lien term loan and a first lien revolving credit facility (“First Lien Revolving Credit Facility”). The first lien term loan consisted of a \$1,540,000 USD Facility (“USD First Lien Term Loan”) and €1,043,716 EUR Facility (“EUR First Lien Term Loan”). The second lien term loan consisted of \$250,000 USD Facility (“USD Second Lien Term Loan”) and a €212,459 EUR Facility (“EUR Second Lien Term Loan”). The First Lien Revolving Credit Facility had an available balance of \$225,000 in multiple currencies. As of December 31, 2020, the Company had no unpaid drawdowns.

In connection with the Transaction as described in Note 2, the Company repaid \$416,700, including quarterly principal payments, and €204,500 under the USD First Lien Term Loan and EUR First Lien Term Loan, respectively, and fully repaid the second lien term loan facility which consisted of a \$250,000 USD Facility (“USD Second Lien Term Loan”) and a €212,459 EUR Facility (“EUR Second Lien Term Loan”). Both debt repayments occurred contemporaneously with the closing of the Transaction. As a result, the Company expensed capitalized debt fees of \$21,724, which are included in “Interest expense, net” on the Consolidated Statements of Comprehensive Loss.

On June 28, 2021, the Company fully repaid the outstanding balances under the USD First Lien Term Loan, the EUR First Lien Term Loan and the First Lien Revolving Credit Facility, which was accounted for as a debt extinguishment. The repayment occurred contemporaneously with the Refinancing, as described above. The Company recorded a loss on extinguishment of debt, including the

expense of capitalized debt fees, of \$40,538, which is included in "Interest expense, net" on the Consolidated Statements of Comprehensive Loss.

#### Line of Credit

In the first quarter of 2022, the Company's Line of Credit was increased from \$50,000 to \$75,000 and the maturity date was extended to June 2025. The Line of Credit is restricted for use in funding settlements in the Merchant Solutions business and is secured against known transactions. As of December 31, 2022 and 2021, the Company had outstanding balances of \$75,000 and \$50,000, respectively.

The key terms of these facilities were as follows:

Facility	Currency	Interest rate <sup>(1)</sup>	Effective Interest Rate <sup>(2)</sup>	Facility maturity date	Principal outstanding at December 31, 2022 (Local Currency)	Principal outstanding at December 31, 2022 (USD)
Term Loan Facility (USD) <sup>(3)</sup>	USD	USD LIBOR + 2.75% (0.5% floor)	7.2%	Jun-28	989,847	\$ 989,847
Term Loan Facility (EUR) <sup>(4)</sup>	EUR	EURIBOR + 3.00% (0% floor)	6.4%	Jun-28	701,000	750,334
Secured Loan Notes (EUR)	EUR	3.00%	3.2%	Jun-29	421,362	451,016
Secured Loan Notes (USD)	USD	4.00%	4.2%	Jun-29	370,418	370,418
Revolving Credit Facility (USD)	USD	BASE + 2.25% (0% floor)	n/a	Dec-27	—	—
Revolving Credit Facility (EUR)	EUR	BASE + 2.25% (0% floor)	4.2%	Dec-27	20,000	21,408
Line of Credit	USD	Term SOFR <sup>(5)</sup> + 2.70%	7.1%	Jun-25	75,000	75,000
<b>Total Principal Outstanding</b>						<b>\$ 2,658,023</b>

(1)For facilities which utilize the EURIBOR and LIBOR rates, a rate floor of 0% and 0.5% applies, respectively.

(2)The effective interest rates for the facilities include interest and amortization of debt issuance costs, if applicable, and are as of December 31, 2022.

(3)Represents Term Loan Facility (USD) and USD Incremental Term Loan as defined under the current facilities

(4)Represent Term Loan Facility (EUR) and EUR Incremental Term Loan as defined under current facilities

(5)The Term Secured Overnight Financing Rate ("Term SOFR") is the forward looking term rate based on the SOFR. The Term SOFR is administered by the CME Group Benchmark Association Limited.

	As of December 31,	
	2022	2021
Principal outstanding	\$ 2,658,023	\$ 2,794,108
Unamortized debt issuance cost	(14,564 )	(35,740 )
<b>Total</b>	<b>2,643,459</b>	<b>2,758,368</b>
Short-term debt	10,190	10,190
<b>Long-term debt</b>	<b>\$ 2,633,269</b>	<b>\$ 2,748,178</b>

For the years ended December 31, 2022, 2021 and 2020, interest expense, including amortization of deferred debt issuance cost, was \$126,628, \$165,827, and \$164,788, respectively.

Maturity requirements on non-current debt as of December 31, 2022 by year are as follows:

<u>Years ending December 31,</u>	
2023	10,190
2024	10,190
2025	85,190
2026	10,190
2027	31,597
2028 and thereafter	2,510,666
<b>Total</b>	<b>\$ 2,658,023</b>

During the year ended December 31, 2022, the Company made principal payments of \$19,624 under its Term Loan Facility, inclusive of voluntary prepayments of \$9,434. In addition, the Company repurchased \$43,200 of Secured Notes and \$13,845 of Term Loans during the year ended December 31, 2022. This resulted in a gain on repurchase of \$11,534 recognized within "Other income, net" within the Consolidated Statements of Comprehensive Loss for the year ended December 31, 2022.

Subsequent to December 31, 2022, the Company has continued to repurchase Secured Notes and Term Loan notes.

#### *Compliance with Covenants*

The Company's new facilities as described above contain affirmative, restrictive and incurrence-based covenants, including, among others, financial covenants based on the Company's leverage and Revolving Credit Facility utilization, as defined in the agreement. The financial covenants under the new facilities require the Company to test its Consolidated First Lien Debt Ratio if the principal amount of the Revolving Credit Facility, less any cash and cash equivalents, at the reporting date exceeds 40% of the total Revolving Credit Facility Commitment. If the Revolving Credit Facility utilization is greater than 40% at the reporting date, there is an additional requirement that the Consolidated First Lien Debt Ratio is not permitted to exceed 7.5 to 1.0. The Consolidated First Lien Debt Ratio is the ratio of (a) consolidated senior secured net debt of the Company and restricted subsidiaries as of the last day of such relevant period to (b) Last Twelve Months (LTM) EBITDA, as defined in the new facilities, of the Company and the restricted subsidiaries for the relevant period.

The financial covenants under the former debt facilities required the Company to test its First Lien Net Leverage Ratio if the principal amount of the Revolving Facility Loans outstanding at the reporting date exceeded 40% of the total Revolving Credit Facility Commitment. If the Revolving Credit Facility utilization was greater than 40% at the reporting date, there was an additional requirement that the First Lien Net Leverage Ratio was not permitted to exceed 9.0 to 1.0. The First Lien Net Leverage Ratio is the ratio of (a) consolidated senior secured net debt of the Company and restricted subsidiaries as of the last day of such relevant period to (b) consolidated EBITDA, as defined in the former debt facilities, of the Company and the restricted subsidiaries for the relevant period.

The Company was in compliance with its financial covenants at December 31, 2022 and 2021.

#### *Letters of Credit*

As of December 31, 2022 and 2021, the Company had issued letters of credit of approximately \$121,960 and \$171,392, respectively, for use in the ordinary course of business.

## 10. Derivative instruments

The Company's derivative instruments have consisted of interest rate swaps or interest rate cap agreements (collectively "interest rate contracts"). The interest rate swaps mitigate the exposure to the variable-rate debt by effectively converting the floating-rate payments to fixed-rate payments. The interest rate cap agreements cap a portion of the Company's variable-rate debt under if interest rates rise above the strike rate on the contract. The interest rate contracts are measured at fair value and not designated as hedges for accounting purposes; as such, any fair value changes were recorded in "Other income, net" in the Consolidated Statements of Comprehensive Loss.

In connection with the Refinancing on June 28, 2021, the Company's former debt facilities were repaid (see Note 9). As a result, all interest rate swaps and interest rate caps were cancelled as of December 31, 2021, reducing the derivative liability to zero and resulting in market value settlement cash payments of \$41,483.

During the year ended December 31, 2022, the Company entered into a new derivative financial instrument arrangement to manage its interest rate risk related to its current credit facilities, comprised of its Term Loan Facility and Secured Notes. As of December 31, 2022, the Company's interest rate swap had a notional amount of \$367,490 and fair value of \$17,321 which was recorded as a "Derivative financial asset" in the Consolidated Statements of Financial Position. The interest rate swap matures on March 31, 2026.

The Company recognized a fair value gain for the year ended December 31, 2022 and 2021 of \$17,321 and \$8,585, respectively, and fair value loss of \$22,463 for the year ended December 31, 2020 in respect of its interest rate contracts (See Note 17).

## 11. Accounts payable and other liabilities

Accounts payable and other liabilities is comprised of the following balances:

	As of December 31,			
	2022		2021	
Accounts payable	\$	45,974	\$	18,599
Other payables <sup>(1)</sup>	\$	24,544	\$	46,824
Accrued liabilities <sup>(2)</sup>	\$	91,691	\$	72,328
Payroll liabilities	\$	33,186	\$	35,780
Provisions and contingent liabilities <sup>(3)</sup>	\$	46,134	\$	38,310
<b>Total</b>	<b>\$</b>	<b>241,529</b>	<b>\$</b>	<b>211,841</b>

(1) Other payables mainly consist of sales tax and value added tax payable and other miscellaneous payables.

(2) Accrued liabilities mainly consist of the provision for customer payments (See Note 10), general accrued expenses and external interest payable.

(3) Provisions and contingent liabilities mainly consist of uncertain tax positions, allowance for credit losses related to financial guarantees and merchant overdrafts, and provisions recognized for certain litigation claims.

## 12. Contingent and deferred consideration payable

Contingent and deferred consideration relates to merchant buyouts and business combinations that are payable in cash subject to the future financial performance of the acquired portfolios and acquired businesses. Contingent and deferred consideration payable is comprised of the following balances:

	Total
Balance at December 31, 2020	9,562
Payments made during the year	(7,681 )
Additions in the year	30,716
Fair value gain	(1,782 )
<b>Balance at December 31, 2021</b>	<b>\$ 30,815</b>
Payments made during the year	(19,834 )
Additions in the year	8,168
Fair value loss	9,075
Foreign exchange	(1,078 )
<b>Balance at December 31, 2022</b>	<b>\$ 27,146</b>
Current portion of contingent and deferred consideration payable	\$ 18,171
Non-current portion of contingent and deferred consideration payable	\$ 8,975

During the year ended December 31, 2022:

- The Company completed the acquisition of merchant portfolios, recognizing an estimated contingent and deferred consideration payable of \$8,168, none of which was related to business combinations.
- The Company paid \$19,834 of the contingent consideration payable in respect to the merchant portfolios acquired in prior years.
- The Company recorded a \$9,075 loss on contingent consideration payable, mainly related to a previous acquisition in which the terms of the agreement were modified during the year.

During the year ended December 31, 2021:

- The Company completed the business combination of ICS, PagoEfectivo and viaFintech, as well as, the acquisition of merchant portfolios, recognizing an estimated contingent and deferred consideration payable of \$30,716, of which \$25,781 was related to business combinations (See Note 14). The remaining estimated amount recorded for these business combinations represents the maximum amount of possible payments.
- The Company paid \$7,681 of the contingent consideration payable in respect to the merchant portfolios acquired in prior years.

The contingent and deferred consideration of \$27,146 is classified as a liability on the Consolidated Statements of Financial Position, of which \$8,975 is non-current. This contingent and deferred consideration arose as part of the consideration of merchant buyouts, as well as current and prior year acquisitions.

### 13. Contingent consideration receivable

In connection with the Transaction, a contingent consideration receivable associated with the disposal of Paysafe Merchant Services Limited ("PMSL"), a previous subsidiary of Paysafe Group Limited, was transferred to PGHL as partial settlement of the shareholder term loan agreement with PGHL (see Note 22).

The remaining contingent consideration receivable balance at December 31, 2021 was \$2,842 and related to a contingent consideration receivable recorded upon the disposal of Paylater (See Note 15). As of December 31, 2022, all payments related to the contingent consideration receivable had been received.

The following table summarized the movement in the contingent consideration receivable during the years ended December 31, 2022 and 2021:

	<b>Total</b>
Balance at December 31, 2020	151,775
Fair value gain on contingent consideration receivable <sup>(1)</sup>	11,097
Related party transaction with PGHL	(159,302 )
Settlements	(3,045 )
Foreign exchange	2,317
<b>Balance at December 31, 2021</b>	<b>\$ 2,842</b>
Settlements	(2,621 )
Foreign exchange	(221 )
<b>Balance at December 31, 2022</b>	<b>\$ —</b>
Current portion of contingent consideration receivable	\$ —
Non-current portion of contingent consideration receivable	\$ —

(1)The gain recognized is due to the fair value measurement of the contingent consideration receivable and is recorded in Other income, net (Note 20).

### 14. Business Combinations

During the year ended December 31, 2022, the Company completed the acquisition of SafetyPay with the goal of furthering the expansion of alternative payment methods and direct bank integration in the Latin America market, as well as creating additional revenue opportunities for both of our segments. This acquisition was accounted for as a business combination and the operating results have been included in the Company's consolidated financial statements since the date of the acquisition.

The following table summarizes the purchase price and fair value of the assets and liabilities acquired on acquisition during the year ended December 31, 2022.

Cash consideration	\$	449,790
<b>Total purchase price</b>	<b>\$</b>	<b>449,790</b>
Cash and cash equivalents		25,068
Trade and other receivables <sup>(1)</sup>		1,895
Deferred tax assets		12
Property, plant and equipment		371
Intangible assets <sup>(2)</sup>		223,300
Other assets - non-current		926
Trade and other payables		(20,539 )
Deferred tax liability		(65,482 )
<b>Net assets acquired</b>	<b>\$</b>	<b>165,551</b>
<b>Goodwill <sup>(3)</sup></b>	<b>\$</b>	<b>284,239</b>

(1)Gross contractual amounts receivable are equal to their book value where appropriate.

(2)Intangible assets are primarily comprised of customer relationships, brands, and computer software.

(3)Goodwill was primarily attributed to the expected synergies between the acquired businesses and the Company, the value of the employee workforce, new customer acquisitions and intangible assets that do not qualify for separate recognition at the time of acquisition. The goodwill is not deductible for income tax purposes. Purchase price adjustments of \$9,608 were recorded during the year ended December 31, 2022 (Note 5).

The aggregate revenues and net loss of the acquired business, including interest, during 2022 of \$31,408 and \$21,325 respectively, are included in the Consolidated Statements of Comprehensive Loss from the date of acquisition.

The unaudited pro forma consolidated revenues and net loss for the Company for the year ended December 31, 2022 and 2021 were as follows, had these acquisitions occurred on January 1, 2021. These pro forma results are presented for informational purposes only and are not indicative of future operations or results that would have been achieved had the acquisitions been completed as of January 1, 2021.

	Year Ended December 31,	
	2022	2021
Revenue	\$ 1,498,772	\$ 1,518,021
Net loss <sup>(1)</sup>	(1,855,983 )	(139,750 )

(1)The pro forma net loss for 2022 was adjusted to exclude the acquisition-related costs and include additional amortization and interest expense that would have been charged assuming the intangible assets and associated debt had been recorded as of January 1, 2021. The pro forma net loss for 2021 was adjusted to include the acquisition-related costs and additional amortization and interest expense that would have been charged assuming the intangible assets and debt had been recorded as of January 1, 2021.

The Company incurred acquisition-related costs associated with this acquisition of approximately \$13,863, of which \$9,319 was recorded in "Restructuring and Other Costs" on the Consolidated Statements of Comprehensive Loss for the year ended December 31, 2022. The remaining costs were incurred in the prior year.

#### ***International Card Services ("ICS"), Orbis Ventures S.A.C. ("PagoEfectivo"), and viaFintech***

During the year ended December 31, 2021, the Company completed the acquisition of International Card Services ("ICS") with the goal of furthering the expansion of the Merchant Solutions segment in the United States as well as obtaining new merchants. The Company also completed the acquisitions of Orbis Ventures S.A.C. ("PagoEfectivo"), and viaFintech with the goal of furthering the expansion of alternative payment methods in the Latin America and German markets as well as creating additional revenue opportunities for the Digital Wallets segment.

These acquisitions were accounted for as business combinations and the operating results have been included in the Company's consolidated financial statements since the date of the acquisition. These acquisitions were not considered material business combinations individually.

The following table summarizes the aggregate purchase price and fair value of the assets and liabilities acquired on acquisitions during the year ended December 31, 2021 as described above which are considered material business combinations in the aggregate.



Cash consideration	\$	285,166
Contingent and deferred consideration payable <sup>(1)</sup>		25,781
Other adjustments for working capital		(1,656)
<b>Total purchase price</b>		<b>309,291</b>
Cash and cash equivalents		21,646
Prepaid expenses and other current assets		460
Trade and other receivables <sup>(2)</sup>		3,596
Deferred tax assets		74
Property, plant and equipment		216
Intangible assets <sup>(3)</sup>		129,036
Other assets - non-current		337
Trade and other payables		(24,101)
Deferred tax liability		(38,093)
<b>Net assets acquired</b>		<b>93,171</b>
<b>Goodwill <sup>(4)</sup></b>	<b>\$</b>	<b>216,120</b>

(1) Payable in cash subject to the future financial performance of the acquisitions. Represents the maximum amount of possible payments recognized as of the acquisition date. See Note 17, Fair Value Measurements for further details on our fair value methodology with respect to the contingent and deferred consideration payable.

(2) Gross contractual amounts receivable are equal to their book value where appropriate.

(3) Intangible assets are primarily comprised of customer relationships, brands, and computer software.

(4) Goodwill was primarily attributed to the expected synergies between the acquired businesses and the Company, the value of the employee workforce, new customer acquisitions and intangible assets that do not qualify for separate recognition at the time of acquisition. The goodwill is not deductible for income tax purposes. Purchase price adjustments of \$2,330 were recorded during the year ended December 31, 2022 (Note 5).

The aggregate revenues and net earnings of the acquired businesses during 2021 of \$24,848 and \$5,180 respectively, are included in the Consolidated Statements of Comprehensive Loss from the date of acquisition.

The unaudited pro forma consolidated revenues and net loss for the Company for the year ended December 31, 2021 and 2020 were as follow, had these acquisitions occurred on January 1, 2020. These pro forma results are presented for informational purposes only and are not indicative of future operations or results that would have been achieved had the acquisitions been completed as of January 1, 2020.

		Year Ended December 31,	
		2021	2020
Revenue	\$	1,514,581	\$ 1,449,217
Net loss <sup>(1)</sup>		(117,765)	(142,420)

(1) The pro forma net loss for 2021 was adjusted to exclude the acquisition-related costs and include additional amortization and interest expense that would have been charged assuming the intangible assets and associated debt had been recorded as of January 1, 2020. The pro forma net loss for 2020 was adjusted to include the acquisition-related costs and additional amortization and interest expense that would have been charged assuming the intangible assets and debt had been recorded as of January 1, 2020.

The Company incurred acquisition-related costs associated with these acquisitions of approximately \$2,647, which are recorded in "Restructuring and Other Costs" on the Consolidated Statements of Comprehensive Loss for the year ended December 31, 2021.

### *Openbucks*

In August 2020, the Company completed the acquisition of Openbucks with the goal of accelerating the expansion of the Digital Wallets in the United States as well as benefit from certain partnerships with retailers. The total expected purchase price at the time of acquisition, including earnouts was \$13,262, comprised of cash consideration of \$9,760 and an additional contingent earnout to be paid in future periods based on earnings targets. The operating results of the acquisition have been included in the Company's consolidated financial statements since the date of acquisition. This acquisition was not considered a material business combination. During the year ended December 31, 2022, certain modifications were made to the earnout terms resulting in additional contingent consideration of \$4,288. As of December 31, 2022, all contingent consideration had been paid related to this acquisition. Refer to Note 12 regarding changes in contingent consideration payable during the year.

## **15. Loss / (gain) on disposal of subsidiaries**

### *Pay Services India, LLC*

During the year ended December 31, 2022, the Company disposed of 100% of the equity interest of Pay Services India, LLC, including \$1,620 in cash. Consideration for the disposal was \$1,056 payable in cash, of which \$794 had been received as of December 31, 2022. The net cash outflow is recorded as an investing activity in the Consolidated Statements of Cash Flows. This disposal resulted in a loss of \$1,359 for the year ended December 31, 2022 which is included in Corporate for segment reporting purposes.

#### ***Payolution GmbH***

On October 5, 2020, the Company disposed of Payolution GmbH, a wholly owned subsidiary of the Company for total consideration consisting of cash and contingent consideration. The receivable was contingent upon the achievement of certain financial performance metrics of Payolution GmbH. For the years ended December 31, 2022, 2021 and 2020, the Company earned the contingent consideration of \$2,621, \$3,045 and \$4,885, respectively, as the financial performance metrics had been achieved prior to the 2021 and 2020 year-end, respectively. As of December 31, 2022, all contingent consideration had been received.

Cash consideration	\$	47,098
Contingent consideration		4,686
Total consideration		51,784
Less: Net assets on disposal		38,647
<b>Gain on disposal of a subsidiary</b>	<b>\$</b>	<b>13,137</b>

As a result of the disposal, the Company recognized a gain of \$13,137 during the year ended December 31, 2020, recorded in "Gain on disposal of subsidiaries and other assets, net" on the Consolidated Statements of Comprehensive Loss.

#### **16.Share-based payments**

The Company operates two share-based employee compensation plans: the 2018 Pi Jersey Topco Limited Plan (2018 Plan) for which a majority of the shares vested upon completion of the Transaction (See Note 2) and the 2021 Omnibus Incentive Plan (2021 Plan) under which 10,580,754 shares were authorized for award as of December 31, 2022. The 2021 Plan serves as the successor to the 2018 Plan. The 2021 plan became effective as of March 30, 2021 upon closing of the Transaction. Outstanding awards under the 2018 Plan continue to be subject to the terms and conditions of the 2018 Plan. Since March 2, 2021, no additional awards have been granted nor are expected to be granted in the future under the 2018 Plan. During the year ended December 31, 2022, all remaining nonvested shares under the 2018 Plan vested.

Share-based compensation expense recognized during the years ended December 31, 2022 and 2021 under both plans was \$62,354 and \$101,770, respectively and is included in "Selling, general and administrative" expense in the Consolidated Statements of Comprehensive Loss. The related income tax benefit for the years December 31, 2022 and 2021 was \$8,864 and \$5,250, respectively. There was no shared based compensation recognized during the year ended December 31, 2020. As of December 31, 2022 the unrecognized stock-based compensation expense was \$74,300.

#### ***2018 Pi Jersey Topco Limited Plan ("2018 Plan")***

On January 2, 2018, Pi Jersey Topco Limited adopted the 2018 Plan authorizing the issuance of equity-based awards, including A ordinary shares and B ordinary shares, to certain executive and senior managers of the Company in consideration for their employee services. A ordinary shares have been granted to certain executives and senior management only, while B ordinary shares are held by certain executives and senior managers as well as shareholders of Topco. The total number of authorized A ordinary shares under the Plan was 600,000, and there was not a limit to the number of B ordinary shares authorized. A consideration of \$2.16 or \$1.50 was payable on the grant of each A ordinary share, depending on the grant date, and consideration of \$1.00 was payable on the grant of each B ordinary share. The awards are issued and settled by Pi Jersey Topco Limited. The employee services are rendered to the Company. As such, they are accounted for as equity settled share-based payments in the Company's financial statements.

The A ordinary shares and B ordinary shares included a service-based vesting condition and a performance-based vesting condition. Vesting was subject to continuous service until the achievement of an Exit Event (defined as an Initial Public Offering ("IPO") whereby Blackstone and CVC retained less than 50% of the B ordinary shares they held immediately prior to the IPO through one or multiple transactions, winding-up or completion of a sale). The Plan also included a market condition through a ratchet mechanism whereby, upon the achievement of a specified return at an Exit Event or subsequent sale of ordinary shares, a number of B ordinary shares as determined by a formula would automatically be converted into deferred shares, so as to result in the A ordinary shares, which are held by executives and senior managers of the Company only, having an additional ownership percentage of the total equity. This ratchet mechanism impacts the grant date fair value of the A ordinary shares and the B ordinary shares.

As vesting for a majority of the shares was contingent upon the achievement of an Exit Event, a majority of compensation expense was recognized during December 31, 2021 upon completion of the Transaction. For the year ended December 31, 2020, no share-based compensation expense was recorded.

The weighted average grant date fair value of shares granted under the 2018 Plan for the years ended December 31, 2021 and 2020 was \$350.62 and \$320.50, respectively. There were no shares granted under the 2018 plan during the year ended December 31, 2022. The total grant date fair value of shares vested during the year ended December 31, 2021, was \$71,630. There were no shares vested under the 2018 Plan for the year ended December 31, 2020.

The fair value of the A ordinary shares and B ordinary shares was determined using a Monte Carlo simulation approach for the year ended December 31, 2020. The expected volatility was 48.27%, risk free interest rate was 0.14% with no dividend yield. Expected volatility was determined based on the historical volatility of Paysafe and broadly comparable companies operating in the payments sector.

#### *2021 Omnibus Incentive Plan ("2021 Plan")*

##### *Restricted stock units*

Under the 2021 Plan, restricted stock units ("RSUs") that have a service condition only, generally vest ratably over three years. Performance restricted stock units ("PRSUs") generally vest at the end of one- to three-years. The weighted average period over which compensation is expected to be recognized related to RSUs is 2.0 years. The number of PRSUs that vest is variable depending upon the probability of achievement of certain internal performance targets and may vest between 0% and 200% of the target share amount. We did not record compensation expense for certain PRSUs during the year ended December 31, 2022 as the performance criteria for such awards were not expected to be achieved and the ultimate vesting of the awards was not probable as of such date.

Certain PRSUs were granted during the year ended December 31, 2022 which are liability-classified share-based payment awards under ASC 718 as the value of the award is fixed and will be settled in a variable number of shares. At December 31, 2022, the share-based compensation expense and liability associated with these awards was \$7,105, which is classified as a current liability within the Consolidated Statements of Financial Position based on the expected timing of the vesting of shares. There is no remaining expense to be recognized related to these awards.

The weighted average grant date fair value of shares granted under the 2021 Plan for the years ended December 31, 2022 and 2021 was \$35.75 and \$99.60, respectively. There were no shares granted under the 2021 plan during the year ended December 31, 2020. The total grant date fair value of shares vested during the year ended December 31, 2022 and 2021, was \$39,941 and \$32. There were no shares vested under the 2021 Plan for the year ended December 31, 2020.

The following table summarizes restricted stock unit activity during the year ended December 31, 2022.

	Restricted Stock Units	Weighted average grant date fair value
<b>Nonvested as of December 31, 2021</b>	<b>1,108,423</b>	<b>\$ 99.00</b>
Granted <sup>(1)</sup>	2,771,248	\$ 35.75
Vested	(608,088 )	\$ 65.68
Forfeited	(368,053 )	\$ 57.94
Performance adjustments <sup>(2)</sup>	(44,145 )	\$ —
<b>Nonvested as of December 31, 2022</b>	<b>2,859,385</b>	<b>\$ 45.95</b>

(1)Represents RSUs and PRSUs based on performance target achievement of 100%.

(2)Represents the adjustment to the number of PRSUs vested based on actual performance compared to target.

##### *Stock options*

During the year ended December 31, 2022, 166,666 stock options were granted under the 2021 Plan, all of which were outstanding as of year end. The exercise price of each option is based on either one or two times the fair market value of the Company's stock at the date of grant. The options have a contractual ten-year life and vest annually in equal increments over three years. The weighted average period over which compensation is expected to be recognized related to stock options is 2.4 years.

The fair value of options is determined using a Black-Scholes model and compensation expense is recognized on a straight-line basis over the vesting period. The weighted average fair value of the options was \$9.06 for the year end December 31, 2022. The following table shows the key assumptions used in the valuation:

	For the year ended December 31, 2022
Expected term	6.0
Expected volatility	32.0 %
Risk free interest rate	3.0 %
Dividend yield	0 %
Weighted average exercise price	\$ 52.38

The intrinsic value is the amount by which the fair value of the underlying share exceeds the exercise price of the stock option. As of December 31, 2022, the share price of the Company was less than the exercise price for all outstanding stock options. Therefore, the intrinsic value for stock options outstanding was zero. No stock options were exercised or exercisable during the year ended December 31, 2022.

#### Preference Shares

We have authorized 233,333,333 shares in the Company that have not yet been issued, the rights and restrictions attached to which are not defined by the Company bylaws. Pursuant to the Company bylaws, preference shares may be issued by the Company from time to time, and the Company Board is authorized (without any requirement for further shareholder action) to determine the rights, preferences, powers, qualifications, limitations and restrictions attached to those shares.

### 17.Fair Value Measurements

The fair value hierarchy of financial instruments measured at fair value as of December 31, 2022 is provided below.

	Level 1	Level 2	Level 3
<i>Financial assets measured at fair value:</i>			
Derivative financial asset		17,321	
		<b>17,321</b>	
	<b>\$ —</b>		<b>\$ —</b>
<i>Financial liabilities measured at fair value:</i>			
Contingent consideration payable			\$ 27,146
Warrant liabilities	3,094		
Liability for share-based compensation <sup>(1)</sup>			16,342
	<b>3,094</b>	<b>\$ —</b>	<b>43,488</b>

The fair value hierarchy of financial instruments measured at fair value as of December 31, 2021 is provided below.

	Level 1	Level 2	Level 3
<i>Financial assets measured at fair value:</i>			
Contingent consideration receivable	\$ —	\$ —	\$ 2,842
	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 2,842</b>
<i>Financial liabilities measured at fair value:</i>			
Contingent consideration payable <sup>(2)</sup>	\$ —	\$ —	\$ 29,689
Warrant liabilities <sup>(3)</sup>	32,275	3,300	—
Liability for share-based compensation	—	—	10,024
	<b>\$ 32,275</b>	<b>\$ 3,300</b>	<b>\$ 39,713</b>

(1) Liability for share-based compensation relates to the share-based compensation awards modified in connection with the Transaction (Note 2) and certain performance awards to be issued in a variable number of shares (Note 16).

(2) Excludes deferred consideration payable of \$1,126 which is not a Level 3 financial instrument. The carrying value of deferred consideration payable approximates fair value.

(3) Level 2 warrant liabilities represent the fair value of private warrants which is estimated using the price of the Company's public warrants.

There were no transfers between levels during the years ended December 31, 2022, 2021 and 2020. A reconciliation of the movements in level 3 financial instruments in the year are shown in Note 2 and 16 as it relates to Liability for share-based compensation, Note 12 as it relates to Contingent consideration payable and Note 13 as it relates to Contingent consideration receivable.

The valuation techniques and significant unobservable inputs used in determining the fair value measurement of Level 3 financial instruments is set out in the table below. Other than this input, a reasonably possible change in one or more of the unobservable inputs listed below would not materially change the fair value of financial instruments listed below.

Financial instrument	Valuation technique used	Significant unobservable inputs
Contingent consideration payable	Discounted cashflow	Discount rate of 7%
Liability for share-based compensation	Market and income approach	Discount rate of 16.5%

The Company considers that the carrying value of cash and cash equivalents, customer accounts and other restricted cash, accounts receivable, settlement receivables, prepaid expenses and other assets, related party receivables, accounts payable and other liabilities, and liabilities to customers and merchants approximate fair value given the short-term nature of these items. At December 31, 2022, the fair value of debt was \$2,367,129 (a Level 2 measurement) based on market yields for similar debt facilities and observable trading data related to the Company's debt securities.

## 18. Leases

Components of lease expense are as follows:

	For the year ended December 31,		
	2022	2021	2020
Operating lease expense	\$ 7,034	\$ 9,523	\$ 10,562

Supplemental cash flow information related to leases was as follows:

	For the year ended December 31,		
	2022	2021	2020
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash outflows from operating leases	\$ 7,769	\$ 9,357	\$ 10,300
Leased assets obtained in exchange for new operating lease liabilities	\$ 9,248	\$ 2,314	\$ 11,438

Weighted-average remaining lease term and discount rate for our operating leases are as follows:

	As of December 31,		
	2022	2021	2020
Weighted-average remaining lease term	6.2 years	5.1 years	5.9 years
Weighted-average discount rate	4.2 %	4.6 %	4.9 %

As of December 31, 2022, maturities of lease liabilities on an undiscounted cash flow basis were as follows:

2023	8,128
2024	8,898
2025	7,815
2026	5,400
2027	3,295
2028 and beyond	9,166
<b>Total lease payments</b>	<b>42,702</b>
Less: interest	(4,836 )
<b>Total lease liability</b>	<b>\$ 37,866</b>
Current portion of lease liability	7,953
Non-current portion of lease liability	29,913

## 19. Commitments, Contingencies and Guarantees

### Litigation provision

Through the normal course of the Company's business, the Company is subject to a number of litigation proceedings both brought against and brought by the Company. The Company maintains liabilities for losses from legal actions that are recorded when they are

determined to be both probable in their occurrence and can be reasonably estimated. On this basis, we have recognized a provision of \$10,300 as of December 31, 2022 and \$8,550 as of December 31, 2021, related to certain litigation proceedings. This amount is presented within "Accounts payable and other liabilities" in the Company's Consolidated Statements of Financial Position.

On December 10, 2021, a class action complaint, Lisa Wiley v Paysafe Limited was filed, naming among others the Company, our former Chief Executive Officer, and our former Chief Financial Officer, as defendants. The complaint asserts claims, purportedly brought on behalf of a class of shareholders, under Sections 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, and alleges that the Company and individual defendants made false and misleading statements to the market. In addition, the complaint asserts claims against the individual defendants, under Sections 20(a) of the Exchange Act, alleging that the individual defendants misled the public. On January 21, 2022, a related complaint was brought in the Southern District of New York, which named an additional defendant. In May 2022, the securities cases were consolidated.

The complaints seek unspecified damages and an award of costs and expenses, including reasonable attorneys' fees, on behalf of a purported class of purchasers of our ordinary shares between December 7, 2020, and November 10, 2021. The Company intends to vigorously defend against the foregoing complaints. At this time, the Company is unable to estimate the potential loss or range of loss, if any, associated with these lawsuits, which could be material.

In November 2020, we discovered that we were the target of a potential cyber security incident that involved an outside actor attempting to exploit a potential vulnerability residing in a web application used by part of our U.S. business. As a result of our investigation, we identified evidence of suspicious activity in the web application that potentially impacted approximately 100,000 merchants and agents. As of December 31, 2022, we believe we have identified and addressed any potentially impacted merchant or agent.

The Company vigorously defends its position on all open cases. While the Company considers a material outflow for any one individual case, unlikely, it is noted that there is uncertainty over the final timing and amount of any potential settlements. Management believes the disposition of all claims currently pending, including potential losses from claims that may exceed the liabilities recorded, and claims for loss contingencies that are considered reasonably possible to occur, will not have a material effect, either individually or in the aggregate, on the Company's consolidated financial condition, results of operations or liquidity.

#### ***Financial guarantee contracts***

Through services offered primarily in our Merchant Solutions segment, the Company is exposed to potential losses from merchant-related chargebacks. A chargeback occurs when a dispute between a cardholder and a merchant, including a claim for non-delivery of the product or service by the merchant, is not resolved in favor of the merchant and the transaction is charged back to the merchant resulting in a refund of the purchase price to the cardholder. If the Company is unable to collect this chargeback amount from the merchant due to closure, bankruptcy or other reasons, the Company bears the loss for the refund paid to the cardholder. The risk of chargebacks is typically greater for those merchants that promise future delivery of goods and services rather than delivering goods or rendering services at the time of payment. The Company has recorded an allowance for credit losses on financial guarantees as of December 31, 2022 and 2021 (See Note 8).

#### ***Contingencies***

Following an internal review of the disclosures in our terms and conditions of foreign exchange rates in our Digital Wallets business for the period January 2018 to August 2022, and pursuant to discussions with our regulator that were initiated by us and concluded in September 2022, we agreed to provide payments to certain customers. As a result, we have recorded a provision of \$33,603 related to this matter in "Restructuring and other" within the Consolidated Statements of Comprehensive Loss for the year ended December 31, 2022 and the remaining accrual at December 31, 2022 is \$18,502. The Company does not expect any additional liability or impact to our ongoing operating results in relation to this matter.

## 20. Other income / (expense), net

A summary of the amounts recorded in Other income / (expense), net is as follows:

		For the year ended December 31,		
	2022	2021	2020	
Foreign exchange gain / (loss)	\$ 38,289	\$ 7,122	\$ (19,280 )	
Fair value (loss) / gain on contingent consideration	(9,075 )	13,443	9,831	
Fair value gain / (loss) on derivative instruments <sup>(1)</sup>	17,321	8,585	(22,463 )	
Interest expense, net, on related party balances	—	—	(1,554 )	
Fair value gain on warrant liability <sup>(2)</sup>	32,481	222,611	—	
Gain on debt repurchases <sup>(3)</sup>	11,534	—	—	
Other <sup>(4)</sup>	(6,772 )	(12,100 )	(7,339 )	
<b>Other income / (expense), net</b>	<b>\$ 83,778</b>	<b>\$ 239,661</b>	<b>\$ (40,805 )</b>	

(1) During the year ended December 31, 2022, the Company entered into a new derivative financial instrument arrangement to mitigate interest risk on its variable-rate debt. The fair value gain on derivative instruments in the prior period related to derivative financial instruments associated with the Company's former credit facilities which were cancelled as of December 31, 2021 (See Note 10).

(2) This fair value gain relates to the remeasurement of the warrant liabilities from the closing date of the prior year Transaction to the balance sheet date (See Note 2).

(3) Relates to gain on repurchases of the Company's debt (See Note 9).

(4) For the year ended December 31, 2022, Other mainly relates to the loss on waiver of related party receivables (See Note 22), derivative payments and certain banking fees.

## 21. Operating segments

Operating segments are defined as components of an enterprise that engage in business activities and for which discrete financial information is available that is evaluated on a regular basis by the Chief Operating Decision Maker ("CODM") to make decisions about how to allocate resources and assess performance. In the fourth quarter of 2022, we revised our reportable segments as a result of a change in our CODM and how our CODM regularly reviews financial information to allocate resources and assess performance. Our CODM is defined as our Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), and Chief Operating Officer ("COO"). Our new operating segments, which align with our reportable segments, are: Merchant Solutions, which focuses on card not present and card present solutions for small to medium size business merchants; and Digital Wallets, which provides wallet based online payment solutions through our Skrill and NETELLER brands and also enables consumers to use cash to facilitate online purchases through paysafecard prepaid vouchers under the Paysafecard and Paysafecash brands. These two operating segments, which are also reportable segments, as they have not been aggregated, are based on how the Company is organized, reflecting the difference in nature of the products and services they each sell. Shared costs are the cost of people and other resources consumed in activities that provide a benefit across more than one segment. Shared costs are allocated to each segment and Corporate primarily based on applicable drivers including headcount, revenue and Adjusted EBITDA. The prior year segment information has been recast to reflect this change.

In the fourth quarter of 2021, we also revised our reportable segments, which were the same as our operating segments, as a result of a change in our CODM and how our CODM regularly reviewed financial information to allocate resources and assess performance.

The CODM evaluates performance and allocate resources based on Adjusted EBITDA of each operating segment. Adjusted EBITDA of each operating segment includes the revenues of the segment less ordinary operating expenses that are directly related to those revenues and an allocation of shared costs. Corporate overhead costs and Corporate's allocation of shared costs are included in Corporate in the following table. Corporate overhead costs are costs consumed in the execution of corporate activities that are not directly factored into the production of any service provided by the Company's segments.

The CODM does not receive segment asset data to evaluate performance or allocate resources and therefore such information is not presented.

The Company earns revenue from the sale of Merchant Solutions and Digital Wallets services. The information below summarizes revenue and Adjusted EBITDA by segment for the year ended December 31, 2022:

	Merchant Solutions	Digital Wallets	Corporate <sup>(1)</sup>	Intersegment	Total
Total external revenue	\$ 809,751	\$ 680,587	\$ —	\$ —	\$ 1,490,338
Interest revenue	\$ 221	\$ 5,578	\$ —	\$ —	\$ 5,799
Intersegment revenue <sup>(2)</sup>	\$ 7,381	\$ -	\$ —	\$ (7,381 )	\$ -
<b>Total Revenue</b>	<b>\$ 817,353</b>	<b>\$ 686,165</b>	<b>\$ —</b>	<b>\$ (7,381 )</b>	<b>\$ 1,496,137</b>
Adjusted EBITDA	\$ 200,304	\$ 289,413	\$ (79,766 )	\$ -	\$ 409,951

The information below summarizes revenue and Adjusted EBITDA by segment for the year ended December 31, 2021:

	Merchant Solutions	Digital Wallets	Corporate <sup>(1)</sup>	Intersegment	Total
Total external revenue	\$ 736,969	\$ 748,725	\$ —	\$ —	\$ 1,485,694
Interest revenue	\$ 19	\$ 1,300	\$ —	\$ —	\$ 1,319
Intersegment revenue <sup>(2)</sup>	\$ 8,356	\$ -	\$ —	\$ (8,356 )	\$ -
<b>Total Revenue</b>	<b>\$ 745,344</b>	<b>\$ 750,025</b>	<b>\$ —</b>	<b>\$ (8,356 )</b>	<b>\$ 1,487,013</b>
Adjusted EBITDA	\$ 186,878	\$ 332,090	\$ (75,070 )	\$ -	\$ 443,898

The information below summarizes revenue and Adjusted EBITDA by segment for the year ended December 31, 2020:

	Merchant Solutions	Digital Wallets	Corporate <sup>(1)</sup>	Intersegment	Total
Total external revenue	\$ 716,777	\$ 705,668	\$ —	\$ —	\$ 1,422,445
Interest revenue	\$ 106	\$ 3,938	\$ —	\$ —	\$ 4,044
Intersegment revenue <sup>(2)</sup>	\$ 3,099	\$ -	\$ —	\$ (3,099 )	\$ -
<b>Total Revenue</b>	<b>\$ 719,982</b>	<b>\$ 709,606</b>	<b>\$ —</b>	<b>\$ (3,099 )</b>	<b>\$ 1,426,489</b>
Adjusted EBITDA	\$ 203,626	\$ 294,751	\$ (72,608 )	\$ -	\$ 425,769

(1)Corporate consists of corporate overhead and unallocated shared costs of people and other resources consumed in activities that provide a benefit across the Company.

(2)Intersegment revenue and related eliminations are primarily for processing of credit card transactions and deposits between segments.

A reconciliation of total segments Adjusted EBITDA to the Company's loss from operations before taxes is as follows:

	Year Ended December 31,		
	2022	2021	2020
Segments Adjusted EBITDA	\$ 489,717	\$ 518,968	\$ 498,377
Corporate costs	(79,766 )	(75,070 )	(72,608 )
Depreciation and amortization	(266,819 )	(261,372 )	(268,166 )
Share-based compensation	(62,354 )	(101,770 )	—
Impairment expense on goodwill and intangible assets	(1,887,223 )	(324,145 )	(130,420 )
Restructuring and other costs	(64,132 )	(25,883 )	(20,640 )
(Loss) / gain on disposal of subsidiaries and other assets, net	(1,359 )	-	13,137
Other income / (expense), net	83,778	239,661	(40,805 )
Interest expense, net	(126,628 )	(165,827 )	(164,788 )
<b>Loss before taxes</b>	<b>\$ (1,914,786 )</b>	<b>\$ (195,438 )</b>	<b>\$ (185,913 )</b>

For the year ended December 31, 2022 and 2021, Adjusted EBITDA excludes share-based compensation expense. No share-based compensation expense was recognized for the year ended December 31, 2020.

### Geographic Information

Revenue from external customers by major geographic region is based upon the geographic location of the customers who receive the Company's services. Interest revenue for the years ended December 31, 2022, 2021 and 2020 was \$5,799, \$1,319 and \$4,044, respectively. Interest revenue is not included within this table as it was not practicable to apportion its geographical source.

The information below summarizes revenue by geographic area for the years ended December 31, 2022, 2021 and 2020.

	Year Ended December 31,		
	2022	2021	2020
United Kingdom	\$ 28,896	\$ 52,263	\$ 46,037
United States of America	774,050	683,338	631,570
Germany	103,488	127,119	146,670
All other countries <sup>(1)</sup>	583,904	622,974	598,168
<b>Revenue from external customers</b>	<b>\$ 1,490,338</b>	<b>\$ 1,485,694</b>	<b>\$ 1,422,445</b>

(1)No single country included in the "All other countries" category generated more than 10% of revenues.

The Company has no single customer contributing 10% or more of the Company's revenue in the period.



The information below summarizes long-lived assets, net by geographic area for the years ended December 31, 2022 and 2021.

	Year Ended December 31,	
	2022	2021
United Kingdom	\$ 11,768	\$ 5,068
Canada	5,800	6,455
United States of America	10,774	11,416
Bulgaria	8,109	11,442
Austria	7,354	8,682
All other countries <sup>(1)</sup>	3,651	4,962
<b>Total long lived assets, net</b>	<b>\$ 47,456</b>	<b>\$ 48,025</b>

(1) No single country included in the All other countries category generated more than 10% of total long lived assets.

## 22. Related party transactions

The Company has provided and purchased services to and from various affiliates of certain directors or entities under common control. The dollar amounts related to these related party activities are not significant to our consolidated financial statements. In the current year, we entered into a lease with an affiliate of one of our directors. The balance of the right of use asset and lease liability as of December 31, 2022 was \$1,751 and 1,784, respectively.

Intercompany balances and transactions between the Company and its subsidiaries, which are related parties, have been eliminated on consolidation and are not disclosed in this note.

### *Balances and transactions with related parties*

The Company entered the following transactions with related parties.

#### *Transactions with Topco*

The amounts owed from Topco arose from the disposal of PMSL, a previous subsidiary of Paysafe Group Limited. Before the Transaction, the contingent consideration payments from the disposal of PMSL were made by the buyer to Topco and Topco was obligated to transfer the consideration received to Legacy Paysafe (See Note 13), resulting in a receivable from Topco. In connection with the Transaction, Legacy Paysafe transferred the contingent consideration receivable to PGHL and as a result, Topco's obligation is now with PGHL.

The remaining receivable related to payments made by the buyer to Topco that have not been transferred to the Company. This receivable was GBP denominated and the movement in the balance was due to foreign currency translation. During the year ended December 31, 2022, the company waived the right to the receivable, resulting in a loss which was recognized in "Other income/expense, net." As of December 31, 2022 and 2021, the amounts owed from Topco related to the disposal of PMSL were \$0 and \$4,408, respectively.

#### *Transactions with PGHL*

In January 2018, Legacy Paysafe entered into a shareholder term loan agreement with PGHL for an amount of \$317,760, used to fund part of the acquisition price of Paysafe Group Limited. The loan carries interest at a rate equal to the US Applicable Federal Rate. The interest is capitalized to the loan annually and is payable with the principal in July 2026 or earlier at the option of the Company. During the year ended December 31, 2021, in connection with the Transaction, the Company fully settled this loan through the following transactions, (i) an amount of \$159,302 was settled in connection with the contingent consideration receivable transfer to PGHL (See Note 13), (ii) an amount of \$26,000 was settled in connection with additional contributions from PGHL into Skrill USA, which were funded by Legacy Paysafe. PGHL owns 100% of Skrill USA's share capital. As a VIE of the Company, Skrill USA's equity and results are presented as non-controlling interest in these financial statements, and therefore this additional capital contribution was presented as "Contributions from non-controlling interest holders" in the Consolidated Statements of Shareholder's Equity and (iii) the remaining loan balance of \$10,694 was released by PGHL as consideration for the issuance of 233,376 additional ordinary shares by Legacy Paysafe, which is presented as "Capital injection in Legacy Paysafe" in the Consolidated Statements of Shareholder's Equity.

The Company had a receivable from PGHL which is interest free and repayable on demand. During the year ended December 31, 2022, the company waived the right to the receivable, resulting in a loss which was recognized in "Other income/expense, net." As of the year ended December 31, 2022 and 2021 this receivable balance was \$0 and \$2,069, respectively.

The amounts outstanding at December 31, 2021 were unsecured and no guarantees were given or received. No allowances for credit losses had been made for debts in respect of the amounts owed by related parties. Interest expense, net, on related party transactions for

the year ended December 31, 2020 was \$1,554. There was no interest expense on related party transactions for the years ended December 31, 2022 and 2021. This balance was recognized and included within "Other income/expense, net."



## Description of the Company's Securities

The following is a description of material terms of, and is qualified in its entirety by, the Company Charter and the Company Bye-laws. Under "Description of the Company's Securities," "we," "us," "our," the "Company" and "our company" refer to Paysafe Limited and not to any of its subsidiaries.

We are an exempted company incorporated under the laws of Bermuda. We are registered with the Registrar of Companies in Bermuda under registration number 56074. We were incorporated on November 23, 2020 under the name Paysafe Limited. Our registered office is located at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. Our agent for service of process in the United States is Cogency Global Inc.

Our objects are unrestricted, and we have the capacity of a natural person. We can therefore undertake activities without restriction on our capacity.

Our authorized share capital is US\$22,000,000 divided into 1,600,000,000 common shares, par value \$0.012 per share and 233,333,333.3 undesignated shares, par value \$0.012 per share. As of March 1, 2023, there are approximately 60.79 million Company Common Shares issued and outstanding, and no preference shares outstanding. All of our issued and outstanding common shares have been issued fully paid. Unless the Company Board determines otherwise, we will issue all of our share capital in uncertificated form.

Pursuant to the Company Bye-laws, subject to the requirements of the NYSE and subject to any resolution of the shareholders to the contrary, the Company Board is authorized to issue any of our authorized but unissued shares on such terms as the Company Board determines. There are no limitations on the right of non-Bermudians or non-residents of Bermuda to hold or vote our shares.

## Company Common Shares

Under Bermuda law and the Company Bye-laws, the Company Board is authorized to issue any of our authorized but unissued shares without shareholder approval on such terms as the Company Board determines. The holders of Company Common Shares have no pre-emptive, redemption, conversion or sinking fund rights. Holders of Company Common Shares are entitled to one vote per share on all matters submitted to a vote of holders of Company Common Shares. Unless a different vote is required by Bermuda law or by the Company Bye-laws, resolutions to be approved by holders of voting shares require approval by a simple majority of votes cast at a meeting at which a quorum is present. Holders of Company Common Shares will vote together as a single class on all matters presented to the shareholders for their vote or approval, including the election of directors. The Company Charter and the Company Bye-laws do not authorize cumulative voting and directors are elected by plurality of votes.

Any individual who is a shareholder of the Company and who is present at a meeting may vote in person, as may any corporate shareholder that is represented by a duly authorized representative at a meeting of shareholders. The Company Bye-laws also permit attendance at general meetings by proxy, provided the instrument appointing the proxy is in such form as the Company Board may determine.

In the event of our liquidation, dissolution or winding up, the holders of Company Common Shares are entitled to share equally and ratably in our assets, if any, remaining after the payment of all of our debts and liabilities, subject to any liquidation preference on any issued and outstanding preference shares.

## Preference Shares

Under Bermuda law and the Company Bye-laws, the Company Board is authorized to issue preference shares in one or more series without shareholder approval. The Company Board has the discretion under the Company Bye-laws to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences of our authorized but unissued undesignated shares, and the Company Board may issue those shares in series of preference shares, without any further shareholder approval. The rights with respect to a series of preference shares may be greater than the rights attached

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to our Company Common Shares. It is not possible to state the actual effect of the issuance of any preference shares on the rights of holders of our Company Common Shares until the Company Board determines the specific rights attached to those preference shares. The effect of issuing preference shares could include, among other things, one or more of the following:

- restricting dividends in respect of our Company Common Shares;
- diluting the voting power of our Company Common Shares or providing that holders of preference shares have the right to vote on matters as a class;
- impairing the liquidation rights of our Company Common Shares; or
- delaying or preventing a change of control of us.

There are no preference shares outstanding, and we have no present plans to designate the rights of or to issue any preference shares.

#### **Dividend Rights**

Under Bermuda law and the Company Bye-laws, the Company Board has discretion as to the payment of dividends on our Company Common Shares, including the amount (if any), payment date and whether paid in cash or satisfied by our shares or other assets, without shareholder approval. Under Bermuda law, we may not declare or pay dividends if there are reasonable grounds for believing that: (i) the company is, or would after the payment be, unable to pay its liabilities as they become due; or (ii) that the realizable value of our assets would as a result be less than our liabilities. Under the Company Bye-laws, each Company Common Share is entitled to dividends if, as and when dividends are declared by the Company Board, subject to any preferred dividend right of the holders of any preference shares. If we are permitted under Bermuda law to pay dividends, there are no restrictions on our ability to pay dividends in U.S. dollars or to U.S. residents who are holders of our shares.

As disclosed in “Item 8. Financial Information—Dividend Policy,” we have no current plans to pay dividends on our Company Common Shares and no obligation under Bermuda law or the Company Bye-laws to do so. Any decision to declare and pay dividends in the future will be made at the sole discretion of the Company Board and will depend on, among other things, our results of operations, cash requirements, financial condition, contractual restrictions and other factors that the Company Board may deem relevant. Because we are a holding company and have no direct operations, we will only be able to pay dividends from funds we receive from our subsidiaries. In addition, our ability to pay dividends will be limited by covenants in our existing indebtedness and may be limited by the agreements governing any indebtedness we or our subsidiaries may incur in the future. See “Description of Certain Indebtedness.”

Any cash dividends payable to holders of our Company Common Shares listed on the NYSE will be paid to Continental Stock Transfer & Trust Company, our transfer agent in the United States, for disbursement to those holders.

#### **Variation of Rights**

If at any time we have more than one class of shares, the rights attaching to any class, unless otherwise provided for by the terms of issue of the relevant class, may be varied either: (i) with the consent in writing of the holders of a majority of the issued shares of that class or (ii) with the sanction of a resolution passed by a majority of the votes cast at a general meeting of the relevant class of shareholders at which a quorum consisting of at least two persons holding or representing a majority of the issued shares of the relevant class is present in person or by proxy. The Company Bye-laws specify that the creation or issue of shares ranking equally with existing shares or the purchase or redemption by us of our shares will not, unless expressly provided by the terms of issue of existing shares, vary the rights attached to existing shares. In addition, the creation or issue of preference shares ranking prior to common shares will not be deemed to vary the rights attached to common shares or, subject to the terms of any other series of preference shares, to vary the rights attached to any other series of preference shares.

#### **Transfer of Shares**

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The Company Board may, in its absolute discretion and without assigning any reason, refuse to register the transfer of a share that it is not fully paid (but we do not currently have, or intend to issue, any shares which are not fully-paid). The Company Board may also refuse to recognize any required instrument of transfer of a share unless it is accompanied by the relevant share certificate (if issued), such other evidence of the transferor's right to make the transfer as the Company Board shall reasonably require, and unless the Company Board is satisfied that all applicable consents, authorizations, permissions or approvals are in place and that the transfer would not violate any agreement to which the Company or the transferor is subject.

When our shares are listed or admitted to trading on an appointed stock exchange (which includes the NYSE), they will be transferred in accordance with the rules and regulations of such exchange.

If at any time our shares cease to be listed or admitted to trading on an appointed stock exchange, which includes the NYSE, the permission of the Bermuda Monetary Authority is required, pursuant to the provisions of the Exchange Control Act 1972 and related regulations, for all transfers of shares (which includes our Company Common Shares) of Bermuda companies to or from a non-resident of Bermuda for exchange control purposes, other than in cases where the Bermuda Monetary Authority has granted a general permission. Subject to the restrictions mentioned above, a holder of common shares may transfer the title to all or any of such holder's common shares by completing a form of transfer in such form as the Company Board may accept. The instrument of transfer must be signed by the transferor and transferee, although in the case of a fully paid share the Company Board may accept the instrument signed only by the transferor.

#### **Meetings of Shareholders**

Under Bermuda law, a company is required to convene at least one general meeting of shareholders each calendar year, which is referred to as the annual general meeting. However, the shareholders may by resolution waive this requirement, either for a specific year or period of time, or indefinitely. When the requirement has been so waived, any shareholder may, on notice to the company not later than three months before the end of the year in question, require the holding of an annual general meeting, in which case an annual general meeting must be called. We intend to hold an annual general meeting in the year ending December 31, 2023.

Bermuda law provides that a special general meeting of shareholders may be called by the Company Board of a company and must be called upon the request of shareholders holding not less than 10% of the paid-up share capital of the company carrying the right to vote at general meetings. Bermuda law also requires that shareholders be given at least five days' advance notice of a general meeting, but the accidental omission to give notice to any person does not invalidate the proceedings at a meeting. The Company Bye-laws provide that the president or chairman or a majority of the Company Board may convene an annual general meeting or a special general meeting; provided, however, that for so long as our Principal Shareholders (as defined in the Shareholders Agreement) beneficially own, collectively, at least 30% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time, special meetings of our shareholders shall also be called by the Company Board or the chairman of the Company Board at the request of a Principal Shareholder. Under the Company Bye-laws, at least five clear days' notice (as defined in the Company Bye-laws) of an annual general meeting or a special general meeting must be given to each shareholder entitled to vote at such meeting. The quorum required for a general meeting of shareholders generally is two or more persons present throughout the meeting and representing, in person or by proxy, a majority of the issued shares entitled to vote at such meeting; provided, however, that if the special general meeting was requisitioned by shareholders in accordance with the provisions of Bermuda law, the quorum required for such meeting is two or more persons present throughout the meeting and representing in person or by proxy of at least 75% of the issued shares entitled to vote at such meeting.

#### **Access to Books and Records and Dissemination of Information**

Members of the general public have a right to inspect the public documents of a company available at the office of the Registrar of Companies in Bermuda. These documents include the Company Charter, including its objects and powers, certain alterations to the Company Charter and a list of the directors of the company. The shareholders have the additional right to inspect the Company Bye-laws of a company, minutes of general meetings and a company's audited financial statements, which must be presented to the annual general meeting. The register of shareholders of a company is also open to inspection by shareholders and by members of the general public

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without charge. The register of shareholders is required to be open for inspection for not less than two hours in any business day (subject to the ability of a company to close the register of shareholders for not more than thirty days in a year). A company is required to maintain its share register in Bermuda but may, subject to the provisions of the Companies Act, establish a branch register outside of Bermuda. A company is required to keep at its registered office a register of directors and officers that is open for inspection for not less than two hours in any business day by members of the public without charge. Bermuda law does not, however, provide a general right for shareholders to inspect or obtain copies of any other corporate records.

Certain Bermuda companies are required to maintain a register of their beneficial owners holding more than 25% of their shares, which is not open for inspection by the public. We will be exempted from this requirement for so long as our shares are listed on an appointed stock exchange, which includes the NYSE.

### **Election of Directors**

The Company Bye-laws provide that the Company Board shall consist of eleven directors or such lesser or greater number as the Company Board, by resolution, may from time to time determine, provided that, at all times, there shall be no fewer than three directors. The Company Board currently consists of 11 directors.

The Company Bye-laws provide that, subject to the rights granted to one or more series of preference shares then outstanding or the rights granted under the Shareholders Agreement, any newly-created directorship on the Company Board that results from an increase in the number of directors and any vacancies on the Company Board will be filled only by the affirmative vote of a majority of the remaining directors, even if less than a quorum, by a sole remaining director or by the shareholders; provided, however, at any time our Principal Shareholders beneficially own, collectively, less than 30% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time, any newly-created directorship on the Company Board that results from an increase in the number of directors and any vacancy occurring in the Company Board may only be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director (and not by the shareholders).

Any shareholder wishing to propose for election as a director someone who is not an existing director or is not proposed by the Company Board must give notice of the intention to propose the person for election to the Company in accordance with the timetable set forth in the Company Bye-laws. In addition, the proposed nominee must be approved by the competent regulatory authorities with responsibility for regulating the business activities of the Company and group of companies to which it belongs. Where a director is to be elected at an annual general meeting, the shareholder notice must be given not less than 90 days nor more than 120 days before the anniversary of the last annual general meeting prior to the giving of the notice or, in the event the annual general meeting is called for a date that is not 30 days before or after such anniversary the notice must be given not later than 21 days following the earlier of the date on which notice of the annual general meeting was posted to shareholders or the date on which public disclosure of the date of the annual general meeting was made. Where a director is to be elected at a special general meeting the shareholder notice must be given not later than 10 days following the earlier of the date on which notice of the special general meeting was posted to shareholders or the date on which public disclosure of the date of the special general meeting was made. Such proposal must be made in accordance with the procedures set forth in the Company Bye-laws. These provisions will not apply to the parties to the Shareholders Agreement so long as the Shareholders Agreement remains in effect. These provisions will not apply to a requisition pursuant to the Companies Act.

### **Proceedings of Company Board**

The Company Bye-laws provide that our business is to be managed and conducted by the Company Board. Bermuda law permits individual and corporate directors and there is no requirement in the Company Bye-laws or Bermuda law that directors hold any of our shares. There is also no requirement in the Company Bye-laws or Bermuda law that our directors must retire at a certain age.

The remuneration of our directors is determined by the Company Board and each such director, other than directors who are employees of the Company, shall be entitled to a fee at a rate determined by the Company Board.

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The directors may also be paid all travel, hotel and other expenses properly incurred by them in connection with our business or their duties as directors.

A director who has a direct or indirect interest in any contract or arrangement with us must disclose such interest as required by Bermuda law. Such an interested director may be counted in the quorum but is not entitled to vote on or participate in any discussion in respect of any such contract or arrangement in which he or she is interested.

#### **Indemnification of Directors and Officers**

Section 98 of the Companies Act provides generally that a Bermuda company may exempt or indemnify its directors, officers and auditors against any liability that by virtue of any rule of law would otherwise be imposed on them in respect of any negligence, default, breach of duty or breach of trust, except in cases where such liability arises from fraud or dishonesty of which such director, officer or auditor may be guilty in relation to the company. Section 98 further provides that a Bermuda company may indemnify its directors, officers and auditors against any liability incurred by them in defending any proceedings, whether civil or criminal, in which judgment is awarded in their favor or in which they are acquitted or granted relief by the Supreme Court of Bermuda pursuant to section 281 of the Companies Act.

The Company Bye-laws provide that we shall indemnify and advance expenses to our officers and directors in respect of their actions and omissions, except in respect of their fraud or dishonesty. The Company Bye-laws also provide that the shareholders waive all claims or rights of action that they might have, individually or in right of the company, against any of the company's directors or officers for any act or failure to act in the performance of such director's or officer's duties, except in respect of any fraud or dishonesty of such director or officer. Section 98A of the Companies Act permits us to purchase and maintain insurance for the benefit of any officer or director in respect of any loss or liability attaching to him in respect of any negligence, default, breach of duty or breach of trust, whether or not we may otherwise indemnify such officer or director. We will purchase and maintain a directors' and officers' liability policy for such a purpose.

#### **Amendment of Company Charter and Company Bye-laws**

Bermuda law provides that the Company Charter may be amended by a resolution passed at a general meeting of shareholders. Under Bermuda law, the holders of an aggregate of not less than 20% in par value of the company's issued share capital or any class of shares have the right to apply to the Supreme Court of Bermuda for an annulment of any amendment of the Company Charter adopted by shareholders at any general meeting, other than an amendment which alters or reduces a company's share capital as provided in the Companies Act. Where such an application is made, the amendment becomes effective only to the extent that it is confirmed by the Bermuda court. An application for an annulment of an amendment of the Company Charter must be made within twenty-one days after the date on which the resolution altering the Company Charter is passed and may be made on behalf of persons entitled to make the application by one or more of them. No application may be made by shareholders who voted in favor of the amendment.

Amendments to the Company Bye-laws will require the approval of the Company Board and the affirmative vote of a majority of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time. In addition, the Company Bye-laws provide that at any time when our Principal Shareholders collectively beneficially own, in the aggregate, less than 30% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time, certain provisions in the Company Bye-laws, including the provisions providing for a classified board of directors (the election and term of our directors), may be amended, altered, repealed or rescinded only by the affirmative vote of at least 66 2/3% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time. This provision makes it more difficult for any person to remove or amend any provisions in the Company Bye-laws that may have an anti-takeover effect.

#### **Certain Corporate Anti-Takeover Provisions**

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Certain provisions in the Company Bye-laws may be deemed to have an anti-takeover effect and may delay, deter or prevent a tender offer or takeover attempt that a shareholder might consider to be in its best interests, including attempts that might result in a premium being paid over the market price for the common shares. These provisions are also designed, in part, to encourage persons seeking to acquire control of us to first negotiate with our board.

#### ***Common Shares***

The authorized but unissued common shares will be available for future issuance by the Company Board on such terms as the Company Board may determine, subject to any resolutions of the shareholders. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued Company Common Shares could render more difficult or discourage an attempt to obtain control over us by means of a proxy contest, tender offer, merger, amalgamation, scheme of arrangement or otherwise.

#### ***Preference Shares***

We have authorized 233,333,333.3 of as yet undesignated shares in the Company, the rights and restrictions attaching to which are not defined by the Company Bye-laws. Pursuant to the Company Bye-laws, preference shares may be issued by the Company from time to time, and the Company Board is authorized (without any requirement for further shareholder action) to determine the rights, preferences, powers, qualifications, limitations and restrictions attaching to those shares (and any further undesignated shares which may be authorized by our shareholders).

#### ***Classified Board***

The Company Bye-laws provide that, subject to the right of holders of any series of preference shares, the Company Board will be divided into three classes of directors, as nearly equal in number as possible, and with the directors serving staggered three-year terms, with only one class of directors being elected at each annual meeting of shareholders. As a result, approximately one-third of the Company Board will be elected each year.

The classification of directors will have the effect of making it more difficult for shareholders to change the composition of the Company Board. The Company Bye-laws provide that, subject to any rights of holders of preference shares to elect additional directors under specified circumstances, the number of directors will be fixed from time to time exclusively pursuant to a resolution adopted by the Company Board.

#### ***Removal of Directors***

In accordance with the terms of the Company Bye-laws, our directors may be removed only by resolution, with or without cause, upon the affirmative vote of a majority of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time; provided, however, at any time when our Principal Shareholders beneficially own, collectively, less than 30% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time, directors may only be removed for cause, and only upon the affirmative vote of holders of at least 66 2/3% of the then issued and outstanding shares carrying the right to vote at general meetings at the relevant time.

#### ***Restriction on Shareholder Action by Written Consent***

The Company Bye-laws provide that for so long as our Principal Shareholders beneficially own, collectively, at least 30% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time, anything (except the removal of a director or an auditor) which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the shareholders may, without a meeting, be done by resolution in writing signed by, or on behalf of, such number of shareholders who, at the date that the notice of resolution is given, represent not less than the minimum number of votes as would be required if the resolution was voted on at a meeting of shareholders. If our Principal Shareholders cease to beneficially own, collectively, at least

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30% of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time, all shareholder action may be taken only at an annual meeting or special general meeting of shareholders and may not be taken by written consent in lieu of a meeting. Failure to satisfy any of the requirements for a shareholder general meeting could delay, prevent or invalidate shareholder action.

#### ***Advance Notice Requirements for Shareholder Proposals and Director Nominations***

The Company Bye-laws provide that shareholders seeking to nominate candidates for election as directors or to bring business before an annual general meeting of shareholders or special general meeting of shareholders must provide timely notice of their proposal. Generally, to be timely, a shareholder's notice must be received with advance notice to the fullest extent permitted by law. The Company Bye-laws also specify requirements as to the form and content of a shareholder's notice for shareholder proposals and nominations. These provisions may impede shareholders' ability to bring matters before an annual or special general meeting of shareholders or make nominations for directors at a general meeting of shareholders.

#### ***Voting Requirements***

Approval of certain significant corporate transactions, including amendments to the Company Bye-laws, will require the approval of the Company Board in addition to any other vote required by applicable law.

#### ***Amalgamations and Business Combinations***

The amalgamation or merger of a Bermuda company with another company or corporation (other than certain affiliated companies) requires the amalgamation or merger agreement to be approved by the Company Board and by our shareholders. The Company Bye-laws provide that a majority in number of the Company Board present at a meeting where a quorum is present is required to approve the amalgamation or merger agreement. Additionally, the Company Bye-laws provide that a resolution passed by holders of a majority of the issued and outstanding shares carrying the right to vote at general meetings at the relevant time is required to approve the amalgamation or merger agreement. The Company Bye-laws provide that a merger or an amalgamation that is a business combination with an interested shareholder must be approved as described below.

The Company Bye-laws contain provisions regarding "business combinations" with "interested shareholders." Pursuant to the Company Bye-laws, in addition to any other approval that may be required by applicable law, we may not engage in certain "business combinations" with any "interested shareholder" for a three-year period following the time that the shareholder became an interested shareholder, unless:

- prior to such time, the Company Board approved either the business combination or the transaction that resulted in the shareholder becoming an interested shareholder;
- upon consummation of the transaction that resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least 85% of our issued and outstanding voting shares at the time the transaction commenced, excluding certain shares; or
- at or subsequent to that time, the business combination is approved by the Company Board and by the affirmative vote of holders of at least 66 2/3% of our issued and outstanding voting shares that are not owned by the interested shareholder.

Generally, a "business combination" includes a merger, amalgamation, asset or share sale, or other transaction resulting in a financial benefit to the interested shareholder. An "interested shareholder" is a person who, together with that person's affiliates and associates, owns, or within the previous three years owned, 10% or more of our issued and outstanding voting shares, but our Principal Shareholders and their affiliates and any of their respective direct or indirect transferees shall not constitute "interested shareholders" for purposes of this provision.

Under certain circumstances, this provision will make it more difficult for a person who would be an "interested shareholder" to effect various business combinations with us for a three-year period. This provision may encourage companies interested in acquiring us to negotiate in advance with the Company Board because the shareholder approval requirement would be avoided if the Company Board approves either the business combination

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or the transaction that results in the shareholder becoming an interested shareholder. These provisions also may have the effect of preventing changes in the Company Board and may make it more difficult to accomplish transactions that shareholders may otherwise deem to be in their best interests.

Under Bermuda law, in the event of an amalgamation or merger of a Bermuda company with another company or corporation, a shareholder of the Bermuda company who did not vote in favor of the amalgamation or merger and who is not satisfied that fair value has been offered for such shareholder's shares may, within one (1) month of notice of the shareholders meeting, apply to the Supreme Court of Bermuda within one (1) month of the transaction to appraise the fair value of those shares.

#### **Shareholder Suits**

Class actions and derivative actions are generally not available to shareholders under Bermuda law. The Bermuda courts, however, would ordinarily be expected to permit a shareholder to commence an action in the name of a company to remedy a wrong to the company where the act complained of is alleged to be beyond the corporate power of the company or illegal, or would result in the violation of the Company Charter or the Company Bye-laws. Furthermore, consideration would be given by a Bermuda court to allow a shareholder to commence such action where acts that are alleged to constitute a fraud against the minority shareholders or, for instance, where an act requires the approval of a greater percentage of the company's shareholders than that which actually approved it.

When the affairs of a company are being conducted in a manner which is oppressive or prejudicial to the interests of some part of the shareholders, one or more shareholders may apply to the Supreme Court of Bermuda, which may make such order as it sees fit, including an order regulating the conduct of the company's affairs in the future or ordering the purchase of the shares of any shareholders by other shareholders or by the company.

The Company Bye-laws contain a provision by virtue of which our shareholders waive any claim or right of action that they have, both individually and on our behalf, against any director or officer in relation to any action or failure to take action by such director or officer, except in respect of any fraud or dishonesty of such director or officer.

#### **Capitalization of Profits and Reserves**

Pursuant to the Company Bye-laws, the Company Board may (i) capitalize any part of the amount of our share premium or other reserve accounts or any amount credited to our profit and loss account or otherwise available for distribution by applying such sum in paying up unissued shares to be allotted as fully paid bonus shares pro-rata (except in connection with the conversion of shares) to the shareholders; or (ii) capitalize any sum standing to the credit of a reserve account or sums otherwise available for dividend or distribution by paying up in full, partly paid or nil paid shares of those shareholders who would have been entitled to such sums if they were distributed by way of dividend or distribution.

#### **Transfer Agent and Registrar**

A register of holders of the Company Common Shares will be maintained by MQ Services Ltd. in Bermuda, and a branch register will be maintained in the United States by Continental Stock Transfer & Trust Company, who will serve as branch registrar and transfer agent.

#### **Listing**

Our Company Common Shares are listed on the NYSE under the symbol "PSFE." Our warrants are listed on the NYSE under the symbol "PSFE.WS."

#### **Untraced Shareholders**

The Company Bye-laws provide that the Company Board may forfeit any dividend or other monies payable in respect of any shares which remain unclaimed for six years from the date when such monies became due for

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payment. In addition, we are entitled to cease sending dividend warrants and checks by post or otherwise to a shareholder if such instruments have been returned undelivered to, or left uncashed by, such shareholder on at least two consecutive occasions or, following one such occasion, reasonable enquires have failed to establish the shareholder's new address. This entitlement ceases if the shareholder claims a dividend or cashes a dividend check or a warrant.

#### **Certain Provisions of Bermuda Law**

We have been designated by the Bermuda Monetary Authority as a non-resident for Bermuda exchange control purposes. There are no restrictions on our ability to transfer funds (other than funds denominated in Bermuda dollars) in and out of Bermuda or to pay dividends to U.S. residents who are holders of our Company Common Shares.

Under Bermuda law, "exempted" companies are companies formed for the purpose of conducting business outside Bermuda from a principal place of business in Bermuda. As an "exempted" company, we generally may not, without the express authorization of the Bermuda legislature or under a license or consent granted by the Minister of Finance, participate in certain business transactions in Bermuda, including: (i) the acquisition or holding of land in Bermuda (except that held by way of lease or tenancy agreement which is required for its business and held for a term not exceeding 50 years; or (ii) the carrying on of business with persons outside Bermuda.

The Bermuda Monetary Authority has, pursuant to its general permissions issued in its Notice to the Public of June 2015, given its consent for the issue and free transferability of all of our Company Common Shares to and between non-residents of Bermuda for exchange control purposes, provided our shares remain listed on an appointed stock exchange, which includes the NYSE. Approvals or permissions given by the Bermuda Monetary Authority do not constitute a guarantee by the Bermuda Monetary Authority as to our performance or our creditworthiness. Accordingly, in giving such consent or permissions, the Bermuda Monetary Authority shall not be liable for the financial soundness, performance or default of our business or for the correctness of any opinions or statements expressed herein. Certain issues and transfers of common shares involving persons deemed resident in Bermuda for exchange control purposes require the specific consent of the Bermuda Monetary Authority.

The Bermuda Economic Substance Act 2018 and associated regulations (the "Economic Substance Act") require Bermuda companies carrying on certain relevant activities to comply with obligations related to their economic substance in Bermuda, including being managed and directed from Bermuda and undertaking certain core income generating activities in Bermuda. For entities which are resident for tax purposes in certain jurisdictions outside Bermuda, only limited compliance and filing obligations are relevant.

**In accordance with Bermuda law, share certificates are only issued in the names of companies, partnerships or individuals. In the case of a shareholder acting in a special capacity (for example as a trustee), certificates may, at the request of the shareholder, record the capacity in which the shareholder is acting. Notwithstanding such recording of any special capacity, we are not bound to investigate or see to the execution of any such trust.**

#### **Limitations on the Right to Own Securities**

In addition to the limitations applicable to all businesses under applicable law, the right to own our securities is subject to limitations imposed due to the nature of the products and services that we offer, as summarized below. Any shareholder seeking to acquire 10% or more of our shares or the voting rights attached to our shares or acquiring the power to exercise, directly or indirectly, an equivalent degree of control in us should carefully consider the regulatory framework within which we operate and the formalities that must be complied with. See "Item 4. Business Overview—Payments Regulation" and "Item 3. Key Information—D. Risk Factors—Regulatory, Legal and Tax Risks—Limitations imposed by the FCA and CBI on the right to own our securities may result in sanctions being imposed on our regulated subsidiaries and an acquirer of such securities in the event of noncompliance by such acquirer, and may reduce the value of our shares."

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Several of the Company's indirect subsidiaries are subject to regulatory supervision, including the requirement to obtain prior consent from the relevant regulator when a person holds, acquires or increases a qualifying holding in those entities.

As such, each person who, alone or together with others, holds, acquires or increases a qualifying holding/control in any of these regulated subsidiaries, directly or indirectly (including by way of investment in Paysafe), as a result of which certain thresholds are reached or passed, will require prior approval or a declaration of no objection from the relevant regulator (the FCA in the UK and the CBI in Ireland) prior to obtaining such qualifying holding/control. This requirement to obtain prior approval or a declaration of no objection for qualifying holdings/changes in control in the regulated subsidiaries implements the requirements relating to qualifying holdings in payment services providers as set out in PSD2.

A "qualifying holding" or "an acquisition of control" in UK terms is a direct or indirect holding of 10% or more of the issued share capital of any of the regulated subsidiaries, the ability to exercise directly or indirectly 10% or more of the voting rights in such regulated subsidiary, or the power to exercise, directly or indirectly, an equivalent degree of control in such regulated subsidiary.

Holders of such qualifying holdings or "controllers" in UK terms, will also be subject to certain additional notification requirements where the size of such holdings increase beyond or fall below certain thresholds, as required by Article 6 of PSD2 (as implemented in the UK and Ireland).

Local laws, regulations and guidelines, including the EU Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector (JC/GL/2016/01), shall be taken into account in assessing a qualifying holding/control (e.g., the voting rights of any other shareholders with whom a person is acting in concert are also relevant in determining a person's voting rights).

## **Company Warrants**

The Company Warrants represent the right to purchase one Company Common Share at a price of \$138 per share. The Company Warrants became exercisable on August 21, 2021 and will expire on the fifth anniversary of Closing at 5:00 p.m. New York City time, or upon an earlier redemption. The Company Warrants are governed by the Warrant Agreement, as modified by a warrant assumption agreement that was entered into by the Company and Continental Stock Transfer & Trust Company, as warrant agent, in connection with the Closing.

### *Public Warrants*

The following description applies to Public Warrants that became Company Warrants as a result of the Business Combination.

As set forth in the Warrant Agreement, the Public Warrants that were previously issued in the private placement (i) may be exercised for cash or on a "cashless basis," (ii) shall not be redeemable by the Company pursuant to Section 6.1 of the Warrant Agreement and (iii) shall only be redeemable by the Company pursuant to Section 6.2 of the Warrant Agreement if the Reference Value (as defined in the Warrant Agreement) is less than \$216.00 per share.

Once the Company Warrants become exercisable pursuant to the exercise period, the Company may call all such Company Warrants for redemption if, and only if, the reported last sale price of our Company Common Shares equals or exceeds \$216.00 per share (as adjusted for stock splits, stock dividends, reorganizations, recapitalizations and the like) for any 20 trading days within a 30 trading day period ending on the third trading day before the Company sends the notice of redemption to the holders of Company Warrants. In addition, the Company may only call such Company Warrants for redemption:

- in whole and not in part;
  - at a price of \$0.01 per warrant;
  - upon not less than 30 days' prior written notice of redemption to each warrant holder.
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Additionally, once the Company Warrants become exercisable, the Company may call all such Company Warrants for redemption at a price of \$0.10 per warrant when the price per share of our Company Common Shares equals or exceeds \$120.00 provided that (i) the Reference Value (as defined in the Warrant Agreement) equals or exceeds \$120.00 per share (subject to adjustment) and (ii) if the Reference Value is less than \$216.00 per share (subject to adjustment), the Private Warrants are also concurrently called for redemption on the same terms as the outstanding Public Warrants. After the Company has provided notice of redemption to the holders of Company Warrants, the holders of such Company Warrants may elect to exercise their Company Warrants on a “cashless basis” and receive a number of shares of Company Common Stock as set forth in the Warrant Agreement (a “Make-Whole Exercise”).

If and when the Company Warrants become redeemable, the Company may not exercise its redemption rights if the issuance of Company Common Shares upon exercise of the Company Warrants is not exempt from registration or qualification under applicable state blue sky laws or the Company is unable to effect such registration or qualification.

A holder of a Company Warrant may notify the Company in writing in the event it elects to be subject to a requirement that such holder will not have the right to exercise such Company Warrant, to the extent that after giving effect to such exercise, such person (together with such person’s affiliates), to the warrant agent’s actual knowledge, would beneficially own in excess of 9.8% (or such other amount as a holder may specify) (the “Maximum Percentage”) of our Company Common Shares outstanding immediately after giving effect to such exercise. By written notice to the Company, the holder of a Company Warrant may from time to time increase or decrease the Maximum Percentage applicable to such holder to any other percentage specified in such notice; provided, however, that any such increase shall not be effective until the sixty-first (61st) day after such notice is delivered to the Company.

In the event of a consolidation, combination, reverse share split or reclassification of Company Common Shares or other similar event, then on the effective date of such event, the number of Company Common Shares issuable on exercise of each Company Warrant will be decreased in proportion to such decrease in issued and outstanding Company Common Shares.

In the case of any reclassification, reorganization, merger or consolidation of the issued and outstanding Company Common Shares, the holders of Company Warrants are entitled to purchase and receive the kind and amount of Company Common Shares or other securities or property (including cash) receivable upon such reclassification, reorganization, merger or consolidation.

The Company Warrants may be exercised upon surrender of the warrant certificate on or prior to the expiration date at the offices of the warrant agent, with the exercise form on the reverse side of the warrant certificate completed and executed as indicated, accompanied by full payment of the exercise price (or on a “cashless basis,” if applicable), by certified check or bank draft payable to the order of the warrant agent, for the number of the Company Warrants being exercised. The warrant holders do not have the rights or privileges of holders of Company Common Shares or any voting rights until they exercise their Company Warrants and receive Company Common Shares.

#### *Private Warrants*

The following description applies to Private Warrants that became Company Warrants as a result of the Business Combination.

On July 31, 2020, FTAC entered into a Forward Purchase Agreement with Cannae Holdings, a diversified holding company which is externally managed by Trasimene Capital, but is not an affiliate of FTAC or the Founder, in which Cannae Holdings agreed to purchase an aggregate of 5,000,000 redeemable private placement warrants to purchase one (1) share of FTAC’s Class A Common Stock at \$11.50 per share, in a private placement which occurred concurrently with the closing of an initial business combination. Pursuant to the Warrant Agreement, Cannae Holdings and its permitted transferees may transfer, assign or sell their Private Warrants following the effectiveness of this registration statement. Except as otherwise provided in Section 6 of the Warrant Agreement, the terms of the Private Warrants mirror those of the Public Warrants.

#### **Comparison of Corporate Governance and Shareholder Rights**

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Paysafe is a Bermuda company. The Bermuda Companies Act, the Company Charter and the Company Bye-laws govern the rights of its shareholders. Bermuda law differs in some material respects from laws generally applicable to United States corporations and their stockholders. Below is a summary chart outlining important similarities and differences in the corporate governance and stockholder/shareholder rights associated with each of a Delaware corporation and Paysafe according to applicable law and/or its organizational documents, as applicable. You also should review the Company Charter, the Company Bye-laws, as well as the Delaware General Corporation Law and the Bermuda Companies Act, to understand how these laws apply to Paysafe.

Provision	A Delaware Corporation	The Company (A Bermuda exempted limited company)
Applicable corporate law legislation	DGCL	Companies Act 1981, as amended (the “Companies Act”)
Voting Rights	Except as otherwise provided by applicable law or in the certificate of incorporation or bylaws, the holders of common stock have the right to vote for the election of director and all other purposes. Unless otherwise required by the DGCL, the certificate of incorporation or the bylaws, any question brought before any meeting of stockholders is decided by a majority of votes cast by holders of the stock represented and entitled to vote thereon.	Holders of common shares are entitled to one vote per share on all matters submitted to a vote of holders of common shares. Unless a different vote is required by Bermuda law or by the Company Bye-laws, resolutions to be approved by holders of voting shares require approval by a simple majority of votes cast at a meeting at which a quorum is present. Holders of common shares will vote together as a single class on all matters presented to the shareholders for their vote or approval, including the election of directors. The Company Charter and the Company Bye-laws do not authorize cumulative voting and directors are elected by plurality of votes.
Appraisal Rights	Under the DGCL, in certain situations, appraisal rights may be available in connection with a merger or a consolidation.	Under Bermuda law, in the event of an amalgamation or merger of a Bermuda company with another company or corporation, a shareholder of the Bermuda company who did not vote in favor of the amalgamation or merger and is not satisfied that fair value has been offered for such shareholder’s shares may, within one month of notice of the shareholders meeting, apply to the Supreme Court of Bermuda to

Stockholder Meeting Quorum	Quorum shall be present at a meeting of stockholders if the holder or holders of a majority of the shares entitled to vote are present in person, represented by duly authorized representative in the case of a corporation or other legal entity or represented by proxy.	appraise the fair value of those shares.  For a general meeting convened by the Company Board, the quorum required for such meeting is at least two shareholders present in person or by proxy and entitled to vote representing the holders of a majority of the issued shares entitled to vote. At a general meeting convened other than by the Company Board, the quorum required for such meeting is two or more shareholders present in person or by proxy and entitled to vote representing the holders of at least 75% of the issued shares entitled to vote at such meeting.
Stockholder/Shareholder Consent to Action Without Meeting	Under Delaware corporate law, unless otherwise provided in the certificate of incorporation, any action that can be taken at a meeting of the stockholders (except stockholder approval of a transaction with an interested stockholder, which may be given only by vote at a meeting of the stockholders) may be taken without a meeting if written consent to the action is signed by the holders of outstanding stock having not less than the minimum number of votes necessary to authorize or take the action at a meeting of the stockholder.	Shareholders may act by written consent for so long as the Principal Shareholders beneficially own, collectively, at least 30% of the Company's voting power, then action may be taken by a majority of votes that would be required to pass the resolution as if it had been voted on at a meeting of shareholders.
Inspection of Books and Records; Information Requests	All stockholders of a Delaware corporation have the right, upon written demand, to inspect or obtain copies of the corporation's shares ledger and its other books and records for any purpose reasonably related to such person's interest as a stockholder.	Members of the general public have the right to inspect the Company's public documents available at the office of the Registrar of Companies in Bermuda and the Company's registered office in Bermuda, which will include the Company Charter (including its objects and powers) and certain alterations to the Company Charter and a list of the directors of the Company. The

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shareholders have the additional right to inspect the Company Bye-laws, minutes of general meetings and audited financial statements, which must be presented to the annual general meeting of shareholders.

The register of shareholders of a company is also open to inspection by shareholders and members of the general public without charge. The register of shareholders is required to be open for inspection for not less than two (2) hours in any business day (subject to the ability of a company to close the register of shareholders for not more than 30 days in a year). A company is required to maintain its share register in Bermuda but may, subject to the provisions of the Companies Act, establish a branch register outside of Bermuda. A company is required to keep at its registered office a register of directors and officers. Bermuda law does not, however, provide a general right for shareholders to inspect or obtain copies of any other corporate records.

Certain Bermuda companies are required to maintain a register of their beneficial owners holding more than 25% of their shares, which is not open for inspection by the public. The Company will be exempted from this requirement for so long as its shares are listed on an appointed stock exchange, which includes the NYSE.

Stockholder/Shareholder Lawsuits for violation of directors' duties

A stockholder may bring a derivative suit for alleged violation of directors' duties,

The Company Bye-laws provide that the shareholders waive all claims or rights of action that they might have, individually or in

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subject to procedural requirements.

right of the Company, against any of the Company's directors or officers for any act or failure to act in the performance of such director's or officer's duties, except in respect of any fraud or dishonesty of such director or officer. As such, shareholders may not have a direct cause of action against the directors.

#### Stockholders'/Shareholders' Suits in General

Class actions and derivative actions generally are available to stockholders under Delaware law for, among other things, breach of fiduciary duty, corporate waste and actions not taken in accordance with applicable law. In such actions, the court generally has discretion to permit the winning party to recover attorneys' fees incurred in connection with such action.

Class actions and derivative actions are generally not available to shareholders under Bermuda law. The Bermuda courts, however, would ordinarily be expected to permit a shareholder to commence an action on behalf of a company to remedy a wrong to the Company where the act complained of is alleged to be beyond the corporate power of the Company or illegal, or would result in the violation of the Company Charter or the Company By-laws.

Furthermore, consideration would be given by a Bermuda court to allow derivative action rights in relation to acts that are alleged to constitute a fraud against the minority shareholders or, for instance, where an act requires the approval of a greater percentage of the Company's shareholders than that which actually approved it.

When the affairs of a company are being conducted in a manner which is oppressive or prejudicial to the interests of some part of the shareholders, one or more shareholders may apply to the Supreme Court of Bermuda, which may make such order as it sees fit, including an order regulating the conduct of the Company's affairs in the future or ordering the purchase of the

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Election and Removal of Directors;  
Vacancies

Under Delaware corporate law, a vacancy or a newly created directorship may be filled by a majority of the directors then in office, although less than a quorum, or by the sole remaining director, unless otherwise provided in the certificate of incorporation or by-laws. Directors chosen to fill vacancies generally hold office until the next election of directors. If, however, a corporation's directors are divided into classes, a director chosen to fill a vacancy holds office until the next election of the class for which such director was chosen.

Except in the case of a corporation with a classified board (unless the certificate of incorporation provides otherwise) or with cumulative voting, any director or the entire board may be removed, with or without cause, by the holders of a majority of the shares entitled to vote at an election of directors. The board may increase the size of the board and fill any vacancies.

shares of any shareholders by other shareholders or by the Company.

The board shall consist of eleven (11) directors or such other number as determined by the Board, but no fewer than three (3) Directors. The appointment of Directors at a general meeting would be determined by a plurality of the votes cast in respect of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

For so long as the Principal Shareholders beneficially own at least 30% of the Company's voting securities, directors may be removed by a majority vote of shareholders present in person or by proxy, provided that certain procedures described in the Company Bye-laws are followed.

When the Principal Shareholders beneficially own less than 30% of the Company's voting securities, Directors may only be removed for "cause" (as determined by the Board, in their sole discretion from time to time) and only upon the affirmative vote of at least 66 2/3 of the Company's voting securities.

When the Principal Shareholders beneficially own, collectively, less than 30% of the Company's voting securities, any newly-created directorships on the Board that results from an increase in the number of Directors and/or any vacancy occurring in the Board, may only be filled by resolution of the Board, or by the sole remaining Director (and not by the Shareholders in general meeting).

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Classified or Staggered Boards	Classified boards are permitted and do prevent the removal of directors with immediate effect.	Classified board with staggered elections; three (3) classes of directors each elected for a term of three (3) years.
Indemnification of Directors and Officers	A corporation is generally permitted to indemnify its directors and officers if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe their conduct was unlawful, except that in any action brought by or in the right of the corporation, such indemnification may be made only for expenses (not judgments or amounts paid in settlement) and may not be made even for expenses if the officer, director or other person is adjudged liable to the corporation (unless otherwise determined by the court).	The directors and officers are indemnified out of the funds of the Company against all liabilities, losses, damages or expenses (including but not limited to liabilities under contract, tort and statute or any applicable foreign law or regulation and all legal and other costs and expenses properly payable) arising out of the actual or purported execution or discharge of his duties or the exercise or purported exercise of his powers or otherwise in relation to or in connection with his duties, powers or office (including but not limited to liabilities attaching to him and losses arising by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company or any subsidiary of the Company).
Limited Liability of Directors	The DGCL law permits the limiting or eliminating of the monetary liability of a director to a corporation or its stockholders, except with regard to breaches of duty of loyalty, intentional misconduct, unlawful stock repurchases or dividends, or improper personal benefit.	Directors are liable to the Company in respect of any negligence, default or breach of duty on his own part in relation to the Company or any subsidiary of the Company, or for any loss or damage which may happen, in or arising out of the actual or purported execution or discharge of his duties or the exercise or purported exercise of his powers or otherwise in relation to or in connection with his duties, powers or office.
Special Vote Required for Combinations with Interested Stockholders/Shareholders	The Delaware General Corporation Law contains a business combination statute	A transaction entered into by the Company in which a director has an interest will not be voidable by

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applicable to Delaware corporations whereby, unless the corporation has specifically elected not to be governed by such statute by amendment to its certificate of incorporation, it is prohibited from engaging in certain business combinations with an “interested shareholder” for three years following the date that such person becomes an interested shareholder. An interested shareholder generally is a person or a group who or which owns or owned more than 15% of the target’s outstanding voting stock within the past three years. This has the effect of limiting the ability of a potential acquirer to make a two-tiered bid for the target in which all shareholders would not be treated equally. The statute does not apply if, among other things, prior to the date on which such shareholder becomes an interested shareholder, the board of directors approves either the business combination or the transaction which resulted in the person becoming an interested shareholder. This encourages any potential acquirer of a Delaware corporation to negotiate the terms of any acquisition transaction with the target’s board of directors.

the Company and such director will not be liable to the Company for any profit realized pursuant to such transaction as a result of such interest, provided the nature of the interest is disclosed at the first opportunity either at a meeting of directors or in writing to the directors. The Company By-laws provide that a majority in number of the Company Board present at a meeting where a quorum is present is required to approve the amalgamation or merger agreement and require directors to recuse themselves from any discussion or decision at a meeting involving another firm or company with which the director is affiliated or other matters with respect to which the director has a personal conflict.

#### Approval of Certain Transactions

Under the DGCL, the consummation of a merger or consolidation requires the approval of the board of directors of the corporation which desires to merge or consolidate and requires that the agreement and plan of merger be adopted by the affirmative vote of a majority of the stock of the corporation entitled to vote thereon at an annual or special meeting for the purpose of acting on the agreement. However, no such

#### Amalgamations and Mergers:

Any merger or amalgamation of the Company with another company shall require the approval of (i) the Board by a resolution passed with the approval of a majority of those Directors then in office and eligible to vote on that resolution XX and (ii) a Resolution passed by a majority of votes cast, in addition to any other sanction required by the Companies Acts in respect of any variation of the

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approval and vote are required if such corporation is the surviving corporation and such corporation's certificate of incorporation is not amended, the stockholders of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and rights, immediately after the effective date of the merger; and either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger do not exceed 20% of the shares of common stock of such corporation outstanding immediately prior to the effective date of the merger. Under the DGCL, a sale or all or substantially all of a corporation's assets requires the approval of such corporation's board of directors and the affirmative vote of a majority of the outstanding stock of the corporation entitled to vote thereon.

rights of any class of Shareholders.

If the Company has more than one class of shares at that time, the Companies Act provides that all of the Company shares carry the right to vote on the merger or amalgamation, whether or not they otherwise carry the right to vote, and that the holders of a class of shares have the right to vote separately as a class if the merger or amalgamation terms would result in a variation of their share class rights.

#### Takeovers:

An acquiring party is generally able to acquire compulsorily the common shares of minority holders of a company: (a) by a procedure under the Companies Act known as a "scheme of arrangement." A scheme of arrangement could be effected by obtaining the agreement of the Company and its shareholders. The scheme must be approved by a majority in number of shareholders present and voting, at a court ordered meeting held to consider the scheme of arrangement, and representing 75% in value of the issued and outstanding shares. The scheme of arrangement must then be sanctioned by the Bermuda Supreme Court. If a scheme of arrangement receives all necessary agreements and sanctions, upon the filing of the court order with the Registrar of Companies in Bermuda, all holders of common shares could be compelled to sell their shares under the terms of the scheme of arrangement; (b) by acquiring pursuant to a tender offer 90% of the shares or class of shares not already owned by, or by a

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nominee for, the acquiring party (the offeror), or any of its subsidiaries. If an offeror has, within four months after the making of an offer for all the shares or class of shares not owned by, or by a nominee for, the offeror, or any of its subsidiaries, obtained the approval of the holders of 90% or more of all the shares to which the offer relates, the offeror may, at any time within two months beginning with the date on which the approval was obtained, by notice compulsorily acquire the shares of any non-tendering shareholder on the same terms as the original offer unless the Supreme Court of Bermuda (on application made within a one-month period from the date of the offeror's notice of its intention to acquire such shares) orders otherwise; (c) Where the acquiring party or parties hold not less than 95% of the shares or a class of shares of the Company, by acquiring, pursuant to a notice given to the remaining shareholders or class of shareholders, the shares of such remaining shareholders or class of shareholders. When this notice is given, the acquiring party is entitled and bound to acquire the shares of the remaining shareholders on the terms set out in the notice, unless a remaining shareholder, within one month of receiving such notice, applies to the Supreme Court of Bermuda for an appraisal of the value of their shares (in which case the appraised value is payable or the acquiring party may withdraw its notice to acquire the shares). This provision only applies where the acquiring party offers the same terms to all holders of shares whose shares are being acquired;

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#### Stockholder/Shareholder Proposals

The DGCL does not include a provision restricting the manner in which nominations for directors may be made by stockholders or the manner in which business may be brought before a meeting.

or (d) by a merger or amalgamation transaction.

Eligible shareholder(s) may, as set forth below and at their own expense (unless the Company otherwise resolves), require the Company to: (a) give notice to all shareholders entitled to receive notice of the annual general meeting of any resolution that the shareholder(s) may properly move at the next annual general meeting; and/or (b) circulate to all shareholders entitled to receive notice of any general meeting a statement in respect of any matter referred to in any proposed resolution or any business to be conducted at such general meeting. The number of shareholders necessary for such a requisition is either: (i) any number of shareholders representing not less than 5% of the total voting rights of all shareholders entitled to vote at the meeting to which the requisition relates; or (ii) not less than 100 shareholders.

#### Amendment of Company Charter/Certificate of Incorporation

Delaware law requires that, unless a greater percentage is provided for in the certificate of incorporation, a majority of the outstanding stock entitled to vote is required to approve the amendment of the certificate of incorporation at the stockholders' meeting.

Bermuda law provides that the Company Charter may be amended by a resolution passed at a general meeting of shareholders of which due notice has been given.

Under Bermuda law, the holders of an aggregate of not less than 20% in par value of a company's issued and outstanding share capital or any class of shares have the right to apply to the Bermuda courts for an annulment of any amendment of the Company Charter adopted by shareholders at any general meeting, other than an amendment which alters or reduces a company's share capital as provided in the Companies Act. Where such an application is

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#### Amendment of Bye-laws

Delaware law requires that, unless a greater percentage is provided for in the certificate of incorporation, a majority of the outstanding stock entitled to vote is required to approve the amendment of the bylaws at the stockholders' meeting.

made, the amendment becomes effective only to the extent that it is confirmed by the Bermuda court. An application for an annulment of an amendment of the Company Charter must be made within 21 days after the date on which the resolution altering the Company Charter is passed and may be made on behalf of persons entitled to make the application by one or more of them. No application may be made by the shareholders voting in favor of the amendment.

The Company Bye-laws may be amended, altered, repealed or rescinded by a resolution of the Board passed by a majority of the Directors then in office and eligible to vote on that resolution. For so long as the Principal Shareholders beneficially own, collectively, at least 30% of the Company's voting securities, a majority of shareholders can approve the amendment, alteration, repeal, rescission, revocation or amendment of the Company Bye-laws. For such time that the Principal Shareholders own less than 30%, (A) a vote of 66 2/3% of shareholders is required to amend provisions relating to (i) the appointment or removal of Directors, (ii) indemnification of officers or (iii) business combinations and (B) a majority of shareholders is required to amend provisions related to all other matters.

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24 JUNE 2021

**PAYSAFE GROUP HOLDINGS II LIMITED**

(as the Parent)

**PAYSAFE GROUP HOLDINGS III LIMITED**

(as the Company)

**J.P. MORGAN SECURITIES PLC, CREDIT SUISSE AG, LONDON BRANCH and CREDIT  
SUISSE LOAN FUNDING LLC**

(as Arrangers and Bookrunners)

**J.P. MORGAN AG**

(as Agent)

**LUCID TRUSTEE SERVICES LIMITED**

(as Security Agent)

**SENIOR FACILITIES AGREEMENT**

**LATHAM & WATKINS**

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## CONTENTS

### Clause Page

1.	INTERPRETATION	4
2.	THE FACILITIES	64
3.	PURPOSE	73
4.	CONDITIONS OF UTILISATION	74
5.	UTILISATION – LOANS	78
6.	UTILISATION – LETTERS OF CREDIT	81
7.	LETTERS OF CREDIT	87
8.	OPTIONAL CURRENCIES	92
9.	ANCILLARY FACILITIES	93
10.	REPAYMENT	100
11.	ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION	102
12.	MANDATORY PREPAYMENT	105
13.	RESTRICTIONS	115
14.	INTEREST	116
15.	INTEREST PERIODS	118
16.	CHANGES TO THE CALCULATION OF INTEREST	120
17.	FEES	123
18.	TAXES	126
19.	INCREASED COSTS	139
20.	OTHER INDEMNITIES	143
21.	MITIGATION BY THE LENDERS	145
22.	COSTS AND EXPENSES	145
23.	GUARANTEES AND INDEMNITY	146
24.	REPRESENTATIONS AND WARRANTIES	150

25.	INFORMATION UNDERTAKINGS	155
26.	FINANCIAL COVENANT	158
27.	GENERAL UNDERTAKINGS	159
28.	EVENTS OF DEFAULT	162
29.	CHANGES TO THE LENDERS	170
30.	CHANGES TO THE OBLIGORS	182
31.	ROLE OF THE AGENT, THE ARRANGERS AND OTHERS	187
32.	CONDUCT OF BUSINESS BY THE FINANCE PARTIES	198
33.	SHARING AMONG THE FINANCE PARTIES	198
34.	PAYMENT MECHANICS	199
35.	SET-OFF	204
36.	NOTICES	204
37.	CALCULATIONS AND CERTIFICATES	208
38.	PARTIAL INVALIDITY	208
39.	REMEDIES AND WAIVERS	208
40.	AMENDMENTS AND WAIVERS	208
41.	CONFIDENTIAL INFORMATION	226
42.	CONFIDENTIALITY OF FUNDING RATES	230
43.	EXECUTION	232
44.	GOVERNING LAW	232
45.	ENFORCEMENT	232
46.	WAIVER OF RIGHT TO TRIAL BY JURY	233
47.	USA PATRIOT ACT	233
48.	CONTRACTUAL RECOGNITION OF BAIL-IN	233
SCHEDULE 1		235
THE ORIGINAL PARTIES		

<b>SCHEDULE 2</b>	<b>238</b>
<b>CONDITIONS PRECEDENT</b>	
<b>SCHEDULE 3</b>	<b>242</b>
<b>REQUESTS AND NOTICES</b>	
<b>SCHEDULE 4</b>	<b>247</b>
<b>FORM OF ASSIGNMENT AGREEMENT</b>	
<b>SCHEDULE 5</b>	<b>252</b>
<b>FORM OF TRANSFER CERTIFICATE</b>	
<b>SCHEDULE 6</b>	<b>258</b>
<b>FORM OF ACCESSION DEED</b>	
<b>SCHEDULE 7</b>	<b>261</b>
<b>FORM OF COMPLIANCE CERTIFICATE</b>	
<b>SCHEDULE 8</b>	<b>263</b>
<b>FORM OF LETTER OF CREDIT</b>	
<b>SCHEDULE 9</b>	<b>266</b>
<b>TIMETABLES</b>	
<b>SCHEDULE 10</b>	<b>269</b>
<b>AGREED SECURITY PRINCIPLES</b>	
<b>SCHEDULE 11</b>	<b>277</b>
<b>FORM OF INCREASE CONFIRMATION</b>	
<b>SCHEDULE 12</b>	<b>281</b>
<b>INCREMENTAL FACILITY INCREASE NOTICE</b>	
<b>SCHEDULE 13</b>	<b>290</b>
<b>FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE</b>	
<b>SCHEDULE 14</b>	<b>292</b>
<b>FORM OF RESIGNATION LETTER</b>	
<b>SCHEDULE 15</b>	<b>293</b>
<b>FORM OF SUBSTITUTE AFFILIATE LENDER DESIGNATION NOTICE</b>	
<b>SCHEDULE 16</b>	<b>295</b>

INFORMATION UNDERTAKINGS	295
SCHEDULE 17 GENERAL UNDERTAKINGS	297
SCHEDULE 18 EVENTS OF DEFAULT	341
SCHEDULE 19	345
CERTAIN NEW YORK LAW DEFINED TERMS	
SCHEDULE 20	396
COMPOUNDED RATE TERMS	
SCHEDULE 21	399
DAILY NON-CUMULATIVE COMPOUNDED RFR RATE	
SCHEDULE 22	401
CUMULATIVE COMPOUNDED RFR RATE	



THIS AGREEMENT (this “Agreement”) is dated 24 June 2021

**BETWEEN:**

- (1) **PAYSAFE GROUP HOLDINGS II LIMITED**, a company incorporated under the laws of England with registered office at Floor 27, 25 Canada Square, London, England, E14 5LQ and registered number 10880277 (the “**Parent**”).
- (2) **PAYSAFE GROUP HOLDINGS III LIMITED**, a company incorporated under the laws of England with registered office at Floor 27, 25 Canada Square, London, England, E14 5LQ and registered number 10869332 (the “**Company**”).
- (3) **THE ENTITY** listed in Part 1 (*The Original TLB Borrower*) of Schedule 1 (*The Original Parties*) as original TLB borrower (the “**Original TLB Borrower**”).
- (4) **THE ENTITIES** listed in Part 2 (*The Original RCF Borrowers*) of Schedule 1 (*The Original Parties*) as original RCF borrowers (the “**Original RCF Borrowers**”).
- (5) **THE ENTITIES** listed in Part 3 (*The Original Guarantors*) of Schedule 1 (*The Original Parties*) as original guarantors (the “**Original Guarantors**”).
- (6) **J.P. MORGAN SECURITIES PLC, CREDIT SUISSE AG, LONDON BRANCH** and **CREDIT SUISSE LOAN FUNDING LLC** as joint lead arrangers (the “**Arrangers**”).
- (7) **J.P. MORGAN SECURITIES PLC, CREDIT SUISSE AG, LONDON BRANCH** and **CREDIT SUISSE LOAN FUNDING LLC** as bookrunners (the “**Bookrunners**”).
- (8) **BANK OF MONTREAL** and **GOLDMAN SACHS BANK USA** as syndication agents.
- (9) **BANK OF AMERICA, N.A., INTESA SANPAOLO S.P.A., LONDON BRANCH, KEYBANK NATIONAL ASSOCIATION, PNC CAPITAL MARKETS LLC** and **ROYAL BANK OF CANADA** as documentation agents.
- (10) **THE FINANCIAL INSTITUTIONS** listed in the Part 4 (*The Original Lenders*) (*The Original Lenders*) of Schedule 1 (*The Original Parties*) as lenders (the “**Original Lenders**”).
- (11) **J.P. MORGAN AG** as agent of the other Finance Parties (the “**Agent**”).
- (12) **LUCID TRUSTEE SERVICES LIMITED** as security agent for the Secured Parties (the “**Security Agent**”).

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement:

“**Acceptable Bank**” means:

- (a) a bank or financial institution which 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 Fitch

Ratings Ltd or Baa2 or higher by Moody's Investors Service Limited or a rating for its short-term unsecured and non credit-enhanced debt obligations of A-2 or higher by Standard & Poor's Rating Services or F-3 or higher by Fitch Ratings Ltd or P-3 or higher by Moody's Investors Service Limited, or in each case a comparable rating from an internationally recognised credit rating agency; or

(b) a Lender, an Affiliate of a Lender and any Substitute Affiliate Lender; or

(c) a Finance Party or any other bank or financial institution approved by the Agent from time to time.

**"Accession Certificate"** means a certificate in the form set out in Part 1 of Schedule 12 (*Incremental Facility Increase Notice*).

**"Accession Deed"** means a document substantially in the form set out in Schedule 5 (*Form of Accession Deed*) or in such other form agreed between the Agent and the Parent.

**"Accounting Principles"** has the meaning given to the term "GAAP" in Schedule 19 (*Certain New York Law Defined Terms*).

**"Additional Borrower"** means an entity which becomes a Borrower in accordance with Clause 30 (*Changes to the Obligors*).

**"Additional Business Day"** means any day specified as such in the applicable Compounded Rate Terms.

**"Additional Guarantor"** means an entity which becomes an Additional Guarantor in accordance with Clause 30 (*Changes to the Obligors*).

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

**"Additional Refinancing Lender"** has the meaning given to that term in paragraph (a) of Clause 40.4 (*Refinancing Amendments*).

**"Affiliate"** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

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

(a) the spot rate of exchange as displayed by ICE Data Services; or

(b) any other commercially available spot rate of exchange selected by the Agent (acting reasonably), for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11:00 am on a particular day.

**"Agreed Certain Funds Obligor"** means:

(a) with respect to any Agreed Certain Funds Utilisation of the Initial Revolving Facility, the proposed Borrower of the relevant Agreed Certain Funds Utilisation; or

(b) with respect to any Agreed Certain Funds Utilisation of an Incremental Facility, any member of the Group designated as an Agreed Certain Funds Obligor by the Parent and

the relevant Incremental Facility Lenders in an Agreed Incremental Facility Certain Funds Notice.

**“Agreed Certain Funds Period”** means:

- (a) in respect of the Initial Revolving Facility, such period specified in any relevant Agreed Revolving Facility Certain Funds Notice; and
- (b) in respect of any Incremental Facility, such period specified in any relevant Agreed Incremental Facility Certain Funds Notice.

**“Agreed Certain Funds Utilisation”** means:

- (a) in respect of the Initial Revolving Facility, a Utilisation made or to be made under the Initial Revolving Facility during any Agreed Certain Funds Period; or
- (b) in respect of an Incremental Facility, a Utilisation made or to be made under that Incremental Facility during any Agreed Certain Funds Period.

**“Agreed Incremental Facility Certain Funds Notice”** has the meaning given to that term in Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*).

**“Agreed Revolving Facility Certain Funds Notice”** has the meaning given to that term in Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*).

**“Agreed Security Principles”** means the principles set out in Schedule 10 (*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 Revolving Facility from which that Ancillary Facility has been established.

**“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*), in each case as notified by the Ancillary Lender to the Agent pursuant to Clause 9.2 (*Availability*) 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 (*provided that*, for the purposes of this definition, any amount of any outstanding utilisation under any BACS facility (or similar) made available by an Ancillary Lender shall, with the prior written consent of that Ancillary Lender, be excluded);
- (b) the face amount of each guarantee, bond and letter of credit under that Ancillary Facility (net of any cash cover provided in respect of that guarantee, bond or letter of credit and excluding any liability in respect of amounts of interest or fees); 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 net of any Available Credit Balance.

For the purposes of this definition:

- (i) in relation to any Ancillary Outstandings denominated in the Base Currency, the amount of those Ancillary Outstandings (determined as described in paragraphs (a) to (c) above) shall be used; and
- (ii) in relation to any Ancillary Outstandings not denominated in the Base Currency, the equivalent in the Base Currency (calculated as specified in the relevant Ancillary Document or, if not so specified, as the relevant Ancillary Lender may specify, in each case in accordance with its usual practice at that time for calculating that equivalent in the Base Currency (acting reasonably)) of those Ancillary Outstandings (determined as described in paragraphs (a) to (c) above) shall be used.

**“Annual Financial Statements”** has the meaning given to that term in paragraph (a) of Section 1 (*Financial Statements*) of Schedule 16 (*Information Undertakings*).

**“Arrangement Fee Letter”** means each arrangement fee letter from an Arranger to the Parent dated on or prior to the date of this Agreement in respect of fees payable in relation to the Facilities.

**“Assignment Agreement”** means an agreement substantially in the form set out in Schedule 4 (*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 4 (*Form of assignment agreement*) it shall not be a Creditor/Agent Accession Undertaking as defined in, and for the purposes of, the Intercreditor Agreement.

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

**“Availability Period”** means:

- (a) in relation to Facility B, the period from and including the date of this Agreement to and including the last day of the Certain Funds Period;
- (b) in relation to the Initial Revolving Facility, the period from and including the date of this Agreement to the Termination Date in relation to the Initial Revolving Facility; and

(c) in relation to each Incremental Facility, the period agreed between the Parent and the relevant Incremental Facility Lender(s) and specified in the relevant notice delivered by the Parent in accordance with Clause 2.3 (*Incremental Facility*) for that Incremental Facility.

**“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, in relation to a Facility, a Lender’s Commitment under that Facility minus (subject to Clause 9.9 (*Affiliates of Lenders as Ancillary Lenders*)) and as set out below):

- (a) the Base Currency Amount of its participation in any outstanding Utilisations under that Facility and, in the case of a Revolving Facility only, the Base Currency Amount of the aggregate of its and its Affiliates’ 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 that Facility on or before the proposed Utilisation Date and, in the case of a Revolving Facility only, the Base Currency Amount of its and its Affiliates’ Ancillary Commitment in relation to any new Ancillary Facility that is due to be made available from that Revolving Facility on or before the proposed Utilisation Date.

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

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

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

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

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

**“Bail-In Legislation”** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and
- (c) in relation to the United Kingdom, the UK Bail-In Legislation.

“**Base Case Model**” means the base case model relating to the Group (assuming that the Closing Date has occurred).

“**Base Currency**” means USD.

“**Base Currency Amount**” means:

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

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

“**Base Reference Bank Rate**” means:

- (a) in relation to LIBOR, the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Base Reference Banks:
  - (i) (other than where paragraph (ii) below applies) as the rate at which the relevant Base Reference Bank could borrow funds in the London interbank market in the relevant currency and for the relevant period were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period; or
  - (ii) if different, as the rate (if any and applied to the relevant Base Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator;

(b) in relation to EURIBOR, the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Base Reference Banks:

- (i) (other than where paragraph (ii) below applies) as the rate at which the relevant Base Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in euro within the Participating Member States for the relevant period; or
- (ii) if different, as the rate (if any and applied to the relevant Base Reference Bank and the relevant period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or

(c) in relation to CDOR, the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Base Reference Banks:

- (i) (other than where paragraph (ii) below applies) as the relevant Base Reference Bank's bid rate for the purchase of CAD denominated Canadian bankers' acceptances with a term to maturity equal in length to the relevant period (disregarding any inconsistency arising from the last day of that period being determined pursuant to the terms of this Agreement); or
- (ii) if different, as the rate (if any and applied to the relevant Base Reference Bank and the relevant period (disregarding any inconsistency arising from the last day of that period being determined pursuant to the terms of this Agreement)) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

**"Base Reference Banks"** means such entities as may be appointed (and which have accepted such appointment) from time to time by the Agent in consultation with the Parent.

**"Borrower"** means an Incremental Facility Borrower, a Revolving Facility Borrower or a TLB Borrower.

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

(a) in respect of any Term Rate Loan, the amount (if any) by which:

- (i) the interest (excluding the Margin and the effects of any interest rate floor) 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:

- (ii) 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 Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period; or

(b) in respect of any Compounded Rate Loans, any amount specified as such in the applicable Compounded Rate Terms.

“**Brexit**” means the actual withdrawal (including by way of any governmental decision to withdraw or any vote or referendum electing to withdraw) of the United Kingdom from the European Union, including as a consequence of the notification given by it on 29 March 2017 of its intention to withdraw from the European Union pursuant to Article 50 of the Treaty on European Union, or the end of any transition period in connection therewith, and, in each case, any law, regulation, treaty or agreement (or change in, or change in the interpretation, administration, implementation or application of, any law, regulation, treaty or agreement) in connection therewith.

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

- (a) (in relation to any date for payment or purchase of, or the fixing of an interest rate in relation to, 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; or
- (c) (in relation to:
  - (i) any date for payment or purchase of a Compounded Rate Currency;
  - (ii) the determination of the first day or the last day of an Interest Period for a Compounded Rate Loan, or otherwise, or in relation to the determination of the length of such an Interest Period; or
  - (iii) the Lookback Period for a Compounded Rate Currency),an Additional Business Day relating to that currency or that Loan.

“**Capital Requirement**” means the minimum amount of regulatory capital (however described) each Regulated Entity is required to maintain pursuant to any applicable law, licensing condition or regulation (including, without limitation, pursuant to or in connection with the Isle of Man Financial Services Rule Book 2016, the Payment Services Regulations 2009, the Payment Services Regulations 2017, the Swiss Financial Market Infrastructure Act and/or the Mauritius Financial Services Act 2007), as amended and/or replaced from time to time, or the views, guidance or interpretation of any such laws, licensing condition or regulation of any Relevant Regulator.

“**Capital Stock**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Card Scheme**” means any credit, debit, charge card or other similar scheme.

“**Cash Equivalents**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**CDOR**” means, in relation to any Loan in CAD:

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



provided that, if in either case that rate is (i) in the case of the Initial Revolving Facility, less than zero, CDOR shall be deemed to be zero and (ii) in the case of any Incremental Facility, less than the percentage rate per annum specified in the relevant Incremental Facility Increase Notice (the “**CDOR Floor Rate**”), CDOR shall be deemed to be the relevant CDOR Floor Rate.

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

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

“**Certain Funds Period**” means:

- (a) in respect of Facility B and the Initial Revolving Facility, the period from (and including) the date of this Agreement to (and including) the date falling five Business Days after the date of this Agreement; and
- (b) in respect of any Incremental Facility or the Initial Revolving Facility (after the last day of the Certain Funds Period described in paragraph (a) above), such period for certain funds agreed with the relevant Incremental Facility Lender(s) or the relevant Initial Revolving Facility Lenders (as applicable) in accordance with paragraph (b) of Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*).

“**Certain Funds Utilisation**” means a Utilisation made or to be made under Facility B and/or the Initial Revolving Facility during the Certain Funds Period.

“**Change of Control**” has the meaning given to that term in Clause 12.1 (*Change of Control*).

“**Charged Property**” means any or all of the assets of the Obligors and any Third Party Security Provider which from time to time are, or are expressed to be, the subject of the Transaction Security.

“**Closing Date**” means the date on which the first Utilisation of Facility B occurs.

“**Code**” means the US Internal Revenue Code of 1986, as amended.

“**Commitment**” means a Facility B Commitment, Incremental Facility Commitment or Revolving Facility Commitment.

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*) or in any other form agreed by the Agent and the Parent and, in each case, delivered by the Parent to the Agent under Clause 25.2 (*Compliance Certificates*), including any Voluntary Compliance Certificate.

“**Compounded Rate Currency**” means GBP.

“**Compounded Rate Interest Payment**” means the aggregate amount of interest that:

- (a) is, or is scheduled to become, payable under any Finance Document; and
- (b) relates to a Compounded Rate Loan.

“**Compounded Rate Loan**” means any Loan or, if applicable, Unpaid Sum in a Compounded Rate Currency.

**“Compounded Rate Supplement”** means, in relation to any currency, a document which:

- (a) is agreed in writing by the Parent and the Agent (acting in accordance with paragraph (d) or (e) of Clause 40.5 (*Changes to reference rates*) or otherwise on the instructions of the Relevant Currency Majority Lenders under the Facilities for which the relevant currency constitutes the Base Currency or an Optional Currency (acting reasonably));
- (b) specifies for that currency the relevant terms which are expressed in this Agreement to be determined by reference to Compounded Rate Terms; and
- (c) has been made available to the Parent and each Finance Party by the Agent.

**“Compounded Rate Terms”** means in relation to:

- (a) a currency;
  - (b) a Loan or an Unpaid Sum in that currency;
  - (c) an Interest Period for such a Loan or Unpaid Sum (or other period for the accrual of commission or fees in respect of that currency); or
  - (d) any term of this Agreement relating to the determination of a rate of interest in relation to such a Loan or Unpaid Sum,
- the terms set out for that currency in Schedule 20 (*Compounded Rate Terms*) or in any Compounded Rate Supplement.

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

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

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

- (a) is agreed in writing by the Parent, the Agent (in its own capacity) and the Agent (acting in accordance with paragraph (d) or (e) of Clause 40.5 (*Changes to reference rates*) or otherwise on the instructions of the Relevant Currency Majority Lenders under the Facilities for which the relevant rate will be used in the calculation of interest (acting reasonably));
- (b) specifies a calculation methodology for that rate; and
- (c) has been made available to the Parent and each Finance Party by the Agent.

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

- (a) any Third Party Security Provider, any member of the Group, any Affiliate of any member of the Group or any of their respective advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any Third Party Security Provider, any member of the Group, any Affiliate of any member of the Group or any of their respective 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:

(i) information that:

- (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party or its Affiliates of Clause 41 (*Confidential Information*); or
- (B) is identified in writing at the time of delivery as non-confidential by any Third Party Security Provider, any member of the Group or any of their respective advisers; or
- (C) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (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 any Third Party Security Provider or the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and

(ii) any Funding Rate.

**“Confidentiality Undertaking”** means a confidentiality undertaking substantially in a recommended form of the LMA on the date of this Agreement or in any other form agreed between the Parent and the Agent, and in any case capable of being relied upon by, and not capable of being materially amended without the consent of, the Parent.

**“Consolidated Current Assets”** means, as at any date of determination, the Total Assets that may properly be classified on a consolidated balance sheet of the Parent as current assets in conformity with the relevant Accounting Principles, excluding cash and Cash Equivalents, amounts related to current or deferred taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees and derivative financial instruments, any Settlement Assets and excluding the effects of adjustments pursuant to the relevant Accounting Principles resulting from the application of recapitalisation accounting or purchase accounting, as the case may be, in relation to any consummated acquisition.

**“Consolidated Current Liabilities”** means, as at any date of determination, the total liabilities of the Parent and the Restricted Subsidiaries on a consolidated basis that may properly be classified on a consolidated balance sheet of the Parent as current liabilities in conformity with the relevant Accounting Principles, excluding (A) the current portion of any Funded Debt, (B) the current portion of interest, (C) accruals for current or deferred taxes based on income or profits, (D) accruals of any costs or expenses related to restructuring reserves, (E) revolving loans, swing line loans and letter of credit obligations under any Revolving Facility or any other revolving credit

facility, (F) in respect of any Financing Lease Obligation of any Person, the capitalised amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with the relevant Accounting Principles as in effect on the date of this Agreement, (G) deferred revenue arising from cash receipts that are earmarked for specific projects, (H) liabilities in respect of unpaid earn-outs, (I) any Settlement Debt, Settlement Liabilities or any other liabilities in connection with Settlement Cash Balances or other Settlement Assets, (J) the current portion of any other long-term liabilities, and, furthermore, excluding the effects of adjustments pursuant to the relevant Accounting Principles resulting from the application of recapitalisation accounting or purchase accounting, as the case may be, in relation to any consummated acquisition and (K) any non-cash liabilities recorded in connection with stock-based awards, partnership interest-based awards, awards of profits interests, deferred compensation awards and similar incentive based compensation awards or arrangements.

**“Consolidated First Lien Net Debt”** means as of any date of determination:

- (a) Consolidated Total Indebtedness of the Parent and its Restricted Subsidiaries that is secured by Liens on the Collateral on a pari passu basis with the Facilities as of such date of determination; *minus*
- (b) cash and Cash Equivalents that would be stated on the balance sheet of the Parent and its Restricted Subsidiaries as of such date of determination,

in each case with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of “Fixed Charge Coverage Ratio” (and subject, for the avoidance of doubt, to Clause 1.3 (*Calculations*)) and as determined in good faith by Parent.

**“Consolidated First Lien Debt Ratio”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“Consolidated Secured Debt Ratio”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“Consolidated Total Debt Ratio”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“Consolidated Total Indebtedness”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“Consolidated Working Capital”** means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities; *provided that* increases or decreases in Consolidated Working Capital shall be calculated without regard to any changes in Consolidated Current Assets or Consolidated Current Liabilities as a result of (a) any reclassification in accordance with the relevant Accounting Principles of assets or liabilities, as applicable, between current and noncurrent or (b) the effects of purchase accounting.

**“Constitutional Documents”** means the constitutional documents of the Parent.

**“Credit Adjustment Spread”** means, in respect of any Compounded Rate Loan, any rate which is either:

- (a) specified as such in the applicable Compounded Rate Terms; or

- (b) to the extent the applicable Compounded Rate Terms specify a methodology for calculating a Credit Adjustment Spread, determined by the Agent (or by any other Finance Party which agrees with the Parent to determine that rate in place of the Agent) in accordance with that methodology.

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

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

“**Currency Equivalent**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Customary Bridge Loans**” means customary bridge loans or interim indebtedness with a maturity date of no longer than one year; *provided that* any loan, note, security or other Indebtedness which is exchanged for or otherwise replaces such bridge loans is permitted by the terms of this Agreement.

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

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

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

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

“**Declared Default**” means:

- (a) in the case of an Event of Default (other than a Financial Covenant Event of Default), the occurrence of an Event of Default which has resulted in a notice by the Agent to the Parent under paragraph (a)(ii) of Clause 28.5 (*Acceleration*); or
  - (b) in the case of a Financial Covenant Event of Default, the occurrence of a Financial Covenant Event of Default which has resulted in a notice by the Agent to the Parent under both of paragraphs (b)(i) and (b)(ii) of Clause 28.5 (*Acceleration*),
- and, in each case, such notice has not been withdrawn, cancelled or otherwise ceased to have effect.

“**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 to the Parent or the making of any determination, in each case, provided for in Clause 28 (*Events of Default*) or any combination of the foregoing) be an Event of Default, *provided that* any such event or circumstance which requires any determination as to materiality before it may become an Event of Default shall not be a Default until such determination is made.

“**Defaulting Lender**” means any Lender:

- (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 which has failed to provide cash collateral (or has notified the Issuing Bank or the Parent (which is notified the Agent) that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower’s option to provide cash cover*);
- (b) which has otherwise rescinded or repudiated a Finance Document;
- (c) which is an Issuing Bank which has failed to issue a Letter of Credit (or has notified the Agent or the Parent (which has notified the Agent) that it will not issue a Letter of Credit) in accordance with Clause 6.5 (*Issue of Letters of Credit*) or which has failed to pay a claim (or has notified the Agent or the Parent (which has notified the Agent) that it will not pay a claim) in accordance with (and as defined in) Clause 7.2 (*Claims under a Letter of Credit*);
- (d) with respect to which an Insolvency Event has occurred and is continuing; or
- (e) which became a Lender in breach of the provisions of Clause 29 (*Changes to the Lenders*); or
- (f) which purports to assign or transfer any of its rights and obligations under this Agreement or enter into any sub-participation or sub-contract in respect thereof, in each case, in breach of the provisions of Clause 29 (*Changes to the Lenders*),

unless, in the case of paragraph (a) above and in respect of a participation in a Loan other than a Certain Funds Utilisation or an Agreed Certain Funds Utilisation:

- (i) its failure to pay, or to issue a Letter of Credit, is caused by:

- (A) administrative or technical error; or

- (B) a Disruption Event; and

- (ii) payment is made within three Business Days after its due date; or

- (iii) 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 or the Agent.

“**Derivative Instrument**” means, with respect to a Lender, any contract, instrument or other right to receive payment or delivery of cash or other assets to which such Lender (or any Affiliate of

such Lender that is acting in concert with such Lender in connection with such Lender's Commitments under any Facility (other than a Screened Affiliate)) is a party (whether or not requiring further performance by such Lender or Affiliate), pursuant to which the value and/or cash flows (or any material portion thereof) are materially affected by any of the Performance References.

**"Designated Gross Amount"** means the amount notified by the Parent to the Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Gross Outstandings that will, at any time, be outstanding under that Multi-account Overdraft.

**"Designated Net Amount"** means the amount notified by the Parent to the Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Net Outstandings that will, at any time, be outstanding under that Multi-account Overdraft.

**"Disposition"** means the sale, transfer, license tantamount to a sale, lease or other disposition (including any sale and leaseback transaction and any sale or issuance of Equity Interests in a Restricted Subsidiary) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith; *provided that* "Disposition" shall not be deemed to include any issuance by the Parent of any of its Equity Interests to another Person.

**"Disqualified Lender"** means:

- (a) any person as designated in writing by the Parent from time to time;
- (b) the Parent's or any other member of the Group's competitors, including any that have been specified to the Agent or the Arrangers by the Parent in writing from time to time (a **"Primary Competitor"**);
- (c) any person that owns or controls (in either case, directly or indirectly) a Primary Competitor or any of its affiliates (a **"Competitor Shareholder"**) or any person that is otherwise under common control, ownership or management of a Competitor Shareholder; and
- (d) as to any person referenced in paragraph (a), (b) or (c) above (each, a **"Primary Disqualified Lender"**), any of such Primary Disqualified Lender's known Affiliates or Affiliates identified in writing to the Agent or the Arrangers or otherwise readily identifiable by name,

in each case, other than:

- (i) deposit-taking financial institutions;
- (ii) Affiliates of any Primary Competitor or Competitor Shareholder that are acting on the other side of appropriate information barriers implemented or maintained as required by law or regulation from the person that would otherwise constitute a Primary Competitor or Competitor Shareholder and managed and controlled separately from the person that would otherwise constitute a Primary Competitor or Competitor Shareholder and has separate personnel responsible for its interests under the Finance Documents, such personnel being independent from the interests of the entity or division constituting the Primary Competitor or Competitor Shareholder, and no information provided under the Finance Documents is disclosed or otherwise made available to any personnel responsible for the interests

of the entity or division constituting a Primary Competitor or Competitor Shareholder; and

(iii) Affiliates of any Primary Competitor or Competitor Shareholder that are Independent Debt Funds.

**“Disqualified Stock”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

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

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

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

**“E-Money Directive”** means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

**“EBITDA”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

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

**“End User”** means any person holding or otherwise beneficially entitled to the proceeds of any e-wallet or other account provided or otherwise made available by any member of the Group (including, without limitation, any customer which has accepted the terms and conditions, from time to time, in respect of such account), but excluding any merchant selling any product and/or service which utilises the payment processing services provided by any member of the Group.

**“Enforcement Event”** means an Event of Default has occurred which is continuing and notice of acceleration has been given by the Agent which results in an Acceleration Event (as defined in the Intercreditor Agreement) which is continuing (*provided that* such Acceleration Event is not in respect of a Financial Covenant Event of Default in respect of which a Financial Covenant Cross-Default has not occurred and is not continuing).

**“Equity Documents”** means:



(a) the Constitutional Documents; and

(b) any document evidencing Shareholder Indebtedness owed by, or equity investment in, the Parent.

“**Equity Interests**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Equityholding Vehicle**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Erroneous Payment**” has the meaning given to that term in Clause 34.4 (*Amounts paid in error*).

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the LMA (or any successor person) from time to time.

“**EURIBOR**” means, in relation to any Term Rate Loan in euro:

(a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of that Loan; or

(b) as otherwise determined pursuant to Clause 16.1 (*Unavailability of Screen Rate*),

*provided that*, if in either case that rate is (i) in the case of the Initial Revolving Facility, less than zero, EURIBOR shall be deemed to be zero, (ii) in the case of Facility B2, less than zero, EURIBOR shall be deemed to be zero and (iii) in the case of any Incremental Facility, less than the percentage rate per annum specified in the relevant Incremental Facility Increase Notice (the “**EURIBOR Floor Rate**”), EURIBOR shall be deemed to be the relevant EURIBOR Floor Rate.

“**Event of Default**” means any event or circumstance specified as such in Clause 28 (*Events of Default*) (save for Clause 28.5 (*Acceleration*), Clause 28.6 (*Clean Up Period*) and Clause 28.7 (*Excluded Matters*)).

“**Excess Cash Flow**” means, for any period, an amount equal to the excess of:

(a) the sum, without duplication, of:

(i) Consolidated Net Income of the Parent for such period; plus

(ii) an amount equal to the amount of all non-cash charges (including depreciation and amortisation) to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortisation of a prepaid cash item that was paid in a prior period; *plus*

(iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions or Dispositions by the Parent and the Restricted Subsidiaries completed during such period or the application of purchase accounting); *plus*

(iv) an amount equal to the aggregate net non-cash loss on Dispositions by the Parent and the Restricted Subsidiaries during such period (other than Dispositions in the

ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income; *less*

(v) (to the extent otherwise included or included in Consolidated Net Income) the proceeds of any Disposition received during that period; over

(b) the sum, without duplication, of:

- (i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in paragraph (a)(ii) above) and cash charges excluded by virtue of paragraphs (a) through (q) of the definition of “Consolidated Net Income”;
- (ii) the amount of Capital Expenditures or acquisitions of intellectual property made in cash during such period by the Parent or the Restricted Subsidiaries to the extent financed with (A) internally generated cash flow or (B) the proceeds of extensions of credit under any Revolving Facility or any other revolving credit facility, in each case, of the Parent and the Restricted Subsidiaries;
- (iii) an amount equal to the aggregate net non-cash gain on Dispositions by the Parent and the Restricted Subsidiaries during such period (other than Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income and the net cash loss on Dispositions to the extent otherwise added to arrive at Consolidated Net Income;
- (iv) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions or Dispositions by the Parent and the Restricted Subsidiaries completed during such period or the application of purchase accounting);
- (v) cash payments by the Parent and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Parent and the Restricted Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income;
- (vi) the amount of Investments and acquisitions made pursuant to Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*), to the extent that such Investments and acquisitions were financed with internally generated cash flow or borrowings under any revolving credit facility;
- (vii) the aggregate amount of expenditures actually made in cash by the Parent and the Restricted Subsidiaries from internally generated cash flow of the Parent and the Restricted Subsidiaries during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed (or exceed the amount that is expensed) during such period or are not deducted in calculating Consolidated Net Income;
- (viii) cash expenditures in respect of Hedging Obligations during such financial year to the extent not deducted in arriving at such Consolidated Net Income;
- (ix) the aggregate amount of cash and Cash Equivalents which are Restricted Assets;

(x) the aggregate amount of cash and Cash Equivalents of the Parent or any of its Restricted Subsidiaries deposited during such financial year into cash collateral accounts or other blocked accounts established for the benefit of customers or suppliers or other commercial counterparties (other than cash or Cash Equivalent Investments held in any such accounts to support any outstanding Indebtedness);

(xi) the aggregate amount of cash and Cash Equivalents which:

(A)

(1) appears (or would be required to appear) as “restricted” on a consolidated balance sheet of the Parent and the Restricted Subsidiaries (unless such appearance is related to the Finance Documents (or the Liens created thereunder) or other Indebtedness permitted under this Agreement which is permitted to be secured); or

(2) is subject to any Lien (other than as contemplated by sub-paragraph (1) above or Liens permitted by Section 3 (*Liens*) of Schedule 17 (*General Undertakings*)); and

(B) is attributable to internally generated cash flow; and

(xii) any payment of cash to be amortized or expensed over a future period and recorded as a long-term asset,

*provided that*, with respect to paragraphs (b)(ii), (v), (vi) and (vii), at the option of the Parent (in its sole and absolute discretion), (1) the amount shall also include any amount committed to be paid pursuant to a binding contract in any subsequent period so long as to the extent such amount is not actually paid as committed in such subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period and (2) the amount shall also include any payment made after such period and prior to the date on which the Excess Cash Flow calculation is due so long as such amount will not be deducted in subsequent periods.

“**Exchange Act**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Existing Facilities Agreement**” means the senior facilities agreement entered into on 20 December 2017 (as amended and/or restated from time to time) between, amongst others, the Parent, Credit Suisse AG, London Branch as agent and Credit Suisse AG, London Branch as security agent.

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

“**Extended Revolving Facility**” has the meaning given to that term in paragraph (b)(iii) of Clause 40.3 (*Loan Modifications*).

“**Extended Revolving Facility Commitment**” has the meaning given to that term in paragraph (b)(i) of Clause 40.3 (*Loan Modifications*).

“**Extended Revolving Facility Loan**” means a loan made under an Extended Revolving Facility Commitment.

**“Extended Term Facility”** has the meaning given to that term in paragraph (a)(iii) of Clause 40.3 (*Loan Modifications*).

**“Extended Term Loan”** has the meaning given to that term in paragraph (a)(i) of Clause 40.3 (*Loan Modifications*).

**“Extension”** means the establishment of an Extended Term Loan or Extended Revolving Facility Loan by amending a Loan pursuant to Clause 40.3 (*Loan Modifications*) and the applicable Extension Amendment.

**“Extension Amendment”** has the meaning given to that term in paragraph (d)(i) of Clause 40.3 (*Loan Modifications*).

**“Extension Request”** means any Term Loan Extension Request or a Revolver Extension Request, as the case may be.

**“Facility”** means Facility B, any Revolving Facility or, following its establishment, any Incremental Facility, any Extended Term Facility or any Extended Revolving Facility and **“Facilities”** means Facility B, any Revolving Facility, any Incremental Facility, any Extended Term Facility and any Extended Revolving Facility together.

**“Facility B”** means Facility B1 and Facility B2.

**“Facility B Commitment”** means a Facility B1 Commitment, a Facility B2 Commitment and/or a Refinancing Term Commitment.

**“Facility B Lender”** means any Lender who makes available a Facility B Commitment or a Facility B Loan.

**“Facility B Loan”** means a loan made or to be made under Facility B, an Extended Term Loan, a Refinancing Term Loan or, in each case, the principal amount outstanding for the time being of that loan.

**“Facility B1”** means the term loan facility made available under this Agreement as described in paragraph (a)(i) of Clause 2.1 (*The Facilities*).

**“Facility B1 Commitment”** means:

(a) in relation to an Original Lender, the amount in the Base Currency set out opposite its name under the heading ‘Facility B1 Commitment’ in Part 4 (*The Original Lenders*) of Schedule 1 (*The Original Parties*) and the amount of any other Facility B1 Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*); and

(b) in relation to any other Lender, the amount in the Base Currency of any Facility B1 Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*),

(in each case, including any Extended Term Loans with respect to Facility B1), to the extent not:

(i) cancelled, reduced or transferred by it under this Agreement; or

(ii) deemed to be zero pursuant to paragraph (l) of Clause 29.3 (*Conditions of assignment or transfer*) or Clause 29.15 (*Notifiable Debt Purchase Transactions*).

**“Facility B1 Lender”** means any Lender who makes available a Facility B1 Commitment or a Facility B1 Loan.

**“Facility B1 Loan”** means a loan made or to be made under Facility B1 or the principal amount outstanding for the time being of that loan.

**“Facility B2”** means the term loan facility made available under this Agreement as described in paragraph (a)(ii) of Clause 2.1 (*The Facilities*).

**“Facility B2 Commitment”** means:

- (a) in relation to an Original Lender, the amount in EUR set out opposite its name under the heading ‘Facility B2 Commitment’ in Part 4 (*The Original Lenders*) of Schedule 1 (*The Original Parties*) and the amount of any other Facility B2 Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*); and
- (b) in relation to any other Lender, the amount in EUR of any Facility B2 Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*),

(in each case, including any Extended Term Loans with respect to Facility B2), to the extent not:

- (i) cancelled, reduced or transferred by it under this Agreement; or
- (ii) deemed to be zero pursuant to paragraph (l) of Clause 29.3 (*Conditions of assignment or transfer*) or Clause 29.15 (*Notifiable Debt Purchase Transactions*).

**“Facility B2 Lender”** means any Lender who makes available a Facility B2 Commitment or a Facility B2 Loan.

**“Facility B2 Loan”** means a loan made or to be made under Facility B2 or the principal amount outstanding for the time being of that loan.

**“Facility Office”** means:

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

**“FATCA”** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;

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

**“FATCA Application Date”** means:

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

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

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

**“Fee Letter”** means (i) any letter or letters dated on or prior to the date of this Agreement (in each case, to the extent such letter is still in effect or has not been replaced) between (A) all of the Arrangers and the Parent, (B) the Agent and the Parent or (C) the Security Agent and the Parent, setting out any of the fees referred to in Clause 17 (*Fees*); and (ii) any agreement setting out fees payable to a Finance Party, including, but not limited to, those referred to in paragraph (e) of Clause 2.2 (*Increase*), paragraph (b) of Clause 2.3 (*Incremental Facility*), Clause 17.2 (*Agent and Security Agent fees*), Clause 17.4 (*Issuing Bank fees*) or Clause 17.3 (*Interest, commission and fees on Ancillary Facilities*) of this Agreement or under any other Finance Document.

**“Finance Document”** means this Agreement, any Incremental Facility Increase Notice, any Accession Deed, any Resignation Letter, any Ancillary Document, any Compliance Certificate, any Fee Letter, the Intercreditor Agreement, any Selection Notice, any Transaction Security Document, any Utilisation Request, any Extension Request, any Extension Amendment, any Refinancing Amendment, any Compounded Rate Supplement, any Compounding Methodology Supplement and any other document designated as a Finance Document by the Agent and the Parent.

**“Finance Party”** means the Agent, each Arranger, each Bookrunner, each Issuing Bank, the Security Agent, a Lender or any Ancillary Lender.

**“Financial Statements”** means Annual Financial Statements, Semi-Annual Financial Statements and Quarterly Financial Statements.

**“Financial Quarter”** means the period commencing on the day immediately following a Quarter Date and ending on the next occurring Quarter Date.

**“Financial Year”** means the annual accounting period of the Parent and the Group ending on the relevant Accounting Reference Date in each year.

**“Financing Lease Obligation”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“First Test Date”** means the first Quarter Date to occur after the third complete Financial Quarter occurring after the Closing Date.

**“Fixed Charge Coverage Ratio”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“Funded Debt”** means, in respect of any Person, all third-party Indebtedness of such Person for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

**“Funding Rate”** means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 16.5 (*Cost of funds*).

**“German Resident”** means an Obligor (and any of its directors, managers, officers, agents and employees) which qualifies as a resident party domiciled in Germany (*Inländer*) within the meaning of Section 2 paragraph 15 of the German Foreign Trade Act (*Außenwirtschaftsgesetz*).

**“Governmental Authority”** means the government of any nation, or of any political subdivision thereof, whether state, regional, provincial, territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

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

**“Group”** means the Parent and each of its Restricted Subsidiaries from time to time.

**“Group Structure Chart”** means the structure chart of the Group assuming the Closing Date has occurred.

**“Guarantor”** means an Original Guarantor or an Additional Guarantor, in each case, unless it has ceased to be a Guarantor in accordance with Clause 30 (*Changes to the Obligors*).

**“Guarantor and Security Coverage Requirement”** means that, subject to the Agreed Security Principles, the aggregate (without double counting) earnings before interest, tax, depreciation and amortisation (**“Relevant EBITDA”**) (calculated on the same basis as EBITDA, taking each entity on an unconsolidated basis and excluding all intra-Group items) of the Guarantors represents not less than 80% of the EBITDA of the Group (disregarding (i) in the calculation of Relevant EBITDA of the Guarantors, the Relevant EBITDA of any Guarantor generating negative Relevant EBITDA (which shall be deemed to have zero Relevant EBITDA) and (ii) in the calculation of the EBITDA of the Group, the Relevant EBITDA of (x) to the extent positive, any Regulated Entity (unless such Regulated Entity is a Guarantor) and (y) to the extent positive, any other entity which, in each case, is not required to become a Guarantor in accordance with the Agreed Security Principles).

**“Hedging Obligations”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

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

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

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
  - (b) the Agent otherwise rescinds or repudiates a Finance Document;
  - (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; and
  - (ii) payment is made within three Business Days after its due date; or
  - (iii) 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 11 (*Form of Increase Confirmation*).

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

**“Incremental Facility”** means following its establishment pursuant to Clause 2.3 (*Incremental Facility*), any Incremental Term Facility or Incremental Revolving Facility (as the context requires).

**“Incremental Facility Borrower”** means any TLB Borrower and any member of the Group which is specified as a Borrower under the relevant Incremental Facility in an Incremental Facility Increase Notice or which accedes as an Additional Borrower under the relevant Incremental Facility in accordance with Clause 30 (*Changes to the Obligors*), unless it has ceased to be an Incremental Facility Borrower in accordance with Clause 30 (*Changes to the Obligors*).

**“Incremental Facility Commitment”** means an Incremental Revolving Facility Commitment or an Incremental Term Facility Commitment.

**“Incremental Facility Increase Notice”** means a notice substantially in the form set out in Part 2 (*Form of Incremental Facility Increase Notice*) of Schedule 12 (*Incremental Facility Increase Notice*) delivered by the Parent to the Agent in accordance with Clause 2.3 (*Incremental Facility*).



**“Incremental Facility Lender”** means:

- (a) any Original Incremental Facility Lender; and
- (b) any bank or financial institution, trust, fund or other person which has become an Incremental Facility 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 Party in accordance with the terms of this Agreement.

**“Incremental Facility Loan”** means an Incremental Term Facility Loan or an Incremental Revolving Facility Loan.

**“Incremental Financial Covenant Revolving Facility”** means an Incremental Revolving Facility which is specified to benefit from the Revolving Facility Financial Covenant in the Incremental Facility Increase Notice pursuant to which that Incremental Revolving Facility is established.

**“Incremental MFN Term Facility”** means an Incremental Term Facility that is:

- (a) a floating rate debt facility with banks or other institutional lenders providing for term loans that is underwritten or arranged by mandated arrangers with the primary goal of being distributed and broadly syndicated to institutional investors in the international syndicated loan markets (for the avoidance of doubt excluding, without limitation, revolving credit facilities, bilateral facilities and club credit facilities provided by relationship lenders);
- (b) secured by all or substantially all of the Transaction Security on a *pari passu* basis with Facility B; and
- (c) initially incurred under paragraph (b)(i)(C) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*).

**“Incremental Revolving Facility”** has the meaning given to that term in Clause 2.3 (*Incremental Facility*).

**“Incremental Revolving Facility Commitments”** means, in relation to an Incremental Revolving Facility:

- (a) in relation to an Original Incremental Facility Lender under such Incremental Revolving Facility, the aggregate amount of any commitments made available by it pursuant to paragraph (a)(ii) of Clause 2.3 (*Incremental Facility*) and identified in the relevant Incremental Facility Increase Notice and attributable to that Original Incremental Facility Lender and the amount of any other Incremental Revolving Facility Commitment under that Incremental Revolving Facility 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 aggregate amount of any Incremental Revolving Facility Commitments under such Incremental Revolving Facility transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

(in each case, including any Extended Revolving Facility Commitments with respect to such Incremental Revolving Facility), to the extent not:

(i) cancelled, reduced or transferred by it under this Agreement; or

(ii) deemed to be zero pursuant to Clause 29.15 (*Notifiable Debt Purchase Transactions*).

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

**“Incremental Term Facility”** has the meaning given to that term in Clause 2.3 (*Incremental Facility*).

**“Incremental Term Facility Commitment”** means, in relation to an Incremental Term Facility:

- (a) in relation to an Original Incremental Facility Lender under such Incremental Term Facility, the aggregate amount of any commitments made available by it pursuant to paragraph (a)(i) of Clause 2.3 (*Incremental Facility*) and identified in the relevant Incremental Facility Increase Notice and attributable to that Original Incremental Facility Lender and the amount of any other Incremental Term Facility Commitment under that Incremental Term Facility 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 aggregate amount of any Incremental Term Facility Commitments under such Incremental Term Facility transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

(in each case, including any Extended Term Loans with respect to such Incremental Term Facility), to the extent not:

(i) cancelled, reduced or transferred by it under this Agreement; or

(ii) deemed to be zero pursuant to Clause 29.15 (*Notifiable Debt Purchase Transactions*).

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

**“Independent Debt Fund”** means, in relation to any person or any Affiliate of such person, any trust, fund or other entity which has been established for the purpose of making, purchasing or investing in loans or debt securities (but which has not been formed specifically with a view to investing in the Loans or the Facilities) and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by that person or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of companies (and, for the avoidance of doubt, but without limitation, an entity, trust or fund shall be treated as being managed independently from all other trusts, funds or other entities managed or controlled by that person or that Affiliate, if it has a different general partner (or equivalent)).

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

**“Initial Revolving Facility Commitment”** means:

- (a) in relation to an Original Lender, the amount in the Base Currency set out opposite its name under the heading ‘Revolving Facility Commitment’ in Part 4 (*The Original Lenders*) of

Schedule 1 (*The Original Parties*) and the amount of any other Initial Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*); and

(b) in relation to any other Lender, the amount in the Base Currency of any Initial Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*),

(in each case, including any Extended Revolving Facility Commitments with respect to the Initial Revolving Facility Commitments), to the extent not:

(i) cancelled, reduced or transferred by it under this Agreement; or

(ii) deemed to be zero pursuant to paragraph (l) of Clause 29.3 (*Conditions of assignment or transfer*) or Clause 29.15 (*Notifiable Debt Purchase Transactions*).

**“Initial Revolving Facility Lender”** means a Lender under the Initial Revolving Facility.

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

**“Insolvency Event”** in relation to a Finance Party means the appointment of a liquidator, receiver, administrative receiver, receiver and manager, interim receiver, manager, monitor, trustee, administrator, compulsory manager or other similar officer in respect of that Finance Party or all or substantially all of that Finance Party’s assets or any analogous procedure or step is taken in any jurisdiction (all other than by way of an Undisclosed Administration) with respect to that Finance Party or that Finance Party becomes the subject of any Bail-In Action by a Resolution Authority.

**“Intercreditor Agreement”** means the intercreditor agreement dated on or about the date of this Agreement and made between, amongst others, the Parent, the Company, the Agent and the Security Agent.

**“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 14.4 (*Default Interest*).

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

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

**“Investments”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“Investors”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**IRS**” means the US Internal Revenue Service.

“**Issuing Bank**” means any Lender (or Affiliate of a 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 (or Affiliate of a Lender) has so agreed, such Lenders (and Affiliates of Lenders) shall be referred to, whether acting individually or together, as the Issuing Bank) *provided that*, in respect of a Letter of Credit issued or to be issued pursuant to the terms of this Agreement, the Issuing Bank shall be the Issuing Bank which has issued or agreed to issue that Letter of Credit.

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

“**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 relevant Available Facility immediately prior to the issue of that Letter of Credit, adjusted to reflect any assignment under this Agreement to or by that Lender.

“**Legal Opinion**” means any legal opinion delivered to the Agent under or in connection with this Agreement (including pursuant to Clause 30 (*Changes to the Obligors*)).

“**Legal Reservations**” means:

- (a) the principle that certain remedies may be granted or refused at the discretion of the court, the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and secured creditors;
- (b) the time barring of claims under applicable limitation laws (including the Limitation Acts) and defences of acquiescence, set-off or counterclaim and the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void;
- (c) the principle that in certain circumstances Security granted by way of fixed charge may be recharacterised as a floating charge or that Security purported to be constituted as an assignment may be recharacterised as a charge;
- (d) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (e) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (f) the principle that the creation or purported creation of Security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which Security has purportedly been created;
- (g) the possibility that a non-exclusive choice of jurisdiction provision in any agreement or instrument, or a provision which gives some (but not all) of the parties to the relevant agreement or instrument (or any Receiver or Delegate) a right to commence proceedings in jurisdictions other than the jurisdiction specified in that agreement or instrument as being the most appropriate and convenient forum to settle disputes, may not be enforceable;

- (h) similar principles, rights and defences under the laws of any relevant jurisdiction; and
- (i) any other matters which are set out as qualifications or reservations (however described) as to matters of law in the Legal Opinions.

“**Lender**” means:

- (a) any Original Lender;
- (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*), 2.3 (*Incremental Facility*)) or Clause 29 (*Changes to the Lenders*); and
- (c) any Additional Refinancing Lender,

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 8 (*Form of Letter of Credit*) or in any other form requested by a Revolving Facility Borrower (or the Parent on its behalf) and agreed by the Issuing Bank; or
- (b) any guarantee, indemnity or other instrument in a form requested by a Revolving Facility Borrower (or the Parent on its behalf) and agreed by the Agent and the Issuing Bank.

“**LIBOR**” means, in relation to any Term Rate Loan other than a Term Rate Loan in EUR:

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

and if, in either case, that rate is (i) in the case of the Initial Revolving Facility, less than zero, LIBOR shall be deemed to be zero, (ii) in the case of Facility B1, is less than 0.50% per annum, LIBOR shall be deemed to be 0.50% per annum and (iii) in the case of any Incremental Facility, less than the percentage rate per annum specified in the relevant Incremental Facility Increase Notice (the “**LIBOR Floor Rate**”), LIBOR shall be deemed to be the relevant LIBOR Floor Rate.

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

“**Limited Condition Transaction**” means:

- (a) any Investment or acquisition (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Capital Stock or otherwise and which may include, for the avoidance of doubt, a transaction that may constitute a Change of Control), or other transaction;
- (b) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness, Disqualified Stock or Preferred Stock;
- (c) any Restricted Payment; and

(d) any Asset Sale or a disposition excluded from the definition of “Asset Sale”.

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

“**Loan**” means a Term Loan, a Revolving Facility Loan or an Incremental Facility Loan.

“**Long Derivative Instrument**” means a Derivative Instrument:

- (a) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with positive changes to any of the Performance References; and/or
- (b) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with negative changes to any of the Performance References.

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

“**LTM EBITDA**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Major Event of Default**” means any event or circumstance constituting an Event of Default under any of paragraphs (a) and (b) of Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*) (in so far as it relates to payment of principal and/or interest only), paragraph (c) (*Other obligations*) of Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*) insofar as it relates to a breach of any Major Undertaking in a material respect, Clause 28.2 (*Misrepresentation*) insofar as it relates to a breach of any Major Representation in a material respect and under any of paragraphs (f) and (g) of Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*), in each case as it relates to:

- (a) in the case of a Certain Funds Utilisation, the Parent only (and excluding: (x) any procurement obligations on the part of the Parent with respect to any other member of the Group; and (y) any failure to comply, breach or Default by any other member of the Group); and
- (b) in the case of any other acquisition permitted by the terms of this Agreement or an Agreed Certain Funds Utilisation, the applicable Agreed Certain Funds Obligor(s) only (and excluding: (x) any procurement obligations on the part of the Agreed Certain Funds Obligor(s) with respect to any other member of the Group; and (y) any failure to comply, breach or Default by any other member of the Group).

“**Major Representation**” means a representation or warranty under any of Clause 24.1 (*Status*), Clause 24.2 (*Binding obligations*), Clause 24.3 (*Non-conflict with other obligations*) (other than paragraph (c) therein) and Clause 24.4 (*Power and authority*), in each case as it relates to:

- (a) in the case of a Certain Funds Utilisation, the Parent only (and excluding: (x) any procurement obligations on the part of the Parent with respect to any other member of the Group; and (y) any failure to comply, breach or Default by any other member of the Group); and
- (b) in the case of any other acquisition permitted by the terms of this Agreement or an Agreed Certain Funds Utilisation, the applicable Agreed Certain Funds Obligor(s) only (and excluding: (x) any procurement obligations on the part of the Agreed Certain Funds

Obligor(s) with respect to any other member of the Group; and (y) any failure to comply, breach or Default by any other member of the Group).

**“Major Undertaking”** means any of Section 3 (*Liens*), Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*), Section 5 (*Asset Sales*) and Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*), in each case as it relates to:

- (a) in the case of a Certain Funds Utilisation, the Parent only (and excluding: (x) any procurement obligations on the part of the Parent with respect to any other member of the Group; and (y) any failure to comply, breach or Default by any other member of the Group); and
- (b) in the case of any other acquisition permitted by the terms of this Agreement or an Agreed Certain Funds Utilisation, the applicable Agreed Certain Funds Obligor(s) only (and excluding: (x) any procurement obligations on the part of the Agreed Certain Funds Obligor(s) with respect to any other member of the Group; and (y) any failure to comply, breach or Default by any other member of the Group).

**“Majority Facility B Lenders”** means Facility B Lenders whose Facility B Commitments aggregate more than 50% of the Total Facility B Commitments (or, if the Total Facility B Commitments have been reduced to zero, aggregated more than 50% of the Total Facility B Commitments immediately prior to that reduction), *provided that* the Commitments of any Defaulting Lenders shall in each case be excluded for the purposes of making any determination of Majority Facility B Lenders.

**“Majority Financial Covenant Revolving Facility Lenders”** means, at any time, a Lender or Lenders whose Revolving Facility Commitments under the Initial Revolving Facility and any Incremental Financial Covenant Revolving Facility aggregate more than 50% of the Total Financial Covenant Revolving Facility Commitments (or, if the Total Financial Covenant Revolving Facility Commitments have been reduced to zero, aggregated more than 50% of the Total Financial Covenant Revolving Facility Commitments immediately prior to that reduction) *provided that* the Commitments of any Defaulting Lenders shall in each case be excluded for the purposes of making any determination of Majority Financial Covenant Revolving Facility Lenders.

**“Majority Incremental Term Facility Lenders”** has the meaning given to that term in paragraph (d) of the definition of “Majority Lenders”.

**“Majority Lenders”** means:

- (a) in the context of a proposed consent, amendment or waiver in relation to a proposed Utilisation of Facility B of any of the conditions in Clause 4.2 (*Further conditions precedent*) or Clause 4.5 (*Utilisations during the Certain Funds Period*) (as applicable), the Majority Facility B Lenders;
- (b) in the context of a proposed consent, amendment or waiver in relation to a proposed Utilisation of the Initial Revolving Facility of any of the conditions in Clause 4.2 (*Further conditions precedent*), Clause 4.5 (*Utilisations during the Certain Funds Period*) or Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*) (as applicable), a Lender or Lenders whose Initial Revolving Facility Commitments aggregate more than 50% of the Total Initial Revolving Facility Commitments;

- (c) in the context of a proposed consent, amendment or waiver in relation to a proposed Utilisation of an Incremental Revolving Facility of any of the conditions in Clause 4.2 (*Further conditions precedent*) or Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*) (as applicable), a Lender or Lenders whose Incremental Revolving Facility Commitments in respect of that Incremental Revolving Facility aggregate more than 50% of the Total Incremental Revolving Facility Commitments in respect of that Incremental Revolving Facility;
- (d) in the context of a proposed consent, amendment or waiver in relation to a proposed Utilisation of an Incremental Term Facility of any of the conditions in Clause 4.2 (*Further conditions precedent*) or Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*) (as applicable), a Lender or Lenders whose Incremental Term Facility Commitments in respect of that Incremental Term Facility aggregate more than 50% of the Total Incremental Term Facility Commitments in respect of that Incremental Term Facility (in relation to each such Incremental Term Facility, the “**Majority Incremental Term Facility Lenders**”); and
- (e) otherwise a Lender or Lenders whose Commitments aggregate more than 50% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 50% of the Total Commitments immediately prior to that reduction) (and for this purpose the amount of an Ancillary Lender’s Revolving Facility Commitment shall not be reduced by the amount of its Ancillary Commitment),

*provided that* the Commitments of any Defaulting Lenders shall in each case be excluded for the purposes of making any determination of Majority Lenders pursuant to any of paragraphs (a) to (e) above.

“**Majority Revolving Facility Lenders**” means Lenders whose Revolving Facility Commitments aggregate more than 50% of the Total Revolving Facility Commitments (and for this purpose the amount of an Ancillary Lender’s Revolving Facility Commitment shall not be reduced by the amount of its Ancillary Commitment) *provided that* the Commitments of any Defaulting Lenders shall in each case be excluded for the purposes of making any determination of Majority Revolving Facility Lenders and provided further that for the avoidance of doubt any Revolving Facility Commitments established pursuant to Clause 2.3 (*Incremental Facility*) shall be included as Revolving Facility Commitments for the purposes of this definition.

“**Management Stockholders**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Margin**” means:

- (a) in relation to any Facility B1 Loan, 2.75% per annum;
- (b) in relation to any Facility B2 Loan, 3.00% per annum;
- (c) in relation to any Initial Revolving Facility Loan, 2.25% per annum;
- (d) in relation to any Incremental Facility Loan, the percentage rate per annum specified by the Parent in the relevant Incremental Facility Increase Notice;



(e) in relation to any Refinancing Term Loan or Other Revolving Facility Loan, the percentage rate per annum specified in the relevant Refinancing Amendment relating to such Refinancing Term Loan or Other Revolving Facility Loan, as applicable;

(f) in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility; and

(g) in relation to any other Unpaid Sum, the highest rate specified above,

but if:

(i) no Material Event of Default has occurred and is continuing; and

(ii) the Consolidated First Lien Debt Ratio in respect of the most recently completed Relevant Period is within a range set out below,

then the Margin for each Loan under an Incremental Facility will be the percentage per annum agreed with the relevant Incremental Facility Lenders and as indicated for that range in the relevant Incremental Facility Increase Notice for those Incremental Facility Commitments, the Margin for each relevant Refinancing Term Loan or Other Revolving Facility Loan will be the percentage per annum agreed with the relevant Lenders and/or Additional Refinancing Lenders and as indicated for that range in the relevant Refinancing Amendment for those Refinancing Term Loans or Other Revolving Facility Loans, and the Margin for each Loan under Facility B and the Initial Revolving Facility will be the percentage per annum set out below in the column for the relevant Facility opposite that range (with no limit on the reduction to be effected on any date of determination):

<b>Consolidated First Lien Debt Ratio</b>	<b>Facility B1 Margin % p.a.</b>	<b>Facility B2 Margin % p.a.</b>	<b>Initial Revolving Facility Margin % p.a.</b>
Greater than 3.70:1	2.75%	3.00%	2.25%
Equal to or less than 3.70:1 but greater than 3.50:1	2.75%	2.75%	2.25%
Equal to or less than 3.50:1 but greater than 3.00:1	2.75%	2.75%	2.00%
Equal to or less than 3.00:1	2.75%	2.75%	1.75%

However:

(A) any increase or decrease in the Margin for a Loan shall take effect on the Business Day after receipt by the Agent of the Compliance Certificate for that Relevant Period pursuant to Clause 25.2 (*Compliance Certificates*) (including any Voluntary Compliance Certificate).

(B) if, following receipt by the Agent of the Annual Financial Statements of the Group and related Compliance Certificate, those statements and Compliance Certificate demonstrate that (I) the Margin should have been reduced in accordance with the above table or (II) the Margin should not

have been reduced in accordance with the above table, the next payment of interest under the relevant Facility following receipt of the relevant Annual Financial Statements by the Agent shall be increased or reduced (as the case may be) by such amount as is necessary to put the Agent, the Lenders and the Group (but with respect to payments to Lenders, only to Lenders who were participating in the Facilities both at the time to which the adjustments relate and the time when the adjustments are actually made) in the position they should have been in had the appropriate rate of Margin been applied at the time. The Agent's determination of the adjustments payable shall be prima facie evidence of such adjustments and the Agent shall if so requested by the Parent provide the Parent with reasonable details of the calculation of such adjustments;

- (C) while a Material Event of Default is continuing, the Margin for each Loan under Facility B and the Initial Revolving Facility shall be the highest percentage per annum set out above for a Loan under that Facility (or, in respect of any Incremental Facility Loan, the highest percentage rate per annum set out in the Incremental Facility Increase Notice in respect of the relevant Incremental Facility Commitments) *provided that*, once such Material Event of Default is remedied or waived, the applicable Margin shall be recalculated on the basis of the then most recently delivered Compliance Certificate and any variation of the Margin will apply with effect from the first day after that Material Event of Default ceased to be continuing; and
- (D) for the purpose of determining the Margin, the Consolidated First Lien Debt Ratio and Relevant Period shall be determined in accordance with Clause 1.3 (*Calculations*), Clause 26.2 (*Financial calculations*), Schedule 17 (*General Undertakings*) and Schedule 19 (*Certain New York Law Defined Terms*).

**"Market Disruption Event"** has the meaning given to that term in Clause 16.4 (*Market disruption*).

**"Market Disruption Rate"** means the rate (if any) specified as such in the applicable Compounded Rate Terms.

**"Material Adverse Effect"** means any event or circumstance which, in each case (after taking into account all mitigating factors or circumstances, including any warranty, indemnity or other resources available to the Group or right of recourse against any third party with respect to the relevant event or circumstance and any obligation of any person in force to provide any additional equity investment), has a material adverse effect on the consolidated business, assets or financial condition of the Group (taken as a whole) such that the Group (taken as a whole) would be reasonably likely to be unable to perform its payment obligations under the Finance Documents.

**"Material Event of Default"** means an Event of Default under paragraphs (a) and (b) of Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*) (in respect of non-payment of interest or principal under this Agreement only) or paragraphs (f) and (g) of Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*).

**"Material Subsidiary"** means:

- (a) until the first set of Annual Financial Statements and accompanying Compliance Certificate are delivered, each wholly-owned Restricted Subsidiary of the Parent which has unconsolidated earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA taking each entity on an unconsolidated basis and excluding all intra-Group items) representing more than 5% of the EBITDA of the Group (as determined by reference to the Group's most recently available annual audited financial statements ); and
- (b) following delivery of the first set of Annual Financial Statements and accompanying Compliance Certificate, each wholly-owned Restricted Subsidiary of the Parent which has unconsolidated earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA taking each entity on an unconsolidated basis and excluding all intra-Group items) representing more than 5% of the EBITDA of the Group (as determined by reference to the most recent Compliance Certificate supplied by the Company or the Parent with the Annual Financial Statements in each Financial Year ending after the Closing Date, or, at the Parent's election, any more recent financial statements delivered to the Agent shall, in the absence of manifest error, be conclusive and binding on all Parties ).

**"MFN Threshold"** means the greater of \$430 million and 100% of LTM EBITDA (or its equivalent in other currencies) (or such other amount as agreed between the Parent and the Majority Facility B Lenders).

**"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) other than where paragraph (b) below applies:
  - (i) (subject to paragraph (iii) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
  - (ii) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
  - (iii) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end; and
- (b) in relation to an Interest Period for any Loan (or any other period for the accrual of commission or fees) in a Compounded Rate Currency for which there are rules specified as "Business Day Conventions" in respect of that currency in the applicable Compounded Rate Terms, those rules shall apply.

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

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

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

**“Net Short Lender”** means any Lender which has a Net Short Position with respect to its Commitments and/or participation in any Facility, *provided that*:

- (a) any Lender which is a deposit taking financial institution authorised by a financial services regulator; and
- (b) any Original Lender having an Initial Revolving Facility Commitment as at the date of this Agreement or any of such Original Lender’s Affiliates,

shall not, in each case, be a Net Short Lender.

**“Net Short Position”** means, with respect to a Lender, as of a date of determination, either:

- (a) the value of its Short Derivative Instruments exceeds the sum of:
  - (i) the value of its Commitments and/or participation in any Facility; plus
  - (ii) the value of its Long Derivative Instruments as of such date of determination; or
- (b) it is reasonably expected that paragraph (a) above would be the case were a Failure to Pay or Bankruptcy Credit Event (each as defined in the 2014 ISDA Credit Derivatives Definitions (as published by the International Swaps and Derivatives Association, Inc.)) to have occurred with respect to the Parent or any other member of the Group immediately prior to such date of determination.

**“New Lender”** has the meaning given to that term in Clause 29.2 (*Assignments by Lenders*).

**“New York Law Provisions”** means Clause 1.3 (*Calculations*), Clause 1.4 (*Limited Condition Transactions*), paragraph (a) of Clause 12.1 (*Change of Control*), Schedule 16 (*Information Undertakings*), Schedule 17 (*General Undertakings*), Schedule 18 (*Events of Default*) and Schedule 19 (*Certain New York Law Defined Terms*).

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

- (a) other than any Original Lender and their Affiliates, is not an Acceptable Bank within the meaning of paragraph (a) of the definition of “Acceptable Bank” (other than a Lender which each Issuing Bank has agreed is acceptable to it notwithstanding that fact);
- (b) is a Defaulting Lender; or
- (c) has failed to make (or has notified the Agent and the Parent that it will not make) a payment to be made by it under Clause 7.3 (*Indemnities*) or Clause 31.11 (*Lenders’ indemnity to the Agent*) or any other payment to be made by it under the Finance Documents to or for the account of any other Finance Party in its capacity as Lender by the due date for payment unless the failure to pay falls within the description of any of those items set out at paragraphs (i) and (ii) of the definition of “Defaulting Lender”.

**“Non-Cash Compensation Liabilities”** means any non-cash liabilities recorded in connection with stock-based awards, partnership interest-based awards, awards of profits interests, deferred compensation awards and similar incentive based compensation awards or arrangements.

**“Non-Consenting Lender”** has the meaning given to that term in Clause 40.7 (*Replacement of Lender*).

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

**“Obligors’ Agent”** means the Parent as appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.5 (*Obligors’ Agent*).

**“Officer”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“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 Borrower”** means each Original RCF Borrower and each Original TLB Borrower.

**“Original Financial Statements”** means the audited consolidated financial statements of the Group for the financial year ended 31 December 2020.

**“Original Guarantor”** means each entity listed in Part 3 (*The Original Guarantors*) of Schedule 1 (*The Original Parties*).

**“Original Incremental Facility Lender”** has the meaning given to that term in Clause 2.3 (*Incremental Facility*).

**“Original Obligor”** means the Original Borrowers and the Original Guarantors.

**“Original RCF Borrower”** means each entity listed in Part 2 (*The Original RCF Borrowers*) of Schedule 1 (*The Original Parties*).

**“Original Senior Secured Notes”** the senior secured notes due 2029 issued by the Original Senior Secured Notes Issuers on or about the date of this Agreement.

**“Original Senior Secured Notes Indenture”** means the indenture governing the Original Senior Secured Notes.

**“Original Senior Secured Notes Issuers”** means each of Paysafe Finance PLC and Paysafe Holdings (US) Corp.

**“Original TLB Borrower”** means each entity listed in Part 1 (*The Original TLB Borrowers*) of Schedule 1 (*The Original Parties*).

**“Other Revolving Facility Commitments”** means:

- (a) in relation to an Additional Refinancing Lender, the aggregate amount of any revolving facility commitments made available pursuant to Clause 40.4 (*Refinancing Amendments*) and identified in the relevant Refinancing Amendment relating to such Other Revolving Facility Commitments and attributable to that Additional Refinancing Lender and the amount of any other Other Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*); and

(b) in relation to any other Lender, the aggregate amount of any Other Revolving Facility Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*),

to the extent not:

(i) cancelled, reduced or transferred by it under this Agreement; or

(ii) deemed to be zero pursuant to paragraph (l) of Clause 29.3 (*Conditions of assignment or transfer*) or Clause 29.15 (*Notifiable Debt Purchase Transactions*).

**“Other Revolving Facility Loan”** means a loan made or to be made pursuant to any Other Revolving Facility Commitments or the principal amount outstanding for the time being of that loan.

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

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

**“Perfection Requirements”** means the making or the procuring of the appropriate registrations, filing, endorsements, notarisation, stampings and/or notifications of the Transaction Security Documents and/or the Security created thereunder.

**“Performance References”** means:

(a) the value and/or performance of any Facility; and/or

(b) the creditworthiness of the Parent and/or any one or more members of the Group.

**“Permitted Earlier Maturity Indebtedness Exception”** means, with respect to any Incremental Term Facility Loans, an aggregate principal amount of such Incremental Term Facility Loans not exceeding the greater of \$430 million and 100% LTM EBITDA may have a maturity date that is earlier than the original Termination Date applicable to Facility B, and a Weighted Average Life to Maturity that is shorter than the Facility B Loans or the latest maturity or expiration date applicable to any Term Loans outstanding at the time such Indebtedness is incurred or issued.

**“Permitted Holder”** has the meaning given to that term in Clause 12.1 (*Change of Control*).

**“Permitted Indebtedness”** means any Indebtedness which is permitted or not prohibited by this Agreement.

**“Permitted Reorganisation”** means any amalgamation, demerger, merger, voluntary liquidation, consolidation, reorganisation, winding up or corporate reconstruction involving the Parent or any of the Restricted Subsidiaries, including, without limitation, as set out in or contemplated by the Tax Structure Memorandum (a **“Reorganisation”**), that is made on a solvent basis; provided that if any shares or other assets form part of the Charged Property, substantially equivalent Liens must be granted over such shares or assets of the recipient such that they form part of the Charged Property.

**“Permitted Transaction”** means:

- (a) any step, circumstance, payment, event, reorganisation or transaction contemplated by or relating to the Transaction Documents or the Tax Structure Memorandum and any intermediate steps or actions necessary to implement the steps, circumstances, payments or transactions described in each such document;
- (b) any merger, reorganisation, dissolution or liquidation permitted by Section 7 (*Merger, Consolidation or Sale of All or Substantially All Assets*) of Schedule 17 (*General Undertakings*);
- (c) a Permitted Reorganisation;
- (d) the Transactions and any steps, payments or transactions in connection with the funding of the Facilities;
- (e) any step, circumstance or transaction which is mandatorily required by law (including arising under an order of attachment or injunction or similar legal process);
- (f) any conversion of a loan, credit or any other indebtedness outstanding into distributable reserves, share capital, share premium or other equity interests of any member of the Group or any other capitalisation, forgiveness, waiver, release, distribution or other discharge of any loan, credit or other indebtedness, in each case on a cashless basis;
- (g) any transfers, movements and/or write-downs of Settlement Cash Balances or other Settlement Assets in the ordinary course of trading;
- (h) any “Liabilities Acquisition” (as defined in the Intercreditor Agreement);
- (i) any intermediate steps or actions necessary or desirable to implement steps, circumstances, payments, events, reorganisations, activities, arrangements or transactions permitted by this Agreement; and
- (j) any payment or any transaction to which the Agent (acting on the instructions of the Majority Lenders) shall have given prior written consent or which is a Structural Adjustment.

“**Permitted Plan**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Preferred Stock**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Pro Rata Share**” means, in relation to a Lender and a Facility, the proportion which a Lender’s Commitment under that Facility bears to the aggregate of all of the Commitments under that Facility.

“**Quarter Date**” means each of 31 December, 31 March, 30 June and 30 September or such other dates which correspond to the quarter end dates within the Financial Year.

“**Quarterly Financial Statements**” has the meaning given to that term in paragraph (c) of Section 1 (*Financial Statements*) of Schedule 16 (*Information Undertakings*).

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

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

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

**“Quoted Tenor”** means, in relation to the Screen Rate for EURIBOR for any Term Rate Loans in EUR, LIBOR for any Term Rate Loans in USD or CDOR for any Term Rate Loans in CAD, any period for which that Screen Rate is customarily displayed on the relevant page or screen of an information service.

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

**“Reference Bank Quotation”** means any quotation supplied to the Agent by a Base Reference Bank.

**“Refinancing”** has the meaning given to that term in Clause 3.1 (*Purpose*).

**“Refinancing Amendment”** means an amendment to this Agreement executed by each of (a) the Parent, (b) the Agent, (c) each Additional Refinancing Lender and (d) each Lender that agrees to provide any portion of Refinancing Term Loans, Other Revolving Facility Commitments or Other Revolving Facility Loans incurred pursuant thereto, in accordance with Clause 40.4 (*Refinancing Amendments*).

**“Refinancing Term Commitments”** means:

- (a) in relation to an Additional Refinancing Lender, the aggregate amount of any term facility commitments made available pursuant to Clause 40.4 (*Refinancing Amendments*) and identified in the relevant Refinancing Amendment relating to such Refinancing Term Commitments and attributable to that Additional Refinancing Lender and the amount of any other Refinancing Term Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*); and
- (b) in relation to any other Lender, the aggregate amount of any Refinancing Term Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 2.3 (*Incremental Facility*),

to the extent not:

- (i) cancelled, reduced or transferred by it under this Agreement; or
- (ii) deemed to be zero pursuant to paragraph (l) of Clause 29.3 (*Conditions of assignment or transfer*) or Clause 29.15 (*Notifiable Debt Purchase Transactions*).

**“Refinancing Term Loan”** means a loan made or to be made pursuant to any Refinancing Term Commitments or the principal amount outstanding for the time being of that loan.

**“Register”** has the meaning given to that term in Clause 29.10 (*The Register*).



**“Regulated Entity”** means each member of the Group whose business activities are subject to licence, supervised or regulated by a Relevant Regulator.

**“Related Fund”** in relation to a fund (a **“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 Currency Facility”** means, with respect to a currency, each Facility for which the relevant currency constitutes:

- (a) the Base Currency; or
- (b) an Optional Currency that is available for utilisation under that Facility without any requirement for further consent on the part of any Finance Party.

**“Relevant Currency Lenders”** means, with respect to a currency, the Lenders under each Relevant Currency Facility for that currency.

**“Relevant Currency Majority Lenders”** means, with respect to a currency, a Relevant Currency Lender or Relevant Currency Lenders whose Commitments under the Relevant Currency Facilities aggregate more than 50% of the aggregate Commitments under the Relevant Currency Facilities for that currency.

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

- (a) its jurisdiction of incorporation; and
- (b) the jurisdiction whose laws govern any of the Transaction Security Documents entered into by it.

**“Relevant Market”** means:

- (a) subject to paragraph (b) below:
  - (i) in relation to euro, the European interbank market;
  - (ii) in relation to CAD, the market for Canadian bankers’ acceptances; and
  - (iii) in relation to any other currency, the London interbank market; and
- (b) in relation to a Compounded Rate Currency, the market specified as such in the applicable Compounded Rate Terms.

**“Relevant Period”** means each period of four consecutive Financial Quarters (which for the avoidance of doubt may include periods prior to the Closing Date).

**“Relevant Regulator”** means the Isle of Man Financial Services Authority, the Swiss Financial Market Supervisory Authority (FINMA), the UK Financial Conduct Authority, the UK Payment Systems Regulator, the UK Competition and Markets Authority, the Financial Services Commission of Mauritius or any other entity, agency, governmental authority or person that has regulatory authority over the business or operations of any member of the Group.

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

**“Repeating Representations”** has the meaning given to that term in Clause 24.15 (*Repetition*).

**“Reporting Day”** means the day specified as such in the applicable Compounded Rate Terms.

**“Reporting Entity”** means the Parent or any other entity that delivers financial statements in accordance with the requirements of Clause 25 (*Information Undertakings*) and/or Schedule 16 (*Information Undertakings*).

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

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

**“Resignation Letter”** means a resignation letter substantially in the form set out in Schedule 14 (*Form of Resignation Letter*) delivered in accordance with Clause 30.3 (*Resignation of a Borrower*) and Clause 30.5 (*Resignation of a Guarantor*).

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

**“Restricted Asset”** means, in relation to any Regulated Entity:

- (a) the regulatory capital that a Regulated Entity is required to maintain pursuant to any Capital Requirement;
- (b) the Settlement Cash Balances of that Regulated Entity and any other cash held by or on behalf of that Regulated Entity for merchants, End Users, Card Schemes, cardholders of any Card Scheme, banks, financial institutions or other similar entity or person;
- (c) any amounts held by or on behalf of that Regulated Entity (including, without limitation, in Segregated Accounts) in accordance with the terms of a licence, order, rule, principle, guideline or guidance issued by a Relevant Regulator and/or the Payment Services Directive (PSD, 2007/64/EC), the Second Payment Services Directive (PSD 2, (EU) 2015/2366) or the E-Money Directive or any relevant implementing regulation or legislation (including but not limited to the Electronic Money Regulations 2011, the Payment Services Regulations 2009 and/or the Payment Services Regulations 2017), as amended and/or replaced from time to time, for merchants, other payment service users or payment service providers, End Users, Card Schemes, cardholders of any Card Scheme, banks, financial institutions or other similar entity or person;
- (d) any sums receivable by or on behalf of that Regulated Entity from or under any End User, Card Scheme, bank, financial institution or other similar entity or person for onward transmission or remittance to a merchant;
- (e) any sums receivable by or on behalf of that Regulated Entity from a merchant for onward transmission or remittance to or under any End User, Card Scheme, bank, financial institution or other similar entity or person;

(f) any right, title or interest of that Regulated Entity in or under any letter of credit, guarantee, cash collateral or other financial support or Security provided by a bank, financial institution or other similar entity (or an affiliate thereof) for its account to any End User or Card Scheme counterparty; and

(g) any bank accounts which contain or are reasonably likely to contain any of the aforementioned assets.

“**Restricted Payment**” has the meaning given to that term in Schedule 17 (*General Undertakings*).

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

“**Revolving Facility**” means the Initial Revolving Facility, any Incremental Revolving Facility and/or any Extended Revolving Facility.

“**Revolving Facility Borrower**” means each Original RCF Borrower and any member of the Group which accedes as an Additional Borrower under a Revolving Facility in accordance with Clause 30 (*Changes to the Obligors*), unless it has ceased to be a Revolving Facility Borrower in accordance with Clause 30 (*Changes to the Obligors*).

“**Revolving Facility Commitment**” means in respect of any Lender the aggregate amount of its Initial Revolving Facility Commitments, the aggregate amount of its Incremental Revolving Facility Commitments and/or the aggregate amount of its Other Revolving Facility Commitments.

“**Revolving Facility Financial Covenant**” has the meaning given to that term in paragraph (a) of Clause 26.1 (*Financial Condition*).

“**Revolving Facility Financial Covenant Condition**” has the meaning given to that term in paragraph (b) of Clause 26.1 (*Financial Condition*).

“**Revolving Facility Lender**” means a Lender under a Revolving Facility.

“**Revolving Facility Loan**” means an Initial Revolving Facility Loan, an Incremental Revolving Facility Loan, an Extended Revolving Facility Loan and/or an Other Revolving Facility Loan or, in each case, the principal amount outstanding for the time being of that Loan.

“**Revolving Facility Utilisation**” means a Revolving Facility Loan or a Letter of Credit issued under the Initial Revolving Facility.

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

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

“**Rollover Loan**” means one or more Revolving Facility Utilisations under the same Revolving Facility:

(a) made or to be made on the same day that:

(i) a maturing Revolving Facility Loan under that Revolving Facility is due to be repaid; or

(ii) a payment of outstandings under an Ancillary Facility in connection with that Revolving Facility is due to be met;

- (iii) a demand by the Agent pursuant to a drawing in respect of, or payment by the Group in respect of, a Letter of Credit issued in connection with that Revolving Facility is due to be met;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Revolving Facility Loan, Ancillary Facility Utilisation or the relevant claim in respect of that Letter of Credit;
- (c) in the same currency as the maturing Revolving Facility Loan (unless it arose as a result of the operation of Clause 8.2 (*Unavailability of a currency*)), Ancillary Facility Utilisation or the relevant claim in respect of that Letter of Credit; and
- (d) made or to be made to the same Revolving Facility Borrower (or, if applicable in the case of an Ancillary Facility Utilisation, that Revolving Facility Borrower's Affiliate) or the Parent for the purpose of:
  - (i) refinancing that maturing Revolving Facility Loan or Ancillary Facility Utilisation; or
  - (ii) satisfying the relevant claim in respect of that Letter of Credit.

**“Sanction(s)”** means any international economic sanction administered or enforced by the United States government (including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury), the United Nations Security Council, the European Union or Her Majesty's Treasury.

**“Screen Rate”** means:

- (a) in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on pages LIBOR01 or LIBOR02 of the Thomson Reuters or Refinitiv screen (or any replacement Thomson Reuters or Refinitiv page which displays that rate);
- (b) in relation to EURIBOR, the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Thomson Reuters or Refinitiv screen (or any replacement Thomson Reuters or Refinitiv page which displays that rate); and
- (c) in relation to CDOR, the average discount rates for Canadian bankers' acceptances (with a period to maturity equal in length to the relevant period (disregarding any inconsistency arising from the last day of that period being determined pursuant to the terms of this Agreement)) displayed on page CDOR of the Thomson Reuters or Refinitiv screen (or any replacement Thomson Reuters or Refinitiv page which displays that rate),

or, in each case, on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters or Refinitiv, *provided that* if the agreed page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Parent.

**“Screened Affiliate”** means any Affiliate of a Lender:

- (a) that makes investment decisions independently from such Lender and any other Affiliate of such Lender that is not a Screened Affiliate;
- (b) that has in place customary information screens between it and such Lender and any other Affiliate of such Lender that is not a Screened Affiliate and such screens prohibit the sharing of information with respect to the Parent or any member of the Group;
- (c) whose investment policies are not directed by such Lender or any other Affiliate of such Lender that is acting in concert with such Lender in connection with its Commitment and/or participation in any Facility; and
- (d) whose investment decisions are not influenced by the investment decisions of such Lender or any other Affiliate of such Lender that is acting in concert with such Lender in connection with its Commitment and/or participation in any Facility.

**“Secured Parties”** means each Finance Party from time to time party to this Agreement and any Receiver or Delegate.

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

**“Security Jurisdiction”** means each of the United Kingdom, the United States and the jurisdiction of incorporation of any Borrower.

**“Segregated Accounts”** means a segregated, safeguarding or other similar account established by a member of the Group from time to time into which monies of merchants, other payment service users, other payment service providers, End Users, Card Schemes, cardholders of any Card Scheme, banks, financial institutions or other similar entity or person are paid pending payment on to the relevant merchants, other payment service users, other payment service providers, End Users, Card Schemes, cardholders of any Card Scheme, banks, financial institutions or other similar entity or person, in accordance with the terms of a license, order, rule, principle, guideline or guidance issued by a Relevant Regulator and/or the Payment Services Directive (PSD, 2007/64/EC), the Second Payment Services Directive (PSD 2, (EU) 2015/2366) or the E-Money Directive or any relevant implementing regulation or legislation (including but not limited to the Electronic Money Regulations 2011, the Payment Services Regulations 2009 and/or the Payment Services Regulations 2017), as amended and/or replaced from time to time.

**“Selection Notice”** means a notice substantially in the form set out in Schedule 3 (*Requests and Notices*) given in accordance with Clause 15 (*Interest Periods*).

**“Semi-Annual Financial Statements”** has the meaning given to that term in paragraph (b) of Section 1 (*Financial Statements*) of Schedule 16 (*Information Undertakings*).

**“Semi-Annual Period”** means each period of six months ending on 30 June in each Financial Year.

**“Separate Loans”** has the meaning given to that term in Clause 10.2 (*Repayment of Revolving Facility Loans*).

**“Settlement Assets”** means in the case of each relevant member of the Group:

- (a) any amounts owed to a member of the Group from End Users and/or cardholders of any Card Scheme after taking into account write downs for anticipated doubtful debts;
- (b) any amounts due from an End User, Card Scheme, bank, financial institution or other similar entity or person under Settlement Contracts; and
- (c) any Settlement Cash Balances.

**“Settlement Cash Balances”** means, in the case of each relevant member of the Group, cash in hand or credited to any account with a bank, financial institution or other similar entity and which has been received from an End User, Card Scheme, merchant or cardholder of a Card Scheme or a bank, financial institution or other similar entity or person under Settlement Contracts and is held by or on behalf of a member of the Group (including, without limitation, in Segregated Accounts) or by a person who has entered into a sponsorship agreement with a member of the Group and is holding such cash on behalf of that member of the Group, in each case, for onward payment to End Users, Card Schemes, merchants, cardholders, banks, financial institutions or other similar entities or persons.

**“Settlement Contracts”** means, in the case of each relevant member of the Group, contracts entered into between the relevant member of the Group and (i) merchants or other parties who may refer or introduce merchants for the provision of point of sale, e-commerce gateway, merchant acquiring or related payment processing services (or a combination of such services) or (ii) End Users, Card Schemes, cardholders, banks, financial institutions or other similar entities or persons for the provision of issuer services/processing activities or related issuer services/processing activities (or a combination of such services).

**“Settlement Debt”** means any indebtedness of a member of the Group (including, without limitation, any intra-day or clearing facility) which together with Settlement Assets are used directly or indirectly to pay Settlement Liabilities.

**“Settlement Liabilities”** means in the case of each relevant member of the Group:

- (a) any amounts due from a member of the Group to an End User, Card Scheme, merchant, cardholder of a Card Scheme, bank, financial institution or other similar entities or persons (including, without limitation, by way of any e-wallet or other account provided or otherwise made available by any member of the Group) under Settlement Contracts; and
- (b) any Settlement Payables.

**“Settlement Payables”** means, in the case of each relevant member of the Group, the amounts payable to an End User, Card Scheme, merchant, cardholder of a Card Scheme, bank, financial institution or other similar entities or persons under Settlement Contracts in respect of transactions which have been notified to the relevant member of the Group including, for the avoidance of doubt, amounts held as deferred settlement or withheld for any other reason from such merchants, End Users, Card Schemes, cardholders, banks, financial institutions or other similar entities or persons.

**“Short Derivative Instrument”** means a Derivative Instrument:

- (a) the value of which generally decreases, and/or the payment or delivery obligations under which generally increase, with positive changes to any of the Performance References; and/or

(b) the value of which generally increases, and/or the payment or delivery obligations under which generally decrease, with negative changes to any of the Performance References.

**“Specified Equity Contribution”** means any cash contribution to the equity or capital of the Parent and/or any purchase of, or investment in, any Equity Interest in the Parent by any Holding Company of the Parent or other person, the proceeds of any Equity Offering or other rights issue or other secondary equity raised by any member of the Group or any Holding Company of any member of the Group and/or the proceeds of any Subordinated Shareholder Funding which, in each case, is made pursuant to paragraph (b) of Clause 28.1 (*Financial covenant*).

**“Specified Time”** means a day or time determined in accordance with Schedule 9 (*Timetables*).

**“Subsidiary”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“Substitute Affiliate Lender”** has the meaning given to that term in Clause 5.6 (*Lender Affiliates and Facility Office*).

**“Substitute Facility Office”** has the meaning given to that term in Clause 5.6 (*Lender Affiliates and Facility Office*).

**“Super Majority Lenders”** means, at any time:

- (a) a Lender or Lenders whose Commitments aggregate 66⅔% or more of the Total Commitments (and for this purpose the amount of an Ancillary Lender’s Revolving Facility Commitments shall not be reduced by the amount of its Ancillary Commitment); and
- (b) if the Total Commitments have been reduced to zero, whose Commitments aggregated to 66⅔% or more of the Total Commitments immediately prior to that reduction.

**“Super Majority Financial Covenant Revolving Facility Lenders”** means, at any time, a Lender or Lenders whose Revolving Facility Commitments under the Initial Revolving Facility and any Incremental Financial Covenant Revolving Facility aggregate 66⅔% or more of the Total Financial Covenant Revolving Facility Commitments (or, if the Total Financial Covenant Revolving Facility Commitments have been reduced to zero, aggregated 66⅔% or more of the Total Financial Covenant Revolving Facility Commitments immediately prior to that reduction) *provided that* the Commitments of any Defaulting Lenders shall in each case be excluded for the purposes of making any determination of Super Majority Financial Covenant Revolving Facility Lenders.

**“Super Majority Revolving Facility Lenders”** means Lenders whose Revolving Facility Commitments aggregate 66⅔% or more of the Total Revolving Facility Commitments (and for this purpose the amount of an Ancillary Lender’s Revolving Facility Commitment shall not be reduced by the amount of its Ancillary Commitment) *provided that* the Commitments of any Defaulting Lenders shall in each case be excluded for the purposes of making any determination of Super Majority Revolving Facility Lenders and provided further that for the avoidance of doubt any Revolving Facility Commitments established pursuant to Clause 2.3 (*Incremental Facility*) shall be included as Revolving Facility Commitments for the purposes of this definition.

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

“**Tax Structure Memorandum**” means, together:

- (a) the tax structure memorandum dated on or prior to the Closing Date prepared by PricewaterhouseCoopers LLP; and
- (b) the corporate simplification memorandum dated on or prior to the Closing Date prepared by PricewaterhouseCoopers LLP.

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

“**Term Facility**” means Facility B, any Incremental Term Facility and/or any Extended Term Facility.

“**Term Loan**” means a Facility B Loan or an Incremental Term Facility Loan.

“**Term Rate Loan**” means any Loan or, if applicable, Unpaid Sum which is not a Compounded Rate Loan.

“**Termination Date**” means:

- (a) in respect of Facility B, the date falling 84 months after the Closing Date;
  - (b) in respect of the Initial Revolving Facility, the date falling 78 months after the Closing Date; and
  - (c) in relation to each Incremental Facility, the date specified in the relevant Incremental Facility Increase Notice,
- in each case, as such date may be amended pursuant to any Extension Amendment or Refinancing Amendment relating to such Facility.

“**Test Date**” means the First Test Date and each subsequent Quarter Date, or if any such date is not a Business Day, the Parent may elect that such date shall be the next Business Day or the immediately preceding Business Day.

“**Testing Period**” means each Relevant Period ending on a Test Date.

“**Third Party Security Provider**” has the meaning given to that term in the Intercreditor Agreement.

“**TLB Borrower**” means the Original TLB Borrower and any member of the Group which accedes as an Additional Borrower under Facility B in accordance with Clause 30 (*Changes to the Obligors*), unless it has ceased to be a TLB Borrower in accordance with Clause 30 (*Changes to the Obligors*).



**“Total Assets”** means the total assets of the Parent and the Restricted Subsidiaries on a consolidated basis in accordance with the relevant Accounting Principles, as shown on the most recent balance sheet of the Parent delivered pursuant to Schedule 16 (*Information Undertakings*).

**“Total Commitments”** means the aggregate of the Total Facility B Commitments, the Total Initial Revolving Facility Commitments, the aggregate Other Revolving Facility Commitments, and any Total Incremental Facility Commitments.

**“Total Facility B Commitments”** means the aggregate of the Total Facility B1 Commitments and the Total Facility B2 Commitments.

**“Total Facility B1 Commitments”** means the aggregate of the Facility B1 Commitments, being \$628,000,000 as at the date of this Agreement.

**“Total Facility B2 Commitments”** means the aggregate of the Facility B2 Commitments, being €435,000,000 as at the date of this Agreement.

**“Total Financial Covenant Incremental Revolving Facility Commitments”** means the aggregate of the Incremental Revolving Facility Commitments under any Incremental Financial Covenant Revolving Facility.

**“Total Financial Covenant Revolving Facility Commitments”** means the aggregate of the Total Initial Revolving Facility Commitments and the aggregate Total Financial Covenant Incremental Revolving Facility Commitments.

**“Total Incremental Facility Commitments”** means the aggregate of the Incremental Facility Commitments, being zero as at the date of this Agreement.

**“Total Incremental Revolving Facility Commitments”** means the aggregate of the Incremental Revolving Facility Commitments.

**“Total Incremental Term Facility Commitments”** means the aggregate of the Incremental Term Facility Commitments.

**“Total Initial Revolving Facility Commitments”** means the aggregate of the Initial Revolving Facility Commitments, being \$305,000,000 as at the date of this Agreement.

**“Total Revolving Facility Commitments”** means the aggregate of the Total Initial Revolving Facility Commitments, the aggregate Total Incremental Revolving Facility Commitments and the aggregate Other Revolving Facility Commitments.

**“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 Group arising in the ordinary course of trading of that member of the Group.

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

**“Transaction Documents”** means the Finance Documents and the Equity Documents.

“**Transaction Security**” means the Security created or expressed to be created in favour of the Security Agent and, where applicable, any other Finance Party, pursuant to the Transaction Security Documents.

“**Transaction Security Documents**” means:

- (a) each of the security documents listed in paragraph 4 of Part 1 of Schedule 2 (*Conditions Precedent*); and
- (b) any security document entered into by an Obligor or Third Party Security Provider required to be delivered to the Agent or the Security Agent pursuant to this Agreement,

together with any other document entered into by any Obligor or Third Party Security Provider creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any Obligor under any of the Finance Documents.

“**Transactions**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

“**Transfer Date**” means, in relation to an assignment, 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.

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

“**UK Borrower**” means a Borrower which is incorporated in the United Kingdom.

“**UK Obligor**” means an Obligor which is incorporated in the United Kingdom.

“**Undisclosed Administration**” means the appointment of an administrator, provisional liquidator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or pursuant to the law in the country where such Finance Party is subject to home jurisdiction suspension, if applicable law requires that such appointment is not to be publically disclosed.

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

“**Unrestricted Asset**” means any asset of a Regulated Entity which is not a Restricted Asset.

“**Unrestricted Subsidiary**” has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

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

**“US Bankruptcy Law”** means the United States Bankruptcy Code of 1978 (Title 11 of the United States Code).

**“US Guarantor”** means any Guarantor that is incorporated or organized under the laws of the US or any state thereof (or the District of Columbia) or that has a place of business or property in the US.

**“US Tax Obligor”** means:

- (a) a Borrower which is resident for tax purposes in the US; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes.

**“USA PATRIOT Act”** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 10756, as amended or modified from time to time.

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

**“Utilisation Date”** means the date of an 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 1 of Schedule 3 (*Requests and Notices*).

**“VAT”** means:

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

**“Voluntary Compliance Certificate”** has the meaning given to that term in paragraph (b) of Clause 25.2 (*Compliance Certificates*).

**“Voting Stock”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“Waived Amount”** has the meaning given to it in paragraph (c) of Clause 12.4 (*Right to refuse prepayment*).

**“Weighted Average Life to Maturity”** has the meaning given to that term in Schedule 19 (*Certain New York Law Defined Terms*).

**“Write-down and Conversion Powers”** means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and

(b) in relation to any other applicable Bail-In Legislation:

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

(ii) any similar or analogous powers under that Bail-In Legislation; and

(c) in relation to any UK Bail-In Legislation:

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

(ii) any similar or analogous powers under that UK Bail-In Legislation.

“Yield” has the meaning given to that term in Clause 17.8 (*Call premium*).

## 1.2 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

(i) a capitalised form not defined in Clause 1.1 (*Definitions*) has the meaning given to that term in Schedule 17 (*General Undertakings*);

(ii) the “**Agent**”, any “**Arranger**”, any “**Bookrunner**”, any “**Finance Party**”, any “**Issuing Bank**”, any “**Lender**”, any “**Obligor**”, any “**Party**”, any “**Secured Party**”, the “**Security Agent**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees 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;

(iii) a document in “**agreed form**” is a document which is previously agreed in writing by or on behalf of the Agent and the Parent;

(iv) “**assets**” includes present and future properties, revenues and rights of every description;

- (v) “**cash**” includes all cash at hand or in transit or in tills or payments made by cheques or debit cards or credit cards which are yet to be received or cleared funds;
- (vi) 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;
- (vii) “**guarantee**” means (other than in Clause 23 (*Guarantees 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;
- (viii) “**indebtedness**” includes any obligation (whether incurred as principal, guarantor, surety or otherwise) for the payment or repayment of money, whether present or future, actual or contingent;
- (ix) the “**Interest Period**” of a Letter of Credit shall be construed as a reference to the Term of that Letter of Credit;
- (x) references to any matter being “**permitted**” under this Agreement or any other Finance Document or other agreement shall (other than in respect of Clause 29 (*Changes to the Lenders*), paragraph (c) of Clause 31.15 (*Relationship with the Lenders*) or any equivalent or substantially similar provision in any other Finance Document or other agreement) include references to such matters not being prohibited or otherwise being approved under this Agreement or such Finance Document or other agreement;
- (xi) 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;
- (xii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, grouping or partnership (whether or not having separate legal personality);
- (xiii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law, but if not having force of law which are binding or customarily complied with) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xiv) a Utilisation made or to be made to a Borrower includes a Letter of Credit issued on its behalf;
- (xv) “**sufficient available information**” means financial information selected and determined by the Parent in good faith in order to test any financial covenant or financial ratio or incurrence-based permission, test, basket or threshold in any Finance Document (including any financial definition or component thereof or any financial ratio, test, basket or threshold or permission based on the calculation of

EBITDA, LTM EBITDA, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio, the Consolidated Total Debt Ratio or the Fixed Charge Coverage Ratio), any Default, Event of Default or other relevant breach of a Finance Document, including information required to be delivered to the Agent under this Agreement as well as other information including monthly management accounts and other internal Group accounts and financial information;

(xvi) a provision of law is a reference to that provision as amended or re-enacted; and

(xvii) a time of day is a reference to London time.

- (b) The determination of the extent to which a rate is for a period equal in length to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) 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.
- (e) A Revolving Facility Borrower providing “**cash cover**” for a Letter of Credit or an Ancillary Facility means a Revolving Facility 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 that Revolving Facility Borrower and the following conditions being met:
- (i) the account is with the Security Agent, the Issuing Bank or the relevant Ancillary Lender for which that cash cover is to be provided;
  - (ii) subject to paragraph (b) of Clause 7.6 (*Regulation and consequences of cash cover provided 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 the relevant Finance Party amounts due and payable to it under this Agreement in respect of that Letter of Credit or Ancillary Facility; and
  - (iii) that Revolving Facility Borrower has executed a security document over that account, in form and substance satisfactory to the Security Agent or Ancillary Lender with which that account is held, creating a first ranking security interest over that account.
- (f) A Default (including an Event of Default) or an Enforcement Event is continuing if it has not been remedied or waived. If any Default, Event of Default or Enforcement Event has occurred but is no longer continuing (a “**Cured Default**”), any other Default, Event of Default or Enforcement Event which would not have arisen had the Cured Default not occurred, shall be deemed not to be continuing automatically upon, and simultaneous with, the remedy or waiver of the Cured Default. For the avoidance of doubt, any Default in respect of a failure to comply with any obligation in a Finance Document to deliver any notice, certificate or other document or information, as applicable, within a prescribed time period (including, without limitation, under Clause 25 (*Information Undertakings*)) shall be deemed to be cured upon performance of such obligation even though such performance is not within the prescribed period specified in any Finance Document.

- (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;
  - (iii) in the case of a Letter of Credit, that Letter of Credit is returned by the beneficiary with its written confirmation that it is released and cancelled;
  - (iv) in the case of a Letter of Credit, a bank or financial institution approved by the Issuing Bank (acting reasonably) has issued an unconditional and irrevocable guarantee, indemnity, counter indemnity or similar assurance against financial loss in respect of amounts due under that Letter of Credit; or
  - (v) 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 (g)(i) and (ii) above is the amount of the relevant cash cover or reduction or, in the case of paragraphs (g)(iii), (iv) and (v) above the full amount payable under such Letter of Credit or Ancillary Outstandings.
- (h) An amount borrowed includes any amount utilised by way of Letter of Credit or under an Ancillary Facility, unless a contrary indication appears.
- (i) A Lender funding its participation in an Utilisation includes a Lender participating in a Letter of Credit.
- (j) Amounts outstanding under this Agreement include amounts outstanding under or in respect of any Letter of Credit.
- (k) An outstanding amount of a Letter of Credit at any time is the maximum amount that is or may be payable by the relevant Revolving Facility Borrower in respect of that Letter of Credit at that time.
- (l) A Revolving Facility Borrower’s obligation on Utilisations becoming due and payable includes that Revolving Facility Borrower repaying any Letter of Credit in accordance with paragraph (g) above.
- (m) A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate or the Cumulative Compounded RFR Rate overrides anything relating to that rate in:
- (i) Schedule 21 (*Daily Non-Cumulative Compounded RFR Rate*) or Schedule 22 (*Cumulative Compounded RFR Rate*), as the case may be; or
  - (ii) any earlier Compounding Methodology Supplement.
- (n) The definitions in this Clause 1 shall apply equally to both the singular and plural forms of the terms defined.

- (o) The obligations of the Obligor and any member of the Group (including any procurement obligation), including but not limited to, the making of any payment, any representation or warranty, general undertaking, any information undertaking or financial covenant under or pursuant to the Finance Documents (other than in relation to the utilisation of the Facilities pursuant to Clause 2 (*The Facilities*) to Clause 9 (*Ancillary Facilities*)), any representation or warranty, general undertaking or event of default referred to in the definitions of Major Event of Default, Major Representation or Major Undertaking (as applicable), Clause 11.1 (*Illegality*), Clause 11.2 (*Illegality in relation to an Issuing Bank*) and Clause 15 (*Interest Periods*), shall not become effective or take effect until and from the date of the first Utilisation in accordance with the terms of this Agreement. This paragraph shall not apply to any term or obligation arising under Clause 20.2 (*Other indemnities*), Clause 20.3 (*Indemnity to the Agent*), Clause 20.4 (*Indemnity to the Security Agent*) and Clause 22.1 (*Transaction expenses*).
- (p) Without prejudice to paragraph (o) above, neither the Existing Facilities Agreement nor any Security related thereto nor any breach of representation, warranty, undertaking or other term of (or default or event of default under) the Existing Facilities Agreement arising as a direct or indirect result of the Refinancing or the entry into or performance of obligations under the Finance Documents, shall constitute a breach of (or Default or Event of Default under) any Finance Document.

### 1.3 Calculations

- (a) For the purposes of determining compliance with any restriction, basket, threshold or permission under this Agreement:
- (i) any reference to an amount in a given currency shall be deemed to include reference to its Currency Equivalent in other currencies;
  - (ii) no amount incurred or utilised under any restriction, basket, threshold or permission will be deemed to be increased as a result of:
    - (A) any change in applicable currency exchange rates after the date on which the Currency Equivalent of such incurrence or utilisation was calculated under this Agreement for the purpose of permitting such incurrence or utilisation; or (B) any election made from time to time under the definition of “GAAP” after the date on which such incurrence or utilisation was calculated under this Agreement for the purpose of permitting such incurrence or utilisation; and
  - (iii) for the avoidance of doubt, any restriction, basket, threshold or permission which would (but for paragraph (ii) above) be exceeded as a result of (A) any change in applicable currency exchange rates; or (B) any election made from time to time under the definition of “GAAP” shall be deemed not to have been exceeded and it shall be deemed that no Default, Event of Default or breach of any representation and warranty or undertaking under this Agreement has arisen in connection therewith.
- (b) If a proposed action, matter, transaction or amount (or a portion thereof) meets the criteria of more than one applicable basket, permission or threshold under this Agreement, the Parent shall be entitled to divide or classify or later divide or reclassify (based on circumstances existing on the date of such reclassification) such action, matter or amount (or a portion thereof) between such baskets, permissions or thresholds as it shall elect from time to time; *provided that*:



(i) if:

- (A) a proposed action, matter, transaction or amount (or a portion thereof) is incurred or entered into pursuant to any baskets, thresholds or exceptions determined by reference to a fixed currency amount or a percentage of LTM EBITDA (a “**Fixed Basket**”) or the grower component of any other basket; and
- (B) at a later time would subsequently be permitted under a ratio-based basket, unless otherwise elected by Parent, such action, matter, transaction or amount (or a portion thereof) shall automatically be reclassified to such ratio-based basket.

(ii) if:

- (A) any transaction is entered into between (x) Parent or any Restricted Subsidiary and (y) any other Person which is not a Restricted Subsidiary on the date of such transaction;
- (B) such transaction is permitted pursuant to a fixed basket or an incurrence-based basket; and
- (C) following such transaction, such other Person becomes a Restricted Subsidiary,

such transaction shall be deemed to be reallocated to any applicable basket allowing transactions of such type to be entered into on an unlimited basis between Parent and a Restricted Subsidiary or between Restricted Subsidiaries.

- (c) Notwithstanding anything to the contrary in this Agreement, in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is committed, incurred, assumed or issued, any Lien is committed, incurred, assumed or issued, any Restricted Payment is made any other transaction is undertaken (including a Limited Condition Transaction), in reliance on a Ratio-based Basket (as defined below) based on the Fixed Charge Coverage Ratio, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio or the Consolidated Total Debt Ratio, (other than for the purposes of testing the Revolving Facility Financial Covenant in accordance with the terms of Clause 26.1 (*Financial condition*)) such ratio(s) shall be calculated without regard to the commitment or incurrence of any Indebtedness under any revolving facility or letter of credit facility (including under any Revolving Facility or Ancillary Facility) (i) immediately prior to or in connection therewith; or (ii) used to finance working capital needs of the Parent and Restricted Subsidiaries (as reasonably determined by the Parent).
- (d) If any Fixed Baskets are intended to be utilised together with any baskets, thresholds or exceptions determined by reference to the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio, the Consolidated Total Debt Ratio, the Fixed Charge Coverage Ratio or any other financial ratio or metric (a “**Ratio-based Basket**”) in a single transaction or action or series of related transactions or actions (for the purposes of this paragraph (d), a “**Relevant Transaction**”):

- (i) amounts available to be incurred under the applicable Ratio-based Baskets shall be calculated without giving effect to amounts to be incurred under the applicable Fixed Baskets in connection with such Relevant Transaction, or amounts previously incurred under such Fixed Basket and not reclassified that are being repaid in connection with such Relevant Transaction, unless otherwise elected by the Parent;
  - (ii) full *pro forma* effect shall be given to all increases to LTM EBITDA and repayments or discharges of Indebtedness in connection with such Relevant Transaction in accordance with this Agreement; and
  - (iii) *pro forma* effect shall not be given to any incurrence or drawing of any Indebtedness used to finance working capital needs of the Parent or any of its Restricted Subsidiaries in connection with the Relevant Transaction (as reasonably determined by the Parent).
- (e) From the date of this Agreement until the date it becomes an Additional Guarantor, each member of the Group which is required to become an Additional Guarantor in accordance with Clause 27.1 (*Covenant to guarantee obligations and give security and further assurances*), or which the Parent has requested shall become an Additional Guarantor on or before the Latest Accession Date under paragraph (a) of Clause 30.4 (*Additional Guarantors*) and which, in each case, has been notified to the Agent, shall be deemed to be an Obligor for the purposes of the permissions under this Agreement notwithstanding the fact it is not an Obligor at such time.
- (f) In ascertaining the Majority Lenders, the Majority Facility B Lenders, the Majority Revolving Facility Lenders, the Majority Financial Covenant Revolving Facility Lenders, the Super Majority Lenders, the Super Majority Revolving Facility Lenders or the Super Majority Financial Covenant Revolving Facility Lenders or whether any given percentage of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents or for the purposes of the allocation of any repayment or prepayment or for the purposes of taking any step, decision, direction or exercise of discretion which is calculated by reference to Commitments or any Facility B2 Loan, Facility B2 Commitments or any other Commitments not denominated in USD (“**Non-Base Currency Amounts**”) shall be deemed to be converted into USD at the Agent’s Spot Rate of Exchange on the day on which the relevant determination is made.
- (g) If:
- (i) any restriction, basket, threshold or permission is determined by reference to the greater of a fixed amount (the “**Fixed Component**”) and a percentage of LTM EBITDA (the “**Grower Component**”); and
  - (ii) the Grower Component of the applicable restriction, basket, threshold or permission exceeds the applicable Fixed Component at any time,
- the Fixed Component shall be deemed to be increased to the highest amount of the Grower Component reached from time to time and shall not subsequently be reduced as a result of any decrease in the Grower Component.
- (h) If any amount is incurred or utilised under any Ratio-based Basket, such amount shall be permitted notwithstanding any subsequent decline in the Consolidated First Lien Debt

Ratio, the Consolidated Secured Debt Ratio, the Consolidated Total Debt Ratio, the Fixed Charge Coverage Ratio or any other financial ratio or metric.

(i) If:

(i) any Indebtedness, Disqualified Stock, Preferred Stock or financing liability (a “**Refinancing Amount**”) is or is to be issued or incurred to refinance or replace any existing or previous Indebtedness, Disqualified Stock, Preferred Stock or financing liability; and

(ii) such refinancing or replacement would otherwise cause any applicable restriction, basket, threshold or permission to be exceeded, such restriction, basket, threshold or permission shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Amount does not exceed the principal amount of the existing or previous Indebtedness, Disqualified Stock, Preferred Stock or financing liability being refinanced or replaced (plus all accrued, paid-in-kind, capitalised or accreted interest, prepayment premia, break costs and other fees, costs, expenses and amounts accrued thereon or incurred in connection with such refinancing or replacement).

(j) Any calculation, test or measure that is determined with reference to the financial statements of the Parent (including, without limitation, EBITDA, Consolidated Interest Expense, Consolidated Net Income, Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio, Consolidated Total Debt Ratio, Fixed Charge Coverage Ratio and Fixed Charges) may be determined with reference to the financial statements of a direct or indirect parent entity of the Parent instead, so long as such calculation, test or measure would not differ by more than an immaterial amount when using the financial statements of such direct or indirect parent entity as compared to if such calculation, test or measure were made using the Parent’s financial statements.

(k) Any ratios, tests or baskets required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding up if there is no nearest number).

(l) If the Parent or any Restricted Subsidiary takes an action which at the time of the taking of such action would in the good faith determination of the Parent be permitted under the applicable provisions of this Agreement based on the financial statements available at such time, such action shall be deemed to have been made in compliance with this Agreement notwithstanding any subsequent adjustments, modifications or restatements made in good faith to such financial statements affecting Consolidated Net Income, EBITDA or other applicable financial metric.

(m) In respect of any basket set by reference to a financial year, a fiscal year, a calendar year, a Relevant Period, a four-quarter period, a twelve-month period or any other similar annual period (each an “**Annual Period**”):

(i) at the option of the Parent, the maximum amount so permitted under such basket (which, for the avoidance of doubt, shall be the greater of the numerical permission and the relevant grower permission at the relevant time) during such Annual Period may be increased by:

- (A) an amount equal to 100% of the difference (if positive) between the permitted amount in the immediately preceding Annual Period and the amount thereof actually used or applied by the Group during such preceding Annual Period (the “**Carry Forward Amount**”); and/or
  - (B) an amount equal to 100% of the permitted amount in the immediately following Annual Period and the permitted amount in such immediately following Annual Period (the “**Subsequent Annual Period**”) shall be reduced by such corresponding amount (the “**Carry Back Amount**”), *provided that*, for the avoidance of doubt, if the permitted amount of any numerical permission or grower permission in such Subsequent Annual Period is greater than the amount included in the relevant Carry Back Amount, such greater amount may be used or applied by the Group in the Subsequent Annual Period (and for the avoidance of doubt, such amount shall remain available as a Carry Forward Amount pursuant to paragraph (A) above); and
- (ii) to the extent that the maximum amount so permitted under such numerical permission or grower permission during such Annual Period is increased in accordance with paragraph (i) above, any usage of such basket during such Annual Period shall be deemed to be applied in the following order:
- (A) first, against the Carry Forward Amount;
  - (B) secondly, against the maximum amount so permitted during such Annual Period prior to any increase in accordance with paragraph (i) above; and
  - (C) thirdly, against the Carry Back Amount.

#### 1.4 Limited Condition Transactions

- (a) When calculating the availability under any basket, test or ratio under this Agreement or compliance with any provision of this Agreement in connection with any Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence, issuance or assumption of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence or assumption of Liens, repayments, Restricted Payments, the designation of any Restricted Subsidiaries or Unrestricted Subsidiaries and Asset Sales or any disposition, issuance or other transaction excluded from the definition of “Asset Sale”), in each case, at the option of the Parent (the Parent’s election to exercise such option, an “**LCT Election**”), the date of determination for availability under any such basket, test or ratio or whether any such action or transaction is permitted (or any requirement or condition therefor is complied with or satisfied (including as to the absence of any continuing Default or Event of Default)) under this Agreement shall be deemed to be the date (the “**LCT Test Date**”) either:
  - (i) the definitive agreements for such Limited Condition Transaction are entered into (or, if applicable, the date of delivery of a notice, declaration or making of a Restricted Payment or similar event); or
  - (ii) solely in connection with an acquisition to which the United Kingdom City Code on Takeovers and Mergers or similar law or practices in other jurisdictions apply, the date on which a “Rule 2.7 announcement” of a firm intention to make an offer

in respect of a target of a Limited Condition Transaction (or any substantially equivalent announcement in any other jurisdiction),

and, in each case, if, after giving pro forma effect to the Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence, issuance or assumption of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence or assumption of Liens, repayments, Restricted Payments, the designation of any Restricted Subsidiaries or Unrestricted Subsidiaries and Asset Sales or any disposition, issuance or other transaction excluded from the definition of “Asset Sale”) and any related pro forma adjustments (disregarding for the purposes of such pro forma calculation any borrowing under a revolving credit, working capital or letter of credit facility) as if they had occurred at the beginning of the most recent four consecutive Financial Quarters ending prior to the LCT Test Date for which internal consolidated financial statements of a Reporting Entity are available, the Parent or any of its Restricted Subsidiaries would have been permitted to take such actions or consummate such transactions on the relevant LCT Test Date in compliance with such ratio, test or basket (and any related requirements and conditions), such ratio, test or basket (and any related requirements and conditions) shall be deemed to have been complied with (or satisfied) for all purposes (in the case of Indebtedness, for example, whether such Indebtedness is committed, issued or incurred at the LCT Test Date or at any time thereafter); *provided that*:

- (A) if financial statements for one or more subsequent Financial Quarters shall have become available, the Parent may elect, in its sole discretion, to re-determine all such ratios, tests or baskets on the basis of such financial statements, in which case, such date of redetermination shall thereafter be deemed to be the applicable LCT Test Date for the purposes of such ratios, tests or baskets;
- (B) except as contemplated in sub-paragraph (A), compliance with such ratios, tests or baskets (and any related requirements and conditions) shall not be determined or tested at any time after the applicable LCT Test Date for such Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence, issuance or assumption of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof, the incurrence or assumption of Liens, repayments, Restricted Payments, the designation of any Restricted Subsidiaries or Unrestricted Subsidiaries, and Asset Sales or any disposition, issuance or other transactions excluded from the definition of “Asset Sale”); and
- (C) Consolidated Interest Expense for the purposes of the Fixed Charge Coverage Ratio will be calculated using an assumed interest rate based on the indicative interest margin contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by the Parent in good faith.

(b) For the avoidance of doubt, if the Parent has made an LCT Election:

- (i) if any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would at any time after the LCT Test Date have been

exceeded or otherwise failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in EBITDA or total assets of the Parent or the Person subject to such Limited Condition Transaction at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have been exceeded or failed to have been complied with as a result of such fluctuations; provided that if such ratios, tests or baskets improve as a result of such fluctuations, such ratios, tests and/or baskets may be utilised;

(ii) if any related requirements and conditions (including as to the absence of any continuing Default or Event of Default) for which compliance or satisfaction was determined or tested as of the LCT Test Date would at any time after the LCT Test Date not have been complied with or satisfied (including due to the occurrence or continuation of a Default or an Event of Default), such requirements and conditions will not be deemed to have been failed to be complied with or satisfied (and such Default or Event of Default shall be deemed not to have occurred or be continuing); and

(iii) in calculating the availability under any ratio, test or basket in connection with any action or transaction unrelated to such Limited Condition Transaction following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement, the date of notice or offer or date for redemption, purchase or repayment specified in a notice for such Limited Condition Transaction is terminated, expires or passes, as applicable, without consummation of such Limited Condition Transaction, any such ratio, test or basket shall be determined or tested giving pro forma effect to such Limited Condition Transaction and any actions or transactions related thereto.

(b) In connection with any action being taken in connection with a Limited Condition Transaction, for the purposes of determining compliance with any provision of this Agreement which requires that no Default, Event of Default or specified Event of Default, as applicable, has occurred, is continuing or would result from any such action, as applicable, such condition shall, at the option of the Parent, be deemed satisfied, so long as no Default, Event of Default or specified Event of Default, as applicable, exists on the date of the definitive agreement, the date of notice or offer or date for redemption, purchase or repayment for such Limited Condition Transaction, as applicable. For the avoidance of doubt, if the Parent has exercised an LCT Election, and any Default, Event of Default or specified Event of Default occurs following the date the definitive agreements (or, if applicable, the date of delivery of a notice, declaration or making of a Restricted Payment or similar event) for the applicable Limited Condition Transaction were entered into and prior to the consummation of such Limited Condition Transaction, any such Default, Event of Default or specified Event of Default shall be deemed to not have occurred or be continuing for the purposes of determining whether any action being taken in connection with such Limited Condition Transaction is permitted under this Agreement.

## 1.5 Currency symbols and definitions

(a) “£”, “**GBP**” and “**sterling**” denote the lawful currency of the United Kingdom. “€”, “**EUR**” and “**euro**” denote the single currency of the Participating Member States. “\$”, “**USD**” and

“US dollars” denote the lawful currency of the United States of America. “CAD” denotes the lawful currency of Canada.

(b) Any amounts stated in US dollars shall also be a reference to its equivalent amount in other currencies (if applicable).

### **1.6 Third party rights**

(a) Unless expressly provided to the contrary, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 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 which is not a Party is not required to amend, rescind or vary this Agreement at any time.

### **1.7 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.

### **1.8 Personal Liability**

No director, officer or employee of the Parent, of any other member of the Group or of any of its or their respective Affiliates shall be personally liable for any representation or statement made by it in any Finance Document, certificate or other document required to be delivered under any Finance Document save in the case of fraud in which case liability (if any) will be determined in accordance with applicable law.

### **1.9 No Shareholder Recourse**

No past, present or future member, partner or direct or indirect equityholder of the Parent or any of the Restricted Subsidiaries or of any of their direct or indirect parent companies (other than in such equityholder’s capacity as an Obligor) shall have any liability, for any obligations of the Obligors under the Finance Documents or this Agreement or for any claim based on, in respect of, or by reason of such obligations or their creation.

### **1.10 Divisions**

For all purposes under the Finance Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws):

(a) if any asset, right, obligation or liability of any person becomes the asset, right, obligation or liability of a different person, then it shall be deemed to have been transferred from the original person to the subsequent person; and

(b) if any new person comes into existence, such new person shall be deemed to have been organised on the first date of its existence by the holders of its equity interests at such time.

## **2. THE FACILITIES**

### **2.1 The Facilities**

(a) Subject to the terms of this Agreement, the Lenders make available:

- (i) a term loan facility in the Base Currency in an aggregate amount equal to the Total Facility B1 Commitments;
  - (ii) a term loan facility in EUR in an aggregate amount equal to the Total Facility B2 Commitments; and
  - (iii) a multi-currency revolving credit facility in an aggregate Base Currency Amount equal to the Total Initial Revolving Facility Commitments.
- (b) Facility B1 will be available to Paysafe Holdings (US) Corp.
  - (c) Facility B2 will be available to Paysafe Holdings (US) Corp.
  - (d) Each Revolving Facility will be available to the Revolving Facility Borrowers.
  - (e) Each Incremental Facility will be available to the Incremental Facility Borrowers as specified in the applicable Incremental Facility Increase Notice.
  - (f) Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make available an Ancillary Facility to any of the Revolving Facility Borrowers in place of all or part of its Commitment under a Revolving Facility.

## 2.2 Increase

- (a) The Parent may by giving prior notice to the Agent by no later than the date falling 30 Business Days after the effective date of a cancellation of:
  - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 11.9 (*Right of cancellation in relation to a Defaulting Lender*); or
  - (ii) the Commitments of a Lender in accordance with:
    - (A) Clause 11.8 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*);
    - (B) paragraph (a) of Clause 11.8 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*); or
    - (C) Clause 11.1 (*Illegality*),
 request that the Commitments relating to any Facility be increased (and the Commitments relating to that Facility 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:
    - (I) 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 the Parent or a member of the Group) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had



been an Original Lender (for the avoidance of doubt, no Party shall be obliged to assume the obligations of a Lender pursuant to this Clause 2.2 without the prior consent of that Party);

- (II) 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;
- (III) 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;
- (IV) the Commitments of the other Lenders shall continue in full force and effect; and
- (V) any increase in the Commitments relating to a Facility 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 Commitments relating to a Facility will only be effective on:

- (i) the execution by the Agent of an Increase Confirmation from the relevant Increase Lender; and
  - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase the Agent being satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender, and the Agent shall promptly notify the Parent and the Increase Lender upon being so satisfied.
- (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 consent, 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) The Parent shall within five Business Days after demand pay to the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them (and/or any Receiver or Delegate) in connection with any increase in Commitments under this Clause 2.2.
- (e) If required by the Agent, the Increase Lender shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 29.5 (*Assignment fee*) if the increase was an

assignment pursuant to Clause 29.7 (*Procedure for assignment*) and if the Increase Lender was a New Lender.

- (f) 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.
- (g) Clause 29.6 (*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 Incremental Facility

- (a) Subject to this Clause 2.3 the Parent may by giving at least three Business Days' notice (or such shorter period as the Agent may agree) by delivering to the Agent a duly completed Incremental Facility Increase Notice complying with paragraphs (b) and (c) below (signed by an Officer of the Parent):
  - (i) increase the commitments under an existing Term Facility and/or establish additional commitments for a new term facility (any such increased or additional commitments for a new term facility, an **"Incremental Term Facility"**); and/or
  - (ii) increase the commitments under an existing Revolving Facility and/or establish additional commitments for a new Revolving Facility (any such increased or additional commitments for a new Revolving Facility an **"Incremental Revolving Facility"**).
- (b) Each Incremental Facility Increase Notice will not be regarded as being duly completed unless it specifies the following matters in respect of any such Incremental Facility Commitments:
  - (i) the Availability Period;
  - (ii) whether such Incremental Facility is to be provided on a 'certain funds basis';
  - (iii) whether such Incremental Facility Commitments will be used to establish an Incremental Term Facility, an Incremental Revolving Facility or used to increase the Commitments under a Term Facility or a Revolving Facility;
  - (iv) the identities of the Borrowers in respect of the Incremental Facility Commitments which may be an existing Borrower or another member of the Group which accedes as a Borrower in accordance with Clause 30.2 (*Additional Borrowers*);
  - (v) the amount of the Incremental Facility Commitments allocated to each Original Incremental Facility Lender;
  - (vi) the Margin (and any applicable margin ratchet);

- (vii) the commitment fees payable to the Incremental Facility Lender(s) in connection with the provision of Incremental Facility Commitments;
- (viii) the Termination Date;
- (ix) the currency or currencies in which the Incremental Facility Commitments are to be committed and the currency or currencies in which the Incremental Facility Commitments are to be drawn;
- (x) any applicable guarantee limitations in accordance with the Agreed Security Principles; and
- (xi) the purpose of the Incremental Facility,

*provided that*, if the Incremental Facility Commitments are structured as an increase in the Facility B Commitments or the Initial Revolving Facility Commitments, the matters referred to in paragraphs (i) (in the case of the Initial Revolving Facility only), (vi), (vii) (in the case of the Initial Revolving Facility only), (viii), (ix) and (xi) (in the case of the Initial Revolving Facility only) shall be the same as the equivalent terms of Facility B or the Initial Revolving Facility (as applicable) at that time.

(c) An Incremental Facility Increase Notice shall only be valid if:

- (i) it is served on or before the Termination Date of Facility B, or, if later, the Termination Date of any then existing Incremental Facility Commitments;
- (ii) other than in relation to Customary Bridge Loans, in relation to any Incremental Term Facility Commitments incurred under an Incremental MFN Term Facility prior to the date falling six calendar months after the Closing Date and denominated in any of the currencies described in the table below, and that mature prior to the date falling one year after the relevant Termination Date (as in effect on the Closing Date) in respect of the corresponding Loans described in the table below (the “**Relevant MFN Loans**”) based on the currency of such Incremental Term Facility Commitments, the margin in respect of such Incremental Term Facility Commitments does not exceed 1.00% per annum higher than the Margin applicable to the Relevant MFN Loans on the Closing Date, unless the Margin applicable to such Relevant MFN Loans on the Closing Date is offered to be increased to the extent necessary so that the margin for such Incremental Term Facility Commitments does not exceed 1.00% per annum above the increased Margin for such Relevant MFN Loans on the Closing Date:

<b>Relevant MFN Loans</b>	<b>Currency of Incremental Term Facility Commitment</b>
Facility B1 Loans	USD
Facility B2 Loans	EUR

*provided that* this paragraph (ii) shall not apply to any Incremental Term Facility Commitments under an Incremental MFN Term Facility:

- (I) that are in a principal amount equal to or less than the MFN Threshold;
  - (II) that are incurred in connection with the refinancing of a Term Facility in full; or
  - (III) that are incurred in connection with an acquisition or an Investment permitted under this Agreement;
- (iii) subject to the Permitted Earlier Maturity Indebtedness Exception, while any Facility B Commitments are in place, in relation to any Incremental Term Facility Commitments under an Incremental MFN Term Facility, other than in relation to Customary Bridge Loans, such Incremental Term Facility Commitments:
- (A) may amortise at a rate not greater than five per cent. per annum of the original principal amount of such Incremental Term Facility Commitment prior to the Termination Date in respect of Facility B, unless the Parent has also offered to the Facility B Lenders, in respect of the respective Facility B Loans made available by such Facility B Lenders, the same percentage amortisation prepayment per annum for the corresponding year, *provided that* a Facility B Lender will be automatically deemed to have rejected such offer unless such Facility B Lender notifies the Agent that it has accepted such offer by 11 a.m. on the date falling three Business Days after the date of such offer (or such later date as agreed by the Parent (in its sole and absolute discretion), and *provided further* that if all Facility B Loans have been repaid in full, or all Facility B Loans then outstanding would be repaid in full after giving effect to the application of proceeds from such Incremental Term Facility Commitments, any amortisation profile may apply;
  - (B) do not have a Weighted Average Life to Maturity shorter than the Weighted Averaged Life to Maturity then applicable to Facility B (subject to any amortisation of such Incremental Term Facility Commitments permitted by sub-paragraph (iii)(A) above); and
  - (C) do not have a termination date earlier than the Termination Date applicable to Facility B as at the Closing Date;
- (iv) the aggregate principal amount of the Incremental Facility Commitments established thereby would (as at the time such Incremental Facility Commitments are established) constitute Permitted Indebtedness; and
- (v) it is signed by the Parent, the relevant Incremental Facility Borrower and the relevant Lenders or other banks, financial institutions, trusts, funds or other Persons (which may not be the Parent, the Company or any of its Restricted Subsidiaries) and which have agreed to provide such Incremental Facility Commitments (the “**Original Incremental Facility Lenders**”) on the terms of that Incremental Facility Increase Notice and this Agreement.
- (d) An increase in the Total Incremental Facility Commitments shall only be effective on:

- (i) the execution of an Incremental Facility Increase Notice by the Parent, the relevant Incremental Facility Borrower and the relevant Original Incremental Facility Lender(s) and delivery of such executed notice to the Agent;
- (ii) in relation to an Incremental Facility Lender which is not already a Lender immediately prior to the relevant increase:
  - (A) the Original Incremental Facility Lender acceding as a party to this Agreement as a Lender and the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement) by delivery of an Accession Certificate countersigned by the Agent and the Security Agent; and
  - (B) the performance by the Agent of all necessary “know your customer” or other similar checks (if any) under all applicable laws and regulations in relation to the provision of Incremental Facility Commitments by that Original Incremental Facility Lender(s), the completion of which the Agent shall promptly notify to the Parent and the Incremental Facility Lender.
- (e) By signing an Incremental Facility Increase Notice as an Incremental Facility Lender, each such entity agrees to commit the Incremental Facility Commitments set out against its name in that notice and, in the case of an entity who is not already a party to this Agreement as a Lender by signing an Accession Certificate, become a Lender and a Party to this Agreement and to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).
- (f) Each Obligor confirms:
  - (i) the authority of the Parent to agree, implement and establish Incremental Facility Commitments in accordance with this Agreement; and
  - (ii) that its guarantee and indemnity recorded in Clause 23 (*Guarantees and Indemnity*) (or any applicable Accession Deed or other Finance Document), and all Transaction Security granted by it is intended, subject only to any applicable limitations on such guarantee and indemnity referred to in Clause 23 (*Guarantees and Indemnity*) or any Accession Deed pursuant to which it became an Obligor, extend to include the Incremental Facility Loans and any other obligations arising under or in respect of the Incremental Facility Commitments.
- (g) Each Finance Party agrees, instructs and empowers the Agent and the Security Agent to (and the relevant Obligor (or the Obligors’ Agent) shall promptly upon request by the Agent or the Security Agent in accordance with the Agreed Security Principles) execute any necessary amendments to the Finance Documents (including the Transaction Security Documents) and/or new Transaction Security Documents as may be required in order to ensure that any Incremental Facility Loans rank *pari passu* with the other Facilities and that the Transaction Security granted over any assets purchased with the proceeds of any Incremental Facility Loans is shared *pari passu* by the Finance Parties (to the extent lawful).
- (h) Each Original Incremental Facility Lender, by executing the Incremental Facility Increase Notice, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any consent, 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.

- (i) The Agent is authorised by the Group to disclose the terms of any Incremental Facility Increase Notice to any of the other Finance Parties and, upon request by the other Finance Parties, will promptly disclose such terms to the other Finance Parties.
- (j) The provisions of this Agreement will apply to the Incremental Facility Commitments and the provisions of Clause 5 (*Utilisation – Loans*) will apply to all Utilisations of Incremental Facility Commitments, *provided that* no Utilisation Request for an Incremental Facility Loan shall be valid unless prior to (or simultaneously with) such Incremental Facility Loan the requirements of this Clause 2.3 have been satisfied.
- (k) In relation to any Incremental Facility Commitments:
  - (i) except as agreed to the contrary by the Parent and the relevant Original Incremental Facility Lenders in accordance with this Clause 2.3, each of the Obligors and any Original Incremental Facility Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Original Incremental Facility Lender would have assumed and/or acquired had the Original Incremental Facility Lender been an Original Lender under the Incremental Facility;
  - (ii) each Original Incremental Facility Lender shall become a Party as a “Lender” and any Original Incremental Facility Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Original Incremental Facility Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender under the Incremental Facility;
  - (iii) the Commitments of the other Lenders shall continue in full force and effect; and
  - (iv) any increase in the Total Incremental Facility 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 this Clause 2.3 are satisfied.
- (l) Clause 29.6 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in relation to an Original Incremental Facility 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 Incremental Facility Lender; and
  - (iii) a re-transfer and re-assignment were references to respectively a transfer and assignment.
- (m) The Parent may (subject to paragraph (c)(ii) above) pay to the Incremental Facility Lender a fee in the amount and at the times agreed between the Parent and the Incremental Facility Lender in a Fee Letter.

- (n) Nothing in this Clause 2.3 shall oblige any Lender to provide any Incremental Facility Commitment.
- (o) The Parent may specify that an Incremental Facility Increase Notice is conditional on the satisfaction of one or more conditions and/or revocable prior to the Incremental Facility Commitments to be established pursuant to such Incremental Facility Increase Notice becoming effective.

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

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

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

- (a) To the extent permitted under any applicable law, each Obligor by its execution of this Agreement or an Accession Deed irrevocably appoints the Parent (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
  - (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, Selection Notices and prepayment and cancellation notices), to execute on its behalf any Accession Deed, Incremental Facility Increase Notice, Ancillary Document, any other Finance Document and any guarantee or security amendment, extension, transfer or assignment, ratification and/or release, 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 and

Selection Notices) 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, consent, 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.

## 2.6 Designated Agent Affiliate

- (a) The Agent may nominate (by written notice to the Parent prior to the Closing Date, with such notice to include the identity of the proposed branch or Affiliate and confirming it will be bound as an Agent under this Agreement and as a Senior Agent (as defined in the Intercreditor Agreement) under the Intercreditor Agreement in respect of any Designated Agent Loan (as defined below)) a branch or Affiliate incorporated in the United States or any state or agency thereof (including the District of Columbia) (a "**Designated Agent Affiliate**") to discharge its obligations to receive fees on its own behalf and, with respect to payments (including of interest) received on account of any Lender from:
  - (i) any US Borrower in respect of any Facility B Loan denominated in US Dollars; or
  - (ii) any US Borrower in respect of any Revolving Facility Loan denominated in US Dollars, (a "**Designated Agent Loan**").
- (b) Any Designated Agent Affiliate shall:
  - (i) to the extent of its role set out in paragraph (a) above, comply with the terms of the Finance Documents; and
  - (ii) be entitled, to the extent of its role set out in paragraph (a) above, to all the rights and benefits of the Agent under the Finance Documents, provided that such rights and benefits shall be exercised on its behalf by the Agent save where law or regulation requires the Designated Agent Affiliate to do so,in each case, as if it were a party thereto.
- (c) The Agent will act as the representative of any Designated Agent Affiliate it nominates for all administrative purposes under this Agreement and shall remain liable and responsible for the performance of all obligations assumed by a Designated Agent Affiliate under this Clause 2.6 and non-performance of the Agent's obligations by its Designated Agent Affiliate following a nomination under this Clause 2.6 shall not relieve the Agent of its obligations under this Agreement.
- (d) The Obligors, the Security Agent and the other Finance Parties will be entitled to deal only with the Agent, except that such Designated Agent Affiliate may discharge the Agent's



obligations to receive fees on its own behalf and, with respect to payments (including of interest) received on account of any Lender from a US Borrower in respect of a Designated Agent Loan.

### 3. PURPOSE

#### 3.1 Purpose

- (a) Each Original TLB Borrower shall apply all amounts borrowed by it under Facility B in or towards:
- (i) the repayment, refinancing, discharge and/or acquisition of any existing indebtedness of the Group (including any indebtedness under the Existing Facilities Agreement) (the “**Refinancing**”) and payment of any associated fees, costs, interest and expenses in connection with the Refinancing (including related breakage costs, prepayment premiums, hedging close-out costs and other fees, costs and expenses of or in connection with that repayment, refinancing, discharge and/or acquisition);
  - (ii) backstopping, replacing and/or providing cash-cover in respect of any letters of credit, guarantees or similar instruments or ancillary, revolving, working capital or local facilities or other arrangements and payment of any associated fees, costs, interest and expenses (including related breakage costs, prepayment premiums, make-whole costs and other fees, costs and expenses payable in connection therewith);
  - (iii) for any other purpose contemplated by and/or referred to in any funds flow statement;
  - (iv) general corporate purposes of the Group; and
  - (v) other related amounts, including fees, costs, expenses, liabilities, taxes (including stamp duty) and other amounts, including those incurred in connection with the Refinancing (including any required arrangement, upfront or any original issue discount fees or similar fees, any additional original issue discount or other fees arising as a result of any market flex, and any ticking fees required to be paid in connection with, and any interest accruing on, the Transaction Documents).
- (b) Without prejudice to paragraph (c) below, each Revolving Facility Borrower shall apply all amounts borrowed by it under the Initial Revolving Facility and any Utilisation of any Ancillary Facility towards:
- (i) the repayment, refinancing, discharge and/or acquisition of any existing indebtedness of the Group (including any indebtedness under the Existing Facilities Agreement) or of any acquisition target which is owed to third parties and payment of any associated fees, costs, interest and expenses (including related breakage costs, prepayment premiums, hedging close-out costs and other fees, costs and expenses of or in connection with that repayment, refinancing, discharge and/or acquisition);
  - (ii) backstopping, replacing and/or providing cash-cover in respect of any letters of credit, guarantees or similar instruments or ancillary, revolving, working capital or

local facilities or other arrangements and payment of any associate fees, costs, interest and expenses (including related breakage costs, prepayment premiums, make-whole costs and other fees, costs and expenses payable in connection therewith);

(iii) general corporate purposes of the Group; and

(iv) other related amounts, including fees, costs, expenses, liabilities, taxes (including stamp duty) and other amounts, including those incurred in connection with the Refinancing (including any required arrangement, upfront or any original issue discount fees or similar fees, any additional original issue discount or other fees arising as a result of any market flex, and any ticking fees required to be paid in connection with, and any interest accruing on, the Transaction Documents).

(c) Each Incremental Facility Borrower shall apply all amounts borrowed by it under the Incremental Facility and any utilisation of any Ancillary Facility issued under any Incremental Revolving Facility towards the purposes specified in the Incremental Facility Increase Notice relating to the relevant Incremental Facility Commitments.

### **3.2 Monitoring**

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

## **4. CONDITIONS OF UTILISATION**

### **4.1 Initial conditions precedent**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if, on or before the Utilisation Date for that Utilisation, the Agent has received (or waived the requirement to receive) all of the documents and other evidence listed in Part 1 (*Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*). The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (or waived the requirement to receive) such documents and other evidence.
- (b) It is hereby acknowledged and agreed (and the Agent has notified the Parent and the Lenders) that the Agent has received all of the documents and evidence referred to in Part 1 (*Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*), and that these are irrevocably satisfied conditions precedent to the making of any Utilisation.

### **4.2 Further conditions precedent**

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

- (a) in the case of a Rollover Loan, no Declared Default is continuing; and
- (b) in the case of any Utilisation (other than a Certain Funds Utilisation) other than a Rollover Loan, no Event of Default is continuing or would result from the proposed Utilisation.

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

- (a) A currency will constitute an Optional Currency if it is:
- (i) in relation to any Revolving Facility, USD, EUR, GBP, CAD or, in relation to any Incremental Revolving Facility, additionally such other currencies agreed with the relevant Incremental Revolving Lenders and the Agent; or
  - (ii) in relation to any Facility, any other currency readily available in the amount required and freely convertible into the Base Currency in the wholesale market for that currency on the Quotation Day and the Utilisation Date for that Utilisation and has been approved by the Agent (acting on the instructions of all the Lenders participating in the relevant Utilisation) on or prior to receipt by the Agent of the relevant Utilisation Request for that Utilisation.
- (b) A currency will constitute an Optional Currency in relation to an Incremental Facility if it is specified in the Incremental Facility Increase Notice relating to that Incremental Facility.
- (c) If by the Specified Time the Agent has received a written request from the Parent for a currency to be approved under paragraph (a)(ii) above, the Agent will confirm to the Parent by the Specified Time:
- (i) whether or not the Lenders participating in the relevant Utilisation have granted their approval; and
  - (ii) if approval has been granted, the minimum amount for any subsequent Utilisation in that currency.

#### **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:
- (i) more than 20 Facility B Loans would be outstanding; or
  - (ii) more than 20 Initial Revolving Facility Loans would be outstanding.
- (b) A TLB Borrower (or the Parent) may not request that a Facility B Loan be divided if, as a result of the proposed division, more than 20 Facility B Loans would be outstanding.
- (c) 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.
- (d) Any Separate Loan shall not be taken into account in this Clause 4.4.
- (e) A Revolving Facility Borrower (or the Parent) may not request that a Letter of Credit be issued under a Revolving Facility if, as a result of the proposed Utilisation, more than 20 Letters of Credit would be outstanding.

#### **4.5 Utilisations during the Certain Funds Period**

- (a) Subject to Clause 4.1 (*Initial conditions precedent*) and notwithstanding the conditions of Clause 4.2 (*Further conditions precedent*), during the Certain Funds Period, the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a

Certain Funds Utilisation if, on the date on which the Utilisation Request was delivered to the Agent and on the proposed Utilisation Date:

- (i) no Major Event of Default is continuing;
  - (ii) no Change of Control has occurred; and
  - (iii) it has not, after the date of this Agreement (or, if later, the date on which the relevant Lender became a Party), become unlawful in any applicable jurisdiction for that Lender to fund its participation in the relevant Certain Funds Utilisation (and if that is the case that Lender must notify the Parent as soon as it becomes aware of the relevant legal issue and such Lender's Commitment shall be cancelled or transferred pursuant to the provisions of Clause 11.1 (*Illegality*)), *provided that* such unlawfulness alone will not excuse any other Lender from participating in the relevant Certain Funds Utilisation.
- (b) During the Certain Funds Period (save in circumstances where, pursuant to paragraph (a) above, a Lender is not obliged to comply with Clause 5.4 (*Lenders' participation*)), none of the Finance Parties shall be entitled to:
- (i) cancel any of its Commitments;
  - (ii) take any action to rescind, terminate or cancel this Agreement or any of the Facilities or exercise any similar right or remedy or make or take any action or make or enforce any claim under or in respect of any Finance Documents it may have to the extent to do so would directly or indirectly prevent or limit the making of a Certain Funds Utilisation;
  - (iii) refuse to participate in the making of a Certain Funds Utilisation;
  - (iv) exercise any right of set-off or counterclaim or similar right or remedy which it may exercise in respect of a Utilisation to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
  - (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document or exercise any enforcement rights under any Transaction Security Document to the extent to do so would prevent or limit the making of a Certain Funds Utilisation;
  - (vi) declare that cash cover in relation to a Letter of Credit or an Ancillary Facility is immediately due and payable on demand; or
  - (vii) take any other action or make or enforce any other claim (in its capacity as Lender) to the extent that such action, claim or enforcement would directly or indirectly prevent or limit the making of a Certain Funds Utilisation,
- provided that* immediately upon the expiry of the Certain Funds Period all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the Certain Funds Period.

#### 4.6 Utilisations during an Agreed Certain Funds Period

(a) Subject to Clause 4.1 (*Initial conditions precedent*) and notwithstanding the conditions of Clause 4.2 (*Further conditions precedent*), during the relevant Agreed Certain Funds Period, an Initial Revolving Facility Lender or Incremental Facility Lender (as the case may be) will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to the relevant Agreed Certain Funds Utilisation if:

(i) either:

- (A) the Parent has notified the Agent in writing on or prior to the date of the Utilisation Request (such notice, an “**Agreed Revolving Facility Certain Funds Notice**”) that the Initial Revolving Facility shall be made available on a “*certain funds basis*” for the purpose of financing an acquisition or investment permitted by this Agreement or for such other purpose agreed with the relevant Revolving Facility Lenders under the Initial Revolving Facility (acting reasonably), for such period as the Parent shall specify in such notice (acting reasonably, on the basis of any agreed or proposed long stop date in respect of the applicable transaction and *provided that* such period may not be longer than six Months unless the Majority Lenders in respect of the Initial Revolving Facility (acting reasonably) have given their prior written consent); or
- (B) the Parent and each of the relevant Incremental Facility Lenders have agreed that the relevant Incremental Facility shall be made available on a “*certain funds basis*” for a specified purpose in connection with such agreed purpose, for such period and on such terms or conditions (if any) as the Parent and the relevant Incremental Facility Lenders shall agree and notify in writing to the Agent on or prior to the date of the Utilisation Request (such notice, an “**Agreed Incremental Facility Certain Funds Notice**”); and

(ii) on the proposed Utilisation Date:

- (A) no Change of Control has occurred;
- (B) it has not, since the date of this Agreement (or, if later, the date on which such Lender became a party to this Agreement), become unlawful for that Lender to participate in any Utilisation *provided that* that Lender has notified the Parent of the relevant illegality in accordance with Clause 11.1 (*Illegality*) prior to the date of the relevant Utilisation Request, and *provided further that* such illegality alone will not excuse any other Lender from participating in the relevant Certain Funds Utilisation and will not in any way affect the obligations of any other Lender;
- (C) no Major Event of Default is continuing; and
- (D) solely in relation to the Agreed Certain Funds Utilisation under an Incremental Facility, the additional conditions or events (if any) specified in the relevant Incremental Facility Increase Notice or other notice in relation to that Agreed Certain Funds Period and Agreed Certain Funds Utilisation are complied with or satisfied.

(b) During the Agreed Certain Funds Period (save in respect of an Initial Revolving Facility Lender or relevant Incremental Facility Lender (as the case may be) in circumstances where one of the requirements described in paragraphs (a)(ii)(A), (a)(ii)(B), (a)(ii)(C) or (a)(ii)(D) above is not satisfied and accordingly that Initial Revolving Facility Lender or Incremental Facility Lender (as the case may be) is not obliged to comply with Clause 5.4 (*Lenders' participation*)), none of the Initial Revolving Facility Lenders or relevant Incremental Facility Lenders (as the case may be) shall be entitled in respect of an Agreed Certain Funds Utilisation (and the corresponding Commitments to which it relates) to:

- (i) cancel any of its Commitments;
- (ii) take any action to rescind, terminate or cancel this Agreement or any of the Facilities or exercise any similar right or remedy or make or take any action or make or enforce any claim under or in respect of any Finance Documents it may have to the extent to do so would directly or indirectly prevent or limit the making of an Agreed Certain Funds Utilisation;
- (iii) refuse to participate in the making of an Agreed Certain Funds Utilisation;
- (iv) exercise any right of set-off or counterclaim or similar right or remedy which it may exercise in respect of a Utilisation to the extent to do so would prevent or limit the making of an Agreed Certain Funds Utilisation;
- (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document or exercise any enforcement rights under any Transaction Security Document to the extent to do so would prevent or limit the making of an Agreed Certain Funds Utilisation;
- (vi) declare that cash cover in relation to a Letter of Credit or an Ancillary Facility is immediately due and payable or on demand; or
- (vii) take any other action or make or enforce any other claim (in its capacity as Lender) to the extent that such action, claim or enforcement would directly or indirectly prevent or limit the making of an Agreed Certain Funds Utilisation,

*provided that:*

(A) immediately upon the expiry of the relevant Agreed Certain Funds Period all such rights, remedies and entitlements shall be available to the Finance Parties notwithstanding that they may not have been used or been available for use during the applicable Agreed Certain Funds Period; and

(B) this Clause 4.6 shall be without prejudice to, and shall not prevent or limit the exercise of, any rights of any of the Finance Parties in respect of any other Facility, Loan, Utilisation or Commitment.

## **5. UTILISATION – LOANS**

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

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

## 5.2 Completion of a Utilisation Request for Loans

- (a) Each Utilisation Request for a Loan will not be regarded as having been duly completed unless:
  - (i) it identifies the Facility to be utilised;
  - (ii) it identifies the relevant Borrower;
  - (iii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
  - (iv) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
  - (v) the proposed Interest Period complies with Clause 15 (*Interest Periods*).
- (b) Multiple Utilisations may be requested in a Utilisation Request where the proposed Utilisation Date falls on or prior to the Closing Date. Only one Utilisation may be requested in any other Utilisation Requests.
- (c) For the avoidance of doubt, each Utilisation Request in respect of a Certain Funds Utilisation shall be considered validly submitted if completed and signed by the Parent or relevant Borrower, notwithstanding that all conditions precedent to such Certain Funds Utilisation have not been satisfied (and no funding indemnities shall be required in addition to those set out in this Agreement).
- (d) Subject to Clause 20.2 (*Other indemnities*), a Borrower may deliver a conditional or revocable Utilisation Request for a Loan.
- (e) The Initial Revolving Facility shall not be utilised unless Facility B has been utilised (or is being utilised substantially simultaneously with the initial utilisation of the Initial Revolving Facility).

## 5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be:
  - (i) in relation to Facility B1, the Base Currency;
  - (ii) in relation to Facility B2, EUR;
  - (iii) in relation to a Revolving Facility, the Base Currency or an Optional Currency; and
  - (iv) in relation to an Incremental Facility, in the currency provided for pursuant to the terms of that Incremental Facility.
- (b) The amount of the proposed Utilisation must be:

- (i) for any Facility B in a minimum amount equal to \$1,000,000 (or, in relation to Utilisations in EUR, €1,000,000) or, if less, the relevant Available Facility;
- (ii) for a Revolving Facility in a minimum amount of \$100,000 (or, in relation to Utilisations in any other currency, the Base Currency equivalent) or, if less, the Available Facility; or
- (iii) for an Incremental Term Facility, in a minimum amount equal to \$1,000,000 (or in relation to Utilisations in any other currency, the Base Currency equivalent) or, if less, the relevant Available Facility or any other amount agreed with the relevant Incremental Term Facility Lender(s).

#### 5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, and subject to Clause 10.2 (*Repayment of Revolving Facility Loans*), each Lender shall make its participation in each Loan available on the Utilisation Date through its Facility Office.
- (b) Other than as set out in paragraph (c) below, the amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) If a Revolving Facility Utilisation is made to repay Ancillary Outstandings in respect of an Ancillary Facility from the same Revolving Facility, each Lender's participation in that Utilisation will be in an amount (as determined by the Agent) which will result as nearly as possible in the aggregate amount of its participation in the Revolving Facility Utilisations then outstanding bearing the same proportion to the aggregate amount of the Revolving Facility Utilisations, then outstanding as its Revolving Facility Commitment bears to the Total Revolving Facility Commitments in each case under that Revolving Facility.
- (d) The Agent shall determine the Base Currency Amount of each Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan, the amount of its participation in that Loan and, if different, the amount of that participation to be made available in accordance with Clause 34.1 (*Payments to the Agent*) by the Specified Time.

#### 5.5 Cancellation of Commitment

- (a) The Facility B Commitments which, at that time are unutilised, shall be immediately cancelled at the end of the Availability Period for Facility B.
- (b) The Revolving Facility Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period for that Revolving Facility.
- (c) Incremental Facility Commitments which are unutilised at the end of the Availability Period for those Incremental Facility Commitments shall be immediately cancelled at the end of the Availability Period for those Incremental Facility Commitments.

#### 5.6 Lender Affiliates and Facility Office

- (a) In respect of a Loan or Loans to a particular Borrower (the "**Designated Loans**") and, in the case of an Original Lender, only following the expiry of the Certain Funds Period in



respect of Facility B and the Initial Revolving Facility, a Lender (a “**Designating Lender**”) may at any time and from time to time designate (by written notice to the Agent and the Parent):

- (i) a substitute Facility Office from which it will make Designated Loans (a “**Substitute Facility Office**”); or
  - (ii) nominate an Affiliate to act as the Lender of Designated Loans (a “**Substitute Affiliate Lender**”).
- (b) A notice to nominate a Substitute Affiliate Lender must be in the form set out in Schedule 15 (*Form of Substitute Affiliate Lender Designation Notice*) and be countersigned by the relevant Substitute Affiliate Lender confirming it will be bound as a Lender under this Agreement and as a Senior Lender (as defined in the Intercreditor Agreement) under the Intercreditor Agreement in respect of the Designated Loans in respect of which it acts as Lender.
- (c) The Designating Lender will act as the representative of any Substitute Affiliate Lender it nominates for all administrative purposes under this Agreement. The Obligors, the Agent, the Security Agent and the other Finance Parties will be entitled to deal only with the Designating Lender, except that payments will be made in respect of Designated Loans to the Facility Office of the Substitute Affiliate Lender. In particular the Commitments of the Designating Lender will not be treated as reduced by the introduction of the Substitute Affiliate Lender for voting purposes under this Agreement or the other Finance Documents
- (d) Save as mentioned in paragraph (c) above, a Substitute Affiliate Lender will be treated as a Lender for all purposes under the Finance Documents and having a Commitment equal to the principal amount of all Designated Loans in which it is participating if and for so long as it continues to be a Substitute Affiliate Lender under this Agreement.
- (e) A Designating Lender may revoke its designation of an Affiliate as a Substitute Affiliate Lender by notice in writing to the Agent and the Parent *provided that* such notice may only take effect when there are no Designated Loans outstanding to the Substitute Affiliate Lender. Upon such Substitute Affiliate Lender ceasing to be a Substitute Affiliate Lender the Designating Lender will automatically assume (and be deemed to assume without further action by any Party) all rights and obligations previously vested in the Substitute Affiliate Lender.
- (f) If a Designating Lender designates a Substitute Facility Office or Substitute Affiliate Lender in accordance with this Clause 5.6:
- (i) any Substitute Affiliate Lender shall be treated for the purposes of paragraph (b) of Clause 18.3 (*Tax gross-up*) as having become a Lender on the date that such Substitute Affiliate Lender’s designation by the Designating Lender becomes effective; and
  - (ii) the provisions of paragraphs (a) to (i) inclusive and (k) of Clause 29.3 (*Conditions of assignment or transfer*) shall not apply to or in respect of any Substitute Facility Office or Substitute Affiliate Lender. For the avoidance of doubt, paragraph (j) of Clause 29.3 shall apply mutatis mutandis in respect of the Substitute Facility Office or Substitute Affiliate Lender.

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

### **6.1 The Revolving Facilities**

- (a) Each Revolving Facility may be utilised by a Revolving Facility Borrower by way of Letters of Credit.
- (b) Clause 5 (*Utilisation – Loans*) does not apply to utilisations by way of Letters of Credit.
- (c) In determining the amount of the Available Facility and a Lender's L/C Proportion of a proposed Letter of Credit for the purposes of this Agreement, the Available Commitment of a Lender will be calculated ignoring any cash cover provided for outstanding Letters of Credit.

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

A Revolving Facility 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 (or by such later time as the relevant Issuing Bank and the Agent may agree). Notwithstanding anything to the contrary in this Agreement, an Issuing Bank, the Agent and a Revolving Facility Borrower (or the Parent on its behalf) may agree any alternative procedure for utilising and/or renewing a Letter of Credit.

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

- (a) Each Utilisation Request for a Letter of Credit will not be regarded as having been duly completed unless:
  - (i) it identifies the Revolving Facility to be used;
  - (ii) it specifies that it is for a Letter of Credit;
  - (iii) it identifies the Revolving Facility Borrower of the Letter of Credit;
  - (iv) it identifies the Issuing Bank which has agreed to issue the Letter of Credit;
  - (v) the proposed Utilisation Date is a Business Day within the Availability Period applicable to the Revolving Facility to be utilised;
  - (vi) the currency and amount of the Letter of Credit comply with Clause 6.4 (*Currency and amount*);
  - (vii) the form of Letter of Credit is attached;
  - (viii) the delivery instructions for the Letter of Credit are specified; and
  - (ix) the identity of the beneficiary of the Letter of Credit is a beneficiary to which the Issuing Bank is not precluded from issuing a Letter of Credit by law or regulation.
- (b) Subject to Clause 20.2 (*Other indemnities*), a Borrower may deliver a conditional or revocable Utilisation Request for a Letter of Credit.

### **6.4 Currency and amount**

- (a) The currency specified in an Utilisation Request must be the Base Currency or an Optional Currency.
- (b) Unless otherwise agreed with the Issuing Bank, the amount of the proposed Letter of Credit must be an amount whose Base Currency Amount is not more than the Available Facility and which is a minimum of \$1,000,000 (or in relation to Utilisations in any other currency, the Base Currency equivalent), or, if less, the Available Facility.

## 6.5 Issue of Letters of Credit

- (a) If the conditions set out in this Agreement have been met, the Issuing Bank shall issue the Letter of Credit on the Utilisation Date.
- (b) 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 Declared Default is continuing; and
  - (ii) in the case of any other Utilisation, no Event of Default is continuing or would result from the proposed Utilisation.
- (c) Subject to Clause 4.1 (*Initial conditions precedent*), during the Certain Funds Period, the Issuing Bank will only be obliged to comply with paragraph (a) above in relation to a Letter of Credit which is a Certain Funds Utilisation, if on the proposed Utilisation Date:
  - (i) no Major Event Default is continuing or would result from the proposed Utilisation;
  - (ii) no Change of Control has occurred; and
  - (iii) it has not, after the date of this Agreement (or, if later, the date on which the relevant Issuing Bank became a Party as an Issuing Bank), become unlawful in any applicable jurisdiction for the Issuing Bank to issue the applicable Letter of Credit (and if that is the case the Issuing Bank must notify the Parent as soon as it becomes aware of the relevant legal issue and the provisions of Clause 11.1 (*Illegality*) shall apply),  
  
*provided that*, during the Certain Funds Period, an extension of a Letter of Credit shall be permitted unless a Declared Default is continuing.
- (d) During any Agreed Certain Funds Period, the Issuing Bank will only be obliged to comply with paragraph (a) above in relation to a Letter of Credit which is an Agreed Certain Funds Utilisation if, on the date of the Utilisation Request and on the proposed Utilisation Date:
  - (i) no Major Event Default is continuing or would result from the proposed Utilisation;
  - (ii) no Change of Control has occurred; and
  - (iii) it has not, after the date of this Agreement (or, if later, the date on which the relevant Issuing Bank became a Party as an Issuing Bank), become unlawful in any applicable jurisdiction for the Issuing Bank to issue the applicable Letter of Credit (and if that is the case the Issuing Bank must notify the Parent as soon as it becomes

aware of the relevant legal issue and the provisions of Clause 11.1 (*Illegality*) shall apply); and

- (iv) solely in relation to an Agreed Certain Funds Utilisation under an Ancillary Facility or a Revolving Facility, the additional conditions or events (if any) specified in the relevant Additional Facility Notice or other notice in relation to that Agreed Certain Funds Period and Agreed Certain Funds Utilisation are complied with or satisfied,

*provided that*, during an Agreed Certain Funds Period, an extension of a Letter of Credit shall be permitted unless a Declared Default is continuing.

- (e) Notwithstanding anything to the contrary in this Agreement, during the Certain Funds Period or any Agreed Certain Funds Period the Issuing Bank shall not be entitled to:

- (i) cancel any of its Commitments;
- (ii) take any action to rescind, terminate or cancel this Agreement or any of the Facilities or exercise any similar right or remedy or make or take any action or make or enforce any claim under or in respect of any Finance Documents it may have to the extent to do so would directly or indirectly prevent or limit the issuing of a Letter of Credit which is a Certain Funds Utilisation or an Agreed Certain Funds Utilisation;
- (iii) refuse to issue a Letter of Credit which is a Certain Funds Utilisation or an Agreed Certain Funds Utilisation;
- (iv) exercise any right of set-off or counterclaim or similar right or remedy which it may exercise in respect of a Letter of Credit to the extent to do so would prevent or the making of a Letter of Credit which is a Certain Funds Utilisation or an Agreed Certain Funds Utilisation;
- (v) cancel, accelerate or cause repayment or prepayment of any amounts owing under this Agreement or under any other Finance Document or exercise any enforcement rights under any Transaction Security Document to the extent to do so would prevent or limit the making of a Letter of Credit which is a Certain Funds Utilisation or an Agreed Certain Funds Utilisation;
- (vi) declare that cash cover in relation to a Letter of Credit or an Ancillary Facility is immediately due and payable or on demand; or
- (vii) take any other action or make or enforce any other claim (in its capacity as Issuing Bank) to the extent that such action, claim or enforcement would directly or indirectly prevent or limit the making of a Certain Funds Utilisation or an Agreed Certain Funds Utilisation,

*provided that* immediately upon the expiry of the Certain Funds Period or the relevant Agreed Certain Funds Utilisation (as applicable) all such rights, remedies and entitlements shall be available to the Issuing Bank notwithstanding that they may not have been used or been available for use during the Certain Funds Period or the relevant Agreed Certain Funds Utilisation (as applicable).

- (f) The amount of each Lender's participation in each Letter of Credit will be equal to its L/C Proportion.
- (g) 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.
- (h) The Issuing Bank has no duty to enquire of any person whether or not any of the conditions set out in paragraph (b) above have been met. The Issuing Bank may assume that those conditions have been met unless it is expressly notified to the contrary by the Agent. The Issuing Bank will have no liability to any person for issuing a Letter of Credit based on such assumption.
- (i) The Issuing Bank is solely responsible for the form of the Letter of Credit that it issues. The Agent has no duty to monitor the form of that document.
- (j) Subject to paragraph (a)(i) of Clause 31.7 (*Rights and discretions*), each of the Issuing Bank and the Agent shall provide the other with any information reasonably requested by the other that relates to a Letter of Credit and its issue.
- (k) The Issuing Bank may (with the consent of the relevant Revolving Facility Borrower or the Parent) issue a Letter of Credit in the form of a SWIFT message or other form of communication customary in the relevant market but has no obligation to do so.

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

- (a) A Revolving Facility Borrower (or the Parent on its behalf) may request that any Letter of Credit issued on behalf of that Revolving Facility 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 conditions set out in paragraphs (vi) to (ix) 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 Lender under the relevant Revolving 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 Borrower's option to provide cash cover*); and

(ii) either:

(A) the Issuing Bank has not required the relevant Revolving Facility Borrower to provide cash cover pursuant to Clause 7.5 (*Requirement for cash cover from Borrower*); or

(B) the relevant Revolving Facility Borrower of that proposed Letter of Credit has not exercised its right to provide cash cover to the Issuing Bank in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*),

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 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 Letter of Credit is denominated in an Optional Currency, the Agent shall on the last day of each Financial Year recalculate the Base Currency Amount of each such 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 five Business Days after any calculation under paragraph (a) above, ensure that within three Business Days after such request sufficient Revolving Facility Utilisations are prepaid to prevent the Base Currency Amount of the Revolving Facility Utilisations exceeding the Total Revolving Facility Commitments (after deducting the total Ancillary Commitments) by more than five per cent. following any adjustment to a Base Currency Amount under paragraph (a) above.

#### **6.9 Reduction or expiry of Letter of Credit**

If the amount of any Letter of Credit is wholly or partially reduced or it is repaid or prepaid or it expires prior to its Expiry Date, the relevant Issuing Bank and the relevant Revolving Facility Borrower that requested (or on behalf of which the Parent requested) the issue of that Letter of Credit shall promptly notify the Agent of the details upon becoming aware of them, *provided that* any failure to provide such details shall not constitute a Default or otherwise affect any Revolving Facility Borrower's rights under this Agreement (including requesting further Utilisations).

#### **6.10 Appointment of additional Issuing Banks**

- (a) Any Lender (or Affiliate of a Lender) which has agreed to the Parent's request to be an Issuing Bank pursuant to the terms of this Agreement shall become an Issuing Bank for the purposes of this Agreement upon notifying the Agent and the Parent that it has so agreed to be an Issuing Bank and acceding to this Agreement and the Intercreditor Agreement as an Issuing Bank and on making that notification that Lender (or Affiliate of a Lender) shall become bound by the terms of this Agreement as an Issuing Bank.
- (b) The Parent and any Issuing Bank may at any time and from time to time agree (at their sole discretion) any sub-limit on the amount of Letters of Credit to be issued by that Issuing Bank.
- (c) Where this Agreement or any other Finance Document imposes an obligation on an Issuing Bank and the relevant Issuing Bank 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.

#### 6.11 Existing Letters of Credit and Ancillary Facilities

- (a) The Parent may by notice in writing to the Agent request that any letter of credit, guarantee, bond, indemnity, documentary or like credit or any other instrument of suretyship or payment, issued, undertaken or made prior to the Closing Date by any person which is a Lender under this Agreement (or an Affiliate of such a Lender) on behalf or at the request of any member of the Group be deemed to be issued under an Ancillary Facility or the Initial Revolving Facility and with effect from the later of the date specified in such notice (the "**Grandfathering Date**") (being a date not less than three Business Days, or such shorter period as the Agent may agree, after the date such notice is delivered to the Agent) and the Closing Date, such instrument (the "**Relevant Instrument**") shall be treated as outstanding under an Ancillary Facility or a Letter of Credit for all purposes under the Initial Revolving Facility or Ancillary Facility (as the case may be), *provided that*:
  - (i) the relevant entity that is the borrower of the Relevant Instrument or on whose behalf it has been issued will either (i) accede to this Agreement as a Revolving Facility Borrower on the Grandfathering Date in accordance with Clause 30 (*Changes to the Obligors*) or (ii) (in the case of a Relevant Instrument to be treated as outstanding under an Ancillary Facility) be approved as an Affiliate of a Revolving Facility Borrower by the Lender providing such Relevant Instrument in accordance with Clause 9.10 (*Affiliates of Borrowers*); and
  - (ii) the Agent receives, together with the notice specified in this Clause 6.11, a copy of the Relevant Instrument, detailing the amounts outstanding thereunder and the identity of the Lenders under the Relevant Instrument.
- (b) The Lender (or as the case may be, the Affiliate of the Lender) under a Relevant Instrument will (unless it is already an Ancillary Lender, or, as the case may be, an Issuing Bank) become an Ancillary Lender or, as the case may be, an Issuing Bank with respect to each Relevant Instrument issued, undertaken or made by it, in each case subject to the Agent having received notification in writing from such Lender (or, as the case may be, the Affiliate of such Lender) that it agrees to the Relevant Instrument being treated as outstanding under an Ancillary Facility or, as the case may be, a Letter of Credit for all purposes under this Agreement.

## 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 Revolving Facility Borrower that requested (or on behalf of which the Parent requested) the issue of that Letter of Credit shall repay or prepay that amount promptly on demand by the relevant Issuing Bank.

### 7.2 Claims under a Letter of Credit

- (a) Each Revolving Facility 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 Revolving Facility Borrower shall within five Business Days after demand pay to the Agent for the Issuing Bank an amount equal to the amount of any claim or, *provided that* no Declared Default has occurred and is continuing, may elect that such claim be converted to a Revolving Facility Loan.
- (c) Each Revolving Facility 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 Revolving Facility 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 Revolving Facility Borrower shall promptly 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 Revolving Facility 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) The Revolving Facility Borrower which requested (or on behalf of which the Parent requested) a Letter of Credit shall promptly 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 except to the extent arising out of the negligence of, wilful misconduct of, or material breach of the terms of this Agreement in relation to such Letter of Credit by, such Lender.

- (d) The obligations of each Lender or Revolving Facility Borrower under this Clause are continuing obligations and will extend to the ultimate balance of sums payable by that Lender or Revolving Facility Borrower in respect of any Letter of Credit, regardless of any intermediate payment or discharge in whole or in part.
- (e) If a Revolving Facility Borrower has provided cash cover in respect of a Lender's participation in that Letter of Credit, the Issuing Bank shall seek reimbursement from that cash cover before making a demand of that Lender under paragraph (b) above. Any recovery made by an Issuing Bank pursuant to that cash cover will reduce that Lender's liability under paragraph (b) above.
- (f) The obligations of any Lender or Revolving Facility 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.

#### **7.4 Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover**

- (a) If, at any time but subject to paragraph (g) below, a Lender under a Revolving Facility 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 five Business Days after the request by the Issuing Bank, an amount equal to that Lender's L/C Proportion of:
  - (i) the outstanding amount of a Letter of Credit; or

- (ii) in the case of a proposed Letter of Credit, the amount of that proposed 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 this Agreement by that Lender to the Issuing Bank in respect of that Letter of Credit.
- (c) Subject to paragraph (f) below, withdrawals from the account may only be made to pay the Issuing Bank amounts due and payable to it under this Agreement by the Non-Acceptable L/C Lender in respect of that Letter of Credit until no amount is or may be outstanding under that Letter of Credit.
- (d) If a Revolving Facility Lender is a Non-Acceptable L/C Lender, it shall notify the Agent and the Parent:
- (i) on any later date on which it becomes such a Lender in accordance with Clause 2.2 (*Increase*), 2.3 (*Incremental Facility*) or Clause 29 (*Changes to the Lenders*); and
- (ii) as soon as practicable upon becoming aware of the same,  
and an indication in an Assignment Agreement, in a Transfer Certificate, in an Increase Confirmation, in an Extension Amendment or in a Refinancing Amendment to that effect will constitute a notice under paragraph (i) above to the Agent.
- (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) Notwithstanding paragraph (c) above, a Lender who has provided cash collateral in accordance with this Clause 7.4 may, by notice to the Issuing Bank, request that an amount equal to the amount provided by it as collateral in respect of the relevant Letter of Credit (together with any accrued interest) be returned to it:
- (i) to the extent that such cash collateral has not been applied in satisfaction of any amount due and payable under this Agreement by that Lender to the Issuing Bank in respect of the relevant Letter of Credit:
- (ii) if:
- (A) it ceases to be a Non-Acceptable L/C Lender;
- (B) its obligations in respect of the relevant Letter of Credit are transferred to a New Lender in accordance with the terms of this Agreement; or
- (C) an Increase Lender has agreed to undertake that Lender's obligations in respect of the relevant Letter of Credit in accordance with the terms of this Agreement; and

(iii) if no amount is due and payable by that Lender in respect of a Letter of Credit,

and the Issuing Bank shall pay that amount to the Lender within five Business Days after that Lender's request (and shall cooperate with the Lender in order to procure that the relevant security or collateral arrangement is released and discharged).

- (g) If the Issuing Bank sends a notice to a Lender under paragraph (a) above at a time when the Issuing Bank is a Non-Acceptable L/C Lender or, would be a Non-Acceptable L/C Lender if it were a Lender under a Revolving Facility (as the case may be), the relevant Lender to whom the notice is delivered will not be under any obligation to pay an amount requested under such notice, and it will not as a result of such non-payment become a Defaulting Lender.
- (h) To the extent that a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank that it will not provide cash collateral) when required in accordance with this Clause 7.4 in respect of a proposed Letter of Credit, the Issuing Bank shall promptly notify the Parent (with a copy to the Agent) and the relevant Revolving Facility Borrower of that proposed Letter of Credit (or the Parent) may (at its sole and absolute discretion), provide cash cover to an account with the Issuing Bank in an amount equal to that Lender's L/C Proportion of the amount of that proposed Letter of Credit.

#### **7.5 Requirement for cash cover from Borrower**

If:

- (a) a Non-Acceptable L/C Lender fails to provide cash collateral (or notifies the Issuing Bank and the Parent that it will not provide cash collateral) in accordance with Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) in respect of a Letter of Credit that has been issued;
- (b) the Issuing Bank notifies the Parent (with a copy to the Agent) that it requires the Revolving Facility Borrower of the relevant 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
- (c) that Revolving Facility Borrower has not already provided such cash cover which is continuing to stand as collateral,

then that Revolving Facility Borrower (or the Parent) shall provide such cash cover within three Business Days after the notice referred to in paragraph (b) above.

#### **7.6 Regulation and consequences of cash cover provided by Borrower**

- (a) Any cash cover provided by a Revolving Facility Borrower pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*) may be funded out of a Revolving Facility Loan.
- (b) Notwithstanding paragraph (e) of Clause 1.2 (*Construction*), the relevant Revolving Facility Borrower may request that an amount equal to the cash cover (together with any accrued interest) provided by it pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable*

*L/C Lender and Borrower's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*) be returned to it:

(i) to the extent that such cash cover has not been applied in satisfaction of any amount due and payable under this Agreement by that Revolving Facility Borrower to the Issuing Bank in respect of a Letter of Credit;

(ii) if:

(A) the relevant Lender is not or ceases to be a Non-Acceptable L/C Lender;

(B) 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

(C) an Increase Lender has agreed to undertake the relevant Lender's obligations in respect of the relevant Letter of Credit in accordance with the terms of this Agreement; and

(iii) if no amount is due and payable by the relevant Lender in respect of the relevant Letter of Credit,

and the Issuing Bank shall pay that amount to that Revolving Facility Borrower within five Business Days after that Revolving Facility Borrower's request.

(c) To the extent that a Revolving Facility Borrower has provided cash cover pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*), 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 (e)(ii) of Clause 1.2 (*Construction*)). However, the relevant Revolving Facility 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 provides that 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 Revolving Facility Borrower provides cash cover pursuant to Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) or Clause 7.5 (*Requirement for cash cover from Borrower*) and of any change in the amount of cash cover so provided.

## **7.7 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 Revolving Facility Borrower (or the Parent on its behalf) shall select the currency of a Revolving Facility 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 an Optional Currency requested under paragraph (a)(ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) 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 an Optional Currency requested under paragraph (a)(ii) of Clause 4.3 (*Conditions relating to Optional Currencies*) would contravene a law or regulation applicable to it,

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

## **8.3 Agent's calculations**

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

## **9. ANCILLARY FACILITIES**

### **9.1 Type of Facility**

An Ancillary Facility may be by way of:

- (a) an overdraft, cheque clearing, automatic payment or other current account or similar 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 or desirable in connection with the business of the Group and which is agreed by the Parent and the relevant Ancillary Lender.

### **9.2 Availability**

- (a) If the Parent and a Lender (or Lenders) agree and except as otherwise provided in this Agreement, the Lender (or one or more Lenders) may provide all or part of its Commitment under a Revolving Facility as an Ancillary Facility on either a fronted or bilateral basis.

- (b) An Ancillary Facility shall not be made available unless, not later than three Business Days prior to the Ancillary Commencement Date for an Ancillary Facility (or such later date as may be agreed by the relevant Ancillary Lender), the Agent has received from the Parent:
- (i) a notice in writing of the establishment of an Ancillary Facility and specifying:
    - (A) the Revolving Facility to which it relates;
    - (B) the proposed Revolving Facility Borrower(s) (or, subject to Clause 9.10 (*Affiliates of Borrowers*), Affiliates of Revolving Facility Borrowers) which may use the Ancillary Facility;
    - (C) the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;
    - (D) the proposed type of Ancillary Facility to be provided;
    - (E) the proposed Ancillary Lender(s);
    - (F) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, in the case of a Multi-account Overdraft, its Designated Gross Amount and its Designated Net Amount; and
    - (G) 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.
- (c) The Agent shall promptly notify the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.
- (d) Subject to compliance with paragraph (b) above:
- (i) the Lender(s) 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) Those terms:
  - (i) to the extent relating to the rate of interest, fees and other remuneration in respect of that Ancillary Facility, must be based upon normal commercial terms at that time (except as varied by this Agreement);

- (ii) may allow only Revolving Facility Borrowers (or subject to Clause 9.10 (*Affiliates of Borrowers*) Affiliates of Revolving Facility Borrowers) to use the Ancillary Facility;
  - (iii) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;
  - (iv) may not allow a Lender's Ancillary Commitment to exceed that Lender's Available Commitment relating to the relevant Revolving Facility (before taking into account the effect of the Ancillary Facility on that Available Commitment); and
  - (v) must require that the Ancillary Commitment is reduced to zero, and that all Ancillary Outstandings are repaid not later than the Termination Date applicable to the relevant Revolving Facility (or such earlier date as the applicable Revolving Facility Commitment of the relevant Ancillary Lender (or its Affiliate) 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 37.3 (*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 17.3 (*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 in relation to the applicable Revolving Facility or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement unless otherwise agreed in writing with the relevant Ancillary Lender pursuant to Clause 9.14 (*Continuation of Ancillary Facilities*).
- (b) If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the Ancillary Lender shall be reduced to zero.
- (c) No Ancillary Lender may demand repayment or prepayment of any Ancillary Outstandings or demand cash cover for any liabilities made available or incurred by it under its Ancillary Facility prior to the expiry date of the relevant Ancillary Facility unless:
  - (i) all Revolving Facility Commitments in respect of the relevant Revolving Facility have been cancelled in full, or all outstanding Utilisations under the relevant Revolving Facility have become due and payable in accordance with the terms of this Agreement;

- (ii) it has, after the date of this Agreement (or, if later, the date on which the relevant Ancillary Facility Lender became a Party as an Incremental Facility Lender), become unlawful in any applicable jurisdiction for that Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility (or it has become unlawful for any Affiliate of the Ancillary Lender which is an Ancillary Lender under Clause 9.9 (*Affiliates of Lenders as Ancillary Lenders*) to do so);
- (iii) where required to bring any Gross Outstandings down to the net limit;
- (iv) both:
  - (A) the Available Commitments relating to the relevant Revolving Facility; and
  - (B) the notice of the demand given by the Ancillary Lender,would not prevent the relevant Revolving Facility Borrower funding the repayment of those Ancillary Outstandings in full by way of Revolving Facility Utilisations under the relevant Revolving Facility and the Ancillary Lender gives sufficient notice to enable a Revolving Facility Utilisation to be made to refinance those Ancillary Outstandings; or
- (v) as agreed by the Parent in writing.
- (d) If a Revolving Facility Utilisation is made to repay Ancillary Outstandings in full, the relevant Ancillary Commitment shall be reduced to zero.
- (e) For the purposes of determining whether or not the Ancillary Outstandings under an Ancillary Facility mentioned in paragraph (c)(iv) above can be refinanced by a Utilisation of the relevant Revolving Facility:
  - (i) the Revolving Facility Commitment of the Ancillary Lender under that Revolving Facility will be increased by the amount of its Ancillary Commitment; and
  - (ii) the Utilisation may (so long as paragraph (c)(i) does not apply) be made irrespective of whether a Default is outstanding or any 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 4.2 (*Further conditions precedent*) or paragraph (a)(iv) of Clause 5.2 (*Completion of a Utilisation Request for Loans*) applies.
- (f) On the making of a Utilisation of a Revolving Facility to refinance all or part of any 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 Revolving Facility Utilisations then outstanding bearing the same proportion to the aggregate amount of the Revolving Facility Utilisations then outstanding as its Revolving Facility Commitment bears to the Total Revolving Facility Commitments, in each case, under that Revolving Facility; and



(ii) the relevant Ancillary Facility shall be cancelled to the extent of such refinancing.

(g) 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 the Available Credit Balance which it is permitted to take into account by the then current law and regulations in relation to its reporting of exposures to the applicable regulatory authorities as netted for capital adequacy purposes.

#### **9.5 Limitation on Ancillary Outstandings**

The Parent shall procure that:

- (a) the Ancillary Outstandings under any Ancillary Facility shall not exceed the Ancillary Commitment applicable to that Ancillary Facility; and
- (b) in relation to a Multi-account Overdraft:
  - (i) the Ancillary Outstandings shall not exceed the Designated Net Amount applicable to that Multi-account Overdraft; and
  - (ii) the Gross Outstandings shall not exceed the Designated Gross Amount applicable to that Multi-account Overdraft.

#### **9.6 Voluntary cancellation of Ancillary Facilities**

Unless otherwise agreed with the relevant Ancillary Lender, the Parent may, if it gives the Agent and the relevant Ancillary Lender not less than five Business Days' notice, cancel the whole or any part of the Ancillary Commitment under an Ancillary Facility.

#### **9.7 Adjustment for Ancillary Facilities upon acceleration**

- (a) In this Clause 9.7:
  - (i) Revolving Outstandings means, in relation to a Lender and a Revolving Credit Facility the aggregate of the equivalent in the Base Currency of:
    - (A) its participation in each Revolving Facility Utilisation then outstanding under that Revolving Facility (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under that Revolving Facility); and
    - (B) if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender (or by its Affiliate) under that Revolving Facility (together with the aggregate amount of all accrued interest, fees and commission owed to it (or to its Affiliate) as an Ancillary Lender in respect of the Ancillary Facility); and
  - (ii) Total Revolving Outstandings means the aggregate of all Revolving Outstandings.
- (b) If a Declared Default occurs, each Lender and each Ancillary Lender shall (subject to paragraph (g) below) promptly adjust (by making or receiving (as the case may be)

corresponding transfers of rights and obligations under the Finance Documents relating to Revolving Outstandings) their claims in respect of amounts outstanding to them under each Revolving Facility and each Ancillary Facility to the extent necessary to ensure that after such transfers the Revolving Outstandings of each Lender bear the same proportion to the Total Revolving Outstandings as such Lender's Revolving Facility Commitment bears to the Total Revolving Facility Commitments each as at the date the notice is served under paragraphs (b)(i) and (b)(ii) of Clause 28.5 (*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 making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Revolving Outstandings to the extent necessary) to put themselves in the position they would have been in had the original adjustment been determined by reference to the actual liability or, as the case may be, zero liability and not the contingent liability.
- (d) Any transfer of rights and obligations relating to Revolving Outstandings made pursuant to this Clause 9.7 shall be made for a purchase price in cash, payable at the time of transfer, in an amount equal to those Revolving Outstandings (less any accrued interest, fees and commission to which the transferor will remain entitled to receive notwithstanding that transfer, pursuant to Clause 29.12 (*Pro rata interest settlement*)).
- (e) Prior to the application of the provisions of paragraph (b) above, an Ancillary Lender that has provided a Multi-account Overdraft shall set-off any Available Credit Balance on any account comprised in that Multi-account Overdraft.
- (f) All calculations to be made pursuant to this Clause 9.7 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders and the Agent's Spot Rate of Exchange.
- (g) This Clause 9.7 shall not oblige any Lender to accept the transfer of a claim relating to an amount outstanding under an Ancillary Facility which is not denominated (pursuant to the relevant Finance Document) in either the Base Currency, a currency which has been an Optional Currency for the purpose of any Revolving Facility Utilisation or in another currency which is acceptable to that Lender.

#### **9.8 Information**

The Parent 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.

#### **9.9 Affiliates of Lenders as Ancillary Lenders**

- (a) Subject to the terms of this Agreement, an Affiliate of a Lender under a Revolving Facility may become an Ancillary Lender. In such case, the relevant Lender or its Affiliate shall be treated for all purposes of this Agreement other than under Clause 18 (*Taxes*) as a single Lender whose Revolving Facility Commitment in respect of that Revolving Facility is the amount of the relevant Lender's Revolving Facility Commitment under the relevant Revolving Facility or, as the case may be, as set out in the relevant Incremental Facility

Increase Notice and/or the amount of any Revolving Facility Commitment in respect of that Revolving Facility 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 Clause 18 (*Taxes*), the Affiliate shall be treated as a Lender in its own right which becomes a party to this Agreement on the date that it becomes an Ancillary Lender under the relevant Ancillary Facility.

- (b) The Parent shall specify any relevant Affiliate of a Revolving Facility 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 Revolving Facility Lender which becomes an Ancillary Lender shall accede to the Intercreditor Agreement as a Senior Lender and any person which so accedes to the Intercreditor Agreement shall, at the same time, become a Party as an Ancillary Lender in accordance with Clause 19.7 (*Creditor/Agent Accession Undertaking*) of the Intercreditor Agreement.
- (d) If a Revolving Facility Lender assigns all of its rights and benefits or transfers all of its rights and obligations to a New Lender, its Affiliate shall cease to have any obligations under this Agreement or any Ancillary Document.
- (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 Revolving Facility Lender which is not a party to that document, the relevant Revolving Facility Lender shall ensure that the obligation is performed by its Affiliate.

#### **9.10 Affiliates of Borrowers**

- (a) Subject to the terms of this Agreement, an Affiliate of a Revolving Facility 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 Revolving Facility Borrower in any notice delivered by the Parent to the Agent pursuant to paragraph (b) of Clause 9.2 (*Availability*).
- (c) If a Borrower ceases to be a Revolving Facility Borrower under this Agreement in accordance with Clause 30.3 (*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 Revolving Facility Borrower under an Ancillary Facility and the relevant Revolving Facility Borrower is an Affiliate of a Revolving Facility Borrower which is not a party to that document, the relevant Revolving Facility Borrower shall ensure that the obligation is performed by its Affiliate.
- (e) Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Finance Document or Ancillary Document.

### 9.11 Revolving Facility Commitment amounts

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

- (a) its Ancillary Commitment; or
- (b) the Ancillary Commitment of its Affiliate,

in each case in respect of its Revolving Facility Commitment in respect of that Revolving Facility.

### 9.12 Amendments and Waivers – Ancillary Facilities

No consent, 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 consent, amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this Clause 9). In such a case, Clause 40 (*Amendments and Waivers*) will apply.

### 9.13 Adjustments required in relation to Ancillary Facilities

The Agent may, by notice in writing to the Revolving Facility Lenders, reallocate drawn and undrawn Revolving Facility Commitments at the end of an Interest Period among Revolving Facility Lenders as may be necessary to ensure that any Revolving Facility Lender that intends to enter into an Ancillary Facility has an undrawn Revolving Facility Commitment sufficient to allow it to enter into such Ancillary Facility, in each case, under the relevant Revolving Facility, *provided that* for the avoidance of doubt no such reallocation may increase any Revolving Facility Lender's Revolving Facility Commitment.

### 9.14 Continuation of Ancillary Facilities

- (a) A Revolving Facility Borrower and an Ancillary Lender may, as between themselves only, agree to continue to provide the same Ancillary Facilities following the Termination Date applicable to the relevant Facility or, as the case may be, the date the relevant Commitments are otherwise cancelled under this Agreement (the "**Cancellation Date**").
- (b) If any arrangement contemplated in paragraph (a) above is to occur, each relevant Revolving Facility Borrower and the Ancillary Lender shall each confirm that to be the case in writing to the Agent. Upon such Termination Date or, as the case may be, Cancellation Date, any such Ancillary Facility shall continue as between the said entities on a bilateral basis and not as part of, or under, the Finance Documents. Save for any rights and obligations against any Finance Party under such Ancillary Facility arising prior to such Termination Date or, as the case may be, Cancellation Date, no such rights or obligations in respect of such Ancillary Facility shall, as between the Finance Parties, continue and the Transaction Security shall not secure any such Ancillary Facility after such Termination Date or, as the case may be, Cancellation Date.

## 10. REPAYMENT

### 10.1 Repayment of Term Loans

- (a) The TLB Borrowers under Facility B1 shall repay:

- (i) on each Quarter Date (commencing with the last day of the first complete Financial Quarter ending after the Closing Date) an aggregate principal amount equal to 0.25% of the aggregate principal amount of Facility B1 Loans outstanding on the Closing Date; and
  - (ii) the outstanding aggregate Facility B1 Loans in full on the Termination Date in respect of Facility B1.
- (b) The TLB Borrowers under Facility B2 shall repay the outstanding aggregate Facility B2 Loans in full on the Termination Date in respect of Facility B2.
- (c) The Incremental Facility Borrowers under each Incremental Term Facility shall repay each Incremental Term Facility Loan borrowed by it under that Incremental Term Facility in the amounts and on the dates agreed between the Borrower and the relevant Lenders thereof in accordance with Clause 2.3 (*Incremental Facility*).
- (d) The Borrowers may not reborrow any part of a Term Facility which is repaid.

## 10.2 Repayment of Revolving Facility Loans

- (a) Subject to paragraph (d) below and to the terms of any relevant Incremental Facility Increase Notice, each Revolving Facility Borrower which has drawn a Revolving Facility Loan shall repay that Revolving Facility Loan on the last day of its Interest Period.
- (b) Without prejudice to each Revolving Facility Borrower's obligation under paragraph (a) above, if:
- (i) any Revolving Facility Loan is not repaid on the last day of its Interest Period;
  - (ii) the applicable Borrower (or the Parent on its behalf) has not notified the Agent that it intends to repay such Revolving Facility Loan on the last day of its Interest Period; and
  - (iii) no Declared Default is continuing,
- a Rollover Loan shall be deemed to have been drawn on the last day of the Interest Period for that Revolving Facility Loan and applied in repayment of that Revolving Facility Loan.
- (c) Without prejudice to each Revolving Facility Borrower's obligation under paragraph (a) above, if one or more Revolving Facility Loans under the same Revolving Facility are to be made available to a Revolving Facility Borrower:
- (i) on the same day that a maturing Revolving Facility Loan under that Revolving Facility is due to be repaid by that Revolving Facility Borrower;
  - (ii) in the same currency as the maturing Revolving Facility 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 Revolving Facility Loan,
- the aggregate amount of the new Revolving Facility Loans shall be treated as if applied in or towards repayment of the maturing Revolving Facility Loan so that:

- (A) if the amount of the maturing Revolving Facility Loan exceeds the aggregate amount of the new Revolving Facility Loans:
- (I) the relevant Revolving Facility Borrower will only be required to make a payment under Clause 34.1 (*Payments to the Agent*) in an amount in the relevant currency equal to that excess; and
  - (II) each Lender's participation in the new Revolving Facility Loans shall be treated as having been made available and applied by the relevant Revolving Facility Borrower in or towards repayment of that Lender's participation in the maturing Revolving Facility Loan and that Lender will not be required to make a payment under Clause 34.1 (*Payments to the Agent*) in respect of its participation in the new Revolving Facility Loans; and
- (B) if the amount of the maturing Revolving Facility Loan is equal to or less than the aggregate amount of the new Revolving Facility Loans:
- (I) the relevant Revolving Facility Borrower will not be required to make a payment under Clause 34.1 (*Payments to the Agent*); and
  - (II) each Lender will be required to make a payment under Clause 34.1 (*Payments to the Agent*) in respect of its participation in the new Revolving Facility Loans only to the extent that its participation in the new Revolving Facility Loans exceeds that Lender's participation in the maturing Revolving Facility Loan and the remainder of that Lender's participation in the new Revolving Facility Loans shall be treated as having been made available and applied by the relevant Revolving Facility Borrower in or towards repayment of that Lender's participation in the maturing Revolving Facility Loan.
- (d) At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Revolving Facility Loans, then outstanding will be automatically extended to the Termination Date in relation to the relevant Revolving Facility and will be treated as separate Revolving Facility Loans (the "**Separate Loans**") denominated in the currency in which the relevant participations are outstanding.
- (e) A Revolving Facility Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving three Business Days' prior notice to the Agent. The Agent will forward a copy of a prepayment notice received in accordance with this paragraph (e) to the Defaulting Lender concerned as soon as practicable on receipt.
- (f) Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the relevant Revolving Facility Borrower (or the Parent on its behalf) by the time and date specified by the Agent (acting reasonably) and will be payable by that Revolving Facility Borrower to the Agent (for the account of that Defaulting Lender) on the last day of each Interest Period of that Loan.
- (g) The terms of this Agreement relating to Revolving Facility Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (d) to (f) above, in which case those paragraphs shall prevail in respect of any Separate Loan.

## 11. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

### 11.1 Illegality

- (a) If after the date of this Agreement (or, if later, the date the relevant Lender became a Party) it has become 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:
  - (i) that Lender shall promptly notify the Agent upon becoming aware of that event and the Agent shall promptly notify the Parent;
  - (ii) upon the Agent notifying the Parent, each Available Commitment of that Lender will be immediately cancelled to the extent necessary to comply with applicable laws or, at the Parent's request, the Lender's Commitment shall be transferred to another person pursuant to Clause 40.7 (*Replacement of Lender*); and
  - (iii) to the extent that the Lender's participation has not been transferred pursuant to Clause 40.7 (*Replacement of Lender*), each Borrower shall, to the extent of that unlawfulness, repay that Lender's participation in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Agent has notified the Parent or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.
- (b) Notwithstanding paragraph (a) above, each Lender confirms on the date that it becomes a Lender under a Facility that, based on information available to it, it or its branch or Affiliate is permitted to participate in that Facility, maintain a Commitment under that Facility and perform all of its obligations under any Finance Document in all jurisdictions in which any Borrower under that Facility is incorporated as at that date, following Brexit.

### 11.2 Illegality in relation to Issuing Bank

- (a) If after the date of this Agreement (or, if later, the date on which the relevant Letter of Credit is issued) it has become unlawful for an Issuing Bank to issue or leave outstanding any Letter of Credit:
  - (i) that Issuing Bank shall promptly notify the Agent upon becoming aware of that event and the Agent shall promptly notify the Parent;
  - (ii) upon the Agent notifying the Parent, the Issuing Bank shall not be obliged to issue any Letter of Credit;
  - (iii) to the extent it would be unlawful for any such Letter of Credit to remain outstanding, the relevant Borrower shall use all reasonable endeavours to procure the release of each Letter of Credit issued by that Issuing Bank and outstanding at such time; and
  - (iv) unless any other Lender is or has become an Issuing Bank pursuant to the terms of this Agreement, each Revolving Facility shall cease to be available for the issue of Letters of Credit.

- (b) Notwithstanding paragraph (a) above, each Issuing Bank confirms on the date that it becomes an Issuing Bank that, based on information available to it, it or its branch or Affiliate is permitted to fund and maintain its participation in any Letter of Credit in respect of which it is an Issuing Bank and perform all of its obligations under any Finance Document in all jurisdictions in which any Borrower under any Facility in respect of which it is an Issuing Bank is incorporated as at that date, following Brexit.

### **11.3 Voluntary cancellation**

- (a) In respect of any Term Facility (other than an Incremental Term Facility), the Parent or a TLB Borrower may, if it gives the Agent not less than three Business Days' (or such shorter period as the Majority Facility B Lenders may agree) prior notice, cancel the whole or any part (but, if in part, being an amount that reduces the Base Currency equivalent of the Available Facility in respect of the relevant Term Facility by a minimum amount of \$500,000 (or €500,000 in the case of Facility B2) (or, in each case, its equivalent in other currencies)).
- (b) In respect of any Incremental Term Facility, the Parent or an Incremental Facility Borrower may, if it gives the Agent not less than three Business Days' (or such shorter period as the Majority Incremental Term Facility Lenders may agree) prior notice, cancel the whole or any part (but, if in part, being an amount that reduces the Base Currency equivalent of the Available Facility in respect of the relevant Incremental Term Facility by a minimum amount of \$500,000 (or its equivalent in other currencies)).
- (c) In respect of any Revolving Facility, the Parent or a Revolving Facility Borrower may, if it gives the Agent not less than one Business Day's (or such shorter period as the Majority Revolving Facility Lenders may agree) prior notice, cancel the whole or any part (but, if in part, being an amount that reduces the Base Currency equivalent of the Available Facility in respect of the relevant Revolving Facility by a minimum amount of \$100,000 (or its equivalent in other currencies)).
- (d) Any cancellation under this Clause 11.3 shall reduce the Commitments of the Lenders rateably under the relevant Facility.

### **11.4 Voluntary prepayment of Facility B**

- (a) A TLB Borrower to which a Facility B Loan has been made may, if it or the Parent gives the Agent not less than three Business Days' (in the case of a Term Rate Loan) or five RFR Banking Days' (in the case of a Compounded Rate Loan) (or such shorter period as the Majority Facility B Lenders may agree) prior notice, prepay the whole or any part of that Facility B Loan (but, if in part, being an amount that reduces the Base Currency equivalent of the relevant Facility B Loan by a minimum amount of \$500,000 (or €500,000 in the case of Facility B2)).
- (b) A Facility B Loan may only be prepaid after the last day of the Availability Period for Facility B (or, if earlier, the day on which the applicable Available Facility is zero).

### **11.5 Voluntary prepayment of Revolving Facility Loans**

A Revolving Facility Borrower to which a Revolving Facility Loan has been made may, if it or the Parent gives the Agent not less than one Business Day's (in the case of a Term Rate Loan) or five RFR Banking Days' (in the case of a Compounded Rate Loan) (or such shorter period as the



Majority Lenders under the relevant Revolving Facility may agree) prior notice, prepay the whole or any part of a Revolving Facility Loan (but if in part, being an amount that reduces the Base Currency equivalent of that Revolving Facility Loan by a minimum amount of \$100,000).

#### **11.6 Voluntary prepayment of Incremental Facility Term Loans**

- (a) Unless otherwise provided in the terms of the relevant Incremental Term Facility, an Incremental Facility Borrower to which an Incremental Facility Term Loan has been made may, if it or the Parent gives the Agent not less than three Business Days' (in the case of a Term Rate Loan) or five RFR Banking Days' (in the case of a Compounded Rate Loan) (or such shorter period as the Majority Incremental Term Facility Lenders may agree) prior notice, prepay the whole or any part of that Incremental Facility Term Loan (but, if in part, being an amount that reduces the Base Currency equivalent of the relevant Incremental Facility Term Loan by a minimum amount of \$500,000).
- (b) An Incremental Term Facility Loan may only be prepaid after the last day of the Availability Period for that Incremental Facility (or, if earlier, the day on which the applicable Available Facility is zero).

#### **11.7 Voluntary prepayment at discretion of Parent**

Subject to Clause 13.9 (*Application of prepayments*), the Parent or a Borrower may, in its sole and absolute discretion, apply any voluntary prepayment permitted under this Agreement to any Facility or Facilities and in such proportions as the Parent or such Borrower may elect.

#### **11.8 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 Clause 18.3 (*Tax gross-up*) or under an equivalent provision of any Finance Document;
    - (ii) any Lender or Issuing Bank claims indemnification or payment from the Parent or an Obligor under Clause 18.4 (*Tax indemnity*) or Clause 19.1 (*Increased Costs*) (whether or not entitled to do so in accordance with those provisions); or
    - (iii) any Lender becomes a Non-Consenting Lender,
- the Parent may, whilst the circumstance giving rise to a Lender being a Non-Consenting Lender or 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 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.

#### **11.9 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 three 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 Change of Control**

- (a) For the purposes of this Agreement:

“**Change of Control**” means the occurrence of any of the following after the Closing Date (and excluding, for the avoidance of doubt, the Transactions):

- (i) the sale, lease, transfer, conveyance or other disposition in one or a series of related transactions (other than by merger, consolidation or amalgamation), of all or substantially all of the assets of the Parent and its Subsidiaries, taken as a whole, to any Person other than any Permitted Holder or any Obligor; *provided* that such sale, lease, transfer, conveyance or other disposition shall not constitute a Change of Control unless any Person (other than any Permitted Holder or a Holding Company) or Persons (other than any Permitted Holders or a Holding Company) that are together a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the Closing Date), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act as in effect on the Closing Date), becomes the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act as in effect on the Closing Date), directly or indirectly, of more than 50%, on a fully diluted basis, of the total voting power of the Voting Stock of the transferee Person in such sale, lease, transfer, conveyance or other disposition of assets, as the case may be; or
- (ii) the Parent becomes aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by:
  - (A) any Person (other than any Permitted Holder); or

(B) Persons (other than any Permitted Holders) that are together a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the Closing Date), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act as in effect on the Closing Date),

in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act as in effect on the Closing Date) of more than 50%, on a fully diluted basis, of the total voting power of the Voting Stock of the Parent directly or indirectly through any of its direct or indirect parent holding companies, in each case, other than in connection with any transaction or series of transactions in which the Parent shall become a Subsidiary of a Holding Company.

Notwithstanding sub-paragraphs (i) and (ii) above or any provision of Rule 13d-3 or 13d-5 of the Exchange Act:

- (1) a Person or group shall not be deemed to beneficially own Voting Stock subject to an equity or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement;
- (2) if any group (other than a Permitted Holder) includes one or more Permitted Holders, the issued and outstanding Voting Stock of the Parent owned, directly or indirectly, by any Permitted Holders that are part of such group shall not be treated as being beneficially owned by such group or any other member of such group for the purposes of determining whether a Change of Control has occurred;
- (3) a Person or group will not be deemed to beneficially own the Voting Stock of another Person as a result of its ownership of Voting Stock or other securities of such other Person's parent entity (or related contractual rights) unless it owns 50% or more of the total voting power of the Voting Stock entitled to vote for the election of directors of such parent entity having a majority of the aggregate votes on the Board of such parent entity; and
- (4) the right to acquire Voting Stock (as long as such Person does not have the right to direct the voting of the Voting Stock subject to such right) or any veto power in connection with the acquisition or disposition of Voting Stock will not cause a party to be a beneficial owner.

**"Permitted Holder"** means any of:

- (i) each of the Investors;

- (ii) each of the Management Stockholders (including any Management Stockholders holding Equity Interests through an Equityholding Vehicle);
  - (iii) any Person who is acting solely as an underwriter in connection with a public or private offering of Capital Stock of the Parent or any of its direct or indirect parent companies, acting in such capacity;
  - (iv) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the Closing Date) of which any of the foregoing, any Holding Company of the Parent, Permitted Plan or any Person or group that becomes a Permitted Holder specified in the last sentence of this definition are members and any member of such group; *provided*, that in the case of such group and without giving effect to the existence of such group or any other group, Persons referred to in sub-paragraphs (i) to (iii) above, collectively, have beneficial ownership of more than 50% of the total voting power of the Voting Stock of the Parent or any of its direct or indirect parent companies held by such group;
  - (v) any Holding Company; and
  - (vi) any Permitted Plan.
- (b) If a Change of Control occurs:
- (i) the Parent shall promptly notify the Agent upon becoming aware of that Change of Control (the “**Change of Control Notice**”) and the Agent shall promptly notify the Lenders and Issuing Bank accordingly; and
  - (ii) at the Parent’s option (as specified in the Change of Control Notice), unless otherwise agreed by the Majority Lenders, either:
    - (A) each Lender shall be entitled to cancel its Commitments and require repayment of all of its share of the Utilisations and payment of all amounts owing to it under the Finance Documents and each Issuing Bank shall be entitled to require that any Letters of Credit issued by it are prepaid, in each case by notice to the Agent within 10 Business Days after the date of the Change of Control Notice (the “**Change of Control Put Option Period**”), whereupon:
      - (I) the undrawn Commitments of such Lender shall, by no less than five Business Days’ prior notice to the Parent, be cancelled and such Lender shall have no obligation to fund or participate in any new Utilisation or utilisation of an Ancillary Facility (in each case other than (1) a Rollover Loan, (2) a Letter of Credit issued or to be issued pursuant to a Renewal Request or (3) a Utilisation or utilisation of an Ancillary Facility to refinance any amount falling due under an Ancillary Facility) and, in the case of an Issuing Bank, such Issuing Bank shall have no obligation to issue any new Letter of Credit (other than a Letter of Credit issued or to be issued pursuant to a Renewal Request); and
      - (II) on the date specified by the Parent (such date falling no earlier than 10 days nor later than 60 days from the date the Change of Control

Notice is delivered to the Agent) all outstanding Utilisations provided by such Lender and Ancillary Outstandings of such Lender (and/or, in the case of an Issuing Bank, all Letters of Credit provided by that Issuing Bank), together with accrued interest, and all other amounts accrued or owing to such Lender (or Issuing Bank, as the case may be) under the Finance Documents shall become immediately due and payable, and the relevant Borrower will immediately prepay all Utilisations and amounts provided by or owing to that Lender and procure that any cash collateral provided by that Lender is released and (unless otherwise agreed between the Parent and that Lender) any Letter of Credit provided by that Lender in its capacity as an Issuing Bank is prepaid and any Ancillary Facility provided by that Lender (or that Lender in its capacity as Issuing Bank, as the case may be) is prepaid and cancelled; or

(B) all outstanding undrawn Commitments of each Lender shall be immediately cancelled and all outstanding Utilisations and Ancillary Outstandings shall become immediately due and payable, together with accrued interest and other amounts accrued to each Lender (or that Lender in its capacity as Issuing Bank, as the case may be) under the Finance Documents.

(c) If a Lender or Issuing Bank has not notified the Agent in accordance with the provisions of paragraph (b)(ii)(A) above by the end of the Change of Control Put Option Period in respect of that Change of Control (only), without prejudice to Clause 11.3 (*Voluntary cancellation*), Clause 11.4 (*Voluntary prepayment of Facility B*), Clause 11.5 (*Voluntary prepayment of Revolving Facility Loans*), Clause 11.6 (*Voluntary prepayment of Incremental Facility Term Loans*), Clause 11.8 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*) or paragraph (b)(ii)(B) above, that Lender shall not be able to cancel its Commitments or require repayment of all or any part of its share of the Utilisations and the prepayment of any other amount owing to it under the Finance Document and an Issuing Bank shall not be entitled to require that any Letter of Credit issued by it are repaid and cancelled, in each case pursuant to paragraph (b) above.

## 12.2 Excess Cash Flow

(a) The Parent will ensure that within 15 Business Days after the date on which the Annual Financial Statements and accompanying Compliance Certificate for the relevant Financial Year (commencing with the first complete Financial Year ending after the Closing Date) are required to be delivered, an amount equal to: (x) the applicable percentage of the Excess Cash Flow for such Financial Year, *minus* (y) each of the following:

(i) the sum of (A) all voluntary prepayments, repurchases or redemptions of the Facilities or any other Indebtedness permitted to be incurred by a member of the Group under this Agreement secured on a *pari passu* basis with the Facilities (or any Refinancing Indebtedness that is secured on a *pari passu* basis with the Facilities) (and, in the case of any revolving credit facility, to the extent such prepayment, repurchase or redemption is accompanied by a permanent reduction of the corresponding commitment) which is prepaid, repurchased or redeemed on a pro rata basis or less than pro rata basis with Facility B (but, in each case,

excluding prepayments, repurchases or redemptions to the extent funded with the proceeds of long-term funded indebtedness (other than revolving loans)), made during such Financial Year or after the end of the relevant Financial Year but prior to the time prepayment is due under this Clause 12.2 (including, in the case of Debt Purchase Transactions, the actual purchase price paid in cash pursuant to such Debt Purchase Transaction) (each, a “**Voluntary Debt Reduction**”), *plus* (B) any amounts in respect of a Voluntary Debt Reduction carried forward from any prior Financial Year in accordance with paragraph (g) below;

- (ii) the aggregate consideration required to be paid in cash by the Parent or any of the Restricted Subsidiaries pursuant to binding contracts entered into prior to or during the relevant Financial Year, or intended to be paid in cash by the Parent or any of the Restricted Subsidiaries, in each case in respect of Investments, acquisitions, Capital Expenditures or acquisitions of intellectual property, in each case, permitted under this Agreement, to be consummated or made during the period of four consecutive Financial Quarters following the end of such Financial Year (together, the “**Committed Investment Amount**”); *provided that:*

(A) at the option of the Parent (in its sole and absolute discretion):

- (I) the Committed Investment Amount shall also include any amount committed to be paid pursuant to a binding contract in any subsequent period so long as to the extent such amount is not actually paid as committed in such subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period; and
- (II) the amount shall also include any payment made after such Financial Year and prior to the date on which the Excess Cash Flow payment under this Clause 12.2 is due so long as such amount will not be deducted in subsequent periods; and

(B) to the extent the aggregate amount of internally generated cash flow actually utilised to finance such Investments, acquisitions, Capital Expenditures or acquisitions of intellectual property during such period of four consecutive Financial Quarters or such subsequent period is less than the Committed Investment Amount, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive Financial Quarters; and

- (iii) the amount of any Restricted Payments paid in cash during the relevant Financial Year pursuant to Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*) (each, a “**Specified Restricted Payment**”) in each case to the extent such Specified Restricted Payments were financed with internally generated cash flow or borrowings under any revolving credit facility (the “**Restricted Payment Amount**”); *provided that:*

(A) at the option of the Parent (in its sole and absolute discretion):

- (I) the Restricted Payment Amount shall also include any amount declared by the Parent or any relevant member of the Group to be paid in any subsequent period so long as to the extent such amount

is not actually paid as declared in such subsequent period, such amount shall be added back in calculating Excess Cash Flow for such subsequent period; and

(II) the amount shall also include any payment made after such Financial Year and prior to the date on which the Excess Cash Flow payment under this Clause 12.2 is due so long as such amount will not be deducted in subsequent periods; and

(B) to the extent the aggregate amount of internally generated cash flow actually utilised to finance such Specified Restricted Payments during such period of four consecutive Financial Quarters or such subsequent period is less than the Restricted Payment Amount, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive Financial Quarters;

(iv) the sum of (I) the aggregate amount of all principal payments made in cash of Indebtedness of the Parent and the Restricted Subsidiaries made during such Financial Year or after the end of the relevant Financial Year but prior to the time prepayment is due under this Clause 12.2 (including (A) the principal component of payments in respect of Financing Lease Obligations, (B) the amount of any prepayment or repayment of Loans pursuant to this Agreement (including any scheduled repayment of Term Loans pursuant to Clause 10.1 (*Repayment of Term Loans*)), and (C) the amount of any voluntary prepayments of Loans pursuant to Clause 11.4 (*Voluntary prepayment of Facility B*) (in an amount equal to the amount actually paid in respect of the principal amount of such Loans), but excluding: (1) all prepayments of Revolving Facility Loans (unless the Revolving Facility Commitments are permanently reduced by the amount of such payments), (2) all prepayments in respect of any other revolving credit facility (unless such other revolving credit facility commitments are permanently reduced by the amount of such payments) and (3) prepayments of any Indebtedness secured by a junior lien or subordinated or unsecured Indebtedness, made during such period, in each case except to the extent financed with the proceeds of other Indebtedness of the Parent or the Restricted Subsidiaries and, in the case of (3) above, except to the extent funded by the Available Amount or made in reliance on any basket calculated by reference to the Available Amount to the extent attributable to a Financial Year of the Parent previous to the Financial Year with respect to which Excess Cash Flow is calculated) (each, a “**Mandatory Debt Reduction**”), *plus* (II) any amounts in respect of a Mandatory Debt Reduction carried forward from any prior Financial Year in accordance with paragraph (g) below;

(v) cash payments by the Parent and its Restricted Subsidiaries made (or committed to be made) during such Financial Year in respect of long-term liabilities of the Parent and its Restricted Subsidiaries other than Indebtedness, to the extent financed with internally generated cash (the “**Long Term Liability Amount**”), *provided that*:

(A) at the option of the Parent (in its sole and absolute discretion), the Long Term Liability Amount shall also include any payment made after such Financial Year and prior to the date on which the Excess Cash Flow payment under this Clause 12.2 is due so long as such amount will not be deducted in subsequent periods; and

- (B) to the extent the aggregate amount of internally generated cash flow actually utilised to make such payments in respect of long-term liabilities of the Parent and its Restricted Subsidiaries other than Indebtedness during a subsequent period is less than the Long Term Liability Amount, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of the subsequent Financial Year;
- (vi) the aggregate amount of any premium, make-whole or penalty payments paid (or committed or required to be paid) in cash by the Parent and the Restricted Subsidiaries during such Financial Year that are paid (or committed or required to be paid) in connection with any prepayment of Indebtedness to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income (the “**Make-Whole Amount**”), *provided that*:
- (A) at the option of the Parent (in its sole and absolute discretion), the Make-Whole Amount shall also include any such premium, make-whole or penalty payments paid (or committed or required to be paid) after such Financial Year and prior to the date on which the Excess Cash Flow payment under this Clause 12.2 is due so long as such amount will not be deducted in subsequent periods; and
- (B) to the extent the aggregate amount of any such premium, make-whole or penalty payments actually paid as committed or required during a subsequent period is less than the Make-Whole Amount, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of the subsequent Financial Year;
- (vii) the amount of cash taxes paid (or committed or required to be paid) or tax reserves set aside or payable (without duplication) in such Financial Year, to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period (the “**Tax Liability Amount**”), *provided that*, at the option of the Parent (in its sole and absolute discretion), the Tax Liability Amount shall also include any such cash taxes paid (or committed or required to be paid) or tax reserves set aside or payable (without duplication) after such Financial Year and prior to the date on which the Excess Cash Flow payment under this Clause 12.2 is due so long as such amount will not be deducted in subsequent periods; and
- (viii) the greater of \$108 million and 25% of LTM EBITDA (the “**ECF De Minimis Amount**”),
- is (to the extent not already applied in repayment or prepayment of Facility B) applied in prepayment of Facility B in accordance with Clause 12.3 (*Application of prepayments*), where the applicable percentage is set out in the table below opposite the applicable Consolidated First Lien Debt Ratio as demonstrated by the Annual Financial Statements for such Financial Year (and subject to any adjustments in accordance with this Clause 12.2):

Consolidated First Lien Debt Ratio	Percentage of Excess Cash Flow
Greater than 5.00:1	50%
Equal to or less than 5.00:1 but greater than 4.50:1	25%
Equal to or less than 4.50:1	0%



- (b) Notwithstanding the terms of paragraph (a) above, if at the time that any prepayment required by paragraph (a) above would be required, any member of the Group is required to offer to repurchase or prepay Other Applicable Indebtedness pursuant to the terms of the documentation governing such Other Applicable Indebtedness with Excess Cash Flow, then the Borrowers may apply such Excess Cash Flow on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of Facility B and Other Applicable Indebtedness at such time) to the prepayment of Facilities and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of Facility B that would otherwise have been required pursuant to this Clause 12.2 shall be reduced accordingly. For the avoidance of doubt, the portion of such Excess Cash Flow applied in repurchasing or prepaying the Other Applicable Indebtedness shall not exceed the amount of Excess Cash Flow required to be applied in repurchasing or prepaying Facility B pursuant to the terms hereof.
- (c) For the avoidance of doubt, if the amount calculated under paragraph (a) above is a negative number, the Parent shall not be required to make any such prepayment.
- (d) If, on applying Excess Cash Flow in prepayment of Facility B under this paragraph on any date, the Consolidated First Lien Debt Ratio as demonstrated in the then most recent Compliance Certificate received by the Agent (after taking into account such prepayment) falls into a lower threshold in the table above, then the relevant percentage shall be reduced accordingly for any further prepayments to be made under this Clause 12.2 on that date.
- (e) For the purposes of this Clause 12.2, the Consolidated First Lien Debt Ratio shall be calculated *pro forma* for any Voluntary Debt Reduction and/or Mandatory Debt Reduction made after the end of the relevant Financial Year but prior to the time prepayment is due under this Clause 12.2 as if such Debt Reduction and/or Mandatory Debt Reduction had been made during the relevant Financial Year and Consolidated First Lien Net Debt had accordingly been reduced on a dollar-for-dollar basis.
- (f) If, with respect to Excess Cash Flow attributable to an entity that is not organized in the United States but is a Subsidiary of an entity that is organized in the United States, the distribution (or deemed distribution) of such Excess Cash Flow that would occur in connection with any prepayment of the Facilities hereunder would result in material adverse Tax consequences, then the amount of such Excess Cash Flow attributable to such entity shall not be required to be prepaid hereunder and shall be permitted to be retained by the applicable entity.
- (g) Notwithstanding the terms of paragraph (a) above, to the extent the aggregate amount of Voluntary Debt Reductions and/or Mandatory Debt Reductions during any relevant Financial Year exceeds the amount of any Excess Cash Flow prepayment that would have been required pursuant to paragraph (a) above (after deducting the ECF De Minimis Amount, any Committed Investment Amount and any Restricted Payment Amount), the amount of such excess shall be carried forward to subsequent Financial Years and deducted (on a dollar-for-dollar basis) from any Excess Cash Flow prepayment required in any such subsequent Financial Years (after calculating the applicable Excess Cash Flow percentage for the relevant Financial Year).

### 12.3 Application of prepayments

- (a) Subject to Clause 12.4 (*Right to refuse prepayment*) below, prepayments made pursuant to this Clause 12 shall be applied in any manner as directed by the Parent (in its sole and absolute discretion) or, in the absence of such direction, in direct order of maturity; *provided that* to the extent that the Parent directs that prepayments made pursuant to this Clause 12 are to be applied to any Term Facility (a “**Later Maturing Tranche**”) which matures on a later date than the maturity applicable to any other Term Facility (an “**Earlier Maturing Tranche**”), such proceeds shall be applied *pro rata* across the Later Maturing Tranche and each Earlier Maturing Tranche.
- (b) Without prejudice to paragraph (f) of Clause 12.2 (*Excess Cash Flow*), the Parent and each other Obligor shall use all reasonable endeavours to ensure that any transaction giving rise to a prepayment obligation is structured in such a way that it will not be unlawful for the members of the Group to move the relevant proceeds received between members of the Group to enable a mandatory prepayment to be lawfully made and the proceeds lawfully applied as provided under this Clause 12, and/or to minimise the costs of making such mandatory prepayment (including using all reasonable endeavours to fund such payment from surplus cash in the Group). If, however, (A) the cost of making (or moving the funds to make) such mandatory prepayment would exceed 3% of the amount of such payment at that time; and/or (B) after the Parent and each such member of the Group has used all such reasonable endeavours and taken such reasonable steps, it will still:
- (i) be unlawful (including, without limitation, by reason of financial assistance, corporate benefit restrictions on upstreaming cash intra-Group and the fiduciary and statutory duties of the directors of any member of the Group) for such a prepayment to be made and/or cash cover to be provided and the proceeds so applied; or
  - (ii) be unlawful (including, without limitation, by reason of financial assistance, corporate benefit restrictions on upstreaming cash intra-Group and the fiduciary and statutory duties of the directors of any member of the Group) to make funds available to a member of the Group that could make such a prepayment and/or provide such cash cover,
- then such prepayment and/or provision of cash cover shall not be required to be made (and, for the avoidance of doubt, the relevant amount shall be available for the working capital purposes of the Group and shall not be required to be paid to any blocked account) provided always that if the restriction preventing such payment/provision of cash cover or giving rise to such liability is subsequently removed, any relevant proceeds will immediately be applied in prepayment and/or the provision of cash cover in accordance with this Clause 12 at the end of the relevant Interest Period(s) to the extent that such payment has not otherwise been made.
- (c) If any Term Loans are repaid or prepaid in accordance with Clause 11.4 (*Voluntary prepayment of Facility B*) or this Clause 12, then the Parent may, by giving not less than three Business Days’ notice to the Agent (or such shorter period agreed with the Agent) select which Borrower or Borrowers (if more than one) under the relevant Facility shall effect repayment of each Loan.
- (d) Without prejudice to Clause 12.1 (*Change of Control*) but otherwise notwithstanding anything to the contrary in any Finance Document (including this Clause 12.3 (*Application of prepayments*)), if the Consolidated Total Debt Ratio for the Relevant Period ending on the most recent Quarter Date for which a Compliance Certificate has been delivered is equal

to or less than 6.25:1 (adjusted as if any relevant prepayment and/or other application had taken place on the last day of that Relevant Period), the amount of voluntary prepayment or mandatory prepayment required to be applied under this Agreement may, at the election of the Parent, be applied in prepayment of any other Indebtedness permitted under this Agreement, in priority to the Facilities. Any application made in accordance with this paragraph (d) will satisfy in full all applicable prepayment obligations contemplated by this Agreement.

#### 12.4 Right to refuse prepayment

- (a) The Agent shall notify the Lenders as soon as practicable of any proposed prepayment of Term Loans under Clause 11.4 (*Voluntary prepayment of Facility B*) or Clause 12.2 (*Excess Cash Flow*).
- (b) Any Facility B Lender or Incremental Term Facility Lender (a “**Non-Accepting Lender**”) to which the proposed prepayment would otherwise be made may, by giving not less than three Business Days’ (or such shorter period as the Parent and Majority Lenders may agree) notice to the Agent prior to the date of the relevant prepayment, waive its right to prepayment (in whole or in part) other than (A) in relation to a prepayment arising pursuant to Clause 11.4 (*Voluntary prepayment of Facility B*), (B) in relation to a prepayment arising pursuant to Clause 11.1 (*Illegality*), Clause 11.2 (*Illegality in relation to Issuing Bank*) or Clause 11.8 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*), or (C) a prepayment or repayment in respect of which the Parent elects (in its sole and absolute discretion) that this Clause 12.4 shall not apply.
- (c) If any Non-Accepting Lender delivers any notice under paragraph (b) above, the amount in respect of which that Non-Accepting Lender has waived its right to prepayment (the “**Waived Amount**”) may be retained by the Parent and the Restricted Subsidiaries and/or be applied by the Parent or any of the Restricted Subsidiaries for any purpose that is permitted or not prohibited by the terms of this Agreement.

#### 12.5 Prepayments of Compounded Rate Loans

The Parent (or the relevant Borrower) shall pay to the Agent (for the account of each Lender participating in any Compounded Rate Loan prepaid pursuant to a Relevant Prepayment, pro rata to its participation in such Compounded Rate Loan) a fee of \$5,000 on any Relevant Prepayment under a Facility (the “**Relevant Facility**”), provided that such fee shall not be payable if:

- (a) including such Relevant Prepayment, no more than three Relevant Prepayments under the Relevant Facility have been made since 1 January in that calendar year; or
- (b) such Relevant Prepayment is made in connection with the prepayment and cancellation in full of the Relevant Facility.

For the purposes of this Clause 12.5:

“**Relevant Prepayment**” shall mean a voluntary prepayment of a Relevant Compounded Rate Loan made pursuant to Clause 11.4 (*Voluntary prepayment of Facility B*), Clause 11.5 (*Voluntary prepayment of Revolving Facility Loans*) or Clause 11.6 (*Voluntary prepayment of Incremental Facility Term Loans*) (but not, for the avoidance of doubt, any other provision of this Agreement).

“**Relevant Compounded Rate Loan**” means a Compounded Rate Loan in a Relevant Currency.

“**Relevant Currency**” means a currency in respect of which this Clause 12.5 is specified to apply in the Compounded Rate Terms for that currency.

### **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*) or Clause 12.4 (*Right to refuse prepayment*) may be conditional or revocable and shall (subject to the terms of those Clauses or unless otherwise agreed by the Agent), unless a contrary indication appears in this Agreement, 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**

Subject to Clause 17.8 (*Call Premium*), 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 No reborrowing of Facility B or Incremental Term Facilities**

No Borrower may reborrow any part of any Facility B or an Incremental Term Facility which is prepaid.

#### **13.4 Reborrowing of Revolving Facility**

Unless a contrary indication appears in this Agreement, any part of any Revolving Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement or the relevant Incremental Facility Increase Notice (as appropriate).

#### **13.5 Prepayment in accordance with Agreement**

- (a) 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.
- (b) To the extent that any prepayment is:
  - (i) applied or to be applied against a Utilisation that is not denominated in the Base Currency:
    - (A) any *pro rata* entitlement of that Utilisation shall be calculated using its Base Currency Amount; and
    - (B) any costs of converting the relevant prepayment amount into the currency of that Utilisation shall reduce the amount to be applied against that Utilisation (and, for the avoidance of doubt, such costs shall not reduce the amount applied against other Utilisations denominated in the Base Currency or increase the amount required to be paid by any member of the Group); and

- (ii) made or to be made in respect of proceeds denominated in a currency other than the Base Currency, the required prepayment amount shall be reduced by any costs of converting the relevant proceeds into the currency of the required prepayment.

### **13.6 No reinstatement of Commitments**

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

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

If the Agent receives a notice under Clause 11 (*Illegality, Voluntary Prepayment and Cancellation*) or under Clause 12.1 (*Change of Control*), or an election under Clause 12.4 (*Right to refuse prepayment*), it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender, as appropriate.

### **13.8 Effect of Repayment and Prepayment on Commitments**

If all or part of a Lender's participation in a Utilisation under a Facility is repaid or prepaid and is not available for redrawing, an amount of that Lender's Commitment (equal to the Base Currency Amount of the amount of the participation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.

### **13.9 Timing for prepayments**

Any prepayment under this Agreement shall be deemed to be made to the Agent on the proposed prepayment date immediately on receipt by the Agent, by no later than 4.00 p.m. (London time) on the proposed prepayment date, of an amount equal to the prepayment amount and the Agent shall promptly notify the Parent of receipt of such prepayment amount; if the prepayment amount is not received by the Agent on or prior to 4.00 p.m. (London time) on the proposed prepayment date, the prepayment amount shall be deemed to have been received on the next Business Day.

### **13.10 Application of prepayments**

Any prepayment of a Utilisation (other than a prepayment pursuant to Clause 11.1 (*Illegality*) or Clause 11.8 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*)) shall be applied *pro rata* to each Lender's participation in that Utilisation.

## **14. INTEREST**

### **14.1 Calculation of interest – Term Rate Loan**

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

- (a) Margin; and
- (b) EURIBOR for Loans in euro, CDOR for Loans in CAD and LIBOR (or local equivalent where LIBOR is not available) for Loans in all other currencies.

#### 14.2 Calculation of interest – Compounded Rate Loans

- (a) The rate of interest on each Compounded Rate Loan for any day during an Interest Period is the percentage rate per annum which is the aggregate of the applicable:
  - (i) Margin; and
  - (ii) the Compounded Reference Rate for that day.
- (b) If any day during an Interest Period for a Compounded Rate Loan is not an RFR Banking Day, the rate of interest on that Compounded Rate Loan for that day will be the rate applicable to the immediately preceding RFR Banking Day.

#### 14.3 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 (i) for any Loan denominated in USD, if the Interest Period is longer than three Months, on the dates falling at three Monthly intervals after the first day of the Interest Period and (ii) for all other Loans, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period). The Parties agree that interest (if unpaid) will be compounded with the principal amount of the Loans at the end of each Interest Period, but shall remain immediately due and payable.

#### 14.4 Default interest

- (a) If an Obligor fails to pay any amount (other than non-compounded interest) payable by it under a Finance Document on its due date (or, with respect to any Compounded Rate Interest Payment, if later, on the date falling three RFR Banking Days after the date on which the Agent notifies that the relevant Borrower of the amount of that Compounded Rate Interest Payment in accordance with Clause 14.5 (*Notification of rates of interest*)), interest shall, to the extent permitted by law, accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 1.00% per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 14.4 shall be immediately payable by the Obligor on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Term Rate Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 1.00% per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an Unpaid Sum will be compounded with the Unpaid Sum at the end of each Interest Period applicable to that Unpaid Sum, but shall remain immediately due and payable.

#### 14.5 Notification of rates of interest

- (a) The Agent shall promptly notify the relevant Lenders and the relevant Borrower and the Parent of the determination of a rate of interest relating to a Term Rate Loan.
- (b) The Agent shall promptly upon a Compounded Rate Interest Payment being determinable notify:
  - (i) (such notification to be made no later than three RFR Banking Days prior to the due date for such Compounded Rate Interest Payment) the relevant Borrower and the Parent of that Compounded Rate Interest Payment;
  - (ii) each relevant Lender of the proportion of that Compounded Rate Interest Payment which relates to that Lender's participation in the relevant Compounded Rate Loan; and
  - (iii) the relevant Lenders, the relevant Borrower and the Parent of:
    - (A) each applicable rate of interest and the amount of interest for each day relating to the determination of that Compounded Rate Interest Payment (including a breakdown of such rate and amount of interest as between the Margin and the Compounded Reference Rate for each such day and any other information that the relevant Borrower may reasonably request in relation to the calculation of such rate and amount or the determination of that Compounded Rate Interest Payment); and
    - (B) to the extent it is then determinable, the Market Disruption Rate (if any) relating to the relevant Compounded Rate Loan.

This paragraph (b) shall not apply to any Compounded Rate Interest Payment determined pursuant to Clause 16.4 (*Market Disruption*).

- (c) The Agent shall promptly notify the relevant Borrower and the Parent of each Funding Rate relating to a Loan.
- (d) The Agent shall promptly notify the relevant Lenders, the relevant Borrower and the Parent of the determination of a rate of interest relating to a Compounded Rate Loan to which Clause 16.4 (*Market Disruption*) applies.

#### 14.6 Interest Rate Limitation

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Utilisation, together with all fees, charges and other amounts which are treated as interest on such Utilisation under applicable law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Utilisation in accordance with applicable law, the rate of interest payable in respect of such Utilisation, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Utilisation but were not payable as a result of the operation of this Clause 14.6 shall be cumulated and the interest and Charges payable to such Lender in respect of other Utilisation or periods shall be increased (but not above the Maximum Rate therefor) until such

accumulated amount, together with interest thereon to the date of repayment, shall have been received by such Lender.

## **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 or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Agent by the Borrower (or the Parent on behalf of the Borrower) to which that Term Loan was made not later than the Specified Time.
- (c) If a Borrower (or the Parent) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will be three Months or, with respect to a Compounded Rate Loan, the period specified in the applicable Compounded Rate Terms.
- (d) Subject to this Clause 15, a Borrower (or the Parent) may select an Interest Period of:
  - (i) if the Loan is a Term Rate Loan, one, two, three or six Months; or
  - (ii) if the Loan is a Compounded Rate Loan, any period specified in respect of that currency in the applicable Compounded Rate Terms, or, in each case, any other period agreed between the relevant Borrower (or the Parent on its behalf) and the Agent (acting on the instructions of the Super Majority Lenders participating in the relevant Loan). In addition, a Borrower (or the Parent) may select an Interest Period of any other period if required to ensure that sufficient Loans have an Interest Period ending on the date of a proposed repayment, prepayment cancellation or termination under this Agreement. Notwithstanding anything to the contrary in this Agreement, no Borrower may select an Interest Period of two months in respect of any Term Rate Loans in USD or an Interest Period of six months in respect of any Term Rate Loans in CAD.
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.
- (f) Each Interest Period for a Term Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.
- (g) A Revolving Facility Loan has one Interest Period only.
- (h) A Borrower (or the Parent on its behalf) may select an Interest Period of:
  - (i) any period in relation to any Facility B or an Incremental Facility if necessary or desirable to implement any interest rate hedging in relation to the Facilities to align interest payment dates with payment dates under this Agreement or under hedging agreements which the Group is permitted to enter into pursuant to the terms of this Agreement; and



(ii) a time period agreed by it with the Agent for the purposes of facilitating syndication.

## 15.2 Non-Business Days

- (a) Subject to paragraph (b) below, 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).
- (b) If the Loan is a Compounded Rate Loan and there are rules specified as “Business Day Conventions” for the currency of that Loan in the applicable Compounded Rate Terms, those rules shall apply to each Interest Period for that Loan.

## 15.3 Consolidation and division of Term Loans

- (a) Subject to paragraph (c) below, if two or more Interest Periods:
  - (i) relate to Facility B Loans to be made to the same TLB Borrower under the same Facility B; and
  - (ii) end on the same date,  
  
those Facility B Loans will, unless that TLB Borrower requests to the contrary in a Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Facility B Loan on the last day of the Interest Period.
- (b) Subject to paragraph (c) below, if two or more Interest Periods:
  - (i) relate to Incremental Term Facility Loans to be made to the same Incremental Facility Borrower by the same group of Lenders under the same Incremental Term Facility;
  - (ii) are in the same currency; and
  - (iii) end on the same date,  
  
those Incremental Term Facility Loans will, unless that Incremental Facility Borrower requests to the contrary in a Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Incremental Facility Term Loan on the last day of the Interest Period.
- (c) Subject to Clause 4.4 (*Maximum number of Utilisations*) and Clause 5.3 (*Currency and amount*) if a TLB Borrower or an Incremental Facility Borrower (or, in either case, the Parent on its behalf) requests in a Selection Notice that a Term Loan be divided into two or more Term Loans under the relevant Facility, that Term Loan will, on the last day of its Interest Period, be so divided with amounts specified in that Selection Notice (in the currency of the relevant Loan), having an aggregate amount equal to the amount of the relevant Term Loan immediately before its division.

## 16. CHANGES TO THE CALCULATION OF INTEREST

### 16.1 Unavailability of Screen Rate – Term Rate Loans

- (a) *Interpolated Screen Rate*: If, in the case of a Term Rate Loan, no Screen Rate is available for EURIBOR, LIBOR or CDOR (as applicable), the applicable EURIBOR, LIBOR or CDOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Base Reference Bank Rate*: If, in the case of a Term Rate Loan, no Screen Rate is available for EURIBOR, LIBOR or CDOR (as applicable) for:
  - (i) the currency of a Loan; or
  - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,the applicable EURIBOR, LIBOR or CDOR shall be the Base Reference Bank Rate as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.
- (c) *Cost of funds*: If, in the case of a Term Rate Loan, paragraph (b) above applies but no Base Reference Bank Rate is available for the relevant currency or Interest Period there shall be no EURIBOR, LIBOR or CDOR (as applicable) for that Loan and Clause 16.5 (*Cost of funds*) shall apply to that Loan for that Interest Period.

### 16.2 Calculation of Base Reference Bank Rate

- (a) Subject to paragraph (b) below, if EURIBOR, LIBOR or CDOR (as applicable) is to be determined on the basis of a Base Reference Bank Rate but a Base Reference Bank does not supply a quotation by the Specified Time, the Base Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Base Reference Banks.
- (b) If at or about noon on the Quotation Day none or only one of the Base Reference Banks supplies a quotation, there shall be no Base Reference Bank Rate for the relevant Interest Period.

### 16.3 Interest calculation if no RFR or Central Bank Rate

If, in the case of a Compounded Rate Loan:

- (a) there is no applicable RFR or Central Bank Rate for the purposes of calculating the Daily Non-Cumulative Compounded RFR Rate for an RFR Banking Day during an Interest Period for a Compounded Rate Loan; and
  - (b) “Cost of funds will apply as a fallback” is specified in respect of that Loan in the Compounded Rate Terms for that Loan,
- Clause 16.5 (*Cost of funds*) shall apply to that Loan for that Interest Period.

### 16.4 Market disruption

- (a) In the case of a Term Rate Loan, if 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 40% of that Loan) that the cost to it of funding its participation in that from the wholesale market for the relevant currency would be in excess of EURIBOR, LIBOR or CDOR (as applicable) there shall be no EURIBOR, LIBOR or CDOR for that Loan and Clause 16.5 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.
- (b) In the case of a Compounded Rate Loan, if:
  - (i) a Market Disruption Rate is specified in the Compounded Rate Terms for that Loan; and
  - (ii) before the Reporting Time for that Loan, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 40% of that Loan) that the cost to it of funding its participation in that Loan from the wholesale market for the relevant currency would be in excess of that Market Disruption Rate,
 then Clause 16.5 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

#### 16.5 Cost of funds

- (a) If this Clause 16.5 applies to a Loan for an Interest Period, neither Clause 14.1 (*Calculation of interest - Term Rate Loans*) nor Clause 14.2 (*Calculation of interest - Compounded Rate Loans*) shall apply to that Loan for that Interest Period and the rate of interest on each Lender's share of that Loan for that Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the applicable Margin; and
  - (ii)
    - (A) in relation to a Term Rate Loan, the weighted average of the rates notified to the Agent by each Lender by close of business on the date falling two Business Days after the Rate Fixing Day (or, if earlier, on the date falling five Business Days before the date on which interest is due to be paid in respect of that Interest Period); or
    - (B) in relation to a Compounded Rate Loan, by the Reporting Time for that Loan,
 to be that which expresses as a percentage rate per annum the average cost to the relevant Lender (determined either on an actual or a notional basis) of funding its participation in that Loan from whatever source it may reasonably select, *provided that* such Lender confirms (for the benefit of the Group) to the Agent that such percentage rate per annum represents the cost to the relevant Lender of funding its participation in that currency under other syndicated credit facilities involving similarly situated borrowers under which that Lender is a lender.
- (b) If this Clause 16.5 applies and the Agent or the Parent so requires, the Agent and the Parent shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest in respect of any affected Loan (having

regard to the prevailing market convention in London at such time with respect to the benchmark for determining interest (including the making of appropriate adjustments to such alternate benchmark rate and this Agreement (i) to preserve pricing in effect at the time of selection of such alternate benchmark rate and (ii) for duration, time and periodicity for determination of such alternate benchmark rate in relation to any applicable Interest Period) for syndicated bank loans in the relevant currency); *provided* that the parties shall make commercially reasonable efforts to ensure that the adoption of the replacement rate will not be treated as a deemed exchange under Section 1001 of the Code.

(c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of the Majority Lenders and the Parent, be binding on all Parties *provided that*:

(i) any alternative basis agreed pursuant to paragraph (b) above shall automatically be binding on a Defaulting Lender;

(ii) any alternative basis agreed pursuant to paragraph (b) above shall automatically be binding on any Lender which does not accept or reject a request for any such consent before 5.00 p.m. on the date falling five Business Days from the date of that request being made (or such other time and date as the Parent may specify, with the consent of the Agent if less than five Business Days from the date of such request being made); and

(iii) any Lender which rejects a request for any such consent shall be deemed to be a Non-Consenting Lender for the purposes of this Agreement.

(d) If this Clause 16.5 applies pursuant to Clause 16.4 (*Market disruption*) and:

(i) in relation to a Term Rate Loan:

(A) a Lender's Funding Rate is less than EURIBOR in relation to any Loan in EUR, LIBOR in relation to any Loan in USD or CDOR in relation to any Loan in CAD; or

(B) a Lender does not supply a quotation by the time specified in 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 EURIBOR in relation to any Loan in EUR, LIBOR in relation to any loan in USD or CDOR in relation to any Loan in CAD; or

(ii) in relation to a Compounded Rate Loan:

(A) a Lender's Funding Rate is less than the relevant Market Disruption Rate; or

(B) a Lender does not supply a quotation by the time specified in 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 the Market Disruption Rate for that Loan.

- (e) If this Clause 16.5 applies pursuant to Clause 16.4 (*Market disruption*) but any Lender does not supply a quotation by the time specified in paragraph (a)(ii) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

#### **16.6 Notification to Parent**

If Clause 16.5 (*Cost of funds*) applies, the Agent shall, as soon as is practicable, notify the Parent.

#### **16.7 Break Costs**

- (a) Subject to paragraph (l)(iii)(A) of Clause 29.3 (*Conditions of assignment or transfer*), the Parent or each Borrower shall, within three Business Days after 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) Paragraph (a) above shall only apply in respect of a Compounded Rate Loan if an amount is specified as “Break Costs” in the applicable Compounded Rate Terms.
- (c) Each Lender shall, as soon as reasonably practicable after a demand by the Agent under paragraph (a) above, provide a certificate confirming the amount of (and giving reasonable details of the calculation of) its Break Costs for any Interest Period in which they accrue, a copy of which shall be provided to the Parent.

### **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:
- (i) 30% of the applicable Margin per annum on that Lender’s Available Commitment under the Initial Revolving Facility for the period commencing on the Closing Date and ending on the last day of the Availability Period applicable to the Initial Revolving Facility; and
- (ii) in respect of any Incremental Facility Commitments, the rate specified in the Incremental Facility Increase Notice delivered by the Parent in accordance with Clause 2.3 (*Incremental Facility*), on that Lender’s Available Commitment in respect of those Incremental Facility Commitments for the applicable Availability Period as set out in such Incremental Facility Increase Notice.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the relevant Availability Period, on the last day of the relevant 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.

#### **17.2 Agent and Security Agent fees**

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

#### **17.3 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 relevant Revolving Facility Borrower of that Ancillary Facility.

#### **17.4 Issuing Bank fees**

The Parent shall pay (or procure the payment) to the Issuing Bank (for its own account) a 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 each relevant Revolving Facility Borrower shall pay to the Issuing Bank a fronting fee in the Base Currency at the rate agreed between the relevant Issuing Bank and the Parent in a Fee Letter on the outstanding amount which is counter-indemnified by the other Lenders 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 each relevant Revolving Facility Borrower shall pay to the Agent (for the account of each Revolving Facility Lender) a Letter of Credit fee in the Base Currency (computed at the rate equal to the Margin applicable to a Revolving Facility 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. Subject to paragraph (c) of Clause 7.6 (*Regulation and consequences of cash cover provided by Borrower*) this fee shall be distributed according to each Lender's L/C Proportion of that Letter of Credit.
- (c) The accrued fronting fee and Letter of Credit fee on a Letter of Credit shall be payable on each Quarter Date. If the outstanding amount of a Letter of Credit is reduced, any fronting fee and Letter of Credit fee accrued in respect of the amount of that reduction shall be payable on the day that that reduction becomes effective.
- (d) If a Revolving Facility Borrower provides cash cover in respect of any part of a Letter of Credit, then no fronting fee or Letter of Credit fee shall be payable in respect of that part of the Letter of Credit for which cash cover has been and continues to be provided.

#### **17.6 Fees on Incremental Facilities**

The relevant Incremental Facility Borrower or the Parent shall pay (or procure the payment) to the Incremental Facility Lenders the fees in the amount and at the times agreed in a Fee Letter relating to the Incremental Facility.

#### **17.7 No Closing Date, no Fee**

Notwithstanding any provision of this Clause 17 (*Fees*), Clause 22 (*Costs and Expenses*) or any obligations in any Fee Letter or any other Finance Documents, no fees, costs and expenses of the Finance Parties of any kind (other than reasonable legal costs (subject to any agreed caps)) shall be payable unless and until the Closing Date occurs.

#### **17.8 Call Premium**

(a) If any Re-pricing Transaction occurs at any time during the period from (but excluding) the Closing Date to (and including) the date that is six Months after the Closing Date, the Parent shall pay (or procure there is paid) to the Agent within five Business Days after the date of such Re-pricing Transaction (for the account of each Lender whose participations in Facility B are the subject of the relevant Re-pricing Transaction) a fee in an aggregate amount equal to 1.00% of that Lender's participation in those Facility B Loans which are subject to that Re-pricing Transaction.

(b) In this clause:

**"Re-pricing Transaction"** means the prepayment, refinancing, substitution or replacement of all or any part of Facility B (other than in connection with any initial public offering, acquisition or similar investment, Change of Control) with the incurrence by any member of the Group of any new term loan facility that is broadly syndicated to the extent that: (i) the primary purpose of such new term loan facility is to reduce the Yield applicable to Facility B Loans being prepaid, refinanced, substituted or replaced as of the date of such prepayment, refinancing or replacement (as determined in good faith by the Parent); and (ii) such new term loan facility has a Yield (with the comparative determinations to be made by the Parent consistent with generally accepted financial practices and excluding the effect of (A) amendment fees, consent fees, arrangement fees, structuring fees, commitment fees, underwriting fees, placement fees, advisory fees, success fees, ticking fees, undrawn commitment fees and similar fees (regardless of whether any of the foregoing fees are paid to, or shared with, in whole or in part any or all lenders), any fees not paid or payable in the primary syndication of such term loan facility or other fees not paid or payable generally to all lenders rateably; and (B) any fluctuations in LIBOR, EURIBOR or any other applicable base rate) that is less than the Yield (as determined by the Parent on the same basis) of such Facility B Loans, including, without limitation, as may be effected through any amendment to this Agreement relating to the interest rate for, or Yield of, such Facility B Loans.

**"Yield"** means in respect of any Indebtedness, the yield thereon (taking into account interest margins, and interest rate floors and upfront fees, original issue discount, in each case incurred or payable by the Obligors generally to all lenders of such Indebtedness, with such upfront fees and original issue discount equated to interest margins based on an assumed four year life to maturity or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness); *provided that* "Yield" shall not include amendment fees, consent fees, arrangement fees, structuring fees, commitment fees, underwriting fees, placement fees, advisory fees, success fees, ticking fees, undrawn commitment fees and similar fees (regardless of whether any of the foregoing fees are paid to, or shared with, in whole or in part any or all lenders), any fees not paid or payable in the primary syndication of such Indebtedness or other fees not paid or payable generally to all lenders rateably.

## 18. TAXES

### 18.1 Tax definitions

In this Agreement:

**"Change of Law"** means any change which occurs after the date of this Agreement or, if later, after the date on which the relevant Lender became a Lender pursuant to this Agreement (as applicable) in any law, regulation or treaty (or in the interpretation, administration or application

of any law, regulation or treaty) or any published practice or published concession of any relevant tax authority other than: (i) any change that occurs pursuant to, or in connection with the adoption, ratification, approval or acceptance of, the MLI in or by any jurisdiction; or (ii) any change arising in relation to, as a consequence of or in connection with Brexit insofar as such change has not taken place at the date of this Agreement.

“**DTTP2 Form**” means a HM Revenue & Customs’ Form DTTP2 in relation to the DTTP Scheme (or such equivalent form as may be prescribed by HM Revenue & Customs under the DTTP Scheme from time to time).

“**DTTP Scheme**” means HM Revenue & Customs’ Double Taxation Treaty Passport Scheme, as modified from time to time.

“**Exempt Lender**” means a Finance Party which is (otherwise than by reason of being a Treaty Lender) able, to receive interest from the relevant Obligor without a Tax Deduction under the domestic law of the jurisdiction in which that Obligor is incorporated or organised.

“**MLI**” means the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting of 24 November 2016.

“**Non-Original Lender**” means any Lender that is a New Lender, an Increase Lender, an Incremental Facility Lender, a Substitute Affiliate Lender, an Affiliate of a Lender that is an Ancillary Lender, or (to the extent not an Original Lender) an Additional Refinancing Lender.

“**Non-Original Lender Documents**” means the Assignment Agreement or Transfer Certificate (as applicable) in the case of a New Lender, the Increase Confirmation in the case of an Increase Lender, the Accession Certificate in the case of an Incremental Facility Lender, the notice under Clause 5.6(b) (*Lender Affiliates and Facility Office*) in the case of an Affiliate of a Lender that becomes a Substitute Affiliate Lender, in the case of an Affiliate of a Lender that becomes an Ancillary Lender, a notice given to the Parent at the time it becomes Ancillary Lender, or the Refinancing Amendment in the case of an Additional Refinancing Lender.

“**Non-Original Date**” means the Transfer Date in the case of a New Lender, the date on which the increase in Total Commitments described in the relevant Non-Original Lender Document takes effect in the case of an Increase Lender or an Incremental Facility Lender, in the case of an Ancillary Lender, the date on which it accedes to the Intercreditor Agreement, in the case of a Substitute Affiliate Lender, the date on which its designation by the Designating Lender becomes effective or, in the case of an Additional Refinancing Lender, the date of the relevant Refinancing Amendment.

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

“**Qualifying Lender**” means:

- (a) in respect of a UK Obligor, a UK Qualifying Lender;
- (b) in respect of a US Obligor, a US Qualifying Lender; or
- (c) in respect of any Obligor which is not a UK Obligor or a US Obligor, a Lender which is beneficially entitled to interest payable to that Lender and is:



(i) an Exempt Lender; or

(ii) a Treaty Lender.

**“Relevant Covered Tax Agreement”** means a Covered Tax Agreement (as such term is defined under Article 2(1)(a) of the MLI) the parties to which are the MLI Lender Jurisdiction and the MLI Borrower Jurisdiction.

**“Tax Confirmation”** means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

(a) a company resident in the United Kingdom for United Kingdom tax purposes;

(b) a partnership each member of which is:

(i) a company so resident in the United Kingdom; or

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

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

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

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

**“Tax Payment”** means either the increase in a payment made by an Obligor to a Finance Party under Clause 18.3 (*Tax gross-up*) or a payment under Clause 18.4 (*Tax indemnity*).

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

(a) is treated as a resident of the relevant Treaty State for the purposes of the relevant Treaty;

(b) does not carry on a business in the jurisdiction of incorporation of the relevant Obligor through a permanent establishment with which that Lender’s participation in the Facility is effectively connected; and

(c) fulfils any other conditions which must be fulfilled under the Treaty by residents of that Treaty State for such residents to obtain full exemption from Tax imposed by the jurisdiction of incorporation of the relevant Obligor on interest, including the completion of any necessary procedural formalities.

**“Treaty State”** means a jurisdiction having a double taxation agreement in force (a **“Treaty”**) with the jurisdiction of incorporation of the relevant Obligor, which makes provision for full exemption for Tax imposed by the jurisdiction of incorporation of the relevant Obligor on payments under this Agreement.

**“UK Borrower DTTP Filing”** means, a DTTP2 Form duly completed and filed by the relevant UK Borrower, which:

- (a) where it relates to a UK Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender’s name in Part 4 of Schedule 1 (*The Original Parties*), and
  - (i) where the UK Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 days after the date of this Agreement; or
  - (ii) where the UK Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 days after the date on which that Borrower becomes an Additional Borrower; or
- (b) where it relates to a UK Treaty Lender that is a Non-Original Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Non-Original Lender Document; and
  - (i) where the UK Borrower is a Borrower as at the relevant Non-Original Date, is filed with HM Revenue & Customs within 30 days after the relevant Non-Original Date; or
  - (ii) where the UK Borrower is not a Borrower under a Facility or an Ancillary Facility as at the relevant Non-Original Date, is filed with HM Revenue & Customs within 30 days after the date on which the Borrower becomes a Borrower under the Facility or that Ancillary Facility (as applicable).

**“UK Non-Bank Lender”** means a Non-Original Lender which gives a Tax Confirmation in its Non-Original Lender Documents.

**“UK Qualifying Lender”** means:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
  - (i) a Lender:
    - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
    - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
  - (ii) a Lender which is:
    - (A) a company resident in the United Kingdom for United Kingdom tax purposes;

(B) a partnership each member of which is:

(1) a company so resident in the United Kingdom; or

(2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

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

(iii) a UK Treaty Lender; or

(b) a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document.

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

(a) is treated as a resident of the relevant UK Treaty State for the purposes of the relevant UK Treaty;

(b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender’s participation in the Facility is effectively connected; and

(c) fulfils any other conditions which must be fulfilled under the UK Treaty by residents of that UK Treaty State for such residents to obtain full exemption from Tax imposed by the United Kingdom on interest, including the completion of any necessary procedural formalities.

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

“**US Borrower**” means a Borrower that is a “United States person” as defined in Section 7701(a)(30) of the Code (including an entity disregarded as being an entity separate from its owner for US federal income tax purposes if such owner is a “United States person”).

“**US Obligor**” means an Obligor that is a “United States person” as defined in Section 7701(a)(30) of the Code (including an entity disregarded as being an entity separate from its owner for US federal income tax purposes if such owner is a “United States person”).

“**US Qualifying Lender**” means a Lender which is beneficially entitled to payments under a Finance Document and is qualified for a complete exemption from US federal withholding Tax (other than FATCA) and US federal backup withholding with respect to payments under any Finance Document.

“**Withholding Form**” means whichever of the following is relevant (including, in each case, any successor form):

- (a) IRS Form W-8IMY (with appropriate attachments);
- (b) IRS Form W-8ECI;
- (c) IRS Form W-8EXP;
- (d) IRS Form W-9;
- (e) IRS Form W-8BEN or W-8BEN-E (claiming the benefits of an applicable tax treaty);
- (f) in the case of a Lender relying on the so-called “portfolio interest exemption”, IRS Form W-8BEN or W-8BEN-E and a certificate to the effect that such Lender is not (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, or (iii) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code; or
- (g) any other IRS form by which a person may claim complete exemption from, or reduction in the rate of, withholding (including backup withholding) of United States federal income tax on interest and other payments to that person.

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

#### 18.2 Payments to be free and clear

All payments shall be made by each Obligor under each Finance Document without any Tax Deduction, unless a Tax Deduction is required by law.

#### 18.3 Tax gross-up

- (a) The Parent shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is a change in the rate or the basis of any Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall promptly notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives any such notification from a Lender it shall promptly notify the Parent and any relevant Obligor.
- (b) If a Tax Deduction is required by law to be made by an Obligor, subject to the limitations and exclusions contained in this Agreement, the amount of the payment due from that Obligor shall be increased to an amount which, after making any Tax Deductions, leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (c) A payment shall not be increased under paragraph (b) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom or, where a Borrower incorporated elsewhere is permitted to accede to this Agreement pursuant to Clause 30.2 (*Additional Borrowers*), the jurisdiction of incorporation of that Borrower (other than the United States), if, on the date on which the payment falls due:

- (i) the payment could have been made to the relevant Finance Party without such a Tax Deduction if the Finance Party had been a Qualifying Lender with respect to that payment, but on that date that Finance Party is not or has ceased to be a Qualifying Lender with respect to that payment other than as a result of any Change of Law; or
  - (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of “UK Qualifying Lender” and:
    - (A) an officer of HM Revenue & Customs has given (and not revoked) a direction (a “**Direction**”) under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Parent a certified copy of that Direction; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
  - (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of “UK Qualifying Lender” and:
    - (A) the relevant Lender has not given a Tax Confirmation to the Parent; and
    - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Parent, on the basis that the Tax Confirmation would have enabled the Parent to have formed a reasonable belief that the payment was an “excepted payment” for the purpose of section 930 of the ITA; or
  - (iv) the Obligor making the payment is able to demonstrate that the payment could have been made to the Finance Party without the Tax Deduction had that Finance Party complied with its obligations under paragraph (g) or (h) below (as applicable).
- (d) A payment shall not be increased under paragraph (b) above by reason of a Tax Deduction on account of Tax imposed by the US, if on the date on which the payment falls due:
- (i) the payment could have been made to the relevant Finance Party without such a Tax Deduction if the Finance Party had been a US Qualifying Lender with respect to that payment, but on that date that Finance Party is not or has ceased to be a US Qualifying Lender with respect to that payment other than as a result of any Change of Law; or
  - (ii) the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction or with the application of a reduced rate had that Finance Party complied with its obligations under paragraph (m) below.
- (e) If an Obligor is required by law to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within 30 days after making either a Tax Deduction or payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction or payment shall deliver

to the Agent for the relevant 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.

(g) A Treaty Lender or UK Treaty Lender (as applicable) and each Obligor which makes a payment to which that 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 or with a reduced Tax Deduction.

(h) In the case of a UK Treaty Lender which became a Party:

- (i) on the day on which this Agreement is entered into that holds a passport under the DTTP Scheme, and which wishes that scheme to apply to this Agreement, such UK Treaty Lender shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part 4 of Schedule 1 (*The Original Parties*); and
- (ii) after the day on which this Agreement is entered into that holds a passport under the DTTP Scheme, and which wishes that scheme to apply to this Agreement, shall, confirm its scheme reference number and its jurisdiction of tax residence in the Non-Original Lender Documents,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (g) above.

(i) If a UK Treaty Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (h) above and:

(i) a UK Borrower making a payment to that Lender has not made a UK Borrower DTTP Filing in respect of that Lender; or

(ii) a UK Borrower making a payment to that Lender has made a UK Borrower DTTP Filing in respect of that Lender but:

(A) that UK Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

(B) HM Revenue & Customs has not given the UK Borrower authority to make payments to that Lender without a Tax Deduction within 60 days after the date of the UK Borrower DTTP Filing; or

(C) HM Revenue & Customs has given the Borrower authority to make payments to that Lender without a Tax Deduction but such authority has subsequently been revoked or,

and in each case, the UK Borrower has notified that Lender in writing, that Lender and the UK Borrower shall co-operate in completing any additional procedural formalities necessary for that UK Borrower to obtain authorisation to make that payment without a Tax Deduction.

(j) If a UK Treaty Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (h) above, no Obligor shall make a UK Borrower DTTP Filing or file any other form relating to the DTTP scheme in respect of

that Lender's Commitment(s) or its participation in any advance unless the Lender otherwise agrees.

(k) A UK Borrower shall, promptly on making a UK Borrower DTTP Filing, deliver a copy of that UK Borrower DTTP Filing to the Agent for delivery to the relevant Lender.

(l) A UK Non-Bank Lender shall promptly notify the Parent and the Agent if there is any change in the position from that set out in the Tax Confirmation.

(m) If:

(i) a Tax Deduction should have been made in respect of a payment made by or on account of an Obligor to a Lender or the Agent under a Finance Document;

(ii) either:

(A) the relevant Obligor (or the Agent, if it is the applicable withholding agent) was unaware, and could not reasonably be expected to have been aware, that such Tax Deduction was required and as a result did not make the Tax Deduction or made a Tax Deduction at a reduced rate;

(B) in reliance on the notifications and confirmation provided pursuant to Clause 18.6 (*Lender status confirmation*), the relevant Obligor did not make such Tax Deduction or made a Tax Deduction at a reduced rate; or

(C) any Finance Party has not complied with its obligation under paragraph (a) above and as a result the relevant Obligor did not make the Tax Deduction or made a Tax Deduction at a reduced rate; and

(iii) the applicable Obligor would not have been required to make an increased payment under paragraph (c) or (d) above in respect of that Tax Deduction,

then the Lender that received the payment in respect of which the Tax Deduction should have been made or made at a higher rate undertakes to promptly, upon a request by that Obligor, reimburse that Obligor for the amount of the Tax Deduction that should have been made and any penalty, interest and expenses payable (or incurred in connection with any failure to pay or any delay in paying any of the same) only to the extent the Tax Deduction has not already been accounted for to the tax authority by the relevant Finance Party.

(n) On or prior to the date on which a Lender (including for this purpose in this paragraph, any Issuing Bank) or an Agent to a US Borrower becomes a Party to this Agreement, such Lender or Agent shall provide to Parent and the Agent, as applicable, upon request by the Parent or the Agent, properly completed copies of applicable Withholding Forms and, in the case of an Agent, certifying to Parent that it is entitled to receive any payments for its own account without any US withholding Tax and it is either a "United States person" as defined in Section 7701(a)(3) of the Code, a "US branch" within the meaning of US Treasury Regulation Section 1.1441-1(b)(2)(iv) (A) or a "Qualifying Intermediary" that assumes primary withholding responsibility under Chapter 3 and Chapter 4 of the Code and for Form 1099 reporting and backup withholding) and update such Withholding Forms thereafter, to the extent it remains legally entitled to do so, at such times prescribed by applicable law or as requested by Parent or the Agent.

#### 18.4 Tax indemnity

- (a) The Parent shall (or shall procure that an Obligor will), within five Business Days after 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 as a result of any change after the date it becomes a Party to 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.
- (b) Paragraph (a) above shall not apply:
- (i) with respect to any loss, liability or cost which has been directly or indirectly suffered by a Finance Party for or on account of Tax under the laws of the jurisdiction in which:
- (A) 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) that Finance Party's Facility Office, Substitute Facility Office or other permanent establishment is located in respect of amounts received or receivable in that jurisdiction (or in respect of amounts attributed to the permanent establishment on the basis that personnel of that Finance Party are undertaking relevant functions in the jurisdiction where that permanent establishment is located),
- if that Tax is imposed on or calculated by reference to the net income, profits or gains received or receivable (but not any sum deemed to be received or receivable) by that Finance Party or by reference to net worth or if that Tax is considered a franchise Tax (imposed in lieu of net income Tax) or a branch profits or similar Tax; or
- (ii) if and to the extent that a loss, liability or cost which has been directly or indirectly suffered by a Finance Party for or on account of Tax:
- (A) is compensated for by an increased payment under Clause 18.3 (*Tax gross-up*); or
- (B) would have been so compensated for by an increased payment under Clause 18.3 (*Tax gross-up*) but was not so compensated solely because one or more of the exclusions contained in Clause 18.3 (*Tax gross-up*) applied; or
- (C) is in respect of an amount of (I) stamp duty, registration or other similar Tax, or (II) VAT (which shall be dealt with in accordance with Clause 18.7 (*Stamp taxes*) and Clause 18.8 (*VAT*) respectively); or
- (D) is attributable to a Bank Levy (as defined in Clause 19 (*Increased Costs*)); or



(E) is suffered or incurred by a Lender and would not have been suffered or incurred if such Lender had been a Qualifying Lender in relation to the relevant Obligor at the relevant time, unless that Lender was not a Qualifying Lender at the relevant time as a result of a Change of Law;

(F) is suffered or incurred by a Lender as a result of such Lender's failure to comply with its obligations under Clause 18.6 (*Lender status confirmation*);

(G) is increased as a result of the Protected Party not complying with paragraph (c) below;

(H) relates to a FATCA Deduction required to be made by a Party.

(c) A Protected Party making, or intending to make, a claim under paragraph (a) above shall promptly notify the Agent of the event which has given rise to the claim, following which the Agent will notify the Parent.

(d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 18.4, notify the Agent.

#### **18.5 Tax Credits**

If an Obligor makes a Tax Payment and the relevant Finance Party determines (in good faith) that:

(a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) that Finance Party or any member of a tax consolidation group or unity to which the Finance Party belongs has obtained and utilised that Tax Credit,

that Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it or the tax consolidation group or unity to which it belongs (after that payment) in the same after-Tax position as it or the tax consolidation group or unity to which it belongs would have been in had the Tax Payment had not been required to be made by that Obligor.

#### **18.6 Lender Status Confirmation**

(a) As at the date of this Agreement each Lender confirms which of the following categories it falls in:

(i) with respect to a UK Borrower:

(A) a UK Qualifying Lender other than a UK Treaty Lender;

(B) a UK Treaty Lender; or

(C) not a UK Qualifying Lender;

(ii) with respect to a US Borrower:

(A) a US Qualifying Lender; or

- (B) not a US Qualifying Lender; and
- (iii) with respect to any Borrower (other than a UK Borrower or a US Borrower):
  - (A) a Qualifying Lender other than a Treaty Lender;
  - (B) a Treaty Lender; or
  - (C) not a Qualifying Lender.
- (b) Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Non-Original Lender Document which it executes upon becoming a Party, which of the following categories it falls in:
  - (i) with respect to a UK Borrower:
    - (A) a UK Qualifying Lender other than a UK Treaty Lender;
    - (B) a UK Treaty Lender; or
    - (C) not a UK Qualifying Lender;
  - (ii) with respect to a US Borrower:
    - (A) a US Qualifying Lender; or
    - (B) not a US Qualifying Lender; and
  - (iii) with respect to any Borrower (other than a UK Borrower or a US Borrower):
    - (A) a Qualifying Lender other than a Treaty Lender;
    - (B) a Treaty Lender; or
    - (C) not a Qualifying Lender.
- (c) If a Non-Original Lender fails to indicate its status in accordance with paragraph (b) above then such Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Parent). For the avoidance of doubt, a Non-Original Lender Document shall not be invalidated by any failure of a Lender to comply with this Clause 18.6.

#### 18.7 Stamp taxes

The Parent shall (or shall procure that an Obligor will) pay and, within five Business Days after demand by the Agent (or the Security Agent, in relation to any Transaction Security Document), indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to any stamp duty, registration and other similar Tax or notarial fees payable on, in respect of any Finance Document *provided that* this Clause 18.7 shall not apply in respect of any Tax, stamp duty, registration or similar Taxes or notarial fees payable (a) in respect of an assignment, transfer, sub-participation or sub-contract by a Finance Party, or (b) due to a voluntary registration not required to maintain, preserve or enforce rights of the Finance Parties.

## 18.8 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on that supply or supplies, and, accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is required by the terms of any Finance Document to pay an amount equal to the consideration for such supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying such amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any costs or expenses, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, to the extent that the Finance Party reasonably determines that it is not entitled to credit for or repayment of the VAT from the relevant tax authority.
- (d) Any reference in this Clause 18.8 to any Party shall, at any time when such Party is treated as a member of a group or unity (or fiscal unity) for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided for in Article 11 of Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction which is not a member state of the European Union) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant representative member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be).

- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with (if applicable) details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

#### 18.9 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days after a reasonable request by another Party:
- (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Party to do anything which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payment under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If a Borrower is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days after:
- (i) where an Original Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;

- (ii) where a Borrower is a US Tax Obligor on a Transfer Date or date on which an increase in Commitments takes effect pursuant to Clause 2.2 (*Increase*) and the relevant Lender is a New Lender or an Increase Lender, the relevant Transfer Date; or date on which an increase in Commitments takes effect pursuant to Clause 2.2 (*Increase*);
- (iii) the date a new US Tax Obligor accedes as a Borrower; or
- (iv) where a Borrower is not a US Tax Obligor, the date of a request from the Agent,

supply to the Agent:

(A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or

(B) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.

- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraph (e), (f) or (g) above.

#### **18.10 FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Parent and the Agent and the Agent shall notify the other Finance Parties.

### **19. INCREASED COSTS**

#### **19.1 Increased Costs**

- (a) Subject to Clauses 19.2 (*Increased Cost claims*) and Clause 19.3 (*Exceptions*) the Parent shall, within five Business Days after a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party 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 made,  
in each case, after the date of this Agreement or, if later, after the date it became a Party, or
  - (iii) the implementation or application of or compliance with Basel III or CRD IV or any other law or regulation which implements Basel III or CRD IV (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates),  
but only to the extent such Finance Party imposes costs or charges equivalent to such Increased Costs under other syndicated credit facilities involving similarly situated borrowers under which that Finance Party is a lender.
- (b) In this Agreement:
- (i) “**Bank Levy**” means any amount payable by any Finance Party or any of its Affiliates on the basis of, or in relation to, its balance sheet or capital base or any part of that person or its liabilities or minimum regulatory capital or any combination thereof and includes (without limitation):
    - (A) the bank levy charged pursuant to Section 73 and Schedule 19 to the Finance Act 2011 and any bank surcharge or banking corporation tax surcharge as set out in Finance (No. 2) Act 2015;
    - (B) the French *taxe pour le financement du fonds de soutien aux collectivités territoriales* set out in Article 235 *ter* ZE bis of the French Tax Code;
    - (C) the Austrian bank levy as set out in the Austrian Stability Duty Act (*Stabilitätsgesetz*);
    - (D) the Spanish bank levy (*Impuesto sobre los Depósitos en las Entidades de Crédito*) as set out in the Law 16/2012 of 27 December 2012;
    - (E) the Swedish bank levy as set out in the Swedish Precautionary Support Act (Sw. lag (2015:1017) *om förebyggande statligt stöd till kreditinstitut*) (as amended);
    - (F) the Dutch bank levy as set out in the bank levy act (*Wet bankenbelasting*);
    - (G) the bank levy imposed by the German Government under the Bank Restructuring Fund Regulation (*Restrukturierungsfonds-verordnung, Fed. Law Gazette I 2011, p.1406*) which has been issued pursuant to the provisions of the Bank Restructuring Fund Act (*Restrukturierungsfondsgesetz, Fed. Law Gazette I 2010, p.1900, 1921*); and

(H) any other Tax of a similar nature or with a similar purpose in any jurisdiction or any financial activities taxes (or other taxes) of a kind contemplated in the European Commission consultation paper on financial sector taxation dated 22 February 2011 or the Single Resolution Mechanism established by EU Regulation No. 806 / 2014 of 15 July 2014.

(ii) “**Basel III**” means:

(A) *Basel III: A global regulatory framework for more resilient banks and banking systems, Basel III: International framework for liquidity risk measurement, standards and monitoring and Guidance for national authorities operating the countercyclical capital buffer* published by the Basel Committee on Banking Supervision on 16 December 2010, each as amended, supplemented or restated, together with the agreements on capital requirements, a leverage ratio and liquidity standards contained therein;

(B) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

(C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to Basel III.

(iii) “**CRD IV**” means EU CRD IV and UK CRD IV.

(iv) “**EU CRD IV**” means:

(A)

(I) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (“**CRR**”); and

(II) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (“**CRD**”).

(v) “**Increased Costs**” means:

(A) a reduction in the rate of return from a Facility or on a Finance Party’s (or its Affiliates’) overall capital;

(B) an additional or increased cost; or

(C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document or Letter of Credit.

(vi) “**UK CRD IV**” means:

- (A) CRR as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (the “**Withdrawal Act**”);
- (B) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020 (“**WAA**”)) implemented CRD and its implementing measures;
- (C) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the WAA) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act; and
- (D) any law or regulation of the United Kingdom which introduces into domestic law of the United Kingdom a provision which is equivalent to a provision set out in CRR or CRD and/or implements Basel III standards.

## 19.2 Increased Cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 19.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent or the Borrower, provide to the Borrower a certificate (i) confirming the event giving rise to the claim, (ii) confirming that the Increased Costs are attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document, (iii) providing a description of the reason why such event has resulted in Increased Costs for that Finance Party (*provided that* such Finance Party shall not be required to disclose any calculations made by it or any information treated by it, other than for regulatory purposes, as confidential), (iv) confirming the amount of its Increased Costs and (v) confirming that such Finance Party imposes costs or charges equivalent to such Increased Costs under other syndicated credit facilities involving similarly situated borrowers under which that Finance Party is a lender.

## 19.3 Exceptions

- (a) Clause 19.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) attributable to a Bank Levy or amounts for which a Finance Party and/or its Affiliates are liable in respect of any Bank Levy;



- (iv) compensated for by Clause 18.4 (*Tax indemnity*) (or would have been so compensated but was not so compensated solely because any of the exclusions in Clause 18.4 (*Tax indemnity*) applied);
- (v) compensated for by Clause 18.7 (*Stamp taxes*) or 18.8 (*VAT*) (or would have been so compensated for under that Clause but was not so compensated solely because any of the exceptions set out in the relevant Clause applied);
- (vi) attributable to the implementation or application of or compliance with the *International Convergence of Capital Measurement and Capital Standards, a Revised Framework* published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement or (if later) after the date the relevant Finance Party becomes a Party to this Agreement (but excluding any amendment arising out of Basel III) (“**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);
- (vii) attributable to the implementation or application of, or compliance with Basel III or CRD IV or any other law or regulation which implements Basel III (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates) to the extent that such Finance Party knew or could reasonably be expected to have known the amounts of such Increased Cost at the time it became a Party; or
- (viii) attributable to the breach by any Finance Party or its Affiliates of any law or regulation or the terms of any Finance Document.

(b) In this Clause 19.3 reference to a Tax Deduction has the same meaning given to the term in Clause 18.1 (*Tax 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 five Business Days after demand, indemnify each 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

- (a) The Parent shall (or shall procure that an Obligor will) within three Business Days after demand (which demand shall be accompanied by reasonable calculations or details of the amount demanded) indemnify the Arrangers and each other Secured Party against any cost, loss or liability incurred by it as a result of:
- (i) the occurrence of any Event of Default;
  - (ii) a Utilisation not being made by reason of non-fulfilment by an Obligor of any of the conditions in Clause 4.1 (*Initial conditions precedent*) or Clause 4.2 (*Further conditions precedent*);
  - (iii) a failure by an Obligor to pay any amount due under a Finance Document on its due date (or, with respect to any Compounded Rate Interest Payment, if later, on the date falling three RFR Banking Days after the date on which the Agent notifies the relevant Borrower and the Parent of the amount of that Compounded Rate Interest Payment in accordance with Clause 14.5 (*Notification of rates of interest*)), including without limitation, any cost, loss or liability arising as a result of Clause 33 (*Sharing among the Finance Parties*);
  - (iv) 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);
  - (v) issuing or making arrangements to issue a Letter of Credit requested by the Parent or a Borrower in a Utilisation Request but not issued by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
  - (vi) any prepayment payable by any Borrower under the Finance Documents not being paid after the satisfaction of all conditions specified in any notice of such prepayment that was delivered to the Agent.
- (b) If any event occurs in respect of which indemnification may be sought from the Parent, the relevant indemnified person shall only be indemnified if it notifies the Parent in writing within a reasonable time after the relevant indemnified person becomes aware of such event, and shall, to the extent legally permitted and only if it would not prejudice the defence or making of such claim, consult with the Parent with respect to the conduct of the relevant claim, action or proceeding, conducts such claim action or proceeding properly and diligently (based on advice from its legal counsel, to the extent permitted by law and without being under any obligation to disclose any information which it is not lawfully permitted to disclose) and does not settle any such claim, action or proceeding without the Parent's prior written consent (such consent not to be unreasonably withheld or delayed).

- (c) Notwithstanding any other provision in this Agreement, each indemnified person shall be entitled to rely on the indemnities in paragraph (a) above as if it were a party to this Agreement.

### 20.3 Indemnity to the Agent

Each Obligor shall within five Business Days after demand indemnify the Agent against any third party cost, loss or liability incurred by the Agent, acting reasonably, as a result of:

- (a) investigating any event which it reasonably believes is an Event of Default, *provided that* if after doing so it is established that the event or matter is not a Default or an Event of Default, such cost, loss or liability of investigation shall be for the account of the Lenders; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised, in each case, other than any cost, loss or liability incurred by the Agent in connection with an Erroneous Payment or Clause 34.4 (*Amounts paid in error*) as a result of the Agent's gross negligence or wilful misconduct.

### 20.4 Indemnity to the Security Agent

- (a) Each Obligor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them, acting reasonably, as a result of:
  - (i) any failure by the Parent to comply with its obligations under Clause 22 (*Costs and Expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Finance Documents or by law;
  - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
  - (vi) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Obligor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 20.4 will not be prejudiced by any release or disposal under Clause 13.2 (*Distressed Disposals*) of the Intercreditor Agreement taking into account the operation of that Clause.

(c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 20.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

(d) This Clause shall be subject to the provisions of Clause 23.11 (*Guarantee Limitations*).

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

### **21.1 Mitigation**

(a) Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 11.1 (*Illegality*) (or, in respect of the Issuing Bank, Clause 11.2 (*Illegality in relation to Issuing Bank*)), Clause 18 (*Taxes*) or Clause 19 (*Increased Costs*), including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

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

### **21.2 Limitation of liability**

(a) The Parent shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 21.1 (*Mitigation*).

(b) A Finance Party is not obliged to take any steps under Clause 21.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it in any material respect.

## **22. COSTS AND EXPENSES**

### **22.1 Transaction expenses**

The Parent shall within five Business Days after demand pay the Agent, the Arrangers, the Issuing Bank and the Security Agent (and, in the case of the Security Agent, any Receiver or Delegate) the amount of all costs and expenses (including, but not limited to, legal fees (subject to agreed caps, if any)) reasonably incurred by any of them in relation to arrangement, negotiation, preparation, printing, execution and syndication and perfection of the Facilities up to a maximum amount agreed (if any).

### **22.2 Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent, or (b) an amendment is required pursuant to Clause 2.3 (*Incremental Facility*), Clause 34.11 (*Change of currency*) or Clause 40.5 (*Changes to reference rates*), the Parent shall, within five Business Days after demand, reimburse each of the Agent, and the Security Agent for the amount of all reasonable costs and expenses (including, but not limited to, 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 each case, subject to agreed caps (if any)) in responding to, evaluating, negotiating or complying with that request or

requirement. For the avoidance of doubt, the Parent shall reimburse all reasonable costs and expenses incurred by the Agent in negotiating and agreeing a Compounding Methodology Supplement and/or a Compounded Rate Supplement (as the case may be) within five Business Days after demand.

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

The Parent shall, within five Business Days after demand, pay to each Arranger and each other Secured Party the amount of all costs and expenses (including, but not limited to, 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. GUARANTEES AND INDEMNITY**

### **23.1 Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due (allowing for any applicable grace period) under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; 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.

### **23.2 Continuing guarantee**

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

### **23.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, judicial management, 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.

### 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;  
or
- (g) any insolvency or similar proceedings.

### 23.5 Guarantor Intent

Without prejudice to the generality of Clause 23.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing 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 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 34 (*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 or any of its Holding Companies (other than the Parent) 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

This guarantee and the obligations and liabilities of each Guarantor under and in connection with the Finance Documents (including, without limitation, this Clause 23):

- (a) does not apply to any liability to the extent that it would result in this guarantee being illegal, in breach of law or regulation, or constituting unlawful financial assistance in any relevant jurisdiction (including, for the avoidance of doubt, within the meaning of sections 678 or 679 of the Companies Act 2006 applicable to members of the Group incorporated in the United Kingdom) concerning the financial assistance by that company for the acquisition of, or subscription for, shares or concerning the protection of shareholders' capital; and
- (b) is and shall be subject to Clauses 23.12 (*US Guarantee Limitations*) and 23.13 (*Limitations – Regulated Entities*) and any limitations set out in the Intercreditor Agreement or in an Accession Deed applicable to such Guarantor or the jurisdiction of incorporation of such Guarantor,

and any guarantee, indemnity, obligations and liabilities of each Guarantor shall be construed accordingly.

#### 23.12 US Guarantee Limitations

- (a) In this clause, “**fraudulent transfer law**” means any applicable United States bankruptcy and State fraudulent transfer and conveyance statute and any related case law; and terms used in this Clause are to be construed in accordance with the fraudulent transfer laws.
- (b) Each Finance Party acknowledges and agrees that each US Guarantor's liability under this Clause is limited so that no obligation of, or transfer by, any US Guarantor under any Finance Document is subject to avoidance and turnover under any fraudulent transfer law.
- (c) Notwithstanding any term of any Finance Document, no Loan to a US Borrower or other obligation of a US Obligor under this Agreement or under any Finance Document may be, directly or indirectly: (i) guaranteed by a member of the Group (including, for this purpose, any direct or indirect subsidiaries acquired hereafter by the Parent) that is a “controlled



foreign corporation” (as defined in Section 957(a) of the Code) that has a “United States shareholder” (as defined in Section 951 of the Code) that is a member of the Group (such an entity, a “**CFC**”) or by an entity (a “**FSHCO**”) substantially all the assets of which consist of equity interests (or equity interests and indebtedness) of one or more CFCs or other FSHCOs, or guaranteed by a subsidiary of a CFC or FSHCO; (ii) secured by any assets of a CFC, FSHCO or a subsidiary of a CFC or a FSHCO (including any CFC or FSHCO equity interests held directly or indirectly by a CFC or FSHCO); (iii) secured by a pledge or other security interest in excess of 65% of the voting equity interests (and 100% of the non-voting equity interests) of a CFC or FSHCO; or (iv) guaranteed by any subsidiary or secured by a pledge of or security interest in any subsidiary or other asset, if it would result in material adverse US tax consequences to any member of the Group as reasonably determined by the Borrowers and the Obligors’ Agent and the Agent.

#### 23.13 Limitations – Regulated Entities

- (a) Notwithstanding anything set out to the contrary in this Agreement or any other Finance Document, the obligations and liabilities of each Regulated Entity which is a Guarantor under this Clause 23 or any other provision of this Agreement or any other Finance Document to which it is a party shall be limited:
  - (i) to the material Unrestricted Assets of that Regulated Entity (subject to and in accordance with the Agreed Security Principles); and
  - (ii) such that the Agent and any other Finance Party shall only have recourse against each Regulated Entity to the extent that such recourse does not affect the availability (immediately and without restriction) of Assets to cover, or have a result where the Regulated Entity does not satisfy, a Capital Requirement as at the date the Agent or any Finance Party takes enforcement action (however described) against such Regulated Entity under this Clause 23 or any other provision of this Agreement or any other Finance Document to which it is a party.
- (b) For the purposes of this Clause 23, “**Assets**” means the assets of each Regulated Entity accounted for as such in each Regulated Entity’s financial statements.

#### 24. REPRESENTATIONS AND WARRANTIES

Each Obligor (or, in the case of Clause 24.9 (*Base Case Model*) and Clause 24.10 (*Financial Statements*) the Parent) represents and warrants to each of the Finance Parties the representations and warranties set out in this Clause 24 at the times and in the manner contemplated by Clause 24.15 (*Repetition*).

##### 24.1 Status

- (a) It is duly incorporated (or, as the case may be, organised) and validly existing under the laws of its jurisdiction of its incorporation (or, as the case may be, organisation).
- (b) It has the power to own its material assets and carry on its business substantially as it is now being conducted, save to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

## 24.2 Binding obligations

Subject to the Legal Reservations and the Perfection Requirements:

- (a) its obligations under the Finance Documents to which it is a party are valid, legally binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each of the Transaction Security Documents to which it is party creates valid and effective security interests which that Transaction Security Document purports to make, ranking in accordance with the terms of such documents,

in each case, to the extent that a failure to do so would have a Material Adverse Effect.

## 24.3 Non-conflict with other obligations

Subject to the Legal Reservations, the entry into and performance by it of, and the transactions contemplated by the Finance Documents to which it is a party do not contravene:

- (a) any law or regulation applicable to it;
  - (b) its constitutional documents; or
  - (c) any agreement or instrument binding upon it or any of its assets,
- to an extent which has or is reasonably likely to have a Material Adverse Effect.

## 24.4 Power and authority

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, each of the Finance Documents to which it is a party or will be a party and to carry out the transactions contemplated by those Finance Documents to the extent failure to do so would have a Material Adverse Effect.

## 24.5 Validity and admissibility in evidence

All Authorisations required by it in order:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party; and
  - (b) to make the Finance Documents to which it is a party, subject to the Legal Reservations, admissible in evidence in its Relevant Jurisdictions,
- have been obtained or effected and, subject to the Legal Reservations, are in full force and effect (except for any Perfection Requirements in relation to the security constituted by the Transaction Security Documents which Perfection Requirements will (if required to be so satisfied) be satisfied within any applicable time limits pursuant to Schedule 10 (*Agreed Security Principles*)), in each case, to the extent that failure to have such Authorisations would have a Material Adverse Effect.

## 24.6 Governing law and enforcement

- (a) Subject to the Legal Reservations, the choice of governing law of the Finance Documents to which it is a party as expressed in such Finance Document will be recognised in its jurisdiction of incorporation to the extent failure to do so would have a Material Adverse Effect.
- (b) Subject to the Legal Reservations (i) any judgment obtained in England in relation to a Finance Document to which it is a party will be recognised and enforced in the jurisdiction of the governing law of that Finance Document and (ii) any judgment obtained in relation to a Transaction Security Document to which it is a party will be recognised and enforced in the jurisdiction of the governing law of that Transaction Security Document to the extent failure to do so would have a Material Adverse Effect.

#### **24.7 Filing and stamp taxes**

Under the laws of its Relevant Jurisdictions (and, in relation to Transaction Security Documents, subject to the Perfection Requirements) it is not necessary 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 and, subject to the Perfection Requirements, it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction, except for any filing, recording or enrolling which is referred to in any Legal Opinion and which will (if so required) be made within the period allowed by applicable law or the relevant Finance Document, *provided that* this Clause 24.7 shall not apply in respect of any stamp duty, registration or similar tax payable in respect of an assignment or transfer by a Finance Party of any of its rights or obligations under a Finance Document.

#### **24.8 No Event of Default**

No Event of Default has occurred and is continuing or could reasonably be expected to result from any Utilisation or the entry into or the performance of any Finance Document to which it is a party.

#### **24.9 Base Case Model**

The forecasts and projections contained in the Base Case Model were prepared based on assumptions believed to be reasonable by the Parent at the time made, it being understood that such projections and forecasts may be subject to significant uncertainties and contingencies which are beyond the Group's control and that no assurance can be given that the projections and forecasts will be realised.

#### **24.10 Financial Statements**

- (a) The Annual Financial Statements (together with the notes thereto) most recently delivered pursuant to Clause 25.1 (*Information Undertakings*):
  - (i) give a true and fair view of the consolidated financial position of the Group as at the date to which they were prepared and for the Financial Year then ended; and
  - (ii) were prepared in accordance with the Accounting Principles consistently applied.
- (b) The Semi-Annual Financial Statements most recently delivered pursuant to Clause 25.1 (*Information Undertakings*):

(i) fairly present, in all material respects, the financial position of the Group as at the date to which they were prepared and for the Semi-Annual Period to which they relate; and

(ii) were prepared on a basis consistent with the Accounting Principles (to the extent appropriate in the context of such accounts),

in each case (A) having regard to the fact they were prepared for management purposes and to the extent appropriate for Semi-Annual Financial Statements not subject to audit procedures and (B) save as set out therein.

(c) The Quarterly Financial Statements most recently delivered pursuant to Clause 25.1 (*Information Undertakings*):

(i) fairly present, in all material respects, the financial position of the Group as at the date to which they were prepared and for the Financial Quarter to which they relate; and

(ii) were prepared on a basis consistent with the Accounting Principles (to the extent appropriate in the context of such accounts),

in each case (A) having regard to the fact they were prepared for management purposes and to the extent appropriate for Quarterly Financial Statements not subject to audit procedures and (B) save as set out therein.

#### **24.11 No litigation**

(a) No litigation, arbitration, action or administrative proceeding of or before any court, arbitral body or agency which, is reasonably likely to be adversely determined, and if so adversely determined, could reasonably be expected to have a Material Adverse Effect has been started or, to the best of its knowledge is threatened, or is pending against it.

(b) To the best of its knowledge and belief, there are no labour disputes current, pending or, to its knowledge, threatened against it which, are reasonably likely to be adversely determined, and which if so adversely determined, could reasonably be expected to have a Material Adverse Effect.

#### **24.12 Tax Liabilities**

No claims are being asserted against it with respect to Taxes which are reasonably likely to be determined adversely to it and which, if so adversely determined, would have or would reasonably be expected to have a Material Adverse Effect and all reports and returns on which such taxes are required to be shown have been filed within any applicable time limits and all taxes required to be paid have been paid within any applicable time limit (taking into account any extension or grace period) save, in each case, to the extent any such tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with the relevant Accounting Principles or to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

#### **24.13 Pari passu ranking**

Subject to any applicable Legal Reservations, its payment obligations under each of the Finance Documents rank and will at all times (except pursuant to a Notifiable Debt Purchase Transaction) rank at least *pari passu* in right and priority of payment with all its other present and future unsecured and unsubordinated indebtedness (actual or contingent) except indebtedness preferred by laws of general application.

#### 24.14 Sanctions

- (a) To the extent applicable, each of the Parent, the Borrowers and their Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, the International Emergency Economic Powers Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA PATRIOT Act.
- (b) Neither the Borrowers nor any of their Subsidiaries nor, to the knowledge of the Borrowers and the other Obligor, any director, officer, employee, agent or controlled affiliate of the Borrowers or any of their Subsidiaries is currently the subject of any Sanctions, nor are the Borrowers or any of their Subsidiaries located, organized or resident in any country or territory that is the subject of country- or territory-wide Sanctions.
- (c) No part of the proceeds of the Loans will be used, directly or indirectly, by the Borrowers (i) in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, (ii) for the purpose of financing any activities or business (x) of or with any Person that, at the time of such financing, is the subject or target of any Sanctions or named on any sanctions lists administered by the United Nations Security Council, United States Government (including without limitation, OFAC), the European Union or Her Majesty's Government or (y) in or with Cuba, North Korea, Iran, Syria and the region of Crimea and/or any other country or region that is subject to or the target of country- or territory-wide Sanctions at the current time or as notified in writing by the Lender to the Borrower from time to time; or (iii) or in any other way that would cause any person to violate Sanctions.
- (d) This Clause 24.14 shall not apply to any German Resident or for the benefit of any Lender incorporated in the Federal Republic of Germany in so far as such compliance would result in a violation or conflict with section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*), and this Clause 24.14 shall not be interpreted or applied to any Party to the extent that it violates or places any Party in breach of Council Regulation (EC) 2271/1996 (as amended) or The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2019.

#### 24.15 Repetition

- (a) The representations and warranties in this Clause 24 shall be made by the Parent on the date of this Agreement and the Closing Date except that:
  - (i) the representations and warranties set out in Clause 24.9 (*Base Case Model*) shall be made only on the date of this Agreement and not repeated thereafter;
  - (ii) the representations and warranties set out in Clauses 24.1 (*Status*) to 24.5 (*Validity and admissibility in evidence*) (inclusive) (such representations and warranties being the “**Repeating Representations**”) shall be deemed to be repeated on each Utilisation Date and the first day of each Interest Period; and

(iii) the representations and warranties set out in paragraphs (a), (b) and (c) of Clause 24.10 (*Financial Statements*) in respect of each set of financial statements delivered pursuant to Section 1 (*Financial Statements*) of Schedule 16 (*Information Undertakings*) shall only be made once in respect of each set of financial statements on the date such financial statements are delivered.

(b) Any representation and warranty made in this Agreement shall apply only and if to the extent that it does not result in a violation of Council Regulation (EC) No. 2271/96 of 22 November 1996 or any applicable anti-boycott laws or regulations.

## 25. INFORMATION UNDERTAKINGS

The undertakings in this Clause 25 shall continue for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### 25.1 Information Undertakings

The Parent shall comply with the information undertakings set out in Schedule 16 (*Information Undertakings*); *provided that* the Quarterly Financial Statements (and Semi-Annual Financial Statements, to the extent applicable) for the first three Financial Quarters following the Closing Date or following the completion of any acquisition of a company, business or undertaking may be prepared on a combined or aggregated, rather than on a consolidated, basis and such accounts shall be deemed to satisfy the requirements of this Clause 25 (*Information Undertakings*).

### 25.2 Compliance Certificates

(a) The Parent shall deliver to the Agent with the Annual Financial Statements, Semi-Annual Financial Statements and the Quarterly Financial Statements, a Compliance Certificate signed by an Officer of the Parent, confirming:

(i) (if the Revolving Facility Financial Covenant Condition is satisfied) whether or not as at the relevant time the Group was in compliance with the Revolving Facility Financial Covenant and setting out (in reasonable detail) computations as to compliance with the Revolving Facility Financial Covenant (if applicable);

(ii) the calculation of the Margin ratchet set out in the definition of “Margin”; and

(iii) in any Compliance Certificate delivered together with Annual Financial Statements:

(A) (to the extent Clause 12.2 (*Excess Cash Flow*) applies in respect of the Financial Year to which the relevant Annual Financial Statements relate) the amount of Excess Cash Flow; and

(B) whether or not the Guarantor and Security Coverage Requirement is satisfied.

(b) In respect of any Relevant Period, whether or not a Compliance Certificate is required to be delivered pursuant to paragraph (a) above, the Parent may (in its sole discretion) elect to deliver to the Agent a voluntary Compliance Certificate signed by an Officer of the Parent to confirm the Margin as set out in the definition of “Margin” (a “**Voluntary**

**Compliance Certificate”); provided that no Voluntary Compliance Certificate shall be required to:**

- (i) contain the information and computations required by the form of Compliance Certificate set out in Schedule 7 (*Form of Compliance Certificate*) (other than in respect of confirming the Margin);
- (ii) set out or attach details of any material adjustments made for the applicable Relevant Period;
- (iii) confirm the amount of Excess Cash Flow; or
- (iv) confirm that the Guarantor and Security Coverage Requirement is satisfied.

(c) In respect of any Relevant Period:

- (i) ending on the last day of a Financial Year; or
- (ii) ending on the last day of a Semi-Annual Period,

for the purposes of confirming the Margin as set out in the definition of “Margin”, the Parent may (in its sole discretion) elect to deliver to the Agent the Quarterly Financial Statements for such Financial Quarter in that Financial Year together with any Voluntary Compliance Certificate; *provided that* such financial statements shall be delivered for the purposes of confirming the Margin only.

(d) For the avoidance of doubt, any confirmation in a Compliance Certificate relating to compliance with the Revolving Facility Financial Covenant (including computations as to compliance with the Revolving Facility Financial Covenant (where included)), where received by a Lender who is not an Initial Revolving Facility Lender or a Lender under an Incremental Financial Covenant Revolving Facility, shall be for information purposes only.

### **25.3 Notification of Events of Default**

Each Obligor will, promptly after becoming aware of it, notify the Agent of the occurrence of any Event of Default which is continuing (and the steps if any being taken to remedy it).

### **25.4 Know your customer checks**

- (a) 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 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) (provided it has entered into a confidentiality undertaking substantially in the standard LMA form) in order for the Agent, such Lender or any prospective New Lender to carry out and be satisfied with the results of all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (b) Each Lender shall promptly, upon the request of the Agent, supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied with the results of 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 10 Business Days' (or such other notice period as may be agreed with the Agent) written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 30 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, 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) (provided it has entered into a confidentiality undertaking substantially in the standard LMA form) in order for the Agent, or any Lender to carry out and be satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations, pursuant to the accession of such Subsidiary to this Agreement as an additional Obligor pursuant to Clause 30 (*Changes to the Obligors*).

#### **25.5 Business Days**

Notwithstanding anything to the contrary in this Clause 25, in the event that any period specified in this Clause 25 for any member of the Group to deliver any financial statements, documents or other information expires on a day which is not a Business Day, that period shall be extended so as to expire on the next Business Day.

#### **25.6 Material non-public information**

This Clause 25 is subject to paragraph (d) of Clause 36.7 (*Use of websites*).

#### **25.7 Notes Reporting**

Notwithstanding any other term of the Finance Documents (including this Clause 25), delivery to the Agent of a copy of each set of financial statements which are delivered to Noteholders (as defined in the Intercreditor Agreement), or the satisfaction of the relevant financial reporting requirements under the Original Senior Secured Notes Indenture by filing such reports on the SEC's EDGAR website, shall be deemed to satisfy all requirements of this Clause 25 and Schedule 16 (*Information Undertakings*) (including as regards the form of and requirements in relation to financial statements and any accompanying information, statements and management commentary), this Agreement and the other Finance Documents such that no further documents, statements or information shall be required to be delivered pursuant to this Clause 25, this Agreement and the other Finance Documents *provided that*, where applicable, the Parent shall still be required to comply with any obligation to:

- (a) deliver a Compliance Certificate pursuant to and in accordance with the provisions of Clause 25.2 (*Compliance Certificate*); and
- (b) deliver any "know your customer" information pursuant to Clause 25.4 (*"Know your customer" checks*).

#### **25.8 Reporting obligations in respect of a Listed Entity**

- (a) Notwithstanding this Clause 25 and any other term of the Finance Documents, for so long as any member of the Group or Holding Company of the Parent remains listed on any recognised investment or other stock exchange or makes filings with an applicable securities regulatory authority (the "**Listed Entity**"), delivery to the Agent of a copy of



each set of financial statements of the Listed Entity and (to the extent applicable) any ad hoc press release of the Listed Entity which are delivered to the relevant regulators or disclosed in accordance with the applicable stock exchange or securities regulatory rules (in each case promptly following the date on which such financial statements or ad hoc press release has been delivered to or filed with the relevant regulators or disclosed in accordance with the applicable stock exchange rules), or notice to the Agent that such information has been filed with the relevant regulators or disclosed in accordance with the applicable stock exchange or regulatory rules and confirming where the filings can be electronically assessed by the general public, shall be deemed to satisfy all reporting and other information obligations of this Agreement (including as regards the form of and requirements in relation to financial statements and any accompanying information, statements and management commentary) such that no further documents, statements or information shall be required to be delivered pursuant to this Agreement, *provided that*, where applicable, the Parent shall still be required to comply with any obligation to:

- (i) deliver a Compliance Certificate pursuant to and in accordance with the provisions of Clause 25.2 (*Compliance Certificate*); and
- (ii) deliver any “know your customer” information pursuant to Clause 25.4 (*“Know your customer” checks*).

For the avoidance of doubt, the requirements of this Clause 25.8 shall be considered to have been fulfilled if Paysafe Limited complies with the reporting requirements of the recognised investment or other stock exchange on which its common shares are at that time listed.

- (b) Notwithstanding any other term of the Finance Documents, all reporting and other information requirements in the Finance Documents shall be subject to any confidentiality, regulatory or other restrictions relating to the supply of information concerning the Group or otherwise binding on any member of the Group or any Holding Company of the Parent and no such disclosure shall be required if as a result of such disclosure a member of the Group or any Holding Company of the Parent would be obliged to make an announcement to the relevant listing authorities and/or stock exchange (or in accordance with applicable listing, disclosure and/or stock exchange rules) which it would not otherwise have been required to make or would contravene any applicable laws or regulations or stock exchange requirements.

## 26. FINANCIAL COVENANT

### 26.1 Financial condition

- (a) Subject to paragraph (b) below, with respect to the Initial Revolving Facility and any Incremental Financial Covenant Revolving Facility only, the Parent shall not permit the Consolidated First Lien Debt Ratio in respect of each Testing Period (calculated as at the Test Date in respect of such Testing Period in accordance with paragraph (b) below and as set out in the applicable Compliance Certificate for such Testing Period) to exceed 7.50:1.00 (the “**Revolving Facility Financial Covenant**”).
- (b) Notwithstanding the foregoing, this Clause 26.1 shall be in effect (and shall only be in effect) when the outstanding principal amount of the Revolving Facility Loans (excluding for these purposes the amount of (x) any outstanding Utilisations by way of Ancillary Facilities or Letters of Credit (or bank guarantees) and (y) any Utilisations to fund any

original issue discount fees in respect of Facility B or any Incremental Facility (and any Rollover Loans in respect thereof)), less any cash and Cash Equivalents of the Group, exceeds 40% of the Total Revolving Facility Commitments (disregarding any reduction of Revolving Facility Commitments following the date of this Agreement) on each Test Date (the “**Revolving Facility Financial Covenant Condition**”).

## 26.2 Financial calculations

- (a) Notwithstanding anything to the contrary in this Agreement, any financial covenant or financial ratio or incurrence-based permission, test, basket or threshold in any Finance Document (including any financial definition or component thereof or any financial ratio, test, basket or threshold or permission based on the calculation of EBITDA, LTM EBITDA, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio, the Consolidated Total Debt Ratio or the Fixed Charge Coverage Ratio), any Default, Event of Default or other relevant breach of a Finance Document, shall be calculated in the manner prescribed by Clause 1.3 (*Calculations*), this Clause 26.2, Schedule 17 (*General Undertakings*), Schedule 18 (*Events of Default*) and Schedule 19 (*Certain New York Law Defined Terms*).
- (b) The Revolving Facility Financial Covenant will be tested on the date of delivery of, and by reference to, the Compliance Certificate for the applicable Testing Period; *provided that*, the Revolving Facility Financial Covenant will not be tested on the date of delivery of, or by reference to, any Voluntary Compliance Certificate.
- (c) For the purposes of calculating any financial covenant or financial ratio or incurrence-based permission, test, basket or threshold in any Finance Document (including any financial definition or component thereof or any financial ratio, test, basket or threshold or permission based on the calculation of EBITDA, LTM EBITDA, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio, the Consolidated Total Debt Ratio or the Fixed Charge Coverage Ratio), any Default, Event of Default or other relevant breach of a Finance Document, *pro forma* adjustments may be made pursuant to the definition of “Fixed Charge Coverage Ratio” and the definition of “EBITDA”.
- (d) For the purposes of calculating any financial covenant or financial ratio or incurrence-based permission, test, basket or threshold in any Finance Document (including any financial definition or component thereof or any financial ratio, test, basket or threshold or permission based on the calculation of EBITDA, LTM EBITDA, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio, the Consolidated Total Debt Ratio or the Fixed Charge Coverage Ratio), any Default, Event of Default or other relevant breach of a Finance Document involving a calculation of net Indebtedness, such ratio shall be tested net of all cash (being cash at bank or in hand (including money market deposits, cash in tills and in safes) or in transit, or payments made which are yet to be received in cleared funds, or any credit balance on any deposit, savings, current or other account to which a member (or members) of the Group is beneficially entitled) and Cash Equivalents.
- (e) Any liabilities or obligations in connection with any lease, concession or license of property (including capital leases, finance leases and operating leases) or the interest component thereof, as applicable, shall be calculated in accordance with the definition of “GAAP”.
- (f) Without prejudice to the rights of the Group under paragraphs (a) to (e) (inclusive) above, for the purposes of calculating any financial covenant or financial ratio or incurrence-based permission, test, basket or threshold in any Finance Document (including any financial

definition or component thereof or any financial ratio, test, basket or threshold or permission based on the calculation of EBITDA, LTM EBITDA, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio, the Consolidated Total Debt Ratio or the Fixed Charge Coverage Ratio), any Default, Event of Default or other relevant breach of a Finance Document, the exchange rates used in such calculation shall be (at the Parent's election), as applicable:

- (i) the weighted average exchange rates for the Relevant Period as determined by the Parent;
- (ii) the rate at which any foreign exchange hedging arrangement has been entered into by any member of the Group;
- (iii) the rate applied in the applicable Financial Statements for the Relevant Period;
- (iv) the exchange rate in effect as at the last day of the Relevant Period, as determined by the Parent; or
- (v) any other rate selected by the Parent in good faith.

## **27. GENERAL UNDERTAKINGS**

The undertakings and covenants in this Clause 27 and in Schedule 17 (*General Undertakings*) shall continue in force from the date of this Agreement and for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **27.1 Covenant to guarantee obligations and give security and further assurances**

- (a) Subject to the Agreed Security Principles, the Parent shall procure that:
  - (i) by reference to each Compliance Certificate delivered with the Annual Financial Statements (commencing with the Annual Financial Statements in respect of the first complete Financial Year ending after the Closing Date), the Guarantor and Security Coverage Requirement shall be satisfied in accordance with the Agreed Security Principles within 120 days after the date on which such Compliance Certificate is delivered to the Agent; and
  - (ii) by reference to each Compliance Certificate delivered with the Annual Financial Statements (commencing with the Annual Financial Statements in respect of the first complete Financial Year ending after the Closing Date), each member of the Group which has become a Material Subsidiary and that is incorporated in a Security Jurisdiction shall within 120 days after the date on which such Compliance Certificate is required to be delivered to the Agent accede as an Additional Guarantor in accordance with the Agreed Security Principles.
- (b) Subject to the Agreed Security Principles, each Obligor shall (and the Parent shall ensure that each relevant member of the 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; and/or
  - (ii) after a Declared Default which is continuing, to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (c) Subject to the Agreed Security Principles, each Obligor shall (and the Parent shall ensure that each member of the 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.
- (d) Notwithstanding anything set out to the contrary above, any other term of this Agreement or any other Finance Document, no Regulated Entity or other member of the Group will be required:
- (i) to give a guarantee or grant Security where, in the good faith judgment of the directors of the Parent, the creation of Security, the giving of a guarantee and/or otherwise becoming an Obligor under the Finance Documents could materially increase the regulatory capital requirements pursuant to any applicable law or regulation or the views, guidance or interpretation of the applicable law or regulation of any Relevant Regulator, or materially adversely affect the solvency capital requirements, of the Group (or any member thereof) pursuant to any applicable law or regulation applicable to such member of the Group, or where such guarantee or grant could cause the Group (or any member thereof) to breach any applicable law or regulation; or
  - (ii) to create Security over or otherwise encumber any Restricted Asset (including, without limitation, any bank accounts which contain or are reasonably likely to contain any Restricted Assets).

## 27.2 Authorisations and Consents

Each Obligor will promptly apply for, obtain and promptly renew from time to time and maintain in full force and effect all Authorisations and consents and comply with the terms of all such Authorisations and consents, and promptly make and renew from time to time all such filings, as may be required under any applicable law or regulation to enable it to enter into, and perform its obligations under the Finance Documents to which it is party and to carry out the transactions contemplated by the Finance Documents to which it is a party and to ensure that, subject to the Legal Reservations and Perfection Requirements, its obligations under the Finance Documents to which it is party are valid, legally binding and enforceable and each of the Transaction Security Documents to which it is party constitutes valid security ranking, subject to the Legal Reservations and Perfection Requirements, in accordance with its terms, in each case where failure to do so would have, or would reasonably be expected to have, a Material Adverse Effect.

## 27.3 Pari passu ranking

Each Obligor will ensure that at all times any unsecured and unguaranteed claims of a Finance Party (other than any member of the Group which has entered into a Notifiable Debt Purchase Transaction) against it under each of the Finance Documents rank at least *pari passu* with all its other present and future unsecured and unsubordinated creditors except creditors whose claims are mandatorily preferred by laws of general application.

#### **27.4 Centre of Main Interests**

No Obligor incorporated in the European Union shall without the prior written consent of the Agent or unless otherwise required for genuine tax benefit reasons deliberately cause or allow its “centre of main interests” (as that term is used in Article 3(1) of the Regulation) to change.

#### **27.5 Taxes**

The Parent shall, and shall ensure that its Restricted Subsidiaries shall, pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property within the time period allowed under applicable law without imposing material penalties, except, in each case, to the extent:

- (a) any such tax, assessment, charge or levy is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with the relevant Accounting Principles; or
- (b) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

#### **27.6 Compliance with Laws**

The Parent shall, and shall ensure that the Obligors shall, comply in all material respects with their respective constitutional documents and the requirements of all laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except, in each case, in instances in which:

- (a) such compliance would result in a violation of, conflict with, or liability under Regulation (EC) No 2271/96 or any applicable anti-boycott statute;
- (b) such requirement of Law, order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or
- (c) the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

### **28. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 28 (save for Clause 28.5 (*Acceleration*), Clause 28.6 (*Clean Up Period*) and Clause 28.7 (*Excluded Matters*)) and in Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*) shall constitute an Event of Default.

#### **28.1 Financial covenant**

- (a) Subject to the following paragraphs of this Clause 28.1, with respect to the Initial Revolving Facility and any Incremental Financial Covenant Revolving Facility only, any requirement

of Clause 26.1 (*Financial condition*) is not satisfied (the “**Financial Covenant Event of Default**”), *provided that* a Financial Covenant Event of Default shall not constitute a Default or an Event of Default for the purposes of any Term Loan (or any Incremental Revolving Facility that is not an Incremental Financial Covenant Revolving Facility) and shall not give the Lenders under any Term Loan any right to accelerate the relevant Term Loans (or relevant Incremental Revolving Facilities other than any Incremental Financial Covenant Revolving Facility) or take any other Enforcement Action (as defined in the Intercreditor Agreement) in respect of such Term Loan (or Incremental Revolving Facility that is not an Incremental Financial Covenant Revolving Facility) unless and until the Super Majority Financial Covenant Revolving Facility Lenders have served a notice to the Parent in accordance with paragraphs (b)(i) and (b)(ii) of Clause 28.5 (*Acceleration*) as a result of such Financial Covenant Event of Default and such notice has not been rescinded (a “**Financial Covenant Cross-Default**”).

- (b) Notwithstanding anything to the contrary contained in paragraph (a) above, for the purposes of determining whether any breach of the covenant set out in Clause 26.1 (*Financial condition*) has occurred or will occur as of any date, and at any time until the expiration of the twentieth Business Day after the date on which Annual Financial Statements, Semi-Annual Financial Statements or Quarterly Financial Statements are required to be delivered pursuant to Section 1 (*Financial Statements*) of Schedule 16 (*Information Undertakings*) (as applicable) with respect to the applicable Financial Quarter hereunder (the “**Cure Expiration Date**”):
- (i) the Parent or the applicable Borrowers may by no later than the Cure Expiration Date, procure that sufficient Revolving Facility Loans are repaid or prepaid or otherwise reduced such that the Revolving Facility Financial Covenant Condition is no longer met (and the Revolving Facility Financial Covenant Condition shall then be deemed not to have been met on the applicable Quarter Date) (a “**Prepayment Cure**”); and/or
- (ii) the Permitted Holders (or any other Person so long as no Change of Control results therefrom) may make a Specified Equity Contribution to the Parent which shall be deemed to either (at the option of the Parent, in its sole and absolute discretion):
- (A) increase EBITDA with respect to such Financial Quarter, and such Specified Equity Contribution shall be included in the financial covenant calculations until such time as the Financial Quarter in respect of which such Specified Equity Contribution was made falls outside of the Relevant Period (an “**EBITDA Cure**”); or
- (B) reduce Consolidated First Lien Net Debt on a *pro forma* basis as of the last day of the Relevant Period and on the last day of each subsequent Relevant Period until such time as the Financial Quarter in respect of which such Specified Equity Contribution was made falls outside of the Relevant Period; *provided that* there shall be no requirement to actually use the proceeds of any Specified Equity Contribution to reduce Consolidated First Lien Net Debt or prepay any Facility (a “**Net Debt Cure**”).
- (c) The right to make an EBITDA Cure or a Net Debt Cure pursuant to paragraph (b)(ii) above or a Recalculation pursuant to paragraph (e) below is subject to the following conditions (and the right to effect a Prepayment Cure pursuant to paragraph (b)(i) above is subject to paragraph (iv) below only):

- (i) no more than two EBITDA Cures, Net Debt Cures or Recalculations may be made in any period of four consecutive Financial Quarters;
- (ii) no more than five EBITDA Cures, Net Debt Cures or Recalculations in total will be made after the Closing Date;
- (iii) in the case of an EBITDA Cure, there shall be no *pro forma* reduction in Consolidated First Lien Net Debt with the proceeds of such Specified Equity Contribution for determining compliance with Clause 26.1 (*Financial condition*) for any Financial Quarter in which such Specified Equity Contribution is included in EBITDA; and
- (iv) any Specified Equity Contribution pursuant to a Prepayment Cure, an EBITDA Cure or a Net Debt Cure shall be disregarded for the purposes of determining the Margin, Excess Cash Flow and any financial ratio-based conditions or baskets with respect to covenants contained in the Finance Documents (other than the Revolving Facility Financial Covenant), *provided that*:
  - (A) any reduction in indebtedness funded with a Specified Equity Contribution shall be taken into account for the purposes of determining the Margin, Excess Cash Flow and any financial ratio-based conditions or baskets with respect to covenants contained in the Finance Documents; and
  - (B) subject to sub-paragraph (iii) above and without double counting the amount by which the Consolidated First Lien Net Debt is deemed to be reduced for the purposes of financial covenant calculations in the case of any Net Debt Cure, the amount of any Specified Equity Contribution which is held by any member of the Group as cash or Cash Equivalents on the last day of any applicable Relevant Period shall constitute cash or Cash Equivalents (as applicable) for all purposes under this Agreement (including, for the avoidance of doubt, for the purposes of cash netting purposes in any financial calculation).
- (d) For the avoidance of doubt, there shall be no cap on the amount of any Specified Equity Contribution.
- (e) Notwithstanding anything to the contrary contained in paragraphs (a) and (b) above, the Parent may cure or prevent a breach of the Revolving Facility Financial Covenant in respect of any Relevant Period at any time by electing to recalculate:
  - (i) the Revolving Facility Financial Covenant Condition for that Relevant Period or any subsequent date (notwithstanding that such date is not a Quarter Date) for which the Parent has sufficient available information to effect such recalculation; or
  - (ii) the Revolving Facility Financial Covenant for that Relevant Period or any subsequent Relevant Period (notwithstanding that such Relevant Period is not a

Testing Period) for which the Parent has sufficient available information to effect such recalculation,

(a “**Recalculation**”) and if, taking into account such Recalculation:

(A) the Revolving Facility Financial Covenant Condition would not be met as at the last day of such Relevant Period or on any subsequent date; or

(B) the Revolving Facility Financial Covenant would be complied with for such Relevant Period or if calculated for any subsequent Relevant Period (notwithstanding that such Relevant Period is not a Testing Period),

the relevant failure to comply with the Revolving Facility Financial Covenant shall be treated as having been cured or prevented, *provided that*, in relation to any Recalculation effected:

(I) on or prior to the delivery of the relevant Compliance Certificate for such Relevant Period, the Compliance Certificate for such Relevant Period shall set out the revised Revolving Facility Financial Covenant for the Relevant Period following such Recalculation (or shall confirm that the Revolving Facility Financial Covenant Condition is not met following such Recalculation); and

(II) following the delivery of the relevant Compliance Certificate for such Relevant Period, the Parent shall deliver to the Agent a revised Compliance Certificate which shall set out the revised Revolving Facility Financial Covenant for such Relevant Period following such Recalculation (or shall confirm that the Revolving Facility Financial Covenant Condition was not met for such Relevant Period following such Recalculation).

Any Recalculation pursuant to this paragraph (e) may, at the Parent’s option, give pro forma effect to any Investment, acquisition, disposition, sale, merger, joint venture, consolidation or other business combination transaction, Incurrence, assumption, commitment, issuance, repayment, repurchase or refinancing of Indebtedness (including, for the avoidance of doubt, an Incremental Facility), Disqualified Stock or Preferred Stock and the use of proceeds thereof, any creation of a Lien, any Restricted Payment, any Affiliate Transaction, any designation of a Restricted Subsidiary or Unrestricted Subsidiary, any Asset Disposition or any other transaction (and any permitted adjustments to any baskets, thresholds or exceptions in connection therewith) for which has been consummated following the end of such Relevant Period or any subsequent Relevant Period as if such Relevant Transaction had been consummated on the first day of such Relevant Period or subsequent Relevant Period (as applicable).

(f) Notwithstanding anything to the contrary contained in paragraphs (b) and (c) above:

(i) upon repayment of the Revolving Facility Loans pursuant to paragraph (b)(i) above or receipt of the net cash proceeds of such Specified Equity Contribution by the Parent or any other Obligor, the Revolving Facility Financial Covenant shall be deemed satisfied and complied with as of the end of the applicable Relevant Period with the same effect as though there had been no failure to comply with Clause



26.1 (*Financial condition*) and any Default or Event of Default related to any failure to comply with Clause 26.1 (*Financial condition*) shall be deemed not to have occurred for any purpose under the Finance Documents; and

(ii) neither the Agent nor any Lender shall exercise any rights or remedies under this Clause 28 (or under any other Finance Document) available during the continuance of any Default or Event of Default on the basis of any actual or purported failure to comply with Clause 26.1 (*Financial condition*) until the Cure Expiration Date, *provided that* such Default or Event of Default has not been cured by the Cure Expiration Date in accordance with this Clause 28.1.

(g) Without prejudice to paragraph (f)(i) above, if the Revolving Facility Financial Covenant has been breached and such breach has not been cured by the Cure Expiration Date in accordance with this Clause 28.1, but is complied with when tested, or the Revolving Facility Financial Covenant Condition is not met, on any subsequent Quarter Date (the “**Second Period**”), then, the prior breach of such financial covenant or any Default or Event of Default arising therefrom shall not (or be deemed to) directly or indirectly constitute, or result in, a breach of any representation, warranty, undertaking or other term in the Finance Documents or a Default or an Event of Default unless the Super Majority Financial Covenant Revolving Facility Lenders have served a notice to the Parent in accordance with paragraphs (b)(i) and (b)(ii) of Clause 28.5 (*Acceleration*) as a result of such breach and such notice has not been rescinded before delivery of the Compliance Certificate in respect of the Second Period.

## 28.2 Misrepresentation

(a) Any representation, warranty or written statement made (or deemed to be made under Clause 23.12 (*Representations and Warranties*)) by any Obligor in Clause 23.12 (*Representations and Warranties*) is or proves to be incorrect or misleading in a respect that is materially prejudicial to the interests of the Finance Parties (taken as a whole) under the Finance Documents when made or deemed to be made (or when repeated or deemed to be repeated).

(b) No Event of Default will occur under paragraph (a) above if the circumstances giving rise to that misrepresentation are capable of remedy and are remedied within 60 days after the earlier of: (i) the Parent becoming aware of the relevant Default; and (ii) the giving of notice by the Agent to the Parent in respect of such Default.

## 28.3 Invalidity and Unlawfulness

(a) Any provision of any Finance Document is or becomes invalid or (subject to the Legal Reservations and Perfection Requirements) unenforceable for any reason or shall be repudiated or rescinded or the validity or enforceability of any provision of any Finance Document shall at any time be contested by any Obligor and this, individually or cumulatively, could reasonably be expected to materially adversely affect the interests of the Finance Parties (taken as a whole) under the Finance Documents.

(b) At any time it is or becomes unlawful for any Obligor or any other member of the Group to perform any of its obligations under any of the Finance Documents or any Transaction Security created or expressed to be created by the Transaction Security Documents ceases to be effective or any subordination under the Intercreditor Agreement is or becomes unlawful, and this individually or cumulatively could reasonably be expected to materially

adversely affect the interests of the Finance Parties (taken as a whole) under the Finance Documents.

- (c) Any obligation or obligations of any Obligor or any other Restricted Subsidiary under any Finance Document is not or are not, or cease or ceases to be, (subject to the Legal Reservations and Perfection Requirements) legal, valid, binding or enforceable and the cessation individually or cumulatively could reasonably be expected to materially adversely affect the interests of the Finance Parties (taken as a whole) under the Finance Documents.
- (d) No Event of Default will occur under paragraph (a), (b) or (c) above if the circumstances giving rise to that unlawfulness or invalidity are capable of remedy and are remedied within 60 days after the earlier of: (i) the Parent becoming aware of the relevant Default; and (ii) the giving of notice by the Agent to the Parent in respect of such Default.

#### **28.4 Intercreditor Agreement**

- (a) Any member of the Group fails to comply in any material respect with the provisions of, or does not perform its obligations under, the Intercreditor Agreement and where such failure to comply or perform materially and adversely affects the interests of the Finance Parties (taken as a whole) under the Finance Documents.
- (b) No Event of Default will occur under paragraph (a) above if such failure is capable of remedy and is remedied within 60 days after the earlier of: (i) the Parent becoming aware of the relevant Default; and (ii) the giving of notice by the Agent to the Parent in respect of such Default.

#### **28.5 Acceleration**

- (a) Subject to Clause 4.5 (*Utilisations during the Certain Funds Period*) and Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*), at any time after the occurrence of an Event of Default which is continuing (other than any Financial Covenant Event of Default that has not become a Financial Covenant Cross-Default), the Agent may, and shall if so directed by the Super Majority Lenders, by written notice to the Parent:
  - (i) terminate the availability of the Facilities and cancel the Total Commitments whereupon the Facilities shall cease to be available for utilisation, the undrawn portion of the Commitments of each of the Lenders shall be cancelled and no Lender shall be under any further obligation to make Loans under this Agreement; and/or
  - (ii) declare that all or part of the Utilisations together with accrued interest thereon 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; and/or
  - (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 Super Majority Lenders; and/or
  - (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; and/or

- (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 Super Majority Lenders; and/or
  - (vi) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facility(s) be immediately due and payable, at which time it shall become immediately due and payable; and/or
  - (vii) declare all or any part of the amounts (or cash cover in relation to those amounts) outstanding under the Ancillary Facility(s) be payable on demand, whereupon it shall immediately become due and payable on demand by the Agent on the instructions of the Super 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) Subject to Clause 4.5 (*Utilisations during the Certain Funds Period*) and Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*), if a Financial Covenant Event of Default has occurred and is continuing, the Agent may, and shall if so directed by the Super Majority Financial Covenant Revolving Facility Lenders, by written notice to the Parent:
- (i) cancel the Total Financial Covenant Revolving Facility Commitments, at which time they shall immediately be cancelled; and/or
  - (ii) declare that all or part of the Revolving Facility Loans under the Initial Revolving Facility and any Incremental Financial Covenant Revolving Facility, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents to the Revolving Facility Lenders under the Initial Revolving Facility and any Incremental Financial Covenant Revolving Facility be immediately due and payable, at which time they shall become immediately due and payable; and/or
  - (iii) declare that all or part of the Revolving Facility Loans under the Initial Revolving Facility and any Incremental Financial Covenant Revolving Facility be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Super Majority Financial Covenant Revolving Facility Lenders.
- (c) Subject to Clause 4.5 (*Utilisations during the Certain Funds Period*) and Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*), if any Event of Default occurs under Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*) in relation to a US Obligor all of the Loans made to that US Obligor, together with accrued interest and all other amounts accrued and then payable by that US Obligor under the Finance Documents, shall be immediately due and payable, in each case automatically and without any direction, notice, declaration or other act.
- (d) Notwithstanding any other term of the Finance Documents, none of the steps or matters in connection with a Permitted Transaction (or the actions taken to implement a Permitted Transaction) shall (or shall be deemed to) constitute, or result in, a breach of any representation, warranty, undertaking or other term in the Finance Documents or a Default or an Event of Default.

## 28.6 Clean Up Period

(a) For the period commencing on the Closing Date and ending on (and including) the date falling 180 days after the Closing Date (the “**Clean Up Period**”), the occurrence of any Default or Event of Default will be deemed not to be a breach of representation or warranty or a breach of covenant or an Event of Default (as the case may be), and will not have any of the consequences that such a misrepresentation, breach of warranty, breach of covenant or Event of Default (as the case may be) would ordinarily have under this Agreement, if it would have been (but for this provision) a breach of representation or warranty or a breach of covenant or an Event of Default only by reason of circumstances relating exclusively to the Target or any of its Subsidiaries, and *provided that* such breach or Event of Default:

- (i) is capable of being remedied within the Clean Up Period;
- (ii) does not have a Material Adverse Effect; and
- (iii) was not knowingly procured by or approved by the Parent.

Notwithstanding the above, if the relevant circumstances are continuing after the expiry of the Clean Up Period, there shall be a breach of representation or warranty, breach of covenant or Event of Default, as the case may be (and without prejudice to any rights and remedies of the Finance Parties).

(b) In respect of any acquisition permitted under this Agreement, for the period commencing on the date on which such acquisition is completed and ending on (and including) the date falling 120 days thereafter (the “**Permitted Acquisition Clean Up Period**”), the occurrence of any Default or Event of Default will be deemed not to be a breach of representation or warranty or a breach of covenant or an Event of Default (as the case may be), and will not have any of the consequences that such a misrepresentation, breach of warranty, breach of covenant or Event of Default (as the case may be) would ordinarily have under this Agreement, if it would have been (but for this provision) a breach of representation or warranty or a breach of covenant or an Event of Default only by reason of circumstances relating exclusively to the target of the relevant acquisition or any of its Subsidiaries, and *provided that* such breach or Event of Default:

- (i) is capable of being remedied within the Permitted Acquisition Clean Up Period;
- (ii) does not have a Material Adverse Effect; and
- (iii) was not knowingly procured by or approved by the Parent.

Notwithstanding the above, if the relevant circumstances are continuing after the expiry of the Permitted Acquisition Clean Up Period, there shall be a breach of representation or warranty, breach of covenant or Event of Default, as the case may be (and without prejudice to any rights and remedies of the Finance Parties).

(c) The Parent shall promptly notify the Agent upon becoming aware of the occurrence or existence of any event or circumstance which, but for this Clause 28.6 would constitute an Event of Default and the steps, if any, being taken to remedy it.

## 28.7 Excluded Matters

- (a) Notwithstanding any other term of the Finance Documents:

- (i) none of the steps, actions or events set out in or contemplated by the Tax Structure Memorandum or the intermediate steps, actions or events necessary to implement any of those steps events or actions;
- (ii) no Permitted Transaction;
- (iii) prior to the end of the Certain Funds Period, no breach of any representation, warranty, undertaking or other term of (or default or event of default under) any document relating to the Existing Facilities Agreement or any other existing financing arrangements of any member of the Group arising as a direct or indirect result of any person entering into and/or performing its obligations under any Transaction Document (or carrying out any transaction contemplated by the Transaction Documents) or otherwise, or carrying out the Transaction or any other transactions otherwise disclosed to the Arrangers prior to the date of this Agreement (including, in each case, all steps, transactions and arrangements entered into in connection with or to give effect to such transactions);
- (iv) other than in the case of any payment default under an Ancillary Document constituting an Event of Default under Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*), no breach of any representation, warranty, undertaking or other term of (or default or event of default under) an Ancillary Document;
- (v) no breach of any obligation in respect of which it is expressly provided in this Agreement that a breach shall not constitute a Default and/or Event of Default; and
- (vi) no Withdrawal Event,  
  
shall (or shall be deemed to) constitute a breach of any representation and warranty or undertaking in the Finance Documents or result in the occurrence of a Default or an Event of Default and shall be expressly permitted under the terms of the Finance Documents.

(b) For these purposes, “**Withdrawal Event**” means:

- (i) the withdrawal of any participating member state of the European Union from the single currency of the participating member states of the European Union (being the euro);
- (ii) the redenomination of the euro into any other currency by the government of any current or former participating member state of the European Union; and/or
- (iii) the withdrawal (or any vote or referendum electing to withdraw) of any member state from the European Union, including Brexit.

(c) Notwithstanding any other term of the Finance Documents, no Default or Event of Default shall occur and no notice of Default or Event of Default (or any acceleration in respect of such Default or Event of Default) may be given, in either case, with respect to any action, circumstance or matter taken or which occurred or ceased to subsist more than two years after the date on which (i) the Parent has disclosed the Default or the Event of Default or the circumstances giving rise to such Default or Event of Default in any of its reporting or, if earlier, (ii) the Agent has given notice to the Parent in respect of the Default or Event of Default or the circumstances giving rise to such Default or Event of Default.

## 29. CHANGES TO THE LENDERS

### 29.1 Successors

The Finance Documents shall be binding upon and enure to the benefit of each party hereto and its or any subsequent successors, transferees, assigns and any New Lender.

### 29.2 Assignments by Lenders

- (a) Subject to this Clause 29, any Lender (an “**Existing Lender**”) may assign any of its rights or transfer its rights and obligations (it being understood that an assignment as referred to in this Clause 29 or in this Agreement shall, where the context so requires or permits, include a transfer of its rights and obligations) under any Finance Document to a bank or financial institution or to any fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in or securitising loans, securities or other financial assets (an “**New Lender**”).
- (b) Each Party agrees that in case of a transfer pursuant to this Clause 29.2 (*Assignments by Lenders*), the Transaction Security and the guarantees granted by each Obligor under the Finance Documents shall be preserved for the benefit of the Security Agent, the New Lender and the remaining Secured Parties.

### 29.3 Conditions of assignment or transfer

- (a) An assignment of part of a Lender’s Commitments shall be in a minimum amount of \$1,000,000 (or its equivalent in other currencies), and must be in an amount such that the amount of that Lender’s remaining Commitments (when aggregated with its Affiliates’ and Related Funds’ Commitments) is in a minimum amount of \$2,000,000 (or its equivalent in other currencies), unless the relevant assignment relates to the whole of that Lender’s Commitments under the relevant Facility.
- (b) On and prior to the expiry of the Certain Funds Period, no Existing Lender may assign any of its rights or transfer by novation any of its rights and obligations, nor enter into any sub-participation or sub-contract in respect of the same, without the prior written consent of the Parent (in its sole and absolute discretion).
- (c) After the expiry of the Certain Funds Period, other than with respect to any Revolving Facility, the prior written consent of the Parent (not to be unreasonably withheld or delayed) is required for any assignment, transfer, sub-participation or sub-contract unless such assignment, transfer, sub-participation or sub-contract is:
  - (i) to another Lender or an Affiliate of a Lender or, in the case of a Lender which is a fund, a Related Fund of such Lender; or
  - (ii) made at a time when a Material Event of Default is continuing,

*provided that* if the Parent fails to respond to a request for consent to a transfer, assignment, sub participation or sub-contract within 15 Business Days after such request, such consent shall be deemed as granted *provided that* the request was communicated to the Parent, and only to the extent so, notified to the Agent by or on behalf of the Parent, at least 15 Business Days prior to such consent being deemed granted.

- (d) With respect to any Revolving Facility, the prior written consent of the Parent (in its sole and absolute discretion) is required for any assignment, transfer, sub-participation or sub-contract unless such assignment, transfer, sub-participation or sub-contract is to another Lender or an Affiliate of a Lender or, in the case of a Lender which is a fund, a Related Fund of such Lender.
- (e) Notwithstanding anything to the contrary in this Agreement, no assignment or transfer or sub-participation or sub-contract shall be permitted at any time without the prior written consent of the Parent (in its sole and absolute discretion and never deemed given) to any person that:
- (i) is a Disqualified Lender;
  - (ii) is a Defaulting Lender (or would, upon becoming a Lender, be a Defaulting Lender);
  - (iii) is a Net Short Lender (or would, upon becoming a Lender, be a Net Short Lender);
  - (iv) (unless a Material Event of Default is continuing) a person whose principal investment strategy is investing in distressed debt or the pursuance of loan to own strategies; or
  - (v) with respect to any Revolving Facility only, is not a regulated deposit taking financial institution with a long term corporate credit rating equal to or better than BBB or Baa2 (as applicable) according to at least two of Moody's Investors Services Limited, Standard and Poor's Ratings Services or Fitch Ratings Ltd.
- (f) Any assignment, and any sub-participation or sub-contract referred to in paragraph (c) above, and the identity of the proposed New Lender (or, as the case may be, sub-participant or sub-contractor) shall be notified to the Parent by the Agent (or, in respect of a sub-participation or a sub-contract, by the relevant Lender) promptly upon completion.
- (g) Notwithstanding any assignment, transfer, sub-participation or sub-contract by an Existing Lender which is an Original Lender, if the assignee or transferee (or any subsequent assignee or transferee) defaults in its obligation to fund its pro rata portion of any Certain Funds Utilisation or Agreed Certain Funds Utilisation by the required time on the applicable Utilisation Date (or has confirmed that it will not be able to fund), that Existing Lender shall, by 9:30am on that Utilisation Date, fund an amount of proceeds to the relevant Borrower equal to the amount the defaulting assignee/transferee was required to fund in respect of that Certain Funds Utilisation or Agreed Certain Funds Utilisation (as applicable) and (i) the Commitments of the Existing Lender under each relevant Facility shall be increased by an amount equal to the additional amount that it funded on the relevant Utilisation Date in accordance with this paragraph and (ii) the Commitments under the relevant Facility of any such Lender defaulting in its obligation to fund on that Utilisation shall be reduced by an equivalent amount for all purposes of this Agreement.
- (h) Other than in the case of an assignment or transfer effected in accordance with paragraph (a) of Clause 29.15 (*Notifiable Debt Purchase Transactions*) and subject to paragraph (l) below, an assignment under Clause 29 (*Changes to the Lenders*) will only be effective upon:

- (i) receipt by the Agent (in the Assignment Agreement, Transfer Certificate or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that it will assume the same obligations to each of the other Finance Parties and the other Secured Parties as it would have been under had it been 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) performance by the Agent of all “know your customer” or other similar checks under all applicable laws and regulations relating to any person that the Agent is required to carry out 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,

and no assignment or transfer will be effective until recorded in the Register.

- (i) Without prejudice to this Clause 29.3, each Obligor hereby expressly consents to each assignment of rights or obligations under this Clause 29. Each Obligor also accepts and confirms that all guarantees, indemnities and Security granted by it under any Finance Document will, notwithstanding any such assignment continue and be preserved for the benefit of the New Lender and each of the other Finance Parties in accordance with the terms of the Finance Documents.

(j) 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 18 (*Taxes*) or Clause 19 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under the relevant 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.

- (k) Each New Lender, by executing the Assignment Agreement, Transfer Certificate or Increase Confirmation, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any consent, 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, assignment or assumption 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.
- (l) Unless otherwise consented to by the Parent (which consent, for the avoidance of doubt, shall not be deemed given even if not expressly refused within 15 Business Days after the relevant request), if any assignment, transfer, sub-participation or sub-contract occurs in breach of the provisions of this Clause 29, such assignment, transfer, sub-participation or sub-contract shall be void and deemed to have not occurred for all purposes under this



Agreement and the Parent or any Borrower shall be entitled to seek specific performance to unwind any such assignment, transfer, sub-participation or sub-contract in addition to any other remedies available to the Parent or any Borrower at law or in equity. Without prejudice to the foregoing:

- (i) the interests or purported interests of the assignee, transferee, sub-participant or sub-contractor (as the case may be) (each a “**Transferee**”) shall be ignored for the purposes of ascertaining the Majority Lenders or Super Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments (or the Total Commitments under any Facility) has been obtained to give an instruction or approve any request for a consent, waiver, amendment, or other vote under the Finance Documents;
- (ii) for the purposes of Clause 40.2 (*Exceptions*), such Transferee shall be deemed not to be a Lender;
- (iii) the Parent may:
  - (A) cancel the Commitments of such Transferee and prepay any applicable outstanding Loans at a price equal to the lesser of par and the amount such Transferee paid to acquire such Loans, without premium, penalty, prepayment fee or breakage costs; and/or
  - (B) require such Transferee to assign or transfer its rights and obligations in accordance with Clause 40.9 (*Replacement of a Defaulting Lender*), at the price indicated in paragraph (A) above (which assignment shall not be subject to any processing and recordation fee) and if such Transferee does not execute and deliver to the Agent a duly executed Assignment Agreement or Transfer Certificate reflecting such assignment or transfer within five Business Days after the date on which the assignee Replacement Lender executes and delivers such Assignment Agreement or Transfer Certificate (as applicable) to such Transferee, then such Transferee shall be deemed to have executed and delivered such Assignment Agreement or Transfer Certificate (as applicable) without any action on its part;
- (iv) no such Transferee shall receive any information or reporting provided by the Parent or any of its Restricted Subsidiaries, the Agent or any other Finance Party;
- (v) such Transferee shall not be entitled to any expense reimbursement or indemnification rights under any Finance Documents (including Clauses 22 (*Costs and Expenses*) and 20 (*Other Indemnities*)),

and the Parent expressly reserves all rights against such Transferee under contract, tort or any other theory; it being understood and agreed that the foregoing provisions shall only apply to such Transferee and not to any assignee or transferee of such Transferee that becomes a Lender so long as such assignment or transfer does not occur in breach of the provisions of this Clause 29.

#### 29.4 Assignments by Lenders

Upon an assignment becoming effective, the Existing Lender will be released from its obligations under the Finance Documents to the extent they are assumed by the New Lender.

#### **29.5 Assignment fee**

Subject to paragraph (l)(iii)(B) of Clause 29.3 (*Conditions of assignment or transfer*), unless the Agent otherwise agrees to waive such fees and excluding an assignment (i) by an Existing Lender to an Affiliate of that Existing Lender, (ii) by an Existing Lender to a fund which is a Related Fund of that Existing Lender or (iii) made in connection with primary syndication of the Facilities, the New Lender shall, on or before the date upon which an assignment to it takes effect pursuant to this Clause 29.5, pay to the Agent (for its own account) a fee of \$2,500 in relation to any assignment under any Facility.

#### **29.6 Limitation of responsibility of Existing Lenders and the Agent**

- (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 or any other member of the Group;
  - (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 or information (whether written or oral) made or supplied 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 and 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 and all other risks arising in connection with its participation in the Finance Documents 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 by such Existing Lender under this Clause 29.6; 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.

(d) For the avoidance of doubt, the Agent shall assume no responsibility for, and nothing in any Finance Document shall oblige the Agent to monitor, whether any New Lender is a Disqualified Lender.

#### 29.7 Procedure for assignment

(a) Subject to the conditions set out in Clause 29.3 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (d) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender.

(b) The Agent shall, subject to paragraph (c) 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.

(c) 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.

(d) Subject to Clause 29.12 (*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.

#### 29.8 Procedure for transfer

(a) Subject to the conditions set out in Clause 29.3 (*Conditions of assignment or transfer*) a transfer may be effected in accordance with paragraph (d) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender.

(b) The Agent shall, subject to paragraph (c) 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.

- (c) 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.
- (d) Subject to Clause 29.12 (*Pro rata interest settlement*), on the Transfer Date:
- (i) to the extent that in such 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 Company or the Obligors and such Existing Lender shall be released from further obligations towards one another (and the Existing Lender and any Issuing Bank shall be released from any further obligations toward each other) 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 (the “**Relevant Rights and Obligations**”);
  - (ii) the Company and 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 Relevant Rights and Obligations only insofar as the Company or that Obligor and that New Lender have assumed and/or acquired the same in place of the Company, that Obligor and such Existing Lender;
  - (iii) the Agent, the Arrangers, the New Lender and the other Finance Parties shall acquire the same rights and benefits and assume the same obligations between themselves as they would have acquired and assumed had such New Lender been an original party hereto as a Lender with the rights, benefits and/or obligations acquired or assumed by it as a result of such transfer and to that extent the Agent, the Arrangers and the relevant Existing Lender and the other Finance Parties (other than the New Lender) shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) such New Lender shall become a party hereto as a Lender.

#### 29.9 Sub-participation and sub-contracts

- (a) Subject to paragraphs (b), (c) and (d) of Clause 29.3 (*Conditions of assignment or transfer*), nothing in this Agreement shall restrict the ability of a Lender to sub-participate or sub-contract any or all of its obligations hereunder *provided that*:
- (i) the proposed sub-participation is permitted by 29.3 (*Conditions of assignment or transfer*);
  - (ii) such Lender remains a Lender under this Agreement with all rights and obligations pertaining thereto and remains liable under this Agreement and the other Finance Documents in relation to those obligations;
  - (iii) such Lender retains exclusive control over all rights and obligations in relation to the participations and Commitments that are the subject of the relevant sub-participation, including all voting and similar rights (for the avoidance of doubt, free of any agreement or understanding pursuant to which it is required to or will

consult with any other person in relation to the exercise of any such rights and/or obligations);

- (iv) the relationship between the Lender and the proposed sub-participant is that of a contractual debtor and creditor (including in the bankruptcy or similar event of the Lender or an Obligor);
- (v) the applicable sub-participation agreement states that the conditions above are applicable to further sub-participations (and such provision must be capable of being relied upon and directly enforceable by the Parent against the relevant sub-participant); and
- (vi) if the sub-participation in respect of an Incremental Facility, the restrictions (if any) specified in the relevant Incremental Facility Notice establishing such Incremental Facility Commitments are complied with,

and, for the avoidance of doubt, paragraph (l) of Clause 29.3 (*Conditions of assignment or transfer*) shall apply to any sub-participation which occurs in breach of these provisions.

- (b) Each Lender that sells a participation, sub-participation or sub-contract shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each such participant and the principal amounts (and stated interest) of each such participant's interest in the Loans or other obligations under the Finance Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except the Parent or any Person to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Proposed Treasury Regulations Section 1.163-5(b) (and, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. Notwithstanding anything to the contrary, a Lender shall promptly notify the Parent of any sub-participation or sub-contract entered into by it, including the identity of the entity to which the Lender has sub-contracted or sub-participated.

#### 29.10 The Register

- (a) The Agent, acting for this purpose as the non-fiduciary agent of the Obligor, shall maintain at its address referred to in Clause 36.2 (*Addresses*):
  - (i) each Assignment Agreement referred to in Clause 29.7 (*Procedure for assignment*), each Transfer Certificate referred to in Clause 29.8 (*Procedure for transfer*), each Increase Certificate and each Incremental Facility Increase Notice; and
  - (ii) with respect to each Facility, a register for the recording of the names and addresses of the Lenders and the Commitment of, and principal amount (and stated interest)

owing to, each Lender from time to time (the “**Register**”) under such Facility, which may be kept in electronic form.

The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Obligors, the Agents and the Lenders shall treat each person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Agent shall provide the Parent with a copy of the Register within five Business Days after request. Notwithstanding anything to the contrary, any assignment of any Loan shall be effective only upon appropriate entries with respect thereto being made in the Register.

- (b) Each Party irrevocably authorises the Agent to make the relevant entry in the Register (and which the Agent shall do promptly) on its behalf for the purposes of this Clause 29.10 without any further consent of, or consultation with, such Party.
- (c) The Agent shall, upon request by an Existing Lender (as defined in Clause 29.2 (*Assignments by Lenders*)) or a New Lender, confirm to that Existing Lender or New Lender whether a transfer or assignment from that Existing Lender or (as the case may be) to that New Lender has been recorded on the Register (including details of the Commitment of that Existing Lender or New Lender in each Facility).
- (d) The Register is intended to cause the extensions of credit to the Obligors under this Agreement to be at all times maintained in “registered form” within the meaning of sections 163(f), 871(h)(2) and 881(c)(2) of the Code and shall be interpreted and applied in a manner consistent with such intent.

#### **29.11 Security over Lenders’ rights**

In addition to the other rights provided to Lenders under this Clause 29.11 each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

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

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or other Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

#### **29.12 Pro rata interest settlement**

- (a) 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 assignment pursuant to Clause 29.7 (*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):
- (i) 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
  - (ii) 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:
    - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
    - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 29.12, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 29.12 references to “**Interest Period**” shall be construed to include a reference to any other period for accrual of fees.

#### 29.13 Accession of Incremental Facility Lender

Any person which provides Incremental Facility Commitments or an Incremental Facility Loan (to the extent not already a Lender) shall become a party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement) and shall, at the same time, become a Party to this Agreement as a Lender by executing an Accession Certificate.

#### 29.14 Debt Purchase Transactions

- (a) Notwithstanding any other term of this Agreement or the other Finance Documents, any member of the Group may purchase by way of a Debt Purchase Transaction a participation in any Utilisation and/or any Commitment.
- (b) A member of the Group (or the Parent on behalf of the relevant member of the Group) (a “**Purchaser**”) may purchase by way of assignment, pursuant to this Clause, a participation in any Term Loan and any related Commitment.
- (c) Any Debt Purchase Transaction entered into by a member of the Group may be entered into pursuant to a solicitation process (a “**Solicitation Process**”) which is carried out as follows:
  - (i) Prior to 11:00am on a given Business Day (the “**Solicitation Day**”) the relevant Purchaser or a financial institution acting on its behalf (the “**Purchase Agent**”) will approach at the same time each Lender which participates in the Facilities or an Incremental Facility (as applicable) to invite them to offer to sell to the relevant

Purchaser, an amount of their participation in that Facility. Any Lender wishing to make such an offer shall, by 11:00am on the second Business Day following such Solicitation Day, communicate to the Purchase Agent details of the amount of its participations, it is offering to sell and the price at which it is offering to sell such participations. Any such offer shall be irrevocable until 11:00am on the third Business Day following such Solicitation Day and shall be capable of acceptance by the relevant Purchaser on or before such time by communicating its acceptance in writing to the Purchase Agent or, if it is the Purchase Agent, the relevant Lenders. The Purchase Agent (if someone other than the Purchaser) will communicate to the relevant Lenders which offers have been accepted by 12 noon on the third Business Day following such Solicitation Day. In any event by 11:00am on the fourth Business Day following such Solicitation Day, the Purchaser shall notify the Agent of the amounts of the participations purchased through the relevant Solicitation Process and the identity of such Lenders to which they relate. The Agent shall disclose such information to any Lender that requests such disclosure.

- (ii) If it chooses to accept any offers made pursuant to a Solicitation Process, the Purchaser shall be free to select which offers and in which amounts it accepts but on the basis that, in relation to a participation in a particular Facility it accepts, offers in inverse order of the price offered (with the offer or offers at the lowest price being accepted first) and that if in respect of participations in a particular Facility it receives two or more offers at the same price it shall only accept such offers on a pro rata basis.
  - (iii) Any purchase of participations in any Facility pursuant to a Solicitation Process shall be completed and settled on or before the fifth Business Day after the relevant Solicitation Day.
  - (iv) In accepting any offers made pursuant to a Solicitation Process the Purchaser shall be free to select which offers and in which amounts it accepts.
- (d) A Debt Purchase Transaction entered into by a member of the Group may be entered into pursuant to an open order process (an “**Open Order Process**”) which is carried out as follows:
- (i) A Purchaser may, by itself or through the same or another Purchase Agent, place an open order (an “**Open Order**”) to purchase participations in one or more of the Facilities up to a set aggregate amount at a set price by notifying at the same time all the Lenders participating in the relevant Facilities of the same. Any Lender wishing to sell pursuant to an Open Order will, by 11:00am on any Business Day following the date on which the Open Order is placed but no earlier than the first Business Day, and no later than the fifth Business Day, following the date on which the Open Order is placed, communicate to the Purchase Agent details of the amount of its participations, and in which Facilities, it is offering to sell. Any such offer to sell shall be irrevocable until 11:00am on the Business Day following the date of such offer from the Lender and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by it communicating such acceptance in writing to the relevant Lender.
  - (ii) Any purchase of participations in the Facilities pursuant to an Open Order Process shall be completed and settled by the relevant Borrower(s) on or before the fourth



Business Day after the date of the relevant offer by a Lender to sell under the relevant Open Order.

(iii) If in respect of participations in a Facility the Purchase Agent receives on the same Business Day two or more offers at the set price such that the maximum amount of such Facility to which an Open Order relates would be exceeded, the Parent shall only accept such offers on a pro rata basis. For the avoidance of doubt and notwithstanding the foregoing, the Parent shall be entitled to disregard any offers which come with conditions or terms that are not satisfactory to it.

(iv) The Parent shall, by 11:00am on the sixth Business Day following the date on which an Open Order is placed, notify the Agent of the amounts of the participations purchased through such Open Order Process and the identity of the Facilities to which they relate. The Agent shall disclose such information to any Lender that requests the same.

(e) A Debt Purchase Transaction may be entered into pursuant to a bilateral process (a “**Bilateral Process**”) which is carried out as follows:

(i) A Purchaser may, by itself or through the same or another Purchase Agent, at any time, purchase participations and/or Commitments from the Lenders pursuant to secondary market purchases and/or pursuant to such bilateral arrangements with any Lenders as the Purchaser shall see fit.

(ii) Any purchase of participations in any Facility pursuant to a Bilateral Process shall be completed and settled by the relevant Purchaser(s) on or before the second Business Day after the expiry of the Bilateral Process period referred to in paragraph (i) above.

(iii) The Parent (on behalf of the relevant member of the Group) shall promptly notify the Agent of the amounts of each participation purchased through such Bilateral Process and the identity of such Lenders to which they relate. The Agent shall disclose such information to any Lender that requests the same.

(f) For the avoidance of doubt:

(i) there is no requirement for any Debt Purchase Transaction by a member of the Group to be entered into pursuant to a Solicitation Process, Open Order Process or a Bilateral Process;

(ii) there is no limit on the number of occasions a Solicitation Process, Open Order Process or Bilateral Process may be implemented; and

(iii) any source of funding may be used to effect any Debt Purchase Transaction (including, for the avoidance of doubt, any Revolving Facility Utilisation).

(g) In relation to any Debt Purchase Transaction entered into pursuant to this Clause, notwithstanding any other term of this Agreement or the other Finance Documents (in the case of a Lender that is a member of the Group):

(i) on completion of the relevant assignment pursuant to this Clause, the portions of the Loans to which it relates shall, unless there would be a material adverse tax

- impact on the Group as a result of such cancellation, be extinguished if the purchaser is the relevant Borrower;
- (ii) such Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of the Facilities;
  - (iii) the member of the Group or Purchaser which is the assignee shall be deemed to be an entity which fulfils the requirements of a New Lender;
  - (iv) no member of the Group shall be deemed to be in breach of any provision of this Agreement or any other provisions of the Finance Documents solely by reason of such Debt Purchase Transaction;
  - (v) Clause 33 (*Sharing among the Finance Parties*) shall not be applicable to the consideration paid under such Debt Purchase Transaction; and
  - (vi) for the avoidance of doubt, any extinguishment of any part of the Term Loans shall not affect any consent, amendment or waiver which prior to such extinguishment had been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement.

#### 29.15 Notifiable Debt Purchase Transactions

- (a) Each Lender shall, unless the Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a member of the Group (a “**Notifiable Debt Purchase Transaction**”), such notification to be substantially in the form set out in Schedule 13 (*Form of Notice on entering into Notifiable Debt Purchase Transaction*) of Schedule 13 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (b) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party is terminated or ceases to be with a member of the Group, such notification to be substantially in the form set out in Schedule 13 (*Form of Notice on Termination of Notifiable Debt Purchase Transaction*) of Schedule 13 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (c) Unless otherwise agreed by the Majority Lenders, each member of the Group agrees that (in its capacity as a Lender):
  - (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, unless the Agent otherwise agrees, it shall not attend or participate in the same if so requested by the Agent or be entitled to receive the agenda or any minutes of the same;
  - (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;
  - (iii) in ascertaining the Majority Lenders or Super Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments or the agreement of any specified group of Lenders has been obtained to give an instruction or approve any request for a consent, waiver,

amendment or other vote under the Finance Documents, such Commitment owned by that Lender shall be deemed to be zero; and

(iv) subject to paragraph (iii) above, for the purposes of Clause 40.2 (*Exceptions*), it shall be deemed not to be a Lender.

### 30. CHANGES TO THE OBLIGORS

#### 30.1 Assignment and transfers by Obligors

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

#### 30.2 Additional Borrowers

(a) Subject to compliance with Clause 25.3 (*Know your customer checks*), the Parent may request that any of its Restricted Subsidiaries becomes an Additional Borrower. That Subsidiary shall become a Borrower if:

(i) in the case of Facility B1, it is approved by all the Lenders under Facility B1;

(ii) in the case of Facility B2, it is approved by all the Lenders under Facility B2;

(iii) in the case of a Revolving Facility, it is incorporated in:

(A) the United Kingdom or the United States (each an “**Approved Jurisdiction**”);

(B) any jurisdiction in which an existing Borrower under a Revolving Facility is incorporated; or

(C) any other jurisdiction approved by all of the Lenders under the relevant Revolving Facility in respect of which the relevant Subsidiary is to be a Borrower (acting reasonably);

(iv) in the case of an Incremental Term Facility, it is incorporated in:

(A) an Approved Jurisdiction;

(B) any jurisdiction in which an existing Borrower under an Incremental Facility is incorporated; or

(C) any other jurisdiction approved by all of the Incremental Facility Lenders in respect of that Incremental Facility (acting reasonably);

(v) the Parent and that Subsidiary deliver to the Agent a duly completed and executed Accession Deed;

(vi) the Subsidiary is (or becomes) a Guarantor prior to or contemporaneously with becoming a Borrower; and

(vii) the Agent has received (or otherwise waived the requirement to receive) all of the documents and other evidence set out in Part 2 (*Conditions Precedent required to*

*be delivered by an Additional Obligor*) 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 (acting reasonably)) all of the documents and other evidence set out in Schedule 2 (*Conditions Precedent*) in relation to that Additional Borrower.
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
- (d) Upon the Agent's confirmation to the Parent that it has received (or otherwise waived the requirement to receive) all documents referred to in paragraph (b) above in respect of an Additional Borrower, such Additional Borrower, the other Obligors and the Finance Parties shall each assume such obligations towards one another and/or acquire such rights against each other party as they would have assumed or acquired had such Additional Borrower been an original Party to this Agreement as a Borrower and a Guarantor and to the Intercreditor Agreement as a Debtor (as defined in the Intercreditor Agreement) and such Additional Borrower shall become a Party to this Agreement as a Borrower and as a Guarantor and to the Intercreditor Agreement as a Debtor (as defined in the Intercreditor Agreement).

### **30.3 Resignation of a Borrower**

- (a) The Parent may request that a Borrower (other than the TLB Borrowers) ceases to be a Borrower by delivering to the Agent a resignation letter to that effect.
- (b) The Agent shall accept such resignation letter and notify the Parent and the Lenders of its acceptance if:
  - (i) no Event of Default is continuing or would result from the acceptance of the resignation letter (and the Parent has confirmed this is the case); and
  - (ii) the relevant Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents; and
  - (iii) where the Borrower is also a Guarantor (unless its resignation has been or is contemporaneously accepted in accordance with Clause 30.5 (*Resignation of a Guarantor*), its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations) and (other than by reason of law) the amount guaranteed by it as a Guarantor is not decreased (and the Parent has confirmed this is the case).
- (c) Upon notification by the Agent to the Parent of its acceptance of the resignation of a Borrower, that entity shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower.

### **30.4 Additional Guarantors**

- (a) Subject to compliance with Clause 25.3 (*Know your customer checks*), the Parent may request that any of its Restricted Subsidiaries becomes a Guarantor. That Subsidiary shall become a Guarantor if:
- (i) the Parent and that Subsidiary deliver to the Agent a duly completed and executed Accession Deed; and
  - (ii) the Agent has received (or otherwise waived the requirement to receive) all of the documents and other evidence set out in Part 2 (*Conditions Precedent required to be delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, 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 (acting reasonably)) all of the documents and other evidence set out in Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor.
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
- (d) Upon the Agent's confirmation to the Parent that it has received (or otherwise waived the requirement to receive) all documents referred to in paragraph (a) above in respect of an Additional Guarantor, such Additional Guarantor, the other Obligor and the Finance Parties shall each assume such obligations towards one another and/or acquire such rights against each other party as they would have assumed or acquired had such Subsidiary been an original Party to this Agreement as a Guarantor and to the Intercreditor Agreement as a Debtor (as defined in the Intercreditor Agreement) and such Additional Guarantor shall become a Party to this Agreement as a Guarantor and to the Intercreditor Agreement as a Debtor (as defined in the Intercreditor Agreement).

### 30.5 Resignation of a Guarantor

- (a) The Parent may request that a Guarantor (other than the Parent and the Company) ceases to be a Guarantor by delivering to the Agent a resignation letter if:
- (i) that Guarantor is being disposed (directly or indirectly) pursuant to a Disposition permitted (or not prohibited) pursuant to Schedule 17 (*General Undertakings*) (including a disposal made with the approval of the Majority Lenders) or is subject to or part of a Permitted Transaction (and the Parent has confirmed this is the case);
  - (ii) that Guarantor is not a Material Subsidiary that is incorporated in a Security Jurisdiction (and the Parent has confirmed this is the case) and the Guarantor and Security Coverage Requirement would still be satisfied after the resignation; or
  - (iii) the Majority Lenders have consented to the resignation of that Guarantor.
- (b) The Agent shall accept such resignation letter and notify the Parent and the Lenders of its acceptance if:

- (i) no Event of Default is continuing or would result from the acceptance of the resignation letter (and the Parent has confirmed this is the case);
  - (ii) no payment is due from the Guarantor under Clause 23.1 (*Guarantee and indemnity*); and
  - (iii) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower under any Finance Documents and has resigned and ceased to be a Borrower under Clause 30.3 (*Resignation of a Borrower*).
- (c) The resignation of that Guarantor shall not be effective until the date of (i) in the case of (a)(i) above, the relevant disposal or Permitted Transaction, (ii) in the case of (a)(ii) above, the resignation letter's acceptance by the Agent in accordance with paragraph (b) above or (iii) in the case of (a)(iii) above, resignation agreed by the Majority Lenders, at which time that entity shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.
- (d) If a Guarantor (a "**Merging Guarantor**") is merged into another Guarantor pursuant to a transaction which is permitted or not prohibited by this Agreement, that Merging Guarantor shall cease to be a Guarantor as at the date on which the merger is effective and from (and including) such date shall have no further rights or obligations under the Finance Documents as a Guarantor (to the extent consistent with applicable law), without any requirement for a resignation letter or other document to be delivered to any Finance Party.

### 30.6 Repetition of Representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that all the Repeating Representations applicable to it are true and correct in all material respects in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

### 30.7 Release

- (a) If any member of the Group disposes of any asset (or any member of the Group disposes of shares in any member of the Group or any Holding Company of any member of the Group) as permitted by and in accordance with the terms of this Agreement or the Intercreditor Agreement (including pursuant to a Structural Adjustment or the implementation of other actions permitted under the Finance Documents) or with the prior consent of the Agent (pursuant to the terms of this Agreement) or pursuant to the Intercreditor Agreement, and such asset (or shares) is subject to Transaction Security, the Security Agent shall, and is hereby authorised and instructed by the Secured Parties to, at the cost and request of the Parent, release (or amend) the Transaction Security over that asset (or shares) and, in the case of any such disposal of shares in a member of the Group or a Holding Company of a member of the Group to a person who is not a member of the Group, over the respective assets of such member of the Group and its Subsidiaries (and the shares in any such member of the Group and/or Subsidiary) and issue any certificate of non-crystallisation of any floating charge that may reasonably be required or considered necessary or desirable in connection with that disposal, *provided that* to the extent such disposal is not completed for any reason within a reasonable timeframe following such release, any Transaction Security that has been released shall be promptly reinstated.
- (b) If a member of the Group whose shares and/or assets are subject to Transaction Security is to be merged into another member of the Group or is being liquidated and such merger or

liquidation is permitted by this Agreement, the Security Agent shall (and is irrevocably so authorised by the Secured Parties), upon the request and at the cost of the Parent, execute all documents necessary to release that Transaction Security in order to allow that merger or liquidation to be completed and issue any certificate of non-crystallisation of any floating charge that may reasonably be required or considered necessary or desirable in connection with that merger or liquidation, *provided that* the Secured Parties (or the Security Agent on their behalf) will, after such merger or liquidation, continue to have the same or substantially equivalent guarantees and security (ignoring for the purpose of assessing the foregoing any limitations required in accordance with the Agreed Security Principles and other than guarantees and security from any entity which has ceased to exist as contemplated by this paragraph (b)) over the same or substantially equivalent assets and over the shares (or other interests) in the transferee other than over any shares (or other interests) which have ceased to exist as contemplated by this paragraph (b), in each case to the extent such assets, shares or other interests are not disposed of or used as permitted under, but subject to, the terms of this Agreement.

- (c) In relation to any Transaction Security over a bank account of an Obligor, the Security Agent is hereby authorised and instructed by the Secured Parties to release any Security granted in favour of the Security Agent and, where applicable, any other Finance Party and held over any bank account of an Obligor (a “**Pledged Account**”) which, in accordance with the Agreed Security Principles is no longer to be the subject of such Transaction Security.
- (d) If a member of the Group is or becomes a Regulated Entity, the Security Agent and/or the relevant Secured Parties (as applicable) shall, at the cost and request of the Parent, promptly release Transaction Security over any asset of (or shares in) such Regulated Entity to the extent required to ensure that such Regulated Entity is not in breach of a Capital Requirement and issue any certificate of non-crystallisation of any floating charge accordingly.

## **31. ROLE OF THE AGENT, THE ARRANGERS AND OTHERS**

### **31.1 Appointment of the Agent**

- (a) Each other Finance Party appoints the Agent to act as its Agent under and in connection with the Finance Documents.
- (b) Each other Finance Party authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent, as applicable, under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) For the purpose of acting as their Agent, in accordance with this Clause 31.1, each other Finance Party hereby releases, to the extent legally possible, the Agent from any restrictions of self dealing under any applicable law. A Secured Party which is barred by its constitutional documents or by-laws from granting such exemption shall notify the Agent accordingly.
- (d) Each of the Arrangers and the Lenders hereby exempts the Agent from the restrictions pursuant to section 181 Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to such Finance Party. A Finance Party which cannot grant such exemption shall

notify the Agent accordingly and, upon request of the Agent, either act in accordance with the terms of this Agreement and/or any other Finance Document as required pursuant to this Agreement and/or such other Finance Document or grant a special power of attorney to a party acting on its behalf, in a manner that is not prohibited pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and/or any other applicable laws.

### 31.2 Instructions

(a) The Agent shall:

- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision;
    - (B) the Super Majority Lenders if the relevant Finance Document stipulates the matter is a Super Majority Lender decision;
    - (C) the Majority Revolving Facility Lenders if the relevant Finance Document stipulates the matter is a Majority Revolving Facility Lender decision;
    - (D) the Majority Facility B Lenders if the relevant Finance Document stipulates the matter is a Majority Facility B Lender decision;
    - (E) the Majority Incremental Term Facility Lenders if the relevant Finance Document stipulates the matter is a Majority Incremental Term Facility Lender decision;
    - (F) the Super Majority Revolving Facility Lenders if the relevant Finance Document stipulates the matter is a Super Majority Revolving Facility Lender decision;
    - (G) the Majority Financial Covenant Revolving Facility Lenders if the relevant Finance Document stipulates the matter is a Majority Financial Covenant Revolving Facility Lender decision;
    - (H) the Super Majority Financial Covenant Revolving Facility Lenders if the relevant Finance Document stipulates the matter is a Super Majority Financial Covenant Revolving Facility Lender decision; and
    - (I) in all other cases, the Majority Lenders; and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives those instructions or that clarification.



- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

### 31.3 Duties of the Agent

- (a) Subject to paragraph (b) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (b) Without prejudice to Clause 29.10 (*The Register*), and paragraph (e) of Clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*), paragraph (a) above shall not apply to any Assignment Agreement, any Transfer Certificate or any Increase Confirmation.
- (c) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties and the Parent.
- (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, each 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 five Business Days after 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 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.

(h) Upon the Agent becoming an Impaired Agent the Parent shall provide a copy of the list of all the Lenders to each Finance Party.

(i) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### **31.4 Role of the Arrangers**

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

#### **31.5 No fiduciary duties**

(a) Nothing in any Finance Document constitutes the Agent, the Issuing Bank, any Arranger and/or any Bookrunner as a trustee or fiduciary of any other person.

(b) None of the Agent, the Issuing Bank, the Security Agent, the Arrangers 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.

#### **31.6 Business with the Group**

The Agent, the Security Agent, the Issuing Bank, the Arrangers 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.

#### **31.7 Rights and discretions**

(a) The Agent and the Issuing Bank may:

(i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

(A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and

(B) unless it has received notice of revocation, those instructions have not been revoked; and

(iii) rely on a certificate from any person:

(A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

(b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*));

(ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and

(iii) any notice or request made by the Parent is made on behalf of and with the consent and knowledge of all the Obligors.

(c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

(d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.

(e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent, or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

(f) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:

(i) be liable for any error of judgment made by any such person; or

(ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct.

(g) Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

(h) Without prejudice to the generality of paragraph (g) above, the Agent:

(i) may disclose; and

(ii) on the written request of the Parent or the Majority Lenders shall, as soon as reasonably practicable, disclose,

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

- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent, nor any Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

### **31.8 Responsibility for documentation**

None of the Agent, any Issuing Bank, the Arrangers or any Ancillary Lender is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, any Arranger, an Ancillary Lender, an Obligor or any other person in or in connection with any Finance Document, the Tax Structure Memorandum or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) 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.

### **31.9 No duty to monitor**

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

### **31.10 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, the Issuing Bank or any Ancillary Lender), none of the Agent, the Issuing Bank, nor any Ancillary Lender will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,
    - including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Agent, an Issuing Bank or an Ancillary Lender (as applicable)) may take any proceedings against any officer, employee or agent of the Agent, any Issuing Bank or any Ancillary Lender, in respect of any claim it might have against the Agent, an Issuing Bank or an Ancillary Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent, any Issuing Bank or any Ancillary Lender may rely on this Clause subject to Clause 1.6 (*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 Arrangers to carry out:
  - (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

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

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

#### **31.11 Lenders' indemnity to the Agent**

- (a) Subject to paragraph (b) below, each Lender shall (in proportion to its Available Commitments, Available Ancillary Commitment and participations in the Utilisations and utilisations of the Ancillary Facilities then outstanding to the Available Facilities and all the Utilisations and utilisations of the Ancillary Facilities then outstanding) indemnify the Agent, within three Business Days after demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of its gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless it has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) If the Available Facilities are then zero, each Lender's indemnity under paragraph (a) above shall be in proportion to its Available Commitments to the Available Facilities immediately prior to their reduction to zero, unless there are then any Utilisations and utilisations of the Ancillary Facilities outstanding, in which case it shall be in proportion to its participations in the Utilisations and utilisations of the Ancillary Facilities then outstanding to all the Utilisations and utilisations of the Ancillary Facilities then outstanding.
- (c) Subject to paragraph (d) below, the Parent shall promptly on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (d) Paragraph (c) above shall not apply to the extent:
  - (i) that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor; or
  - (ii) that the Parent has already reimbursed the Agent for the same cost, loss or liability pursuant to Clause 20.3 (*Indemnity to the Agent*).

#### **31.12 Resignation of the Agent**

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom or Federal Republic of Germany (or any other jurisdiction agreed by the Parent) as its 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 may appoint a successor Agent (acting through an office in the United Kingdom or Federal Republic of Germany).
- (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 31.12 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 (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 20.3 (*Indemnity to the Agent*) and this Clause 31.12 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
  - (i) the Agent fails to respond to a request under Clause 18.9 (*FATCA Information*) and the Parent or a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Agent, pursuant to Clause 18.9 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Agent notifies the Parent and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

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

### **31.13 Replacement of the Agent**

- (a) After consultation with the Parent the Majority Lenders may, by giving 30 days' notice to the Agent and the Parent (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 or Federal Republic of Germany).
- (b) The Parent may, provided it gives not less than 30 days' prior notice, at any time while the Agent is an Impaired Agent replace the Agent by appointing a successor (acting through an office in the United Kingdom or Federal Republic of Germany).
- (c) 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.
- (d) The appointment of the successor, Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent and the Parent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 20.3 (*Indemnity to the Agent*) and this Clause 31.13 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (e) 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.

### **31.14 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 any Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty.

### **31.15 Relationship with the Lenders**



- (a) Subject to Clause 29.12 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,
 unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) 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.
- (c) 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 and (where communication by electronic mail or other electronic means is permitted under Clause 36.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission 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, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 36.2 (*Addresses*) and paragraph (a) of Clause 36.6 (*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.

### **31.16 Credit appraisal by the Lenders, Issuing Banks 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, each Issuing Bank and Ancillary Lender confirms to the Agent, each Arranger, each Issuing Bank and each Ancillary Lender that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Lender or Ancillary Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any

Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

- (d) the adequacy, accuracy or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

#### **31.17 Deduction from amounts payable by the Agent**

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

#### **31.18 Reliance and Engagement Letters**

Each Finance Party and Secured Party confirms that each of the Arrangers and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arrangers or Agent) the terms of any reliance letter or engagement letters relating to any reports (including the Tax Structure Memorandum) or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

#### **31.19 Role of Base Reference Banks**

- (a) No Base Reference Bank is under any obligation to provide a quotation or any other information to the Agent.
- (b) No Base Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Base Reference Bank) may take any proceedings against any officer, employee or agent of any Base Reference Bank in respect of any claim it might have against that Base Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Base Reference Bank may rely on this Clause 31.19, subject to Clause 1.6 (*Third party rights*) and the provisions of the Contracts (Rights of Third Parties) Act 1999.

#### **31.20 Third party Base Reference Banks**

A Base Reference Bank which is not a Party may rely on Clause 31.19 (*Role of Base Reference Banks*), paragraph (g) of Clause 40.2 (*Exceptions*) and Clause 42 (*Confidentiality of Funding Rates*) subject to Clause 1.6 (*Third party rights*) and the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 32. 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.

## 33. SHARING AMONG THE FINANCE PARTIES

### 33.1 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 34 (*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 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 34 (*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 Business Days after 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 34.7 (*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.

### 33.2 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 34.7 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

### 33.3 Recovering Finance Party's rights

On a distribution by the Agent under Clause 33.2 (*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.

### 33.4 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.

### 33.5 Exceptions

- (a) This Clause 33 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.

### 33.6 Ancillary Lenders

- (a) This Clause 33 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 28.5 (*Acceleration*).
- (b) Following service of notice under Clause 28.5 (*Acceleration*), this Clause 33 shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

## 34. PAYMENT MECHANICS

### 34.1 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 the relevant currency (or, in relation to a payment in euro, in the principal financial centre in such Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.

#### 34.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 34.3 (*Distributions to an Obligor*) and Clause 34.5 (*Clawback and pre-funding*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than three Business Days' notice (or such shorter period as the Agent may agree (acting reasonably)) with a bank specified by that Party in the principal financial centre of the country of that the relevant currency (or, in relation to a payment in euro, in the principal financial centre of such Participating Member State or London, as specified by that Party).

#### 34.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 35 (*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.

#### 34.4 Amounts paid in error

- (a) If the Agent pays an amount to another Finance Party and the Agent notifies that Finance Party that such payment was an Erroneous Payment then the Finance Party to whom that amount 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.
- (b) The obligations of any Finance Party to the Agent (whether arising under this Clause 34.4 or otherwise) which relate to an Erroneous Payment will not be affected by any act, omission, matter or thing which, but for this paragraph (b) would reduce, release or prejudice any such obligations (whether or not known by the Agent or any other Finance Party).
- (c) All payments to be made by a Finance Party to the Agent (whether made pursuant to this Clause 34.4 or otherwise) which relate to an Erroneous Payment shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- (d) In this Agreement, "**Erroneous Payment**" means a payment of an amount by the Agent to another Finance Party which the Agent determines (in its reasonable discretion) was made in error.

### 34.5 Clawback and pre-funding

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent, as the case may be, 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) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent, as the case may be, 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, as the case may be, 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.
- (c) If the Agent has notified the Lenders that it is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders, then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:
  - (i) the Agent, as the case may be, shall notify the Parent of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to the Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

### 34.6 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, as the case may be, in accordance with Clause 34.1 (*Payments to the Agent*) may instead either:
  - (i) pay that amount direct to the required recipient(s); or
  - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

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

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 34.6 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, as the case may be, in accordance with Clause 31.13 (*Replacement of the Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution in accordance with Clause 34.2 (*Distributions by the Agent*).
- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
  - (i) that it has not given an instruction pursuant to paragraph (d) above; and
  - (ii) that it has been provided with the necessary information by that Recipient Party,give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

#### 34.7 Partial payments

- (a) If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
  - (i) **first**, in or towards payment *pro rata* of any unpaid amount owing to the Agent, the Security Agent or the Issuing Bank (other than any amount under Clause 7.2 (*Claims under a Letter of Credit*) or, to the extent relating to the reimbursement of a Claim (as defined in Clause 7 (*Letters of Credit*) or Clause 7.3 (*Indemnities*) under those Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents; and
  - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

#### 34.8 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.

#### **34.9 Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (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.

#### **34.10 Currency of account**

- (a) Subject to paragraphs (b) to (e)(inclusive) 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, pursuant to this Agreement, 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, pursuant to this Agreement, 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.

#### **34.11 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 Market and otherwise to reflect the change in currency.



#### 34.12 Disruption to payment systems etc.

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

- (a) the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) above 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) above 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, consent to or waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 40 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 34.12; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

#### 35. SET-OFF

- (a) Subject to Clause 4.5 (*Utilisations during the Certain Funds Period*) and Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*), a Finance Party may, at any time while an Event of Default is continuing and the Super Majority Lenders so direct, or if a notice has been delivered by the Agent pursuant to paragraph (a) of Clause 28.5 (*Acceleration*), or, in the case of set-off by the Lenders under a Revolving Facility, paragraph (b) of Clause 28.5 (*Acceleration*), 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.

## **36. NOTICES**

### **36.1 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 electronic mail or letter.

### **36.2 Addresses**

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

- (a) in the case of each Original Obligor, that identified on its signature page to this Agreement;
  - (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 and the Security Agent, that identified on its signature page to this Agreement,
- or any substitute address, electronic mail address or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

### **36.3 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 electronic mail, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,and, if a particular department or officer is specified as part of its address details provided under Clause 36.2 (*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 specified 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 36.3 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5:00pm in the place of receipt shall be deemed only to become effective on the following day.

#### 36.4 Notification of address and electronic mail address

Promptly upon receipt of notification of an address or electronic mail address or change of address or electronic mail address or changing its own address or electronic mail address, the Agent shall notify the other Parties.

#### 36.5 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.

#### 36.6 Electronic communication

- (a) Any communication to be made under or in connection with the Finance Documents may be made by electronic mail or other electronic means if the Parties:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication (with such agreement to be deemed to be given under this Agreement by each person which is a Party unless otherwise notified to the contrary by the Agent or the Security Agent and the Parent);
  - (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 Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent or the Security Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.
- (c) Any reference in a Finance Document to a Communication being sent or received shall be construed to include that Communication being made available in accordance with this Clause 36.6.

#### 36.7 Use of websites

- (a) The Parent acknowledges and agrees that any information under this Agreement may be delivered to a Lender (through the Agent) onto an electronic website (a “**Platform**”) if:
  - (i) the Agent so agrees;
  - (ii) the Agent appoints a website provider and designates an electronic website for this purpose;
  - (iii) the designated website is used for communication between the Agent and the Lenders;

- (iv) the Agent notifies the Lenders and the Parent of the address and password for the website;
  - (v) the information can only be posted on the website by the Agent; and
  - (vi) the information posted is in a format agreed between the Parent and the Agent.
- (b) 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.
- (c) The cost of the website shall be borne by the Parent, subject to such cost being agreed by the Parent beforehand. 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 10 Business Days.
- (d) The Parent:
- (i) acknowledges that certain of the Lenders (each, a “**Public Lender**”) may have personnel who do not wish to receive material non-public information (within the meaning of United States federal and state securities laws) or inside information (within the meaning of Regulation (EU) No 596/2014 of the European Parliament and of the Council (the “**Market Abuse Regulation**”)) with respect to the Parent or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such persons’ securities; and
  - (ii) agrees that, if reasonably requested by the Agent, it will use commercially reasonable efforts to identify that portion of the information provided by or on behalf of the Parent under this Agreement (the “**Borrower Materials**”) that may be distributed to the Public Lenders and that:
    - (A) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC SIDE” which, at a minimum, shall mean that the word “PUBLIC SIDE” shall appear prominently on the first page thereof;
    - (B) by marking Borrower Materials “PUBLIC SIDE,” the Parent shall be deemed to have authorised the Agent and each other Finance Party to treat such Borrower Materials as not containing any material non-public information or inside information (although it may be sensitive and proprietary) with respect to the Parent or its Affiliates, or their respective securities for purposes of United States federal and state securities laws or the Market Abuse Regulation (*provided*, however, that to the extent such Borrower Materials constitute Confidential Information, they shall be treated in accordance with Clause 41 (*Confidential Information*));
    - (C) all Borrower Materials marked “PUBLIC SIDE” and all Finance Documents are permitted to be made available through a portion of the Platform designated “Public Side Information”; and

- (D) any Borrower Materials that are not marked “PUBLIC SIDE” shall be deemed to contain material non-public information (within the meaning of United States federal and state securities laws) or inside information (within the meaning of the Market Abuse Regulation) and shall not be suitable for posting on a portion of the Platform designated “Public Side Information”.

### **36.8 English language**

- (a) Subject to paragraph (c) below, any notice given under or in connection with any Finance Document must be in English.
- (b) Subject to paragraph (c) below, 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 an English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.
- (c) This Clause 36.8 shall not apply in respect of constitutional documents or statutory documents (or similar) or corporate authorisations in respect of or provided by any member of the Group incorporated outside of England and Wales.

## **37. CALCULATIONS AND CERTIFICATES**

### **37.1 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.

### **37.2 Certificates and determinations**

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

### **37.3 Day count convention**

- (a) Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated:
  - (i) on the basis of the actual number of days elapsed and a year of 360 days in relation to euro or an Optional Currency (other than sterling) and 365 days in relation to sterling or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice; and
  - (ii) subject to paragraph (b) below, without rounding.
- (b) The aggregate amount of any interest, commission or fee that becomes payable by an Obligor under any Finance Document shall be rounded to two decimal places.

### 38. 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.

### 39. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party or Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

### 40. AMENDMENTS AND WAIVERS

#### 40.1 Required consents

- (a) This Clause 40 is subject to the terms of the Intercreditor Agreement.
- (b) Subject to Clause 40.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Parent and any such consent, amendment or waiver will be binding on all Parties.
- (c) The Agent may effect, on behalf of any Finance Party, any consent, amendment or waiver permitted by this Clause 40.
- (d) Each Obligor agrees to any such consent, amendment or waiver permitted by this Clause 40 which is agreed to by the Parent. This includes any consent, amendment or waiver which would, but for this paragraph (d), require the consent of all of the Obligors.
- (e) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 31.7 (*Rights and discretions*), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

#### 40.2 Exceptions

- (a) In this Clause 40, “**Structural Adjustment**” means:
  - (i) a consent, amendment or waiver that has the effect of changing or which relates to:
    - (A) an extension to the availability or date of payment of or redenomination of any amount under the Finance Documents (other than as a result of an Extension pursuant to Clause 40.3 (*Loan Modifications*) or a Refinancing Amendment pursuant to Clause 40.4 (*Refinancing Amendments*));
    - (B) a reduction in the Margin or a reduction in the amount of any payment of principal (other than by way of waiver of a mandatory prepayment), interest, fees or commission or other amount payable;

- (C) the currency of payment of any amount under the Finance Documents;
  - (D) a re-tranching of any or all of the Facilities (other than as a result of an Extension pursuant to Clause 40.3 (*Loan Modifications*) or a Refinancing Amendment pursuant to Clause 40.4 (*Refinancing Amendments*));
  - (E) a redenomination of a Commitment into another currency;
  - (F) an increase in, addition of, or an extension of any Commitment or the Total Commitments (other than in respect of an increase in Commitments under Clause 2.2 (*Increase*), Incremental Facility Commitments up to the limit provided for in Clause 2.3 (*Incremental Facility*), an Extension pursuant to Clause 40.3 (*Loan Modifications*) or a Refinancing Amendment pursuant to Clause 40.4 (*Refinancing Amendments*)) or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility; or
  - (G) the introduction of an additional loan, commitment, tranche or facility into the Finance Documents ranking *pari passu* or subordinate to (or, with the consent of the Super Majority Lenders, senior to) the Facilities (other than as a result of an Extension pursuant to Clause 40.3 (*Loan Modifications*) or a Refinancing Amendment pursuant to Clause 40.4 (*Refinancing Amendments*)); or
- (ii) a consent, amendment or waiver of a term of a Finance Document that is consequential on, incidental to, or required to implement or reflect any of the consents, amendments or waivers listed in paragraph (i) above.
- (b) A consent, amendment or waiver that has the effect of changing or which relates to:
- (i) the definitions of “Majority Lenders”, “Majority Financial Covenant Revolving Facility Lenders”, “Super Majority Financial Covenant Revolving Facility Lenders” and “Super Majority Lenders” in Clause 1.1 (*Definitions*) and “Structural Adjustment” in paragraph (a) above;
  - (ii) any provision which expressly requires the consent of all the Lenders;
  - (iii) the order of priority or subordination under the Intercreditor Agreement in a manner adverse to the interests of the Lenders (taken as a whole) under the Finance Documents;
  - (iv) the manner in which the proceeds of enforcement of any Transaction Security created pursuant to any Transaction Security Document are distributed;
  - (v) Clause 2.4 (*Finance Parties’ rights and obligations*), Clause 12.2 (*Application of prepayments*), Clause 29 (*Changes to the Lenders*), Clause 33 (*Sharing among the Finance Parties*), this Clause 40, Clause 44 (*Governing Law*) or Clause 45.1 (*Jurisdiction of English courts*); or
  - (vi) an accession of a Borrower or Guarantor other than in accordance with Clause 30 (*Changes to the Obligors*) or as a result of a merger or combination which is permitted by the terms of this Agreement,

in each case other than as a result of a Structural Adjustment or as required in order to give effect to an Incremental Facility as set out in Clause 2.3 (*Incremental Facility*), an Extension pursuant to Clause 40.3 (*Loan Modifications*) or a Refinancing Amendment pursuant to Clause 40.4 (*Refinancing Amendments*), shall not be made, or given, without the prior consent of all the Lenders.

(c) A consent, amendment or waiver that has the effect of changing or which relates to:

(i) the guarantee and indemnity granted under Clause 23 (*Guarantees and Indemnity*);

(ii) the nature or scope of the Charged Property or the release of any Transaction Security created pursuant to any Transaction Security Document except to the extent that (A) it is, or relates to the sale or disposal of Charged Property where that sale or disposal is, permitted (or not prohibited by) this Agreement or the Intercreditor Agreement or (B) has been consented to by the Majority Lenders or (C) where any Transaction Security is required to be released in connection with a Structural Adjustment, where such release is coupled with an immediate re-take of Security and where the initial release is itself specifically approved in the vote in relation to that Structural Adjustment or (D) where it is necessary to amend any Transaction Security in order to ensure that (to the extent lawful) any Indebtedness permitted to be incurred and secured by the Charged Property in accordance with the provisions of Schedule 17 (*General Undertakings*) to this Agreement has the benefit of such Transaction Security with the ranking that it is permitted to have under this Agreement and the Intercreditor Agreement where, for the avoidance of doubt, no consent shall be required from the Secured Parties for such release or amendment, which shall be made promptly by the Security Agent following the request of the Parent; or

(iii) any provision which expressly requires the consent of the Super Majority Lenders,

in each case other than as a result of a Structural Adjustment shall not be made without the prior consent of the Super Majority Lenders.

(d) A Structural Adjustment shall not be made without the prior consent of each Lender that is participating in that existing or additional tranche or facility or increasing, extending or re-denominating or re-tranching its commitments or, as applicable, extending or redenominating or reducing any amount due to it (an “**Affected Lender**”), in each case as contemplated within the definition of “Structural Adjustment” set out in paragraph (a) above, unless such Structural Adjustment is to increase the Total Commitments (other than as required in order to give effect to an Incremental Facility as set out in Clause 2.3 (*Incremental Facility*), an Extension pursuant to Clause 40.3 (*Loan Modifications*) or a Refinancing Amendment pursuant to Clause 40.4 (*Refinancing Amendments*)), in which case, such Structural Adjustment shall also require the consent of the Majority Lenders.

(e) No consent from any Lenders shall be required in connection with an Incremental Facility pursuant to an Incremental Facility Increase Notice (other than the consent of the relevant Incremental Facility Lender(s)).

(f) The Transaction Security Documents may be amended, varied, waived or modified with the agreement of the relevant Obligor and the Security Agent (including, where Security has been granted to any other Finance Party, for and on behalf of that other Finance Party



to that Transaction Security Document), acting in accordance with this Agreement or the Intercreditor Agreement.

- (g) A consent, amendment or waiver which relates to the rights or obligations of the Agent, the Arrangers, the Issuing Bank, the Security Agent, Base Reference Bank or any Ancillary Lender (each in their capacity as such) may not be effected without the consent of the Agent, each Arranger, the Issuing Bank, the Security Agent, that Base Reference Bank or that Ancillary Lender, as the case may be.
- (h) Subject to paragraph (e) of Clause 40.5 (*Changes to reference rates*), if any Lender does not accept or reject a written request for a consent, waiver, amendment of or in relation to any of the terms of any Finance Document or other vote of Lenders under the terms of this Agreement within five Business Days (unless the Parent and the Agent agree to a longer time period in relation to that written request) of that written request being made, its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the relevant Facility or Facilities 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.
- (i) The Agent may agree with the Parent at any time any amendment to or modification of a name or other details of a Lender as set out in the Register, which is technical in nature or which is necessary to correct a manifest error.
- (j) Any consent, amendment or waiver which:
  - (i) relates to the rights or obligations applicable to a particular Utilisation or Facility; and
  - (ii) does not materially and adversely affect the rights or interests of Lenders in respect of any other Utilisation or Facility,may be made in accordance with this Clause 40 but as if references in this Clause 40 to the specified proportion of Lenders (including, for the avoidance of doubt, each Affected Lender) whose consent would, but for this paragraph (j), be required for that consent, amendment or waiver were to that proportion of the Lenders participating in that particular Utilisation or Facility.
- (k) Any consent, amendment or waiver which has the effect of changing or which relates to:
  - (i) Clause 28.1 (*Financial covenant*) or Clause 26.1 (*Financial condition*);
  - (ii) a waiver of any Financial Covenant Event of Default;
  - (iii) paragraph (b) of Clause 28.5 (*Acceleration*); or
  - (iv) the definition of “Financial Covenant Event of Default” or “Revolving Facility Financial Covenant Condition”,in each case, excluding any consent, amendment or waiver which has the effect of changing or which relates to Clause 25 (*Information Undertakings*) or Schedule 16 (*Information Undertakings*) (including, without limitation, the timing for delivery of any Financial

Statements, Compliance Certificate or other information), shall require only the consent of the Parent and the Majority Financial Covenant Revolving Facility Lenders (and no consent of any other Finance Party shall be required).

- (l) Any consent, amendment or waiver which has the effect of changing or which relates to the definition of “Majority Facility B Lenders” shall require only the consent of the Parent and all the Facility B Lenders (and no consent of any other Finance Party shall be required).
- (m) Any consent, amendment or waiver which has the effect of changing or which relates to the definition of “Majority Revolving Facility Lenders” or “Super Majority Revolving Facility Lenders” shall require only the consent of the Parent and all the Revolving Facility Lenders (and no consent of any other Finance Party shall be required).
- (n) Any consent, amendment or waiver which has the effect of changing or which relates to the definition of “Majority Financial Covenant Revolving Facility Lenders” or “Super Majority Financial Covenant Revolving Facility Lenders” shall require only the consent of the Parent and all the Revolving Facility Lenders under the Initial Revolving Facility and any Incremental Financial Covenant Revolving Facility Lenders (and no consent of any other Finance Party shall be required).
- (o) Any consent, amendment or waiver which has the effect of changing or which relates to the definition of “Majority Incremental Term Facility Lenders” shall require only the consent of the Parent and all the Incremental Term Facility Lenders (and no consent of any other Finance Party shall be required).
- (p) Any amendment or waiver which relates to the rights or obligations applicable to a particular Utilisation, Facility or class of Lenders and which does not materially and adversely affect the rights or interests of Lenders in respect of other Utilisations, Facilities or another class of Lender shall only require the consent of the the Majority Lenders, the Majority Facility B Lenders, the Majority Financial Covenant Revolving Facility Lenders, the Majority Incremental Term Facility Lenders, the Majority Incremental Term Facility Lenders, the Majority Revolving Facility Lenders, the Super Majority Lenders, the Super Majority Financial Covenant Revolving Facility Lenders or the Super Majority Revolving Facility Lenders or all Lenders (as applicable) as if references in this paragraph (p) to Majority Lenders, Majority Facility B Lenders, Majority Financial Covenant Revolving Facility Lenders, Majority Incremental Term Facility Lenders, Majority Incremental Term Facility Lenders, Majority Revolving Facility Lenders, the Majority Lenders, Super Majority Financial Covenant Revolving Facility Lenders or Super Majority Revolving Facility Lenders or all Lenders (as applicable) were only to Lenders participating in that Utilisation, Facility or forming part of that affected class.
- (q) Any amendment to Clause 12.1 (*Change of Control*) or Clause 12.2 (*Excess Cash Flow*) or waiver thereof may be approved with the consent of the Majority Lenders, *provided that* if the Company has specified in a Change of Control Notice that paragraph (b)(ii)(A) of Clause 12.1 (*Change of Control*) shall apply in relation to a Change of Control, any waiver of that Change of Control shall be at the option of each individual Lender.
- (r) Each Finance Party authorises and instructs the Agent to enter into any consent, amendment or waiver of any term of any Finance Document requested by the Parent for the purpose of granting additional rights and benefits to the Lenders, any group of Lenders and/or any Issuing Bank and which does not impose material additional liabilities or obligations on

such Lenders, group of Lenders and/or Issuing Bank (as applicable), in each case without the requirement for any consent of any other Finance Party.

- (s) Notwithstanding anything in this Agreement to the contrary, to the extent the Original Senior Secured Notes have been issued, at the request of the Parent, the Agent and the Parent will promptly enter into any amendments to the New York Law Provisions (and any other terms of this Agreement that are consequential on, incidental to, or required to implement or reflect any such amendments to the New York Law Provisions) as the Parent considers necessary (acting reasonably and in good faith) to ensure that the New York Law Provisions (and any other relevant terms of this Agreement) accurately reflect the equivalent terms of the Original Senior Secured Notes Indenture and the Agent shall be authorised and instructed by each Finance Party (without any further consent, sanction, authority or further confirmation from them) to enter into such documentation as is reasonably required by the Parent to make any such conforming changes and shall promptly enter into such documentation on the request and at the cost of the Parent.

#### 40.3 Loan Modifications

##### (a) *Extension of Term Loans*

- (i) Notwithstanding anything in this Agreement to the contrary, the Parent may at any time and from time to time, in its sole and absolute discretion, request that all or a portion of the Term Loans, Incremental Term Facility Commitments and/or Facility B Commitments (or series or tranche thereof) (each, an “**Existing Term Loan Tranche**”) be amended to extend the scheduled maturity date(s) with respect to all or a portion of any principal amount of such Term Loans, Incremental Term Facility Commitments and/or Facility B Commitments (any such Term Loans, Incremental Term Facility Commitments and/or Facility B Commitments which have been so amended, “**Extended Term Loans**”) and to provide for other terms consistent with this Clause 40.3.
- (ii) In order to establish any Extended Term Loans, the Parent shall provide a notice to the Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Tranche) (each, a “**Term Loan Extension Request**”) setting forth the proposed terms of the Extended Term Loans to be established, which shall (x) be identical as offered to each Lender under such Existing Term Loan Tranche (including as to the proposed interest rates and fees payable) and offered *pro rata* to each Lender under such Existing Term Loan Tranche and (y) be identical to the Term Loans under the Existing Term Loan Tranche from which such Extended Term Loans are to be amended, except that:
  - (A) all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled amortization payments of principal of the Term Loans of such Existing Term Loan Tranche, to the extent provided in the applicable Extension Amendment (as defined in paragraph (d) below);
  - (B) the principal amount and/or tranching of the Extended Term Loans may be different than the principal amount or tranching (as applicable) of the Term Loans of such Existing Term Loan Tranche, in each case, to the extent provided in the applicable Extension Amendment;

- (C) the Yield with respect to the Extended Term Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the Yield for the Term Loans of such Existing Term Loan Tranche, in each case, to the extent provided in the applicable Extension Amendment;
- (D) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Term Loans); and
- (E) Extended Term Loans may have prepayment premiums or call protection as may be agreed by the Parent and the Lenders thereof,

*provided that* (1) subject to the Permitted Earlier Maturity Indebtedness Exception, the final maturity date of any Extended Term Loans at the time of establishment thereof shall not be earlier than the then Latest Maturity Date of any then existing Term Loans hereunder, (2) subject to the Permitted Earlier Maturity Indebtedness Exception, the Weighted Average Life to Maturity of any Extended Term Loans at the time of establishment thereof shall be no shorter (other than by virtue of amortization or prepayment of such Indebtedness prior to the time of incurrence of such Extended Term Loans) than the remaining Weighted Average Life to Maturity of any Existing Term Loan Tranche and (3) any such Extended Term Loans (and the Liens securing the same) shall be permitted by the terms of the Intercreditor Agreement, in each case as specified in the respective Term Loan Extension Request.

- (iii) Any Extended Term Loans amended pursuant to any Term Loan Extension Request shall be designated as a new extended facility (each, an “**Extended Term Facility**”) of Extended Term Loans for all purposes of this Agreement; *provided that* any Extended Term Loans amended from an Existing Term Loan Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extended Term Facility with respect to such Existing Term Loan Tranche.

(b) *Extension of Revolving Facility Commitments*

- (i) Notwithstanding anything in this Agreement to the contrary, the Parent may at any time and from time to time, in its sole and absolute discretion, request that all or a portion of the Revolving Facility Commitments (or series or tranche thereof) (each, an “**Existing Revolver Tranche**”) be amended to extend the Termination Date with respect to all or a portion of any principal amount of such Revolving Facility Commitments (any such Revolving Facility Commitments which have been so amended, “**Extended Revolving Facility Commitments**”) and to provide for other terms consistent with this Clause 40.3.
- (ii) In order to establish any Extended Revolving Facility Commitments, the Parent shall provide a notice to the Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolver Tranche) (each, a “**Revolver Extension Request**”) setting forth the proposed terms of the Extended Revolving Facility Commitments to be established, which shall (x) be identical as offered to each Lender under such Existing Revolver Tranche (including as to the proposed

interest rates and fees payable) and offered *pro rata* to each Lender under such Existing Revolver Tranche and (y) be identical to the Revolving Facility Commitments under the Existing Revolver Tranche from which such Extended Revolving Facility Commitments are to be amended, except that:

- (A) the Termination Date of the Extended Revolving Facility Commitments may be delayed to a later date than the Termination Date of the Revolving Facility Commitments of such Existing Revolver Tranche, to the extent provided in the applicable Extension Amendment;
- (B) the principal amount and/or tranching of the Extended Revolving Facility Commitments may be different than the principal amount or tranching (as applicable) of the Revolving Facility Commitments of such Existing Revolver Tranche, in each case, to the extent provided in the applicable Extension Amendment;
- (C) the Yield with respect to extensions of credit under the Extended Revolving Facility Commitments (whether in the form of interest rate margin, upfront fees, commitment fees, original issue discount or otherwise) may be different than the Yield for extensions of credit under the Revolving Facility Commitments of such Existing Revolver Tranche, in each case, to the extent provided in the applicable Extension Amendment;
- (D) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Facility Commitments); and
- (E) all borrowings under the applicable Existing Revolver Tranche and the Extended Revolving Facility Commitments, and repayments thereunder, shall be made on a *pro rata* basis (except for (I) payments of interest and fees at different rates on Extended Revolving Facility Commitments (and related outstandings) and (II) repayments required upon the Termination Date of the non-extending Revolving Facility Commitments);

*provided that* (1) in no event shall the final maturity date of any Extended Revolving Facility Commitments at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Revolving Facility Commitments hereunder and (2) any such Extended Revolving Facility Commitments (and the Liens securing the same) shall be permitted by the terms of the Intercreditor Agreement.

- (iii) Any Extended Revolving Facility Commitments amended pursuant to any Revolver Extension Request shall be designated as a new extended facility (each, an “**Extended Revolving Facility**”) of Extended Revolving Facility Commitments for all purposes of this Agreement; *provided that* any Extended Revolving Facility Commitments amended from an Existing Revolver Tranche may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extended Revolving Facility with respect to such Existing Revolver Tranche.

(c) *Extension Request*

- (i) The Parent shall provide the applicable Extension Request at least three Business Days prior to the date on which Lenders under the Existing Term Loan Tranche or Existing Revolver Tranche (as applicable) are requested to respond and shall agree to such procedures, if any, as may be established by, or acceptable to, the Agent, in each case acting reasonably to accomplish the purposes of this Clause 40.3.
- (ii) No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Tranche amended into Extended Term Loans or any of its Revolving Facility Commitments amended into Extended Revolving Facility Commitments (as applicable) pursuant to any Extension Request.
- (iii) Any Lender holding a Loan under an Existing Term Loan Tranche (each, an “**Extending Term Lender**”) wishing to have all or a portion of its Term Loans under the Existing Term Loan Tranche subject to such Extension Request amended into Extended Term Loans and any Revolving Credit Lender (each, an “**Extending Revolving Facility Lender**”) wishing to have all or a portion of its Revolving Facility Commitments under the Existing Revolver Tranche subject to such Extension Request amended into Extended Revolving Facility Commitments (as applicable) shall notify the Agent (each, an “**Extension Election**”) on or prior to the date specified in such Extension Request of the amount of its Term Loans under the Existing Term Loan Tranche or Revolving Facility Commitments under the Existing Revolver Tranche (as applicable) which it has elected to request be amended into Extended Term Loans or Extended Revolving Facility Commitments (as applicable).
- (iv) In the event that the aggregate principal amount of Term Loans under the Existing Term Loan Tranche or Revolving Facility Commitments under the Existing Revolver Tranche (as applicable) in respect of which applicable Lenders shall have accepted the relevant Extension Request exceeds the amount of Extended Term Loans or Extended Revolving Facility Commitments (as applicable) requested to be extended pursuant to the Extension Request, Term Loans or Revolving Facility Commitments (as applicable) subject to Extension Elections shall be amended to Extended Term Loans or Extended Revolving Facility Commitments (as applicable) on a *pro rata* basis (subject to rounding by the Agent, which shall be conclusive absent manifest error) based on the aggregate principal amount of Term Loans or Revolving Facility Commitments (as applicable) included in each such Extension Election.

(d) *Extension Amendment*

- (i) Extended Term Loans and Extended Revolving Facility Commitments shall be established pursuant to an amendment (each, an “**Extension Amendment**”) to this Agreement among the Parent, the Agent and each Extending Term Lender or Extending Revolving Facility Lender (as applicable) providing an Extended Term Loan or Extended Revolving Facility Commitment (as applicable) thereunder, which shall be consistent with the provisions set forth in paragraph (a) or (b) above, respectively (but which shall not require the consent of any other Finance Party).
- (ii) The Agent or the Security Agent, as the case may be, on behalf of the Secured Parties shall (unless a Secured Party is required under applicable law to do so in its

own name, in which case the relevant Secured Party will) enter into any Extension Amendment and any other amendment to or replacement of the Finance Documents and/or take such other action (if any) (including entering into any additional Transaction Security Documents and/or any supplemental agreements, confirmations and/or any other similar or equivalent documents) as is necessary as determined by the Parent and the Agent, each acting reasonably, in order to facilitate the establishment of any Extended Term Loans or Extended Revolving Facility Commitments (as applicable) (including in relation to any changes to, the taking of, or (to the extent necessary under local law) the release coupled with the retaking of, Transaction Security as may be required in order to ensure that the relevant Extended Term Loans or Extended Revolving Facility Commitments (as applicable) share the benefit of that Transaction Security *pari passu* with the Facilities).

- (iii) The Agent and Security Agent are irrevocably authorised and instructed by each other Finance Party (without the requirement for any further authorisation or consent from any other Finance Party) to enter into such documentation as is necessary as determined by the Parent and the Agent, each acting reasonably, to amend this Agreement and any other Finance Document (including the Transaction Security Documents) to which each is party and/or any additional security documents and/or to enter into any supplemental agreements, confirmations and/or any other similar or equivalent documents to reflect the terms of any Extension Amendment, Extended Term Loans and/or Extended Revolving Facility Commitments (as applicable) and shall (unless a Finance Party is required under applicable law to do so in its own name, in which case the relevant Finance Party shall) enter into such documentation on the request and at the cost of the Parent.
- (iv) No consent of any Finance Party (other than the applicable Extending Term Lender or Extending Revolving Facility Lender) will be required in connection with any Extension Amendment.
- (v) The Parent may, at its election, specify as a condition to consummating any Extension Amendment that a minimum amount (to be determined and specified in the relevant Extension Request in the Parent's sole and absolute discretion and as may be waived by the Parent) of Term Loans or Revolving Facility Commitments (as applicable) of any or all applicable tranches or series be tendered.
- (vi) The Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment.
- (vii) Each of the Parties hereby agrees that this Agreement and the other Finance Documents may be amended pursuant to an Extension Amendment, without the consent of any other Finance Party, to the extent necessary to:
  - (A) reflect the existence and terms of the Extended Term Loans or Extended Revolving Facility Commitments (as applicable) incurred pursuant thereto;
  - (B) modify the scheduled repayments set forth in Clause 10.1 (*Repayment of Term Loans*) with respect to any Existing Term Loan Tranche subject to an Extension Election to reflect a reduction in the principal amount of the Term Loans thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans amended pursuant to the applicable

Extension (with such amount to be applied rateably to reduce scheduled repayments of such Term Loans required pursuant to Clause 10.1 (*Repayment of Term Loans*));

(C) modify the prepayments set forth in Clause 10.1 (*Repayment of Term Loans*) to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto; and

(D) effect such other amendments to this Agreement and the other Finance Documents as may be necessary or appropriate, in the reasonable opinion of the Agent and the Parent, to effect the provisions of this Clause 40.3, and the Majority Lenders hereby expressly authorize the Agent to enter into any such Extension Amendment.

(e) No conversion of Loans pursuant to any Extension in accordance with this Clause 40.3 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(f) This Clause 40.3 shall supersede any provisions in Clause 33 (*Sharing among the Finance Parties*) or Clause 40 (*Amendments and Waivers*) to the contrary.

#### 40.4 Refinancing Amendments

(a) On one or more occasions after the Closing Date, the Parent may obtain, from any Lender or any other bank, financial institution or other institutional lender or investor that agrees to provide any portion of any Term Loans or Other Revolving Facility Commitments pursuant to a Refinancing Amendment in accordance with this Clause 40.4 (each, an “**Additional Refinancing Lender**”), Credit Agreement Refinancing Indebtedness in respect of all or any portion of any tranche or series, as selected by the Parent in its sole and absolute discretion, of Term Loans or Revolving Facility Loans (or unused Revolving Facility Commitments) then outstanding under this Agreement (and, in the case of any Revolving Facility Loans or unused Revolving Facility Commitments, accompanied by a permanent reduction and cancellation of the corresponding commitment) in the form of Refinancing Term Loans or Refinancing Term Commitments or, solely in respect of Revolving Facility Commitments or Revolving Facility Loans, Other Revolving Facility Commitments or Other Revolving Facility Loans, in each case, pursuant to a Refinancing Amendment; *provided that*, notwithstanding anything to the contrary in this Clause 40.4 or otherwise, assignments and participations of Other Revolving Facility Commitments and Other Revolving Facility Loans shall be governed by the same assignment and participation provisions applicable to Revolving Facility Commitments and Revolving Facility Loans at such time.

(b) The Agent or the Security Agent, as the case may be, on behalf of the Secured Parties shall (unless a Secured Party is required under applicable law to do so in its own name, in which case the relevant Secured Party will) enter into any Refinancing Amendment and any other amendment to or replacement of the Finance Documents and/or take such other action (if any) (including entering into any additional Transaction Security Documents and/or any supplemental agreements, confirmations and/or any other similar or equivalent documents) as is necessary as determined by the Parent, the Agent or the Security Agent, each acting reasonably, in order to facilitate the establishment of any Refinancing Term Loans or Other Revolving Facility Commitments (as applicable) (including in relation to any changes to, the taking of, or (to the extent necessary under local law) the release coupled with the



retaking of, Transaction Security as may be required in order to ensure that the relevant Refinancing Term Loans or Other Revolving Facility Commitments (as applicable) share the benefit of that Transaction Security *pari passu* with the Facilities).

- (c) The Agent and Security Agent are irrevocably authorised and instructed by each other Finance Party (without the requirement for any further authorisation or consent from any other Finance Party) to enter into such documentation as is necessary as determined by the Parent and the Agent, each acting reasonably, to amend this Agreement and any other Finance Document (including the Transaction Security Documents) to which each is party and/or any additional security documents and/or to enter into any supplemental agreements, confirmations and/or any other similar or equivalent documents to reflect the terms of any Refinancing Amendment, Refinancing Term Loans and/or Other Revolving Facility Commitments (as applicable) and shall (unless a Finance Party is required under applicable law to do so in its own name, in which case the relevant Finance Party shall) enter into such documentation on the request and at the cost of the Parent.
- (d) No consent of any Finance Party (other than the Lenders and/or Additional Refinancing Lenders providing the relevant Refinancing Term Loans or Other Revolving Facility Commitments (as applicable)) will be required in connection with any Refinancing Amendment.
- (e) Each of the Parties hereby agrees that this Agreement and the other Finance Documents may be amended pursuant to a Refinancing Amendment, without the consent of any other Finance Party, to the extent (but only to the extent) necessary to:
  - (i) reflect the existence and terms of the Credit Agreement Refinancing Indebtedness incurred pursuant thereto; and
  - (ii) effect such other amendments to this Agreement and the other Finance Documents as may be necessary or appropriate, in the reasonable opinion of the Agent and the Parent, to effect the provisions of this Clause 40.4, and each Finance Party hereby expressly authorises the Agent to enter into any such Refinancing Amendment.
- (f) Notwithstanding anything to the contrary in this Agreement, this Clause 40.4 shall supersede any of the other provisions of this Clause 40 or in Clause 33 (*Sharing among the Finance Parties*) to the contrary.

#### 40.5 Changes to reference rates

- (a) Subject to Clause 40.2 (*Exceptions*) and paragraphs (b) and (d) below, if a Published Rate Replacement Event has occurred in relation to any Published Rate for a currency which can be selected for a Loan, any consent, amendment or waiver which relates to:
  - (i) providing for the use of a Replacement Benchmark in relation to that currency in place of (or in addition to) the affected Published Rate; and
  - (ii)
    - (A) aligning any provision of any Finance Document (including, without limitation, for duration, time and periodicity for determination of such Successor Benchmark Rate in relation to any applicable Interest Period) to the use of that Replacement Benchmark;

- (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
- (C) implementing market conventions applicable to that Replacement Benchmark;
- (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
- (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

together with any change which is consequential on, incidental to, or required to implement or effect or reflect any of the consents, amendments or waivers listed above, may be made with the consent of:

(I) the Agent and the Parent; or

(II) upon not less than 10 Business Days' prior written notice to the Agent, the Relevant Currency Majority Lenders and the Parent, *provided that* it is reasonably practicable for the Agent to administer such Replacement Benchmark (such practicability being determined by the Agent in its reasonable discretion),

in each case, having regard to the prevailing market convention in London at such time with respect to the benchmark for determining interest for syndicated bank loans in the relevant currency, and the Agent shall apply the Replacement Benchmark in a manner that is administratively feasible to the Agent, giving due regard to then-prevailing market practice (determined by the Agent in consultation with the Parent).

(b) If, as at 15 January 2023, this Agreement provides that the rate of interest for a Term Rate Loan denominated in USD is to be determined by reference to a Screen Rate for LIBOR:

(i) a Published Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate for LIBOR for USD; and

(ii) the Agent (acting on the instructions of the Relevant Currency Majority Lenders) and the Parent shall enter into negotiations in good faith with a view to agreeing the Replacement Benchmark in accordance with paragraph (a) above in place of that Screen Rate from and including a date no later than 31 March 2023.

(c) Subject to paragraphs (d) and (e) below, a consent, amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on a Compounded Rate Loan in any currency under this Agreement to any recommendation of a Relevant Nominating Body (*provided that*, for the purposes of this paragraph (c), the Relevant Nominating Body

with respect to LIBOR for GBP shall be the Bank of England and/or the Working Group on Sterling Risk-Free Reference Rates and, in each case, any successor thereto, rather than the Federal Reserve Bank of New York and/or the Alternative Reference Rates Committee) which:

(i) relates to the use of the RFR for that currency on a compounded basis in the international or any relevant domestic syndicated loan markets; and

(ii) is issued on or after the date of this Agreement,

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

- (d) The Parties acknowledge that certain provisions of this Agreement relating to Compounded Rate Loans, including, without limitation, Schedule 20 (*Compounded Rate Terms*), Schedule 21 (*Daily Non-Cumulative Compounded RFR Rate*) and Schedule 22 (*Cumulative Compounded RFR Rate*) (the “**RFR Provisions**”), have been drafted with regard to the LMA exposure recommended form of multicurrency compounded rate/term rate term and revolving facilities agreement (lookback without observation shift) dated 31 March 2021 (the “**LMA Exposure Draft**”). The Parties agree that, at the request of the Parent, the Agent will promptly enter into any amendments to this Agreement reasonably requested by the Parent and agreed by the Agent (acting reasonably) to ensure that the terms of this Agreement relating to Compounded Rate Loans, including, without limitation, the RFR Provisions, reflect the equivalent terms of any subsequent version of the LMA Exposure Draft or any recommended form of multicurrency term and revolving facilities agreement incorporating rate switch provisions (lookback without observation shift) published by the LMA, whilst preserving, to the extent reasonably practicable, any negotiated deviations from, or supplements to, the LMA Exposure Draft, and any election of drafting options set out in the LMA Exposure Draft, in each case agreed between the Parties and reflected in this Agreement as of the date of this Agreement (“**Conforming RFR Changes**”), *provided that*, to the extent that a Conforming RFR Change materially and adversely affects the rights or interests of Lenders in respect of a particular Utilisation, Facility or class of Lenders, such Conforming RFR Change shall not be made in relation to that Utilisation, Facility or affected class (but may, for the avoidance of doubt, be made with respect to other Utilisations, Facilities or classes of Lenders) without the consent of the Agent and the Relevant Currency Majority Lenders with respect to that particular Utilisation, Facility or affected class.
- (e) A Compounded Rate Supplement that amends the Compounded Rate Terms for a currency in a manner which the Parent has determined is necessary or desirable in order to implement any interest rate or cross-currency hedging arrangements in respect of any Relevant Currency Facility (including in order to amend the methodology set out in Schedule 21 (*Daily Non-Cumulative Compounded RFR Rate*) and Schedule 22 (*Cumulative Compounded RFR Rate*) or in any relevant Compounded Rate Supplement in order to align such methodology to the corresponding methodology used for the purposes of the relevant hedging arrangements, including to implement an “observation shift” in such methodology) may be implemented with the consent of the Agent (acting reasonably) and the Parent.
- (f) If any Lender does not accept or reject a written request for a consent, amendment or waiver described in this Clause 40.5 within five Business Days (unless the Parent and the Agent agree to a longer time period in relation to that written request) of that written request being made, its Commitment and/or participation shall not be included for the purpose of

calculating the Total Commitments or participations under the relevant Facility or Facilities 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.

(g) Any Lender which rejects a request for consent under this Clause 40.5 shall be deemed to be a Non-Consenting Lender for the purposes of this Agreement.

(h) Any Conforming RFR Change or Replacement Benchmark agreed pursuant to this Clause 40.5 shall automatically be binding on a Defaulting Lender.

(i) In this Clause 40.5:

**“Published Rate”** means:

(i) an RFR; or

(ii) the Screen Rate for any Quoted Tenor.

**“Published Rate Replacement Event”** means, in relation to a Published Rate:

(i) the methodology, formula or other means of determining that Published Rate has, in the opinion of the Parent, materially changed;

(ii)

(A)

(I) the administrator of that Published Rate or its supervisor publicly announces that such administrator is insolvent; or

(II) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,

*provided that*, in each case, at that time, there is no successor administrator to continue to provide that Published Rate;

(B) the administrator of that Published Rate publicly announces that it has ceased or will cease to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;

(C) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued; or

(D) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used;

(iii) the administrator of that Published Rate determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:

(A) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Parent) temporary; or

(B) that Published Rate is calculated in accordance with any such policy or arrangement for a period no less than 10 days; or

(iv) in the opinion of the Agent (acting reasonably) and the Parent, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

For the avoidance of doubt, the Parties agree that no Published Rate Replacement Event shall be deemed to have occurred on or prior to the date of this Agreement in respect of any Published Rate in respect of USD.

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

**“Replacement Benchmark”** means a benchmark rate which is:

(i) formally designated, nominated or recommended as the replacement for a Published Rate by:

(A) the administrator of that Published Rate; or

(B) any Relevant Nominating Body,

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

(ii) in the opinion of the Agent (acting reasonably) and the Parent, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Published Rate; or

(iii) in the opinion of the Agent (acting on the instructions of the Relevant Currency Majority Lenders under the Facilities to which the relevant Replacement Benchmark will apply (acting reasonably)) and the Parent, an appropriate successor to a Published Rate.

#### 40.6 Technical amendments

Notwithstanding any other provision of this Clause 40, the Agent may at any time without the consent or sanctions of the other Finance Parties, concur with the Parent in making any modifications to any relevant Finance Document:

(a) to cure any ambiguity, omission, mistake, defect or inconsistency; or

- (b) which in the opinion of the Agent would otherwise be proper to make *provided that* the Agent is of the opinion that such modification would not be prejudicial to the position of any Finance Party or in the opinion of the Agent such modification is of a formal, minor or technical nature or is to correct a manifest error.

Any such modification shall be made on such terms as the Agent and the Parent may determine, shall be binding upon the other Finance Parties, and shall be notified by the Agent to the other Finance Parties as soon as practicable thereafter.

#### 40.7 Replacement of Lender

- (a) In the event that:

- (i) the Parent or the Agent (at the request of the Parent) has requested the Lenders to give a consent in relation to, or to agree to a consent, waiver or amendment of, any provisions of the Finance Documents;

- (ii) the consent, waiver or amendment in question:

(A) requires the approval of the Super Majority Lenders or all the Lenders (or all the Lenders under a Facility, as the case may be); or

(B) is being made pursuant to paragraph (b) of Clause 16.5 (*Cost of funds*) or Clause 40.5 (*Changes to reference rates*); and

- (iii) in the case of a consent, waiver or amendment to which paragraph (a)(ii)(A) above applies, the Majority Lenders (or the Majority Lenders participating in that Utilisation, Facility or forming part of that affected class, as the case may be) have consented or agreed to such consent, waiver or amendment,

then any Lender who does not consent or agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender**”.

- (b) If at any time:

- (i) any Lender becomes a Non-Consenting Lender; or

- (ii) any Obligor becomes obliged to repay any amount in accordance with Clause 11.1 (*Illegality*) or becomes entitled to repay any amount in accordance with paragraph (a) of Clause 11.8 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*) or becomes obliged to pay any amounts pursuant to Clause 18.3 (*Tax gross-up*), 18.4 (*Tax indemnity*) or 19.1 (*Increased Costs*) to any Lender,

then the Parent may, provided it gives at least five 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 which is regularly engaged in or established for the purpose of making, purchasing or investing in or securitising loans, securities or other financial assets (a “**Replacement Lender**”) selected by the Parent, and which is acceptable to the Agent (acting reasonably), 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 (to the extent that the Agent has not given a notification under Clause 29.12 (*Pro rata interest settlement*), Break Costs and other amounts payable in relation thereto under the Finance Documents.

(c) The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:

- (i) in the event of a replacement of a Non-Consenting Lender pursuant to paragraph (b) above, such replacement may occur at any time during a period of 90 days commencing on the date on which the relevant consent is requested;
- (ii) the Parent shall have no right to replace the Agent or Security Agent;
- (iii) neither the Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender; and
- (iv) in no event shall the Lender replaced under this paragraph (c) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents.

#### **40.8 Disenfranchisement of Defaulting Lenders**

(a) In ascertaining the Majority Lenders, the Majority Facility B Lenders, the Majority Financial Covenant Revolving Facility Lenders, the Majority Incremental Term Facility Lenders, the Majority Incremental Term Facility Lenders, the Majority Revolving Facility Lenders, the Super Majority Lenders, the Super Majority Financial Covenant Revolving Facility Lenders or the Super Majority Revolving Facility Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments or Total Revolving Facility Commitments or the agreement of any specified group of Lenders has been obtained to approve any request for a consent, waiver, amendment or other vote of the Lenders under the Finance Documents, a Defaulting Lender's Commitments and participations under the relevant Facility/ies will be deemed to be zero.

(b) For the purposes of this Clause 40.8, 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; and
- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraph (a), (b) or (d) 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.

#### **40.9 Replacement of a Defaulting Lender or a Net Short Lender**

- (a) The Parent may, at any time a Lender has become and continues to be a Defaulting Lender or a Net Short Lender, by giving five Business Days' prior written notice to the Agent and such Lender:
- (i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, 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;
  - (ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of any undrawn Revolving Facility Commitments of the Lender; or
  - (iii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 29 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of a Revolving Facility,
- to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Parent, which (unless the replacement Lender is already a Lender or the Agent is an Impaired Agent) has satisfied all the Agents 'know your client' and other similar checks, and 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:
- (A) in the case of a Lender which is a Defaulting Lender by virtue of paragraph (a), (b), (c) or (d) of the definition of "Defaulting Lender" or a Net Short Lender, 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 (to the extent that the Agent has not given a notification under Clause 29.12 (*Pro rata interest settlement*), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
  - (B) in the case of a Lender which is a Defaulting Lender by virtue of (e) or (f) of the definition of "Defaulting Lender", determined in accordance with paragraph (l)(iii)(B) of Clause 29.3 (*Conditions of assignment or transfer*).
- (b) Any transfer of rights and obligations of a Defaulting Lender or a Net Short Lender pursuant to this Clause 40 shall be subject to the following conditions:
- (i) neither the Agent nor the Defaulting Lender or Net Short Lender (as applicable) shall have any obligation to the Parent to find a Replacement Lender;
  - (ii) the transfer must take place no later than 90 days after the notice referred to in paragraph (a) above; and
  - (iii) in no event shall the Defaulting Lender or Net Short Lender (as applicable) be required to pay or surrender to the Replacement Lender any of the fees received by that Defaulting Lender or Net Short Lender (as applicable) pursuant to the Finance Documents.



## 41. CONFIDENTIAL INFORMATION

### 41.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 41.2 (*Disclosure of Confidential Information*) and Clause 41.3 (*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.

### 41.2 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 or which succeeds (or which may potentially succeed) it as Agent or Security Agent and, in each case, to any of that person's Affiliates, 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 Obligor 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 (i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (c) of Clause 31.15 (*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 (i) or (ii) above;
  - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

- (vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 29.11 (*Security over Lenders' rights*);
- (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (viii) who is a Party; or
- (ix) with the consent of the Parent,

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

- (A) in relation to paragraphs (b)(i) and (b)(ii) 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; or
- (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,

and a copy of any such confidentiality undertaking and any amendment thereto shall be provided to the Parent within 10 Business Days after request by the Parent;

- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) and (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Finance Party, and a copy of any such confidentiality undertaking and any amendment thereto shall be provided to the Parent within 10 Business Days after request by the Parent; and

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

#### 41.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligors the following information:
- (i) names of Obligors;
  - (ii) country of domicile of Obligors;
  - (iii) place of incorporation of Obligors;
  - (iv) the date of this Agreement or the Closing Date;
  - (v) Clause 44 (*Governing Law*);
  - (vi) the names of the Agent, the Arrangers and the Bookrunners;
  - (vii) date of each amendment and restatement of this Agreement;
  - (viii) amounts of, and names of, the Facilities;
  - (ix) amount of Total Commitments;
  - (x) currencies of the Facilities;
  - (xi) type of Facilities;
  - (xii) ranking of Facilities;
  - (xiii) Termination Date for Facilities;
  - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
  - (xv) such other information agreed between such Finance Party and the Parent,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities 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 (xv) 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 Facilities and/or one or more Obligors; and
- (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or one or more Obligors by such numbering service provider.

#### **41.4 Entire agreement**

This Clause 41 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.

#### **41.5 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.

#### **41.6 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 41.2 (*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 41.

#### **41.7 Continuing obligations**

The obligations in this Clause 41 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 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.

## 42. CONFIDENTIALITY OF FUNDING RATES

### 42.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate (and in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.
- (b) The Agent may disclose:
  - (i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the relevant Borrower pursuant to Clause 14.5 (*Notification of rates of interest*); and
  - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Base Reference Bank, as the case may be.
- (c) The Agent may disclose any Funding Rate, or any Reference Bank Quotation and each Obligor may disclose any Funding Rate, to:
  - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and

(iv) any person with the consent of the relevant Lender or Base Reference Bank, as the case may be.

(d) The Agent's obligations in this Clause 42 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 14.5 (*Notification of rates of interest*) provided that (other than pursuant to paragraph (b) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

#### **42.2 Related obligations**

(a) The Agent and each Obligor acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.

(b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:

(i) of the circumstances of any disclosure made pursuant to paragraph (c)(i) of Clause 42.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(ii) upon becoming aware that any information has been disclosed in breach of this Clause 42.

#### **42.3 No Event of Default**

No Event of Default will occur under Clause 28 (*Events of Default*) or Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*) by reason only of an Obligor's failure to comply with this Clause 42.

### **43. EXECUTION**

#### **43.1 Counterparts**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document. Delivery of a counterpart of this Agreement by email attachment or telecopy shall be an effective mode of delivery.

#### **43.2 Electronic signature**

Any signature (including, without limitation, (x) any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record and (y) any facsimile, E-pencil or .pdf signature) hereto or to any other certificate, agreement or document related to this transaction, and any contract formation or record-keeping, in each case, through electronic means, shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law. For the avoidance of doubt, the foregoing also applies to any amendment, extension or renewal of the Finance Documents.

#### 44. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law; *provided that* the New York Law Provisions and any non-contractual obligations arising out of or in connection with those New York Law Provisions shall be interpreted in accordance with the laws of the State of New York (without prejudice to the fact that this Agreement is governed by English law).

#### 45. ENFORCEMENT

##### 45.1 Jurisdiction of English courts

- (a) 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) 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.

##### 45.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than any Obligor incorporated in England & Wales):
  - (i) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and the Parent, by its execution of this Agreement, accepts that appointment); and
  - (ii) agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If the Parent is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must within 10 Business Days after such event taking place appoint another agent on terms acceptable to the Agent (acting reasonably). Failing this, the Agent may appoint another agent for this purpose.
- (c) An Obligor may irrevocably appoint another person located in England & Wales as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document on terms acceptable to the Agent (acting reasonably), subject to notifying the Agent accordingly. In the case of any replacement of an existing agent for service of process, following the new process agent’s appointment and notification to the Agent of such new appointment, the existing process agent may resign.

#### 46. WAIVER OF RIGHT TO TRIAL BY JURY

To the extent permitted by applicable law, each Party to this Agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under any Finance Document or in any way connected with or related or incidental to the dealings of the Parties hereto or any of them with respect to any Finance Document, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether founded in contract or tort or otherwise,

and each Party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any Party to this Agreement may file an original counterpart or a copy of this Clause 46 with any court as written evidence of the consent of the signatories hereto to the waiver of their right to trial by jury.

#### **47. USA PATRIOT ACT**

Each Lender that is subject to the USA PATRIOT Act and the Agent (for itself and not on behalf of any Lender) hereby notifies each Obligor that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Obligor, which information includes the name, address and tax identification number of such Obligor and other information regarding such Obligor that will allow such Lender or the Agent, as applicable, to identify such Obligor in accordance with the USA PATRIOT Act. This notice is given in accordance with the requirements of the USA PATRIOT Act and is effective as to the Lenders and the Agent.

#### **48. CONTRACTUAL RECOGNITION OF BAIL-IN**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document or any other agreement, arrangement or understanding between the Parties to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

**THIS AGREEMENT HAS BEEN ENTERED INTO ON THE DATE STATED AT THE BEGINNING OF THIS AGREEMENT.**



**SCHEDULE 1****THE ORIGINAL PARTIES****Part 1****The Original TLB Borrower**

<b>Name of Original TLB Borrower</b>	<b>Jurisdiction of incorporation</b>	<b>Registration number (or equivalent, if any)</b>
Paysafe Holdings (US) Corp.	Delaware	5551109

**Part 2****The Original RCF Borrowers**

<b>Name of Original RCF Borrower</b>	<b>Jurisdiction of incorporation</b>	<b>Registration number (or equivalent, if any)</b>
Paysafe Holdings UK Limited	England & Wales	03202517
Paysafe Finance PLC	England & Wales	13437058
Paysafe Holdings (US) Corp.	Delaware	5551109
Paysafe Payment Processing Solutions LLC	Delaware	6422322

**Part 3****The Original Guarantors**

<b>Name of Original Guarantor</b>	<b>Jurisdiction of incorporation</b>	<b>Registration number (or equivalent, if any)</b>
Paysafe Group Holdings II Limited	England & Wales	10880277
Paysafe Group Holdings III Limited	England & Wales	10869332
Paysafe Finance PLC	England & Wales	13437058
Paysafe Holdings (US) Corp.	Delaware	5551109
Paysafe Holdings UK Limited	England & Wales	03202517
Paysafe Merchant Services Corp.	Delaware	4904974

Paysafe Direct, LLC

Delaware

4593725

Paysafe Payment Processing Solutions LLC

Delaware  
246

6422322

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**Part 4**  
**The Original Lenders**

<b>Name of Original Lender</b>	<b>Facility B1 Commitment (USD)</b>	<b>Facility B2 Commitment (EUR)</b>	<b>Revolving Facility Commitment (USD)</b>	<b>HMRC DT Treaty Passport scheme reference number and jurisdiction of tax residence (if applicable)</b>
JPMorgan Chase Bank, N.A.	\$628,000,000	-	-	13/M/0268710/DTTP
JPMorgan Chase Bank, N.A., London Branch	-	€435,000,000	\$45,000,000	13/M/0268710/DTTP
Credit Suisse AG, London Branch	-	-	\$45,000,000	N/A
Bank of Montreal, London Branch	-	-	\$45,000,000	N/A
Goldman Sachs Bank USA	-	-	\$45,000,000	13/G/351779/DTTP
Bank of America, N.A.	-	-	\$45,000,000	13/B/7418/DTTP
PNC Bank, National Association	-	-	\$25,000,000	13/P/63904/DTTP
Royal Bank of Canada	-	-	\$25,000,000	3/R/70780/DTTP
Intesa Sanpaolo S.p.A., London Branch	-	-	\$15,000,000	41/I/370506
KeyBank National Association	-	-	\$15,000,000	13/K/216374/DTTP
<b>Total</b>	<b>\$628,000,000</b>	<b>€435,000,000</b>	<b>\$305,000,000</b>	

## **SCHEDULE 2**

### **CONDITIONS PRECEDENT**

#### **Part 1**

#### **Conditions Precedent to Initial Utilisation**

##### **1. EACH ORIGINAL OBLIGOR**

- (a) A copy of the constitutional documents of each Original Obligor.
- (b) Where required or appropriate under local law, resolutions of the board of directors or managers (as applicable) and/or shareholder resolutions of each Original Obligor approving the terms of, and the transactions contemplated by the Finance Documents to which it is a party, authorising a specified person (or persons) to execute the Finance Documents to which it is a party on its behalf and authorising such persons to sign and/or despatch all documents and notices (including any Utilisation Request) to be signed under or in connection with the Finance Documents to which it is a party.
- (c) A specimen of the signature of each person authorised as referred to in paragraph (b) above.
- (d) A certificate of each Original Obligor (signed by an authorised signatory):
  - (i) confirming that borrowing, guaranteeing or securing (as appropriate) the total amount of the Facilities would not cause any borrowing, guaranteeing, securing or similar limit binding on it (as appropriate) to be exceeded; and
  - (ii) certifying that each copy document relating to it and referred to in paragraphs (a) and (b) above is correct, complete and in full force and effect as at a date no earlier than the original date of this Agreement.

##### **2. LEGAL OPINIONS**

The following legal opinions:

- (a) Linklaters LLP, legal advisers to the Agent and the Arrangers as to English law;
- (b) Latham & Watkins LLP, legal advisers to the Parent as to certain matters of New York law; and
- (c) Callin Wild, legal advisers to the Agent and the Arrangers as to law of the Isle of Man.

##### **3. OTHER DOCUMENTS AND EVIDENCE**

The Base Case Model, save that, for the avoidance of doubt, the Base Case Model may be revised, updated and/or amended to incorporate such other changes or additions approved by the Arrangers (such approval not to be unreasonably withheld, made subject to any condition or delayed).

##### **4. FINANCE DOCUMENTS**

- (a) A copy of the Intercreditor Agreement duly executed and delivered by each of the Original Obligors.

(b) Each of the following Transaction Security Documents duly executed and delivered by the relevant Original Obligors and Third Party Security Providers (as applicable):

Security Provider(s)	Transaction Security Document	Governing law
Parent, Company, Paysafe Finance PLC and Paysafe Holdings UK Limited	Debenture (the “ <b>Original Debenture</b> ”)	English
Paysafe Holdings (US) Corp., Paysafe Merchant Services Corp., Paysafe Direct, LLC and Paysafe Payment Processing Solutions, LLC	Security agreement in respect of any intercompany loan receivables and shares in Paysafe Merchant Services Corp., Paysafe Direct, LLC and Paysafe Payment Processing Solutions, LLC	New York
Paysafe Group Limited	Third party, limited recourse security agreement in respect of the entire issued share capital of Paysafe Holdings UK Limited	English
Paysafe US Holdco Limited	Third party, limited recourse security agreement in respect of the entire issued share capital of Paysafe Holdings (US) Corp.	New York

## 5. FEES

Evidence that the fees which are due and payable by the Original Obligors under the Arrangement Fee Letter to the relevant Finance Party (excluding legal fees) on or prior to the Closing Date have been paid or will be paid on or prior to the Closing Date, *provided* that this condition may be satisfied by a reference to the payment of such fees in a funds flow statement or Utilisation Request.

**Part 2**  
**Conditions Precedent required to be delivered by an Additional Obligor**

**DO NOT DELETE PLACEHOLDER**

1. An Accession Deed executed by the Additional Obligor and the Parent.
2. A copy of the constitutional documents of the Additional Obligor.
3. If required by law in the jurisdiction of incorporation, or by the articles of association, of the Additional Obligor, a copy of a resolution of the board of directors or management board (or equivalent) of the Additional Obligor:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Accession Deed and any other Finance Document to which it is a party;
  - (b) where applicable, authorising a specified person or persons to execute the Accession Deed and other Finance Documents to which it is a party on its behalf;
  - (c) where applicable, 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 or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
  - (d) where applicable, authorising the Parent to act as its agent in connection with the Finance Documents.
4. If and to the extent applicable and necessary or appropriate as a matter of law in the jurisdiction of incorporation, or by the articles of association, of an Additional Obligor, a copy of a resolution of the supervisory board or the shareholders of that Additional Obligor approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party.
5. If necessary, a copy of the power of attorney granted by a duly authorised representative of each Additional Obligor:
  - (a) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (b) authorising a specified person or persons, on its behalf, to sign and/or dispatch all documents and notices to be signed and/or dispatched by it under or in connection with the Finance Documents to which it is a party.
6. A specimen of the signature of each person authorised 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.
7. A certificate of the Additional Obligor (signed by an authorised signatory):
  - (a) confirming that the borrowing, guaranteeing or securing (as appropriate) the Total Commitments would not cause any borrowing, guaranteeing, securing or similar limit binding on such Additional Obligor to be exceeded; and

(b) certifying that each copy document relating to that Additional Obligor and referred to in paragraphs 2, 3 and 4 above 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 that certificate.

8. Legal opinion(s) addressed to the Finance Parties from the advisers to the Agent relating to entry into the Finance Documents by the Additional Obligor and, where customary in the relevant jurisdiction of such Additional Obligor and with respect to capacity and authority, from the legal advisers to such Additional Obligor.
9. A copy of each Transaction Security Document reasonably required by the Agent in order to provide security in accordance with the Agreed Security Principles (taking into account and subject to the Agreed Security Principles), each duly executed and delivered by the Additional Obligor(s) (and, to the extent applicable, the Obligor(s) party thereto).
10. All necessary filings, registrations and similar matters (i) if required to perfect the security to be given under the terms of the applicable Transaction Security Document(s), and (ii) if, under the law of the relevant jurisdiction, required to be delivered and/or taken on the date of execution of the relevant Transaction Security Document(s), in each case in accordance with the Agreed Security Principles.

**SCHEDULE 3**  
**REQUESTS AND NOTICES**

**Part 1**  
**Utilisation Request Loans**

From: [*Borrower*] [  ]

To: [*Agent*]

Dated: [  ]

Dear Sirs, Madams

**Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [  ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities 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) Facility to be utilised: [Facility B1] / [Facility B2] / [Initial Revolving Facility] / [Incremental Term Facility] / [Incremental Revolving Facility]
  - (d) Currency of Loan: [  ]
  - (e) Amount: [  ] or, if less, the Available Facility
  - (f) Interest Period: [  ]
3. [We confirm that each condition specified in [Clause 4.2 (*Further conditions precedent*)] / [Clause 4.5 (*Utilisations during the Certain Funds Period*)]/ [Clause 4.6 (*Utilisations during an Agreed Certain Funds Period*)] will be satisfied on the Utilisation Date.]
4. [The proceeds of this Loan should be credited to [account].]/[This Loan is to be made in [whole]/[part] for the purpose of refinancing [*identify maturing Revolving Facility Loan.*]]
5. This Utilisation Request is [irrevocable]/[subject to the satisfaction of the following conditions: [*specify conditions*]].



Yours faithfully

.....

authorised signatory for

[the Parent on behalf of

*[insert name of relevant Borrower]]/[insert name of Borrower]*

**Part 2**  
**Letters of Credit**

**DO NOT DELETE PLACEHOLDER**

From: [Borrower] [Paysafe Group Holdings II Limited]

To: [Agent]

Dated: [  ] ]

Dear Sirs, Madams

**Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [  ] ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities 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 in relation to the relevant Revolving Facility
  - (f) Term: [  ] ]
  - (g) Beneficiary: [  ] ]
  - (h) Revolving Facility: [  ] ]
3. We confirm that each condition specified in paragraph (b) of Clause 6.5 (*Issue of Letters of Credit*) will be satisfied on the Utilisation Date.
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 and unconditional]/[subject to the satisfaction of the following conditions: [*specify conditions*]].
7. [*Specify delivery instructions*].

Yours faithfully,

.....

authorised signatory for

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

**Part 3**  
**Selection Notice**

**DO NOT DELETE PLACEHOLDER**

From: [Borrower] [*Paysafe Group Holdings II Limited*]

To: [Agent]

Dated: [  ] ]

Dear Sirs, Madams

**Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [  ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following [Facility B1] / [Facility B2] / [Initial Revolving Facility] / [Incremental Term Facility] / [Incremental Revolving Facility] Loan[s] in [identify currency] with an Interest Period ending on [  ].
3. [We request that the above Facility Loan[s] be divided into [  ] Facility Loans with the following amounts and Interest Periods:]

Or

[We request that the next Interest Period for the above [Facility B1] / [Facility B2] / [Initial Revolving Facility] / [Incremental Term Facility] / [Incremental Revolving Facility] Loan[s] is [  ]].

4. This Selection Notice is irrevocable.

Yours faithfully

.....

authorised signatory for

[the Parent on behalf of] [*insert name of relevant Borrower*]

## SCHEDULE 4

### FORM OF ASSIGNMENT AGREEMENT

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

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

Dated: [ X ]

#### **Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ X ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This is an Assignment Agreement. This agreement (the “**Agreement**”) shall take effect as an Assignment Agreement for the purpose of the Facilities 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 Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. We refer to Clause 29.7 (*Procedure for assignment*) of the Facilities Agreement:
  - (a) The Existing Lender [assigns absolutely]/[transfers by novation] to the New Lender all the rights [and obligations] of the Existing Lender under the Facilities 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 Facilities 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 Facilities 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 [ X ].
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 Lender (as defined in the Intercreditor Agreement).
5. The Facility Office and address, electronic mail address and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in Clause 29.6 (*Limitation of responsibility of Existing Lenders*).
7. The New Lender hereby exempts the Agent from the restrictions pursuant to section 181 Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable

law, in each case to the extent legally possible. If the New Lender cannot grant such an exemption, it shall notify the Agent accordingly and, upon request of the Agent, either act in accordance with the terms of this Agreement and/or any other Finance Document as required pursuant to this Agreement and/or such other Finance Document or grant a special power of attorney to a party acting on its behalf, in a manner that is not prohibited pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and/or any other applicable laws.

8. The New Lender confirms that it is:

(a) [with respect to a UK Borrower:

(i) a UK Qualifying Lender other than a UK Treaty Lender;

(ii) a UK Treaty Lender; or

(iii) not a UK Qualifying Lender;]

(b) [with respect to a US Borrower:

(i) a US Qualifying Lender; or

(ii) not a US Qualifying Lender;]

(c) [with respect to any Borrower (other than a UK Borrower or US Borrower)]:

(i) a Qualifying Lender other than a Treaty Lender;

(ii) a Treaty Lender; or

(iii) not a Qualifying Lender.]

[The New Lender confirms that it [is]/[is not] a Non-Acceptable L/C Lender.]

[The New Lender confirms that it [is]/[is not]<sup>5</sup> a Disqualified Lender.]

[The New Lender confirmed that, it [is]/[is not] a regulated deposit taking financial institution with a long term corporate credit rating equal to or better than BBB or Baa2 (as applicable) according to at least two of Moody's Investors Services Limited, Standard and Poor's Ratings Services or Fitch Ratings Ltd.]

9. [With respect to any UK Borrower, the New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

(a) a company resident in the United Kingdom for United Kingdom tax purposes;

(b) a partnership each member of which is:

(i) a company so resident in the United Kingdom; or

(ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA)

the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

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

10. [With respect to any UK Borrower, the New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [  ]) and is tax resident in [  ]\*, so that interest payable to it by UK borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:

- (a) each UK Borrower which is a Party as a Borrower as at the Transfer Date; and
  - (b) each UK Borrower which is an Additional Borrower which becomes an Additional Borrower after the Transfer Date,
- that it wishes that scheme to apply to the Facilities Agreement.]

11. [We refer to Clause 19.3 (*Change of Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor*) of the Intercreditor Agreement:

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

It is expressly agreed that the security created or evidenced by the Transaction Security Documents will be preserved for the benefit of the New Lender and each other Lender.]

12. The New Lender confirms that its entry into this Agreement is permitted by the terms of Clause 29.3 (*Conditions of assignment or transfer*) of the Facilities Agreement.

13. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and to the Parent (on behalf of each Obligor) of the assignment referred to in this Agreement.

14. 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.

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

16. 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, electronic mail address 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 Facilities 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.

## SCHEDULE 5

### FORM OF TRANSFER CERTIFICATE

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: [ ]

**Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This agreement shall take effect as a Transfer Certificate for the purpose of the Facilities 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 Facilities Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate
2. We refer to Clause 29.7 (*Procedure for assignment*) of the Facilities Agreement:
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the Intercreditor Agreement and the Transaction Security Documents which correspond to that portion of the Existing Lender’s Commitments and participations in Utilisations under the Facilities Agreement specified in the schedule to this Transfer Certificate (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 Facilities Agreement specified in the Schedule.
  - (c) The New Lender becomes a Lender under the Facilities Agreement and assumes and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (a) above.
3. The proposed Transfer Date is [ ].
4. The New Lender hereby exempts the Agent from the restrictions pursuant to section 181 Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible. If the New Lender cannot grant such an exemption, it shall notify the Agent accordingly and, upon request of the Agent, either act in accordance with the terms of this Transfer Certificate and/or any other Finance Document as required pursuant to this Transfer Certificate and/or such other Finance Document or grant a special power of attorney to a party acting on its behalf, in a manner that is not prohibited pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and/or any other applicable laws.
5. The New Lender confirms that it is:
  - (a) [with respect to a UK Borrower:
    - (i) a UK Qualifying Lender other than a UK Treaty Lender;

(ii) a UK Treaty Lender; or

(iii) not a UK Qualifying Lender;]

(b) [with respect to a US Borrower:

(i) a US Qualifying Lender; or

(ii) not a US Qualifying Lender;]

(c) [with respect to any Borrower (other than a UK Borrower or US Borrower)]:

(i) a Qualifying Lender other than a Treaty Lender;

(ii) a Treaty Lender; or

(iii) not a Qualifying Lender.]

[The New Lender confirms that it [is]/[is not] a Non-Acceptable L/C Lender.]

[The New Lender confirms that it [is]/[is not]<sup>5</sup> a Disqualified Lender.]

[The New Lender confirmed that, it [is]/[is not] a regulated deposit taking financial institution with a long term corporate credit rating equal to or better than BBB or Baa2 (as applicable) according to at least two of Moody's Investors Services Limited, Standard and Poor's Ratings Services or Fitch Ratings Ltd.]

6. [With respect to any UK Borrower, the New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

(a) a company resident in the United Kingdom for United Kingdom tax purposes;

(b) a partnership each member of which is:

(i) a company so resident in the United Kingdom; or

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

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

7. [With respect to any UK Borrower, the New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [  ]) and is tax resident in [  ]\*, so that interest payable to it by UK borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:

(a) each UK Borrower which is a Party as a Borrower as at the Transfer Date; and

(b) each UK Borrower which is an Additional Borrower which becomes an Additional Borrower after the Transfer Date, that it wishes that scheme to apply to the Facilities Agreement.]

8. [We refer to Clause 19.3 (*Change of Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor*) of the Intercreditor Agreement:

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

It is expressly agreed that the security created or evidenced by the Transaction Security Documents will be preserved for the benefit of the New Lender and each other Lender.]

9. The New Lender confirms that its entry into this Transfer Certificate is permitted by the terms of Clause 29.3 (*Conditions of assignment or transfer*) of the Facilities Agreement.
10. The Facility Office and address, electronic mail address and attention details for notices of the New Lender for the purposes of Clause 36.2 (*Addresses*) are set out in the Schedule.
11. This Transfer Certificate takes effect as a deed notwithstanding that a party may execute it under hand.
12. This Transfer Certificate has been executed and delivered as a deed on the date stated at the beginning of this Transfer Certificate. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
13. This Transfer Certificate 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 Transfer Certificate.
14. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
15. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in security in all jurisdictions. It is the responsibility of each individual New Lender to ascertain whether any other documents or other formalities are required to perfect transfer of such share in the Existing Lender's 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:

By: \_\_\_\_\_]

This Transfer Certificate is accepted by the Agent and the Security Agent and the Transfer Date is confirmed as [ *xx* ].

[Agent]

By:

[Security Agent]

By:

[*Agent*]

By:

[*Security Agent*]

By:

## SCHEDULE 6

### FORM OF ACCESSION DEED

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

From: [Subsidiary] and

Dated: [ X ]

Dear Sirs, Madams

#### **Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ X ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This deed (the “**Accession Deed**”) shall take effect as an Accession Deed for the purposes of the Facilities 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 Facilities Agreement have the same meaning in this Accession Deed (other than paragraph 6 below) unless given a different meaning in this Accession Deed.
2. [Subsidiary] agrees to become an Additional [Borrower as [an Incremental Facility Borrower/a Revolving Facility Borrower/a TLB Borrower] under [specify the relevant Facility]]/[Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional [Borrower]/[Guarantor] pursuant to Clause [30.2 (*Additional Borrowers*)]/[30.4 (*Additional Guarantors*)] of the Facilities Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered under number [ X ].
3. [Subsidiary's] administrative details for the purposes of the Facilities Agreement and the Intercreditor Agreement are as follows:

Address: [ X ]

Email: [ X ]

Attention: [ X ]
4. [Subsidiary] (for the purposes of this paragraph 4, the Additional Debtor and for the purposes of paragraph 6, 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]: [ X ] (the “**Relevant Documents**”).
5. Pursuant to Clause 30.6 (*Repetition of Representations*) of the Facilities Agreement, [Subsidiary] makes all the Repeating Representations to the Finance Parties on the date of this Accession Deed.
6. 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 6.

(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, agent, representative or otherwise for the benefit of 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, agent, representative or otherwise for the benefit of the Secured Parties,

[on trust / as agent and/or on behalf of] 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].

7. 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 (b) above only), signed on behalf of the Parent and executed as a deed by [*Subsidiary*] and is delivered on the date stated above.


#### **Signatories**

#### **Subsidiary**

**SIGNED** as a **DEED** )

for and on behalf of )

[  ] )

By: [  ] )

Director

**in the presence of**

Witness



**The Parent**

[    ]

By: [    ]

**The Security Agent**

[    ]

By: [    ]

## SCHEDULE 7

### FORM OF COMPLIANCE CERTIFICATE

To: [ X ] as Agent

From: Paysafe Group Holdings II Limited

Dated: [ X ]


Dear Sirs, Madams

#### **Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ X ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:
  - (a) [the outstanding principal amount of the Revolving Facility Loans (excluding for these purposes the amount of (x) any outstanding Utilisations by way of Ancillary Facilities or Letters of Credit (or bank guarantees) and (y) any Utilisations to fund any original issue discount fees in respect of Facility B or any Incremental Facility and any other payments and any fees and expenses in respect of any Facilities (and any Rollover Loans in respect thereof)), less any cash and Cash Equivalents of the Group, is \$[ X ], which equals [ X ]% of the Total Revolving Facility Commitments (disregarding any reduction of Revolving Facility Commitments following the date of this Agreement) and therefore the Revolving Facility Financial Covenant Condition [is] [is not] satisfied;]
  - (b) in respect of the Relevant Period ended on [ X ] (the “**Test Date**”) Consolidated First Lien Net Debt on the Test Date was [ X ] and EBITDA of the Parent and the Restricted Subsidiaries for such Relevant Period was [ X ]. Therefore Consolidated First Lien Debt Ratio at such time was [ X ]:1.00 as at the Test Date and therefore:
    - (i) [the Revolving Facility Financial Covenant [has] [has not] been complied with]; and
    - (ii) the Facility B1 Margin should be [ X ]% p.a., the Facility B2 Margin should be [ X ]% p.a. and the Initial Revolving Facility Margin should be [ X ]% p.a. [and the Margin applicable to [any Incremental [Term/[Revolving] Facility] should be [ X ]% p.a.]][.]; and]
  - (c) [[Excess Cash Flow for the Financial Year of the Parent ending on the Test Date was [ X ]. As the Consolidated First Lien Debt Ratio is [ X ], the Excess Cash Flow to be applied in prepayment pursuant to Clause 12.2 (*Excess Cash Flow*) of the Facilities Agreement, after deducting any amounts permitted to be deducted pursuant to paragraph (a) of Clause 12.2 (*Excess Cash Flow*) and/or applied in repurchasing or prepaying any Other Applicable Indebtedness in accordance with paragraph (b) of Clause 12.2 (*Excess Cash Flow*), will be [ X ].]
3. [We confirm that the Material Subsidiaries are: [ X ].]

4. [We confirm that as at the Test Date subject to the Agreed Security Principles, the aggregate Relevant EBITDA (calculated on the same basis as EBITDA, taking each entity on an unconsolidated basis and excluding all intra-Group items) of the Guarantors represents not less than 80% of the EBITDA of the Group (disregarding (i) in the calculation of Relevant EBITDA of the Guarantors, the Relevant EBITDA of any Guarantor generating negative Relevant EBITDA (which shall be deemed to have zero Relevant EBITDA) and (ii) in the calculation of the EBITDA of the Group, the Relevant EBITDA of (x) to the extent positive, any Regulated Entity (unless such Regulated Entity is a Guarantor), and (y) to the extent positive, any other entity which, in each case, is not required to become a Guarantor in accordance with the Agreed Security Principles)) and therefore the Guarantor and Security Coverage Requirement [has/has not been/will be] met.]
5. [For the avoidance of doubt, the confirmation in paragraph 2(a) above relating to compliance with the Revolving Facility Financial Covenant (including computations as to compliance with the Revolving Facility Financial Covenant (where included)), where received by a Lender who is not an Initial Revolving Facility Lender or a Lender under an Incremental Financial Covenant Revolving Facility, shall be for information purposes only.]

SIGNED

[Officer] [  ]

## SCHEDULE 8

### FORM OF LETTER OF CREDIT

To: [*Beneficiary*] (the “**Beneficiary**”)

Date [ *xx* ]

**Irrevocable Standby Letter of Credit no. [ *xx* ]**

At the request of [ *xx* ], [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 [ *xx* ].

“**Total L/C Amount**” means [ *xx* ].

#### 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 [ *xx* ]pm ([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 [10] Business Days after 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 (a) above, on [ *xx* ]pm ([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 98**

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:

## Schedule

### Form of Demand

To: *[Issuing Bank]*

[Date]

Dears Sirs, Madams

**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 9

### TIMETABLES

#### Part 1 Loans

	Loans in EUR	Loans in GBP	Loans in USD	Loans in other currencies
Agent notifies the Parent if a currency is approved as an Optional Currency in accordance with Clause 4.3 ( <i>Conditions relating to Optional Currencies</i> )	-	-	-	U-3 5:00pm
Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> )) or a Selection Notice (Clause 15.1 ( <i>Selection of Interest Periods and Terms</i> ))	U-2 (U-1 for utilisations on or prior to the Closing Date) 11:00am	U-1 11:00am	U-3 (U-1 for utilisations on or prior to the Closing Date) 11:00am	U-2 (U-1 for utilisations on or prior to the Closing Date) 11:00am
Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 ( <i>Lenders' participation</i> )	U-1 Noon	U-1 Noon	-	U-1 Noon
Agent notifies the Lenders of the Loan in accordance with Clause 5.4 ( <i>Lenders' participation</i> )	U-2 (U-1 for utilisations on or prior to the Closing Date) promptly	U-1 promptly	U-3 (U-1 for utilisations on or prior to the Closing Date) promptly	U-2 (U-1 for utilisations on or prior to the Closing Date) promptly
Agent receives a notification from a Lender under Clause 8.2 ( <i>Unavailability of a currency</i> )	-	-	-	U-2 (U-1 for utilisations on or prior to the Closing Date) 5:00pm
Agent gives notice in accordance with Clause 8.2 ( <i>Unavailability of a currency</i> )	-	-	-	U-1 (U for utilisations on or prior to the Closing Date) 9:30am
Agent determines amount of the Loan in Optional Currency	U	U	-	U-1

in accordance with Clause 34.11 ( <i>Change of currency</i> )	11:00am	11:00am	11:00am
LIBOR or EURIBOR is fixed	Quotation Day as of 11:00am (CET) in respect of EURIBOR	-	Quotation Day as of 11:00am (London time) in respect of LIBOR
CDOR is fixed	-	-	Quotation Day as of 10:00am (London Time).
“U”	=		Quotation Day as of 10:00am (Toronto time).
“U” – “X”	=		date of utilisation
			Business Days prior to date of utilisation



**Part 2**  
**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-1  
11:00am

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 Issuing Bank and Lenders of the Letter of Credit in accordance with paragraph (f) of Clause 6.5 (*Issue of Letters of Credit*).

U-1  
Noon

Delivery of duly completed Renewal Request (Clause 6.6 (*Renewal of a Letter of Credit*))

U-1  
Noon

“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 10

### AGREED SECURITY PRINCIPLES

#### 1. SECURITY PRINCIPLES

- (a) The guarantees and security to be provided will be given in accordance with the Agreed Security Principles set out in this Schedule. 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 guarantees and security from all Obligor in every jurisdiction in which Obligor are located. In particular:
- (i) general legal and statutory limitations (including, but not limited to, with respect to the relevant jurisdictions for which guarantee limitation language is set out in Clauses 23.11 (*Guarantee Limitations*) to 23.13 (*Limitations – Regulated Entities*), such limitations as set out therein), financial assistance, corporate benefit, fraudulent preference, “thin capitalisation”, “earnings stripping”, “controlled foreign corporation” and “capital maintenance” rules, retention of title claims, employee consultation or approval requirements 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 or security be limited by an amount or otherwise;
  - (ii) the relevant Obligor will use reasonable endeavours to assist in demonstrating that adequate corporate benefit accrues to each relevant Obligor and to overcome any such other limitations to the extent reasonably practicable;
  - (iii) the Transaction Security and extent of its perfection will be agreed taking into account the cost to the Group of providing such security (including any increase to the tax and/or regulatory costs of the Group) so as to ensure that it is proportionate to the benefit accruing to the Finance Parties and the maximum guaranteed or secured amount may be limited to minimise stamp duty, notarisation, registration or other applicable fees, taxes and duties where the benefit of increasing the guaranteed or secured amount is disproportionate to the level of such fee, taxes and duties;
  - (iv) any assets subject to third party arrangements which are permitted by this Agreement and which prevent those assets from being charged, and any cash constituting regulatory capital or customer cash, will be excluded from any relevant Transaction Security Document;
  - (v) members of the Group will not be required to give guarantees or enter into security documents if: (1) they are not incorporated in a Security Jurisdiction or not wholly-owned by another member of the Group, or if it is not within the legal capacity of the relevant member of the Group, (2) in the good faith judgment of the directors of the Parent, the creation of Transaction Security and/or the giving of a guarantee and/or otherwise becoming an Obligor could materially increase a Capital Requirement, or materially adversely affect the solvency capital requirements, of the Group (or any member thereof) pursuant to any applicable law or regulation applicable to such member of the Group, (3) if it would conflict with the fiduciary

duties of their directors or managers, or (4) contravene any legal, contractual or regulatory prohibition or result in a risk of personal or criminal liability on the part of any officer;

- (vi) if there are third party arrangements in place in respect of any asset, business or entity acquired by the Group (where those third party arrangements were not entered into in contemplation of that acquisition) as a result of which the consent of a third party is required for that acquired entity to provide a guarantee or to secure any acquired asset, such guarantee and/or security will not be required to be granted;
  - (vii) the granting or perfection of Transaction Security, when required, and other legal formalities will be completed within the time periods specified in the Finance Documents therefore or (to the extent no such time periods are specified in the Finance Documents) within the time periods specified by applicable law in order to ensure due perfection, in each case taking into account the Agreed Security Principles;
  - (viii) the granting or perfection of Transaction Security will not be required if it would have a material adverse effect on the ability of the relevant Obligor to conduct its operations and business in the ordinary course or as otherwise permitted by the Finance Documents (including, without limitation, notification of such security to any third party);
  - (ix) in respect of all assets security (other than share security over (and receivables owed by) its guarantor company subsidiaries), the Transaction Security Document shall be governed by the law of and secure assets located in or otherwise governed or expressed to be governed by the laws of the jurisdiction of incorporation of that Obligor;
  - (x) no perfection action will be required in jurisdictions that are not Security Jurisdictions;
  - (xi) the maximum guaranteed or secured amount may be limited to minimise stamp duty, notarisation, registration or other applicable fees, taxes and duties;
  - (xii) no guarantee or Transaction Security shall guarantee or secure any “Excluded Swap Obligations” defined in accordance with the LSTA Market Advisory Update dated 15 February 2013 entitled “Swap Regulations’ Implications for Loan Documentation”, and any update thereto by the LSTA;
  - (xiii) other than filing an MR01 form with the Registrar of Companies (England and Wales) with respect to a global Transaction Security Document governed by English law (a “**Debenture**”), no perfection action will be required with respect to assets of a type not owned by members of the Group; and
  - (xiv) the Security Agent will hold one set of Transaction Security for the Secured Parties (subject to applicable law).
- (c) The Security Agent (upon request or instruction, as applicable, in accordance with this Agreement) or the other Finance Parties, as the case may be, shall promptly discharge any guarantees and release any Transaction Security which is or are subject to any transaction

permitted by this Agreement, subject to any legal or regulatory prohibition as is referred to in paragraph (b)(v) above or which is contrary to these Agreed Security Principles.

## 2. GUARANTORS AND SECURITY

- (a) Subject to due execution of all relevant documents, completion of all relevant formalities, the Legal Reservations, the Perfection Requirements, the application of the Agreed Security Principles and any qualifications or limitations which may be set out in any Finance Documents, guarantees will be provided by members of the Group to the extent required pursuant to Clause 27.1 (*Covenant to guarantee obligations and give security and further assurances*) of Schedule 17 (*General Undertakings*) to this Agreement.
- (b) Each guarantee will, to the extent legally possible and subject to Clause 23 (*Guarantees and Indemnity*) of this Agreement and the Agreed Security Principles, be an upstream, cross-stream and downstream guarantee and for all liabilities of the Obligor under the Finance Documents in accordance with, and subject to, local law requirements and the requirements of the Agreed Security Principles in each relevant jurisdiction.
- (c) Transaction Security Documents will, to the extent legally possible and subject to the Agreed Security Principles, incorporate the defined terms used in the Intercreditor Agreement and secure the Secured Obligations (as defined in the Intercreditor Agreement) of the relevant Obligor to the Secured Parties, in each case in accordance with, and subject to, local law requirements and the requirements of the Agreed Security Principles in each relevant jurisdiction and, in no circumstances, shall impose any obligation more onerous than those contained in this Agreement other than to the extent required by local law in order to create, enforce or perfect the security interest expressed to be created thereby.
- (d) Where an Obligor secures shares, the Security Document will be governed by the laws of the company whose shares are being charged or pledged and not by the law of the country of the Obligor. Subject to these principles the shares in each Guarantor shall be secured. For the avoidance of doubt, the shares held by an Obligor in a Subsidiary that is not an Obligor shall not be required to be the subject of Transaction Security other than in the case of Obligors incorporated in England and Wales that execute a Debenture, pursuant to an all-asset floating charge to be set out in that Debenture.
- (e) To the extent legally effective, all security shall be given in favour of the Security Agent and not the Secured Parties individually. "Parallel debt" provisions will be used where necessary; such provisions will be contained in the Intercreditor Agreement and not the individual Security Documents unless required under local laws. To the extent possible, there should be no action required to be taken in relation to the guarantees or Transaction Security when any Lender assigns or transfers any of its participation in the Facilities to a New Lender.
- (f) The Obligors will not be required to pay any third party costs of any re-execution, notarisation, re-registration, amendment or other perfection requirement for any Transaction Security on any assignment to a New Lender.
- (g) Any Transaction Security Document shall only be required to be notarised or notarially certified if required by law in order for the relevant Transaction Security to become effective or admissible in evidence.

- (h) No Regulated Entity or other member of the Group will be required to create Transaction Security over or otherwise encumber any Restricted Asset (including, without limitation, any bank accounts which contain or are reasonably likely to contain any Restricted Assets).
- (i) To the extent that any Regulated Entity becomes a Guarantor pursuant to the terms of this Agreement, the recourse under the guarantee and Transaction Security undertaken by it of any beneficiary of any such guarantee and Transaction Security will be strictly and expressly limited:

(i) to the material Unrestricted Assets of that Regulated Entity; and

(ii) to the extent that such recourse does not affect the availability (immediately and without restriction) of Assets (as defined in Clause 23 (*Guarantees and Indemnity*) of this Agreement) to cover or have a result where the Regulated Entity does not satisfy a Capital Requirement as at the date the Security Agent or any Finance Party takes enforcement action (however described) against such Regulated Entity under any provision of this Agreement or any other Finance Document to which it is a party,

in each case, in accordance with and subject to the principles set out in this Schedule and the other provisions of this Agreement.

- (j) Notwithstanding any term of any Finance Document, no Loan to a US Borrower or other obligation of a US Obligor under this Agreement or under any Finance Document may be, directly or indirectly: (i) guaranteed by a member of the Group (including, for this purpose, any direct or indirect subsidiaries acquired hereafter by the Parent) that is a “controlled foreign corporation” (as defined in Section 957(a) of the Code) that has a “United States shareholder” (as defined in Section 951 of the Code) that is a member of the Group (such an entity, a “CFC”) or by an entity (a “FSHCO”) substantially all the assets of which consist of equity interests (or equity interests and indebtedness) of one or more CFCs or other FSHCOs, or guaranteed by a subsidiary of a CFC or FSHCO; (ii) secured by any assets of a CFC, FSHCO or a subsidiary of a CFC or a FSHCO (including any CFC or FSHCO equity interests held directly or indirectly by a CFC or FSHCO); (iii) secured by a pledge or other security interest in excess of 65% of the voting equity interests (and 100% of the non-voting equity interests) of a CFC or FSHCO; or (iv) guaranteed by any subsidiary or secured by a pledge of or security interest in any subsidiary or other asset, if it would result in material adverse US tax consequences to any member of the Group as reasonably determined by the Borrowers and the Obligors’ Agent and the Agent.

### 3. TERMS OF TRANSACTION SECURITY DOCUMENTS

- (a) Subject to due execution of all relevant security documents, completion of all relevant formalities, the Legal Reservations, the Perfection Requirements, the application of the Agreed Security Principles and any qualifications or limitations which may be set out in any Finance Documents, the Security Agent (and, where applicable, each of the other Finance Parties) shall receive the benefit of:
- (i) a guarantee from each Obligor (including each Borrower, the Parent and each Restricted Subsidiary required pursuant to Clause 27.1 (*Covenant to guarantee obligations and give security and further assurances*)) (and for the avoidance of doubt no guarantee or Transaction Security will be provided by any Holding Company of the Parent);

- (ii) Transaction Security over, and limited in each case to, the shares (or equivalent) in any Obligor and material intercompany loan receivables of each Obligor, and, solely in the case of each Obligor incorporated in England and Wales, all material assets of such Obligor (subject to the principles set out in this Schedule) pursuant to the Original Debenture or a Debenture on terms substantially consistent with the Original Debenture;
  - (iii) in respect of any Obligor incorporated in England and Wales only, Transaction Security pursuant to an all-asset floating charge to be set out in a Debenture, subject to customary exclusions;
  - (iv) trade receivables that are part of a receivables or payables financing or factoring facility (or equivalent) shall not be pledged or secured as security in respect of the Secured Obligations (as defined in the Intercreditor Agreement);
  - (v) the Security Agent shall (and is irrevocably authorised and instructed to) promptly enter into and deliver any documentation and/or take such other action as may be required by the Parent to give effect to these Agreed Security Principles; and
  - (vi) for the avoidance of doubt: (i) no guarantee or Transaction Security shall be required to be provided by any person who is not an Obligor or in any jurisdiction other than a Security Jurisdiction; and (ii) Transaction Security shall not be granted over any assets (including, without limitation, over trade receivables, intellectual property, bank accounts, insurance policies, hedging agreements and real estate) other than as set out in paragraphs (i) to (v) (inclusive) above.
- (b) In addition to the above, the following principles will be reflected in the terms of any Transaction Security taken as part of this transaction:
- (i) the Transaction Security will be first ranking, to the extent possible;
  - (ii) Transaction Security will not be enforceable until the occurrence of an Enforcement Event which is continuing and will be enforceable only subject to the terms of the Intercreditor Agreement;
  - (iii) the Security Agent shall only be able to exercise a power of attorney following the occurrence of an Enforcement Event which is continuing;
  - (iv) the provisions of each Transaction Security Document will not be unduly burdensome on the Obligor or interfere unreasonably with the operation of its business, will be limited to those required by local law to create, enforce or perfect security and will not impose commercial obligations and shall not contain additional representations and undertakings (such as in respect of insurance, maintenance of assets, information or the payment of costs) or otherwise repeat any such representations or undertakings given in this Agreement, other than those which are strictly required as a matter of law for the creation and perfection of the Transaction Security;
  - (v) in the Transaction Security Documents there will be no repetition or extension of clauses set out in this Agreement (or the Intercreditor Agreement) including, without limitation, those relating to notices, costs and expenses, indemnities, tax gross up, distribution of proceeds and release of Transaction Security;

representations and undertakings shall be included in the Transaction Security Documents only to the extent required by local law in order to create, enforce or perfect the security interest expressed to be created thereby;

- (vi) information, such as lists of assets, will be provided if, and only to the extent, required by local law to be provided to perfect, enforce or register the Transaction Security and, when required, shall be provided no more frequently than annually following an Enforcement Event which is continuing, on the Security Agent's written request;
- (vii) the Transaction Security Documents should not and will not operate so as to prevent transactions which are not prohibited under the other Finance Documents; and
- (viii) Transaction Security will, where possible and practical, automatically create security over future assets of the same type as those already secured; where local law requires supplemental charges to be delivered in respect of future acquired assets in order for effective security to be created over that class of asset, such supplemental charges shall be provided at intervals no more frequently than annually, in each case on the Security Agent's reasonable written request; and
- (ix) each Transaction Security Document must contain a clause which records that if there is a conflict between the Transaction Security Document and this Agreement or the Intercreditor Agreement then (to the fullest extent permitted by law) the provisions of this Agreement or (as applicable) the Intercreditor Agreement will take priority over the provisions of the relevant Transaction Security Document.

#### 4. SHARES

- (a) If an Obligor grants Transaction Security over shares held by it, until notified in writing by the Security Agent following an Enforcement Event which is continuing, the Obligor will be permitted to retain and to exercise voting rights appertaining to any shares charged by it and the company whose shares have been charged will be permitted to pay dividends upstream on charged shares to the extent permitted under the Finance Documents with the proceeds to be available to the Parent and its Restricted Subsidiaries.
- (b) Where customary and applicable as a matter of law, on or within 20 Business Days following execution of any Transaction Security over shares, to the extent applicable, the share certificate and a stock transfer form executed in blank will be provided to the Security Agent and, where required by law, the share certificate or shareholders' register will be endorsed or written up and the endorsed share certificate or a copy of the written up register provided to the Security Agent; *provided that* if any stock and share certificates and other documents of title to the such shares or stock transfer forms have been sent to HM Revenue and Customs or any other regulatory or government body then the Obligor shall deposit with the Security Agent (or procure the deposit of) such certificates, other documents of title or stock transfer forms (executed in blank by it or on its behalf) as soon as reasonably practicable following their return to the relevant company by HM Revenue and Customs or such other regulatory or government body. To the extent that any relevant share certificates cannot be located, the relevant member of the Group shall use reasonable efforts to obtain replacements.

- (c) Unless the restriction is required by law or regulation (or as expressly contemplated in any Transaction Security Document), the constitutional documents of the company whose shares have been charged will be amended to remove any restriction on the transfer or the registration of the transfer of the shares on the taking or enforcement of the Transaction Security granted over them.
- (d) If required under local law, Transaction Security over shares will be registered subject to the general principles set out in these Agreed Security Principles.

## **5. INTERCOMPANY RECEIVABLES**

- (a) If an Obligor grants Transaction Security over its material intercompany receivables it shall be free to deal with those receivables in the course of its business until notified by the Agent following an Enforcement Event which is continuing.
- (b) If required by local law to perfect the Transaction Security, notice of the Transaction Security will be served on the relevant borrower in respect of material intercompany receivables within 20 Business Days after an Enforcement Event which is continuing and the Obligor shall use its commercially reasonable endeavours (not involving the payment of money or incurrence of external expenses) to obtain an acknowledgement of that notice within 20 Business Days after service. If the Obligor has used its commercially reasonable endeavours but has not been able to obtain acknowledgement or acceptance its obligation to obtain acknowledgement or acceptance shall cease on the expiry of that 20 Business Day period.
- (c) Irrespective of whether notice of the Transaction Security is required for perfection, if the service of notice would prevent the Obligor from dealing with an intercompany receivable in the course of its business no notice of security shall be served until required by the Agent following an Enforcement Event which is continuing.
- (d) If required under local law, Transaction Security over intercompany receivables will be registered subject to the general principles set out in these Agreed Security Principles.

## **6. BANK ACCOUNTS**

- (a) No Regulated Entity or other member of the Group will be required to create Transaction Security over or otherwise encumber any bank accounts which contain or are reasonably likely to contain Restricted Assets.
- (b) If, pursuant to a Debenture, an Obligor grants Transaction Security over its bank accounts it shall be free to deal with those accounts in the course of its business (including exercising the ability to close such charged accounts) until notified in writing by the Security Agent following an Enforcement Event which is continuing.
- (c) If required by local law to perfect the Transaction Security, notice of the Transaction Security will be served on the account bank within 20 Business Days after an Enforcement Event which is continuing and the Obligor shall use its commercially reasonable endeavours (not involving the payment of money or incurrence of external expenses) to obtain an acknowledgement of that notice with 20 Business Days after service. If the Obligor has used its commercially reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement shall cease on the expiry of that 20 Business Day period.



- (d) Irrespective of whether notice of the Transaction Security is required for perfection, if the service of notice would prevent the Obligor from retaining control over and using a bank account in the ordinary course of its business no notice of security shall be served until required in writing by the Security Agent following an Enforcement Event which is continuing. For the avoidance of doubt, subject to the provisions of this Agreement, there will be no restriction on the movement and dealing with cash and receivables into and out of any secured bank accounts until an Enforcement Event has occurred and is continuing.
- (e) Any Transaction 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 Transaction Security may request these are waived by the account bank but the Obligor shall not be required to change its banking arrangements if these security interests are not waived or only partially waived.
- (f) If required under local law, Transaction Security over bank accounts will be registered subject to the general principles set out in these Agreed Security Principles.

## **7. RELEASE OF SECURITY**

Unless required by local law, the circumstances in which the Transaction Security shall be released should not be dealt with in individual Transaction Security Documents but, if so required, shall provide that such Transaction Security will be released in accordance with this Agreement and the Intercreditor Agreement.

## SCHEDULE 11

### FORM OF INCREASE CONFIRMATION

To: [ X ] as Agent, [ X ] as Security Agent, [ X ] as Issuing Bank] and Paysafe Group Holdings II Limited as Parent, for and on behalf of each Obligor

From: [the *Increase Lender*] (the “**Increase Lender**”)

Dated: [ X ]

#### **Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ X ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the “**Agreement**”) shall take effect as an Increase Confirmation for the purpose of the Facilities 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 Facilities 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 Facilities 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 Facilities 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 [ X ].
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 Lender (as defined in the Intercreditor Agreement).
6. The Facility Office and address, electronic mail address and attention details for notices to the Increase Lender for the purposes of Clause 36.2 (*Addresses*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders’ obligations referred to in paragraph (g) of Clause 2.2 (*Increase*).
8. The Increase Lender hereby exempts the Agent from the restrictions pursuant to section 181 Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible. If the Increase Lender cannot grant such an exemption, it shall notify the Agent accordingly and, upon request of the Agent, either act in accordance with the terms of this Agreement and/or any other Finance Document as required pursuant to this Agreement and/or such other Finance Document or grant a special power of attorney to a party acting on its behalf, in a manner that is not prohibited pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and/or any other applicable laws.

9. The Increase Lender confirms that it is:

- (a) [with respect to a UK Borrower:
  - (i) a UK Qualifying Lender other than a UK Treaty Lender;
  - (ii) a UK Treaty Lender; or
  - (iii) not a UK Qualifying Lender;]
  - (b) [with respect to a US Borrower:
    - (i) a US Qualifying Lender; or
    - (ii) not a US Qualifying Lender;]
    - (c) [with respect to any Borrower (other than a UK Borrower or US Borrower)]:
      - (i) a Qualifying Lender other than a Treaty Lender;
      - (ii) a Treaty Lender; or
      - (iii) not a Qualifying Lender.]

[The Increase Lender confirms that it [is]/[is not]<sup>5</sup> a Disqualified Lender.]

10. [With respect to any UK Borrower, the Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

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

11. [With respect to any UK Borrower, the Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ 80 ]) and is tax resident in [ 80 ]\*, so that interest payable to it by UK borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:

- (a) each UK Borrower which is a Party as a Borrower as at the Transfer Date; and

(b) each UK Borrower which is an Additional Borrower which becomes an Additional Borrower after the Transfer Date,  
that it wishes that scheme to apply to the Facilities Agreement.]

12. We refer to Clause 19.3 (*Change of Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor*) of the Intercreditor Agreement:

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

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

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

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

**[Note: The execution of this 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, electronic mail address 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 Facilities Agreement by the Agent, 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 [ *xx* ].

**Agent**

By:

**Security Agent**

By:

## SCHEDULE 12

### INCREMENTAL FACILITY INCREASE NOTICE

#### Part 1

#### Form of Incremental Facility Accession Certificate

To: [ X ] as Agent, [ X ] as Security Agent

From: [ X ]

Date: [ X ]

#### **Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ X ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the “**Agreement**”) shall take effect as an Accession Certificate for the purpose of the Facilities 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 Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
2. The proposed Accession Effective Date is [ X ].
3. On the Accession Effective Date the Acceding 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 Lender (as defined in the Intercreditor Agreement).
4. The Acceding Lender agrees to assume all the rights and obligations of a Lender in relation to the Commitments specified in the Schedule to this Agreement (the “**Schedule**”) in accordance with the terms of the Facilities Agreement and the Intercreditor Agreement.
5. The administrative details of the Acceding Lender for the purposes of the Facilities Agreement are set out in the Schedule.
6. The Acceding Lender hereby exempts the Agent from the restrictions pursuant to section 181 Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible. If the Acceding Lender cannot grant such an exemption, it shall notify the Agent accordingly and, upon request of the Agent, either act in accordance with the terms of this Agreement and/or any other Finance Document as required pursuant to this Agreement and/or such other Finance Document or grant a special power of attorney to a party acting on its behalf, in a manner that is not prohibited pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and/or any other applicable laws.
7. The Acceding Lender confirms that it is:

(a) [with respect to a UK Borrower:

(i) a UK Qualifying Lender other than a UK Treaty Lender;

(ii) a UK Treaty Lender; or

(iii) not a UK Qualifying Lender;]

(b) [with respect to a US Borrower:

(i) a US Qualifying Lender; or

(ii) not a US Qualifying Lender;]

(c) [with respect to any Borrower (other than a UK Borrower or US Borrower)]:

(i) a Qualifying Lender other than a Treaty Lender;

(ii) a Treaty Lender; or

(iii) not a Qualifying Lender.]

[The Acceding Lender confirms that it [is]/[is not]<sup>5</sup> a Disqualified Lender.]

8. [With respect to any UK Borrower, the Acceding Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

(a) a company resident in the United Kingdom for United Kingdom tax purposes;

(b) a partnership each member of which is:

(i) a company so resident in the United Kingdom; or

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

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

9. [With respect to any UK Borrower, the Acceding Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ 80 ]) and is tax resident in [ 80 ]\*, so that interest payable to it by UK borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:

(a) each UK Borrower which is a Party as a Borrower as at the Transfer Date; and

(b) each UK Borrower which is an Additional Borrower which becomes an Additional Borrower after the Accession Effective Date,  
that it wishes that scheme to apply to the Facilities Agreement.]

10. We refer to Clause 19.3 (*Change of Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor*) of the Intercreditor Agreement:

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

11. This Accession Certificate takes effect as a deed notwithstanding that a party may execute it under hand.
12. This Accession Certificate has been executed and delivered as a deed on the date stated at the beginning of this Accession Certificate.
13. This Accession Certificate and any non-contractual obligations arising out of it are governed by English law.



**The Schedule**  
**Commitment to be Assumed**

Administrative details of the New Lender [*insert details of Facility Office, address for notices and payment details etc.*]

EXECUTED AS A DEED by [*Acceding Lender*]

acting by [ *☞* ]

and

[ *☞* ]

This Agreement is accepted as an Accession Certificate for the purposes of the Facilities Agreement by the Agent, and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Accession Effective Date is confirmed as [ *☞* ].

acting under the authority of that company,

in the presence of:

Witness's signature:

Name: [ *☞* ]

Address: [ *☞* ]

The Accession Effective Date is confirmed by the Agent as [ *☞* ].

[*Agent*]

By:

As Agent

and for and on behalf of each of the parties to the Facilities Agreement (other than the Obligors and the Acceding Lender)

Acknowledged and agreed

By:

As Security Agent

and for and on behalf of each of the parties to the Facilities Agreement (other than the Obligors and the Acceding Lender)

**Part 2**  
**Form of Incremental Facility Increase Notice**

To: [ ] as Agent

From: Paysafe Group Holdings II Limited (the “**Parent**”)

[ ] (the “**Borrower**”)

[ ] (the “**Lender**”)

Date: [ ]

**Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is an Incremental Facility Increase Notice in respect of an Incremental Facility. Terms defined in the Facilities Agreement have the same meaning in this Incremental Facility Increase Notice unless given a different meaning in this Incremental Facility Notice.
2. We have agreed with the institutions set out in the Schedule (*Incremental Facility Lenders and Incremental Facility Commitments*) to this Incremental Facility Increase Notice (the “**Incremental Facility Lenders**”) in respect of the Incremental Facility Commitments detailed in this Incremental Facility Increase Notice that they will provide Incremental Facility Commitments as set out in the Schedule (*Incremental Facility Lenders and Incremental Facility Commitments*).
3. The Incremental Facility shall be established as [*set out basis (e.g. a new facility commitment, existing facility commitment, additional tranche, increase of an existing Facility)*] and on the following terms:

Borrower(s):	[ ]
Guarantor(s):	[ ]
Base Currency:	[ ]
Other available/Optional Currencies (if any, as applicable):	[ ]
Purpose:	[ ]
Additional conditions to drawdown (including any Agreed Certain Funds Period and related conditions if any):	[ ]
Margin and margin ratchet:	[ ]
Interest Period:	[ ]
Commitment Fees:	[ ]

Incremental Facility Commencement Date:	[ 80 ]
Availability Period:	[ 80 ]
Maximum number of Utilisation(s):	[ 80 ]
Termination Date:	[ 80 ]
Amortisation schedule (if any):	[ 80 ]
Financial Covenant:	[ 80 ]
Mandatory prepayment provisions (if any):	[ 80 ]


4. The Incremental Facility Increase Notice 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 Incremental Facility Increase Notice. Delivery of a counterpart of this Incremental Facility Increase Notice by email attachment or telecopy shall be an effective mode of delivery.
5. This Incremental Facility Increase Notice and any non-contractual obligations arising out of, or in connection with, it are governed by English law. The provisions of Clause 45 (*Enforcement*) of the Facilities Agreement shall be deemed to be incorporated into this Incremental Facility Increase Notice in full, *mutatis mutandis*.


This Incremental Facility Increase Notice has been entered into on the date stated at the beginning of this Incremental Facility Increase Notice.


**SCHEDULE**  
**INCREMENTAL FACILITY LENDERS AND INCREMENTAL FACILITY COMMITMENTS**

Name of Incremental Facility Lender	Existing Lender (yes/no)	Incremental Facility Commitment ([CURRENCY])
[ \$ ]	[Yes / No]	[ \$ ]
[ \$ ]	[Yes / No]	[ \$ ]
[ \$ ]	[Yes / No]	[ \$ ]
	<b>Total</b>	[ \$ ]

Yours faithfully

\_\_\_\_\_  
For and on behalf of  
[  ]  
as the Parent

\_\_\_\_\_  
For and on behalf of  
[  ]  
as Borrower

\_\_\_\_\_  
For and on behalf of  
[  ]  
as Incremental Facility Lender

**SCHEDULE 13**

**FORMS OF NOTIFIABLE DEBT PURCHASE TRANSACTION NOTICE**

**Part 1**

**Form of Notice on entering into Notifiable Debt Purchase Transaction**

To: [  ] as Agent

From: [The Lender]

Dated: [  ]

**Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [  ] (the “Facilities Agreement”)**

1. We refer to paragraph (a) of Clause 29.15 (*Notifiable Debt Purchase Transactions*) of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this notice unless given a different meaning in this notice.
2. We have entered into a Notifiable Debt Purchase Transaction.
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<b>Commitment</b>	<b>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (EUR/USD/GBP)</b>
[Facility B1 Commitment]	[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]
[Facility B2 Commitment]	[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]
[Incremental Facility Commitment]	[insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies]

[Lender]

By:

**Part 2**  
**Form of Notice on Termination of Notifiable Debt Purchase Transaction**

**DO NOT DELETE PLACEHOLDER**

Notifiable Debt Purchase Transaction ceasing to be with a member of the Group

To: [ *☐* ] as Agent

From: [*The Lender*]

Dated: [ *☐* ]

**Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ *☐* ] (the “Facilities Agreement”)**

1. We refer to paragraph (a) of Clause 29.15 (*Notifiable Debt Purchase Transactions*) of the Facilities Agreement. Terms defined in the Facilities 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 member of the Group].
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

<b>Commitment</b>	<b>Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (EUR/USD/GBP)</b>
[Facility B1 Commitment]	[ <i>insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies</i> ]
[Facility B2 Commitment]	[ <i>insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies</i> ]
[Incremental Facility Commitment]	[ <i>insert amount (of that Commitment) to which the relevant Debt Purchase Transaction applies</i> ]

[Lender]

By:

**The Parent**

By:

Name: [ *☐* ]





SCHEDULE 14

FORM OF RESIGNATION LETTER

To: [ ✂ ] as Agent

From: [resigning Obligor] and Paysafe Group Holdings II Limited

Dated: [ ✂ ]

Dear Sirs, Madams

**Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ ✂ ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [Clause 30.3 (*Resignation of a Borrower*)]/[Clause 30.5 (*Resignation of a Guarantor*)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the Finance Documents (other than the Intercreditor Agreement).
3. We confirm that:
  - (a) no Event of Default is continuing or would result from the acceptance of this request; and
  - (b) [this request is given in relation to a Disposition of [resigning Obligor] permitted (or not prohibited) pursuant to Schedule 17 (*General Undertakings*) of the Facilities Agreement;]
  - (c) [[resigning Obligor] is not a Material Subsidiary that is incorporated in a Security Jurisdiction;]
  - (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:

**SCHEDULE 15**

**FORM OF SUBSTITUTE AFFILIATE LENDER DESIGNATION NOTICE**

To: [ X ] as Agent); and

[ [ X ] as Security Agent]

for itself and each of the other parties to the Facilities Agreement [and the Intercreditor Agreement] referred to below.

Cc: Paysafe Group Holdings II Limited

From: [Designating Lender] (the “**Designating Lender**”)

Dated: [ X ]

Dear Sirs, Madams

**Paysafe Group Holdings II Limited – Senior Facilities Agreement dated [ X ] (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement [and to the Intercreditor Agreement]. Terms defined in the Facilities Agreement have the same meaning in this Designation Notice.
2. We hereby designate our Affiliate details of which are given below as a Substitute Affiliate Lender in respect of any [Term/Revolving] Loans required to be advanced to [specify name of borrower or refer to all borrowers in a particular jurisdiction etc] (“**Designated Loans**”).
3. The details of the Substitute Affiliate Lender are as follows:
  - (a) Name: [ X ]
  - (b) Facility Office: [ X ]
  - (c) Email: [ X ]
  - (d) Attention: [ X ]
  - (e) Jurisdiction of Incorporation: [ X ]
4. By countersigning this notice below the Substitute Affiliate Lender agrees to become a Substitute Affiliate Lender in respect of Designated Loans as indicated above and agrees to be bound by the terms of the Facilities Agreement [and the Intercreditor Agreement] accordingly.
5. This Designation Notice [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by English law.

.....

For and on behalf of

[Designating Lender]

We acknowledge and agree to the terms of the above.

.....

For and on behalf of

[Substitute Affiliate Lender]

We acknowledge the terms of the above.

.....

For and on behalf of

The [Agent] and the [Security Agent]

Dated

## SCHEDULE 16

### INFORMATION UNDERTAKINGS

Words and expressions in this Schedule 16 shall have the meaning ascribed to them in Schedule 19 (*Certain New York Law Defined Terms*) save that if a word or expression is not given a meaning in Schedule 19 (*Certain New York Law Defined Terms*), it shall be given the meaning ascribed to it in Clause 1 (*Interpretation*) or otherwise pursuant to the recitals in this Agreement. Unless expressly stated herein, Section references in this Schedule 16 are to the sections of this Schedule 16.

#### 1. Financial Statements

Following the Closing Date, the Parent shall provide to the Agent the following reports:

- (a) within 120 days after the end of each Financial Year of the Parent thereafter, annual reports (the “**Annual Financial Statements**”) containing, to the extent applicable, an audited consolidated balance sheet of the Parent or its predecessor as of the end of the most recent Financial Year and audited consolidated income statements and statements of cash flow of the Parent or its predecessor for the most recent Financial Year;
- (b) within 90 days following the end of the Semi-Annual Period in each Financial Year of the Parent, half-year reports in respect of the Semi-Annual Period in each Financial Year of the Parent (the “**Semi-Annual Financial Statements**”) containing, to the extent applicable, an unaudited condensed consolidated balance sheet as of the end of such Semi-Annual Period and unaudited condensed statements of income and cash flow for the most recent half-year-to-date period ending on the unaudited condensed balance sheet date; and
- (c) within 60 days following the end of each applicable Financial Quarter of the Parent, quarterly reports in respect of the first and third Financial Quarters in each Financial Year of the Parent (the “**Quarterly Financial Statements**”) beginning with the quarter ending 30 September 2021, a trading statement containing (i) revenue, operating profit/loss, adjusted EBITDA, net debt, cash and cash equivalents and capital expenditures for the current period; and (ii) a discussion of any material recent developments.

#### 2. Requirements as to Financial Statements

- (a) All financial statements and *pro forma* financial information to be delivered pursuant to Section 1 (*Financial Statements*) above shall, at the election of the Parent, be prepared in accordance with IFRS or U.S. GAAP.
- (b) If, for any period to which any Annual Financial Statements or Semi-Annual Financial Statements relate:
  - (i) any of the Parent’s Subsidiaries are Unrestricted Subsidiaries; and
  - (ii) any such Unrestricted Subsidiary or group of Unrestricted Subsidiaries, if taken together as one Subsidiary, constitutes a Significant Subsidiary of the Parent,

then the applicable Annual Financial Statements and Semi-Annual Financial Statements shall include a presentation of selected financial metrics (in the Parent’s sole discretion) of such Unrestricted Subsidiaries as a group.

- (c) Except as provided for in Section 3 (*Alternative Reporting*) below, no Annual Financial Statements, Semi-Annual Financial Statements, Quarterly Financial Statements or other financial information provided under this Schedule 16 shall be required to include separate financial statements for any Subsidiaries of the Parent.

### 3. Alternative Reporting

- (a) At the Parent's election, it may comply with the provisions of this Schedule 16 by furnishing the applicable financial statements and/or other financial information of an indirect or direct parent company of the Parent (an "**Alternative Reporting Entity**"), in each case, in lieu of those for the Parent and as if references to "the Parent" in this Schedule 16 were to such Alternative Reporting Entity, *provided that* if such Alternative Reporting Entity is not an Obligor then the same is accompanied by selected financial metrics that show the differences (in the Parent's sole discretion) between the information relating to such Alternative Reporting Entity, on the one hand, and the information relating to the Parent and its Restricted Subsidiaries on a stand-alone basis, on the other hand.
- (b) The requirements of this Schedule 16 shall be considered to have been fulfilled if Paysafe Ltd. complies with the reporting requirements of the principal stock exchange on which its common shares are then listed.
- (c) The Parent will be deemed to have furnished the reports referred to in Section 1 above if the Parent or any parent entity of the Parent has filed reports containing substantially such information (or any such information of a parent entity of the Parent pursuant to paragraph (a) or (b) above) with the SEC. The Parent expects to rely on this paragraph to utilize the reports of Paysafe Ltd. to satisfy the requirements of this Schedule 16.

### 4. Constructive Notice

Delivery of Annual Financial Statements, Semi-Annual Financial Statements, Quarterly Financial Statements and other reports, information and documents pursuant to this Schedule 16 to the Agent shall be for informational purposes only, and the Agent's receipt thereof shall not constitute constructive notice of any information contained therein, including compliance by the Parent or any of its Restricted Subsidiaries with any of the liabilities, obligations and/or requirements of this Agreement.

**SCHEDULE 17**  
**GENERAL UNDERTAKINGS**

Words and expressions in this Schedule 17 shall have the meaning ascribed to them in Schedule 19 (*Certain New York Law Defined Terms*) save that if a word or expression is not given a meaning in Schedule 19 (*Certain New York Law Defined Terms*), it shall be given the meaning ascribed to it in Clause 1 (*Interpretation*) or otherwise pursuant to the recitals in this Agreement. Unless expressly stated herein, Section references in this Schedule 17 are to the sections of this Schedule 17.

**1. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock**

- (a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, “**incur**” and collectively, an “**incurrence**”) with respect to any Indebtedness (including Acquired Indebtedness) and the Parent shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or any Restricted Subsidiary that is not a Borrower or a Guarantor to issue Preferred Stock; *provided that* the Parent may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness) and issue shares of Disqualified Stock and any Restricted Subsidiary that is not a Borrower or a Guarantor may issue shares of Preferred Stock, if:
- (i) the Fixed Charge Coverage Ratio on a consolidated basis of Parent and its Restricted Subsidiaries for, at the option of the Parent, (A) the most recently ended four Financial Quarters or (B) the most recently ended 12 months, in each case, for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued would have been at least 2.00 to 1.00; or
- (ii) the Consolidated Total Debt Ratio of Parent and its Restricted Subsidiaries for, at the option of the Parent, (A) the most recently ended four Financial Quarters or (B) the most recently ended 12 months, in each case, for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued would have been equal to or less than 6.75 to 1.00,
- in each case determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such consecutive 12 month period.
- (b) Paragraph (a) above shall not apply to:
- (i) Indebtedness incurred pursuant to any Credit Facilities by the Parent or any Restricted Subsidiary and the issuance and creation of letters of credit and bankers’ acceptances thereunder (with letters of credit and bankers’ acceptances being deemed to have a principal amount equal to the face amount thereof); *provided that* immediately after giving effect to any such incurrence or issuance

(including pro forma application of the net proceeds therefrom), the then outstanding aggregate principal amount of all Indebtedness incurred or issued under this paragraph (i) does not exceed:

(A) the sum of:

(1) €435 million and \$628 million; *plus*

(2) \$305.0 million; *plus*

(B) an amount equal to the greater of (x) \$430.0 million and (y) 100.0% of LTM EBITDA; *plus*

(C) an additional amount after all amounts have been incurred under paragraphs (A) and (B):

(1) if such additional Indebtedness is secured by the Collateral on a *pari passu* basis with the Liens securing the Facilities, if after giving *pro forma* effect to the incurrence of such additional amount (including a *pro forma* application of the net proceeds therefrom), the Consolidated First Lien Debt Ratio would have been equal to or less than 4.70 to 1.00 or, if such Indebtedness is incurred, acquired or assumed in connection with an acquisition, merger, amalgamation, consolidation or Investment, the Consolidated First Lien Debt Ratio is equal to or less than immediately prior to such acquisition, merger, amalgamation, consolidation or Investment; or

(2) if such additional Indebtedness is secured by the Collateral on a junior lien basis to the Liens securing the Facilities, the Consolidated Secured Debt Ratio would have been equal to or less than 6.75 to 1.00 or, if such Indebtedness is incurred, acquired or assumed in connection with an acquisition, merger, amalgamation, consolidation or Investment, the Consolidated Secured Debt Ratio is equal to or less than immediately prior to such acquisition, merger, amalgamation, consolidation or Investment; *provided that* for purposes of determining the amount that may be incurred under this paragraph (C)(2) only, all Indebtedness incurred under this paragraph (C)(2) shall be deemed to be included in paragraph (a) of the definition of “Consolidated Secured Debt Ratio”;

(ii) the incurrence by any Borrower and any Guarantor of Indebtedness represented by (A) the Original Senior Secured Notes and the guarantees thereof and (B) any Indebtedness (other than Indebtedness described in paragraph (i) above, sub-paragraph (ii) (A) above and paragraphs (vi) and (vii) below), Disqualified Stock and Preferred Stock of Parent and its Restricted Subsidiaries outstanding on the Closing Date and any guarantee thereof;

(iii) (a) Attributable Indebtedness relating to any transaction, (b) other Indebtedness (including, to the extent applicable in accordance with the terms of this Agreement



and GAAP, Financing Lease Obligations and Purchase Money Obligations), Disqualified Stock and Preferred Stock incurred or issued by the Parent or any of its Restricted Subsidiaries to finance the purchase, lease, expansion, construction, development, installation, replacement, relocation, renewal, maintenance, upgrade, repair or improvement of property (real or personal), equipment or any other asset, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets, in an aggregate principal amount (together with any Refinancing Indebtedness in respect thereof) not to exceed the greater of (x) \$130.0 million and (y) 30.0% of LTM EBITDA (in each case, determined at the date of incurrence or issuance) and (c) Indebtedness arising out of dispositions with respect to real property, including sale-leaseback transactions, not to exceed the greater of (x) \$90.0 million and (y) 20.0% of LTM EBITDA (in each case, determined at the date of incurrence); it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this paragraph (b)(iii) shall cease to be deemed incurred or outstanding for purposes of this paragraph (b)(iii) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Parent or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this paragraph (b)(iii);

(iv) Indebtedness incurred by the Parent or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or created, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with past practice, including letters of credit in favor of suppliers, customers or trade creditors or in respect of workers' compensation claims, performance or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, performance or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance;

(v) Indebtedness, Disqualified Stock and Preferred Stock arising from:

(A) Permitted Intercompany Activities; and

(B) agreements of the Parent or its Restricted Subsidiaries providing for indemnification, adjustment of purchase price, earn-outs (including contingent earn-outs) or similar obligations, payment obligations in respect of any non-compete, consulting or similar arrangement or progress payments for property or services or other similar adjustments,

in each case, incurred or assumed in connection with the acquisition or disposition of any business (including the Transactions), assets, a Subsidiary or Investment and Indebtedness arising from guarantees, letters of credit, bank guarantees, surety bonds, performance bonds or similar instruments securing performance of the Parent or any Subsidiary pursuant to such agreements;

- (vi) Indebtedness, Disqualified Stock and Preferred Stock of the Parent to a Restricted Subsidiary; *provided that* any such Indebtedness, Disqualified Stock or Preferred Stock owing to a Restricted Subsidiary that is not a Borrower or a Guarantor, excluding any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued in the ordinary course of business or consistent with past practice, is subordinated in right of payment (to the extent permitted by applicable law) to the Guarantee of the Facilities by the Parent (for the avoidance of doubt, any such Indebtedness, Disqualified Stock or Preferred Stock owing to a Restricted Subsidiary that is not a Borrower or a Guarantor shall be deemed to be expressly subordinated in right of payment to the Guarantee of the Facilities by the Parent unless the terms of such Indebtedness, Disqualified Stock or Preferred Stock expressly provide otherwise); *provided further*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness, Disqualified Stock or Preferred Stock (except to the Parent or a Restricted Subsidiary or any pledge of such Indebtedness, Disqualified Stock or Preferred Stock constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness, Disqualified Stock or Preferred Stock (to the extent such Indebtedness, Disqualified Stock or Preferred Stock is then outstanding) not permitted by this paragraph (vi);
- (vii) Indebtedness, Disqualified Stock and Preferred Stock of a Restricted Subsidiary to the Parent or another Restricted Subsidiary; *provided that* if a Borrower or a Guarantor incurs such Indebtedness, Disqualified Stock or Preferred Stock to a Restricted Subsidiary that is not a Borrower or a Guarantor, excluding any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued in the ordinary course of business or consistent with past practice, such Indebtedness, Disqualified Stock or Preferred Stock is subordinated in right of payment (to the extent permitted by applicable law) to the Facilities or the Guarantee of the Facilities by such Guarantor, as applicable (for the avoidance of doubt, any such Indebtedness, Disqualified Stock or Preferred Stock owing to a Restricted Subsidiary that is not a Borrower or a Guarantor shall be deemed to be expressly subordinated in right of payment to the Facilities or the Guarantee of such Guarantor, as applicable, unless the terms of such Indebtedness, Disqualified Stock or Preferred Stock expressly provide otherwise); *provided further*, that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Indebtedness, Disqualified Stock or Preferred Stock (except to the Parent or another Restricted Subsidiary or any pledge of such Indebtedness, Disqualified Stock or Preferred Stock constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness, Disqualified Stock or Preferred Stock (to the extent such Indebtedness, Disqualified Stock or Preferred Stock is then outstanding) not permitted by this paragraph (vii);
- (viii) Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes);
- (ix) obligations in respect of self-insurance and obligations in respect of stays, customs, performance, bid, indemnity, appeal, judgment, surety and other similar bonds or instruments and performance, bankers' acceptance and completion guarantees and

similar obligations provided by the Parent or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with past practice;

(x)

(A) Indebtedness or Disqualified Stock of the Parent and Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference up to 200% of the Net Cash Proceeds received by the Parent or any Restricted Subsidiary since immediately after the Closing Date from the issue or sale of Equity Interests or Subordinated Shareholder Funding of the Parent or cash contributed to the capital of the Parent (in each case, other than Excluded Contributions, proceeds of Disqualified Stock or sales of Equity Interests or Subordinated Shareholder Funding to the Parent or any of its Subsidiaries) as determined in accordance with paragraphs (a)(B)(2) and (a)(B)(3) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*) to the extent such Net Cash Proceeds or cash have not been applied pursuant to such paragraph to make Restricted Payments pursuant to paragraph (a) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*) or to make Permitted Investments specified in paragraphs (h), (k), (m), (bb) or (cc) of the definition thereof; and

(B) Indebtedness or Disqualified Stock of the Parent and Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference, which, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this paragraph (B), does not at any time outstanding exceed the greater of (x) \$175.0 million and (y) 40.0% of LTM EBITDA (in each case, determined on the date of such incurrence); it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this paragraph (x) (B) shall cease to be deemed incurred or outstanding for purposes of this paragraph (x)(B) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Parent or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this paragraph (x)(B);

(xi) the incurrence or issuance by the Parent or any Restricted Subsidiary of Indebtedness, Disqualified Stock or Preferred Stock which serves to extend, replace, refund, refinance, renew or defease any Indebtedness (or unutilized commitment in respect of Indebtedness), Disqualified Stock or Preferred Stock incurred or issued as permitted under paragraph (a) of this Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) and paragraphs (b)(ii) and (x)(A), this paragraph (xi) and paragraphs (b)(xii) and (xxv) or any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued to so extend, replace, refund, refinance, renew or defease such Indebtedness

(or unutilized commitment in respect of Indebtedness), Disqualified Stock or Preferred Stock, including, in each case, additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay premiums (including tender premiums), defeasance costs, accrued interest or dividends, underwriting or initial purchaser discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection therewith and Indebtedness incurred pursuant to a commitment that refinances any Indebtedness or unutilized commitment (the “**Refinancing Indebtedness**”) prior to its respective maturity; *provided that* such Refinancing Indebtedness:

(A) other than in the case of Refinancing Indebtedness of Indebtedness (or unutilized commitments in respect of Indebtedness), Disqualified Stock or Preferred Stock incurred or issued as permitted under paragraphs (iii) and (x)(A) above, and paragraph (xii) below and Customary Bridge Loans, has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being extended, replaced, refunded, refinanced, renewed or defeased (or requires no or nominal payments in cash (other than interest payments) prior to the date that is 91 days after the latest Termination Date of the Facilities);

(B) to the extent such Refinancing Indebtedness extends, replaces, refunds, refinances, renews or defeases (i) Indebtedness subordinated in right of payment to the Term Facilities or any Guarantee thereof, such Refinancing Indebtedness is subordinated in right of payment to the Term Facilities or any Guarantee thereof at least to the same extent as the Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased or (ii) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively; and

(C) shall not include:

(1) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Parent that is not a Borrower or a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Original Senior Secured Notes Issuer;

(2) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Parent that is not a Borrower or a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(3) Indebtedness or Disqualified Stock of the Parent or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

(xii) (A) Indebtedness, Disqualified Stock or Preferred Stock of the Parent or a Restricted Subsidiary incurred or issued to finance an acquisition (or other purchase of assets) or Investment; or (B) Indebtedness, Disqualified Stock or

Preferred Stock of Persons that are acquired by the Parent or any Restricted Subsidiary or merged into or consolidated or amalgamated with the Parent or a Restricted Subsidiary in accordance with the terms of this Agreement; *provided that* in the case of paragraphs (A) and (B), after giving effect to such transaction, acquisition, merger, amalgamation or consolidation or Investment:

- (1) the aggregate amount of such Indebtedness, Disqualified Stock or Preferred Stock incurred under this sub-paragraph (1), together with any Refinancing Indebtedness in respect thereof, does not exceed the greater of (x) \$90.0 million and (y) 20.0% of LTM EBITDA at any time outstanding (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this sub-paragraph (1) shall cease to be deemed incurred or outstanding for purposes of this sub-paragraph (1) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Parent or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the paragraph (a) of this Section 1);
- (2) either (w) the Parent would be permitted to incur at least \$1.00 of additional Indebtedness, Disqualified Stock or Preferred Stock pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of this covenant, (x) the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries is equal to or greater than immediately prior to such acquisition, merger, amalgamation, consolidation or Investment, (y) the Parent would be permitted to incur at least \$1.00 of additional Indebtedness, Disqualified Stock or Preferred Stock pursuant to the test Consolidated Total Debt Ratio set forth in the first paragraph of this covenant or (z) the Consolidated Total Debt Ratio of the Parent and its Restricted Subsidiaries is equal to or less than immediately prior to such acquisition, merger, amalgamation, consolidation or Investment); or
- (3) either (w) in the case of Indebtedness which is (or once incurred will be) included in the calculation of Consolidated First Lien Debt Ratio, the Consolidated First Lien Debt Ratio is no greater than either (I) 4.70 to 1.00 or (II) the Consolidated First Lien Debt Ratio immediately prior to such transaction, acquisition, merger, amalgamation, consolidation or Investment determined on a *pro forma* basis as of, at the option of the Parent, (A) the last day of the most recently ended period of four consecutive Financial Quarters or (B) the last day of the most recently ended period of the last 12 months, in each case, for which financial statements are internally available; or (x) in the case of Indebtedness which is (or once incurred will be) included in the calculation of the Consolidated Secured Debt Ratio and is secured by the Collateral on a junior lien basis to the Liens securing the Facilities, the Consolidated Secured Debt Ratio is no greater than either (I) 6.75 to 1.00 or (II) the Consolidated Secured Debt Ratio immediately

prior to such acquisition, merger, amalgamation, consolidation or Investment determined on a pro forma basis as of, at the option of Parent, (A) the last day of the most recently ended period of four consecutive fiscal quarters or (B) the last day of the most recently ended period of the last twelve months, in each case, for which financial statements are internally available, (y) in the case of Indebtedness which is (or once incurred will be) included in the calculation of Consolidated Total Indebtedness but is not Consolidated Secured Indebtedness, either (I) the Consolidated Total Debt Ratio is no greater than either (aa) 6.75 to 1.00 or (bb) the Consolidated Total Debt Ratio immediately prior to such acquisition, merger, amalgamation or consolidation determined on a pro forma basis as of, at the option of the Parent, (A) the last day of the most recently ended period of four consecutive Financial Quarters or (B) the last day of the most recently ended period of the last 12 months, in each case, for which financial statements are internally available or (II) the Fixed Charge Coverage Ratio is no less than either (aa) 2.00 to 1.00 or (bb) the Fixed Charge Coverage Ratio immediately prior to such acquisition, merger, amalgamation or consolidation determined on a *pro forma* basis as of the last day of, at the option of the Parent, (A) the last day of the most recently ended period of four consecutive Financial Quarters or (B) the last day of the most recently ended period of the last 12 months, in each case, for which financial statements are internally available;

- (xiii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or consistent with past practice;
- (xiv) Indebtedness of the Parent or any of its Restricted Subsidiaries supported by a letter of credit issued pursuant to any Credit Facilities, in a principal amount not in excess of the stated amount of such letter of credit;
- (xv) Indebtedness incurred pursuant to:
  - (A) any guarantee or co-issuance by the Parent or a Restricted Subsidiary of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by such Restricted Subsidiary is permitted under the terms of this Agreement; or
  - (B) any guarantee or co-issuance by a Restricted Subsidiary of Indebtedness or other obligations of the Parent so long as the incurrence of such Indebtedness or other obligations by the Parent is permitted under or is not prohibited by the terms of this Agreement;
- (xvi)
  - (A) Indebtedness, Disqualified Stock or Preferred Stock consisting of Indebtedness, Disqualified Stock or Preferred Stock issued by the Parent or any of its Restricted Subsidiaries to future, present or former employees,

directors, officers, managers, members, partners, independent contractors or consultants thereof, their respective Controlled Investment Affiliates or Immediate Family Members, in each case to finance the purchase or redemption of Equity Interests of the Parent or any direct or indirect parent company of the Parent to the extent described in paragraph (b)(iv) of Section 2 (*Limitation on Restricted Payments*); and

- (B) Indebtedness representing deferred compensation or similar arrangements (1) to any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of the Parent (or any direct or indirect parent thereof) or any of its Restricted Subsidiaries incurred in the ordinary course of business or consistent with past practice or (2) incurred in connection with any Investment or acquisition (by merger, consolidation, amalgamation or otherwise) or other transaction;

(xvii) to the extent constituting Indebtedness, customer deposits and advance payments (including progress premiums) received in the ordinary course of business or consistent with past practice from customers for goods and services purchased in the ordinary course of business or consistent with past practice;

(xviii)

- (A) Indebtedness owed on a short-term basis to banks and other financial institutions incurred in the ordinary course of business or consistent with past practice of the Parent and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances of the Parent and its Restricted Subsidiaries; and

- (B) Indebtedness in respect of Bank Products;

(xix) Indebtedness incurred by the Parent or a Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables or payables for credit management purposes, in each case incurred or undertaken consistent with past practice or in the ordinary course of business;

(xx) Indebtedness of the Parent or any of its Restricted Subsidiaries consisting of:

- (A) the financing of insurance premiums;

- (B) take-or-pay obligations contained in supply arrangements; or

- (C) obligations to reacquire assets or inventory in connection with customer financing arrangements, in each case incurred in the ordinary course of business or consistent with past practice;

(xxi) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries of the Parent that are not Borrowers or Guarantors in an aggregate

principal amount or liquidation preference, which, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this paragraph (xxi), does not at any time outstanding exceed the greater of (x) \$175.0 million and (y) 40.0% of LTM EBITDA; it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this paragraph (xxi) shall cease to be deemed incurred or outstanding for purposes of this paragraph (xxi) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Parent or its Restricted Subsidiaries could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this paragraph (xxi);

- (xxii) Indebtedness of the Parent or any of its Restricted Subsidiaries undertaken in connection with cash management and related activities with respect to any Subsidiary or joint venture in the ordinary course of business or consistent with past practice;
- (xxiii) Indebtedness consisting of obligations of the Parent or any of its Restricted Subsidiaries under deferred purchase price, earn-outs or other arrangements incurred by such Person in connection with any acquisition permitted under this Agreement or any other Investment permitted under this Agreement;
- (xxiv) Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto, in each case, with respect to any transaction permitted under this Agreement;
- (xxv) Indebtedness or Disqualified Stock of the Parent and Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference, which, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred pursuant to this paragraph (xxv), does not at any time outstanding exceed an amount equal to 200% of the Available RP Capacity Amount (determined on the date of such incurrence); it being understood that any Indebtedness, Disqualified Stock or Preferred Stock incurred pursuant to this paragraph (xxv) shall cease to be deemed incurred or outstanding for purposes of this paragraph (xxv) but shall be deemed incurred for the purposes of the first paragraph of this covenant from and after the first date on which the Parent or such Restricted Subsidiary could have incurred such Indebtedness, Disqualified Stock or Preferred Stock under the first paragraph of this covenant without reliance on this paragraph (xxv);
- (xxvi) Indebtedness incurred by Parent or any of its Restricted Subsidiaries to the extent that the net proceeds thereof are deposited with the trustee in respect of the Original Senior Secured Notes at or promptly after the funding of such Indebtedness to satisfy and discharge the Original Senior Secured Notes or exercise the Original Senior Secured Notes Issuers' legal defeasance or covenant option under and in accordance with the Original Senior Secured Notes Indenture; and



(xxvii) Indebtedness under local credit facilities in an aggregate principal amount not to exceed, at any time outstanding, the greater of (x) \$75.0 million and (y) 15.0% of LTM EBITDA.

(c) For purposes of determining compliance with this Section 1:

- (i) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in paragraphs (b)(i) through (xxvii) of this Section 1 or is entitled to be incurred pursuant to paragraph (a) of this Section 1, the Parent, in its sole discretion, may divide or classify, and may from time to time re-divide and re-classify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and shall only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock in one or more of the paragraphs under paragraphs (a) and/or (b) of this Section 1; *provided that* all Facility B Loans in respect of Facility B Commitments outstanding on the Closing Date (excluding for the avoidance of doubt any Indebtedness under any Incremental Facility) shall be treated as incurred on the Closing Date under paragraph (b)(i)(A) of this Section 1 (and Parent shall not be permitted to reclassify all or a portion of such Indebtedness incurred on the Closing Date under the Facilities);
- (ii) the Parent shall be entitled to divide and classify an item of Indebtedness, Disqualified Stock or Preferred Stock in more than one of the types of Indebtedness, Disqualified Stock or Preferred Stock described in paragraph (a) or (b) of this Section 1;
- (iii) guarantees of, or obligations in respect of letters of credit, bankers' acceptances or other similar instruments relating to, or Liens securing, Indebtedness, Disqualified Stock or Preferred Stock that is otherwise included in the determination of a particular amount of Indebtedness, Disqualified Stock or Preferred Stock shall not be included;
- (iv) if obligations in respect of letters of credit, bankers' acceptances or other similar instruments are incurred pursuant to any Credit Facility and are being treated as incurred pursuant to paragraph (a) or any sub-paragraph of paragraph (b) of this Section 1 and the letters of credit, bankers' acceptances or other similar instruments relate to other Indebtedness, Disqualified Stock or Preferred Stock, then such other Indebtedness, Disqualified Stock or Preferred Stock shall not be included;
- (v) the principal amount of any Disqualified Stock of the Parent or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, shall 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; and
- (vi) for purposes of calculating the Fixed Charge Coverage Ratio, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio or the Consolidated Total Debt Ratio, as applicable, in connection with the incurrence of any Indebtedness pursuant to the first or second paragraph above or the creation or

incurrence of any Lien pursuant to the definition of “Permitted Liens”, the Parent may elect, at its option, to treat all or any portion of the committed amount of any Indebtedness (and the issuance and creation of letters of credit and bankers’ acceptances thereunder), including any portion of any committed amount of any Indebtedness of Persons that are acquired by the Person or any Restricted Subsidiary or merged into or consolidated or amalgamated with the Parent or a Restricted Subsidiary, which is to be incurred (or any commitment in respect thereof) or secured by such Lien, as the case may be (any such committed amount elected until revoked as described below, the “**Reserved Indebtedness Amount**”), as being incurred as of such election date, and, if such Fixed Charge Coverage Ratio, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio or Consolidated Total Debt Ratio, as applicable, is satisfied or, in the case of paragraph (b)(xii)(B) of this Section 1, is no worse in accordance with the terms thereof, with respect thereto on such election date, any subsequent borrowing or reborrowing thereunder (and the issuance and creation of letters of credit and bankers’ acceptances thereunder), shall be deemed to be permitted under this Section 1 or the definition of “Permitted Liens,” as applicable, whether or not the Fixed Charge Coverage Ratio, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio or the Consolidated Total Debt Ratio, as applicable, at the actual time of any subsequent borrowing or re-borrowing (or issuance or creation of letters of credit or bankers’ acceptances thereunder) is met; *provided that* for purposes of subsequent calculations of the Fixed Charge Coverage Ratio, the Consolidated First Lien Debt Ratio, the Consolidated Secured Debt Ratio or the Consolidated Total Debt Ratio, as applicable, the Reserved Indebtedness Amount shall be deemed to be outstanding, whether or not such amount is actually outstanding, for so long as such commitments are outstanding or until the Parent revokes an election of a Reserved Indebtedness Amount.

- (d) Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, of the same class shall not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 1. If Indebtedness, Disqualified Stock or Preferred Stock originally incurred in reliance upon a percentage of LTM EBITDA under this Section 1 is being refinanced and such refinancing would cause the maximum amount of Indebtedness, Disqualified Stock or Preferred Stock thereunder to be exceeded at such time, then such refinancing shall nevertheless be permitted thereunder and such additional Indebtedness, Disqualified Stock or Preferred Stock shall be deemed to have been incurred under the applicable provision so long as the principal amount or liquidation preference of such Refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed the principal amount or liquidation preference of Indebtedness, Disqualified Stock or Preferred Stock being refinanced plus amounts permitted by the next sentence. Any Refinancing Indebtedness and any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred under this Agreement to refinance Indebtedness incurred pursuant to paragraphs (b)(i), (iii), (viii), (x)(B) and (xxi) of this Section 1 shall be deemed to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay accrued but unpaid interest or dividends, premiums (including tender premiums), defeasance costs, underwriting or initial purchaser discounts, fees, costs and expenses (including original issue discount, upfront fees or similar fees) in connection with such refinancing.

- (e) For purposes of determining compliance with any restriction, as applicable, on the incurrence of Indebtedness, Disqualified Stock or Preferred Stock denominated in a given currency, the Currency Equivalent of the aggregate principal amount of Indebtedness or liquidation preference of Disqualified Stock or Preferred Stock denominated in another currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred, or, at the option of the Parent, first committed or first incurred or upon execution of the definitive documentation in respect thereof (whichever yields the lower Currency Equivalent); *provided that*:
- (i) if such Indebtedness, Disqualified Stock or Preferred Stock is incurred to refinance other Indebtedness denominated in another currency, and such refinancing would cause the applicable currency denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such currency denominated restriction, as applicable, shall be deemed not to have been exceeded so long as the principal amount or liquidation preference of such Refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed the principal amount or liquidation preference set forth in sub-paragraph (A) of the definition of “Refinancing Indebtedness”;
  - (ii) the Currency Equivalent of the aggregate principal amount of any such Indebtedness and the aggregate liquidation preference of any such Disqualified Stock or Preferred Stock outstanding on the Closing Date shall be calculated based on the relevant currency exchange rate in effect on the Closing Date; and
  - (iii) if and for so long as any such Indebtedness, Disqualified Stock or Preferred Stock is subject to any Currency Agreement with respect to the currency in which such Indebtedness, Disqualified Stock or Preferred Stock is denominated covering principal amounts and interest payable on such Indebtedness or the liquidation preference and preferred equity returns on such Disqualified Stock or Preferred Stock, the amount of such Indebtedness, Disqualified Stock or Preferred Stock if denominated in a given currency will be the amount of the principal payment or the liquidation preference required to be made under such Currency Agreement and, otherwise, the Currency Equivalent of such amount plus the Currency Equivalent of any premium which is at such time due and payable but is not covered by such Currency Agreement.
- (f) This Agreement shall not treat (1) unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because it is unsecured or (2) Indebtedness as subordinated or junior to any other Indebtedness merely because it has a junior priority with respect to the same collateral or because it is secured by different collateral or issued or guaranteed by other obligors. Indebtedness incurred pursuant to this Section 1 (or pursuant to any other permission to incur Indebtedness under this Agreement), may be incurred by way of any Incremental Facility.

## **2. Limitation on Restricted Payments**

- (a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries, to directly or indirectly:

- (i) declare or pay any dividend or make any payment or distribution on account of the Parent's, or any of its Restricted Subsidiaries', Equity Interests (in each case, solely to a holder of Equity Interests in such Person's capacity as a holder of such Equity Interests), including any dividend, payment or distribution payable in connection with any merger, amalgamation or consolidation other than (x) dividends, payments and distributions by the Parent payable solely in Equity Interests (other than Disqualified Stock) of the Parent or in options, warrants or other rights to purchase such Equity Interests (other than Disqualified Stock) or in Subordinated Shareholder Funding; or (y) dividends, payments and distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Subsidiary, the Parent or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities;
- (ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Parent or any direct or indirect parent company of the Parent, including any purchase, redemption, defeasance, acquisition or retirement in connection with any merger, amalgamation or consolidation, in each case held by a Person other than the Parent or a Restricted Subsidiary;
- (iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, other than (x) Indebtedness permitted under paragraphs (b)(vi) and (vii) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) above; or (y) the payment, redemption, purchase, repurchase, defeasance or other acquisition or retirement for value of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of payment, redemption, purchase, repurchase, defeasance or acquisition or retirement;
- (iv) make any payment (whether of principal, interest or other amounts) on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Subordinated Shareholder Funding (other than any payment of interest thereon in the form of additional Subordinated Shareholder Funding); or
- (v) make any Restricted Investment;

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

- (A) in the case of a Restricted Payment under paragraphs (i), (ii) and (iv) above, no Event of Default shall have occurred and be continuing or would occur as a consequence thereof and, in the case of a Restricted Payment under paragraphs (iii) and (v) above, no Event of Default described under paragraph (a), (b), (f) or (g) of Section 1 of Schedule 18 (*Events of Default*) shall have occurred and be continuing or would occur as a consequence thereof; and

(B) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Parent and its Restricted Subsidiaries after the Closing Date (including Restricted Payments permitted by paragraphs (i) (without duplication) and (vi)(C) of paragraph (b) of this Section 2, but excluding all other Restricted Payments permitted by paragraph (b) of this Section 2), is less than the sum of (without duplication):

- (1) the greater of (i) 50% of the Consolidated Net Income of the Parent for the period (taken as one accounting period and including any predecessor of the Parent) from the beginning of the Financial Quarter in which the Closing Date occurs to the end of either, at the option of the Parent, (x) the Parent's most recently ended Financial Quarter of (y) the Parent's most recently ended month, in each case, for which internal financial statements are available at the time of such Restricted Payment; and (ii) the Cumulative Retained Excess Cash Flow Amount at the time of such Restricted Payment, *provided that* such amount shall not be less than zero; *plus*
- (2) 100% of the aggregate Net Cash Proceeds and the fair market value of marketable securities or other property received by the Parent or its Restricted Subsidiaries after the Closing Date (other than Net Cash Proceeds to the extent such Net Cash Proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to paragraph (b)(x)(A) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*)) from the issue or sale of:
  - (i) Equity Interests or Subordinated Shareholder Funding of the Parent, including Treasury Capital Stock (as defined below), but excluding Net Cash Proceeds and the fair market value of marketable securities or other property received from the sale of:
    - (x) Equity Interests or Subordinated Shareholder Funding of the Parent to any future, present or former employees, directors, officers, managers, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Parent, any direct or indirect parent company of the Parent or any of the Parent's Subsidiaries after the Closing Date to the extent such amounts have been applied to Restricted Payments made in accordance with paragraph (b)(iv) of this Section 2; and
    - (y) Designated Preferred Stock; and

(ii) to the extent such Net Cash Proceeds, marketable securities or other property are actually contributed to the Parent or any of its Restricted Subsidiaries, Equity Interests of the Parent or any of the Parent's direct or indirect parent companies (excluding contributions of the proceeds from the sale of Designated Preferred Stock of any such companies or contributions to the extent such amounts have been applied to Restricted Payments made in accordance with paragraph (b)(iv) of this Section 2); or

(iii) Indebtedness of the Parent or a Restricted Subsidiary that has been converted into or exchanged for such Equity Interests or Subordinated Shareholder Funding of the Parent or a parent company of the Parent,

*provided that* this paragraph (2) shall not include the proceeds from:

(w) Refunding Capital Stock applied in accordance with paragraph (b)(ii) of this Section 2;

(x) Equity Interests or convertible debt securities of the Parent or a Restricted Subsidiary sold to a Restricted Subsidiary or to the Parent;

(y) Disqualified Stock or debt securities that have been converted into Disqualified Stock; or

(z) Excluded Contributions; *plus*

(3) 100% of the aggregate amount of Cash Equivalents and the fair market value of marketable securities or other property contributed to the capital of the Parent or a Restricted Subsidiary (including the aggregate principal amount of any Indebtedness of the Parent or a Restricted Subsidiary contributed to the Parent or a Restricted Subsidiary for cancellation) or that becomes part of the capital of the Parent or a Restricted Subsidiary through consolidation, amalgamation or merger following the Closing Date, (other than (i) Net Cash Proceeds to the extent such Net Cash Proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to paragraph (b)(x)(A) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*), (ii) contributions by a Restricted Subsidiary or the Parent and (iii) any Excluded Contributions); *plus*

(4) 100% of the aggregate amount received in Cash Equivalents and the fair market value of marketable securities or other property received by the Parent or any Restricted Subsidiary by means of:

- (i) the sale or other disposition (other than to the Parent or a Restricted Subsidiary) of, or other returns on Investments from, Restricted Investments made by the Parent or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Parent or its Restricted Subsidiaries and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments made by the Parent or its Restricted Subsidiaries, in each case after the Closing Date; or
  - (ii) the issuance, sale or other disposition (other than to the Parent or a Restricted Subsidiary) of the Equity Interests of, or a dividend or distribution (other than an Excluded Contribution) from, an Unrestricted Subsidiary (other than, in each case, to the extent the Investment in such Unrestricted Subsidiary was made by the Parent or a Restricted Subsidiary pursuant to paragraph (b)(vii) of this Section 2 or to the extent such Investment constituted a Permitted Investment, but including such Cash Equivalents and fair market value to the extent exceeding the amount of such Investment), in each case, after the Closing Date; or
  - (iii) any returns, profits, distributions and similar amounts received on account of any Permitted Investment or an Investment classified as a Restricted Payment subject to a dollar-denominated or Ratio-based Basket (to the extent in excess of the original amount of such Investment) and without duplication of any returns, profits, distributions or similar amounts included in the calculation of such basket; *plus*
- (5) in the case of the re-designation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Parent or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Parent or a Restricted Subsidiary after the Closing Date, the fair market value (as determined by the Parent in good faith) of the Investment in such Unrestricted Subsidiary (or the assets transferred) at the time of the re-designation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation, consolidation or transfer of assets, other than to the extent the Investment in such Unrestricted Subsidiary was made by the Parent or a Restricted Subsidiary pursuant to paragraph (b) (vii) of this Section 2 hereof or to the extent such Investment constituted a Permitted Investment made after the Closing Date, but, to the extent exceeding the amount of such Permitted Investment, including such excess amounts of fair market value; *plus*

(6) the aggregate amount of Declined Proceeds since the Closing Date; *plus*

(7) the greater of (x) \$175.0 million and (y) 40.0% of LTM EBITDA.

(b) Paragraph (a) above shall not prohibit any of the following (collectively, “**Permitted Payments**”):

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

(ii)

(A) the redemption, repurchase, defeasance, retirement or other acquisition of any Equity Interests (“**Treasury Capital Stock**”), including any accrued and unpaid dividends thereon, Subordinated Shareholder Funding or Subordinated Indebtedness of the Parent or any Restricted Subsidiary or any Equity Interests of any direct or indirect parent company of the Parent, in exchange for, or in an amount not to exceed the proceeds of, the substantially concurrent sale or issuance (other than to a Restricted Subsidiary) of Equity Interests or Subordinated Shareholder Funding of the Parent or any direct or indirect parent company of the Parent to the extent contributed to the Parent (in each case, other than any Disqualified Stock) (“**Refunding Capital Stock**”);

(B) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of the substantially concurrent sale or issuance (other than to a Subsidiary of the Parent or to an employee stock ownership plan or any trust established by the Parent or any of its Subsidiaries) of Refunding Capital Stock; and

(C) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon was permitted under paragraphs (b)(vi)(A) or (vi)(B) of this Section 2, the declaration and payment of dividends on the Refunding Capital Stock (other than Refunding Capital Stock the proceeds of which were used to redeem, repurchase, retire or otherwise acquire any Equity Interests of any direct or indirect parent company of the Parent) in an aggregate amount per year no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(iii) the prepayment, defeasance, redemption, repurchase, exchange or other acquisition or retirement of (1) Subordinated Indebtedness of a Borrower or a Guarantor made by exchange for, or in an amount not to exceed the proceeds of the sale of, new Indebtedness of a Borrower or a Guarantor or Disqualified Stock of a Borrower or a Guarantor made within 120 days of such incurrence or issuance of new Indebtedness or Disqualified Stock or (2) Disqualified Stock of a Borrower



or a Guarantor made by exchange for, or in an amount not to exceed the proceeds of the sale of Disqualified Stock of a Borrower or a Guarantor made within 120 days of such issuance of Disqualified Stock, that, in each case, is incurred or issued, as applicable, in compliance with Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) so long as:

- (A) the principal amount (or accreted value, if applicable) of such new Indebtedness or the liquidation preference of such new Disqualified Stock does not exceed the principal amount of (or accreted value, if applicable), plus any accrued and unpaid interest on, the Subordinated Indebtedness or the liquidation preference of, plus any accrued and unpaid dividends on, the Disqualified Stock being so prepaid, defeased, redeemed, repurchased, exchanged, acquired or retired for value, plus the amount of any premium (including tender premium) paid on the Subordinated Indebtedness or Disqualified Stock being so defeased, redeemed, repurchased, exchanged, acquired or retired, defeasance costs and any fees and expenses incurred in connection with the issuance of such new Indebtedness or Disqualified Stock;
  - (B) such new Indebtedness is subordinated to the Facilities or the applicable Guarantee at least to the same extent as such Subordinated Indebtedness so defeased, redeemed, repurchased, exchanged, acquired or retired;
  - (C) such new Indebtedness or Disqualified Stock has a final scheduled maturity date equal to or later than the final scheduled maturity date of the Subordinated Indebtedness or Disqualified Stock being so defeased, redeemed, repurchased, exchanged, acquired or retired (or, if earlier, a date that is at least 91 days after the latest Termination Date of the Facilities); and
  - (D) such new Indebtedness or Disqualified Stock has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness or Disqualified Stock being so defeased, redeemed, repurchased, exchanged, acquired or retired (or requires no or nominal payments in cash prior to the date that is 91 days after the latest Termination Date of the Facilities);
- (iv) Restricted Payments to pay for the repurchase, redemption or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) of the Parent or any direct or indirect parent company of the Parent held by any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Parent, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any employee, director, officer, manager, member, partner, independent contractor or consultant equity plan or stock option plan or any other employee, director, officer, manager, member, partner, independent contractor or consultant benefit plan or agreement, or any equity subscription or equityholder agreement or any termination agreement (including, for the avoidance of doubt, any principal and interest payable on any Indebtedness issued by the Parent or any direct or indirect parent company of the Parent in connection with such repurchase, retirement or other acquisition),

including any Equity Interest received or rolled over by any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of the Parent, any of its Subsidiaries or any direct or indirect parent company of the Parent in connection with the Transactions or any other transaction; *provided that* the aggregate amount of Restricted Payments made under this paragraph (iv) does not exceed in any calendar year an amount equal to the greater of (x) \$65.0 million and (y) 15.0% of LTM EBITDA (with unused amounts in any calendar year being carried over to succeeding calendar years subject to a maximum (without giving effect to the following proviso) of the greater of (x) \$130.0 million and (y) 30.0% of LTM EBITDA in any calendar year); *provided further*, that such amount in any calendar year under this paragraph may be increased by an amount not to exceed:

- (A) the cash proceeds from the sale or issuance of Equity Interests (other than Disqualified Stock and other than to a Restricted Subsidiary) or Subordinated Shareholder Funding of the Parent and, to the extent contributed to the Parent or its Subsidiaries, the cash proceeds from the sale or issuance of Equity Interests or Subordinated Shareholder Funding of any of the Parent's direct or indirect parent companies, in each case to any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Parent, any of its Subsidiaries or any of its direct or indirect parent companies that occurs after the Closing Date, to the extent the cash proceeds from the sale or issuance of such Equity Interests or Subordinated Shareholder Funding have not otherwise been applied to the payment of Restricted Payments by virtue of paragraph (a)(B) of this Section 2; *plus*
- (B) the amount of any cash bonuses otherwise payable to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Parent, any of its Subsidiaries or any of its direct or indirect parent companies that are foregone in exchange for the receipt of Equity Interests of the Parent or any of its direct or indirect parent companies pursuant to any compensation arrangement, including any deferred compensation plan; *plus*
- (C) the cash proceeds of key man life insurance policies received by the Parent or its Restricted Subsidiaries (or any direct or indirect parent company of the Parent to the extent contributed to the Parent or one of its Subsidiaries) after the Closing Date; *less*
- (D) the amount of any Restricted Payments previously made with the cash proceeds described in sub-paragraphs (iv)(A), (B) and (C);

*provided that* the Parent may elect to apply all or any portion of the aggregate increase contemplated by sub-paragraphs (iv) (A), (B) and (C) in any calendar year; and *provided further* that (i) cancellation of Indebtedness owing to the Parent or any Restricted Subsidiary from any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or

their respective Controlled Investment Affiliates or Immediate Family Members) of the Parent, any of the Parent's direct or indirect parent companies or any of the Parent's Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Parent or any of its direct or indirect parent companies and (ii) the repurchase, redemption or other acquisition or retirement for value of Equity Interests deemed to occur upon or in connection with the exercise of options, warrants or similar instruments if such Equity Interests represent all or a portion of the exercise price thereof or payments, in lieu of the issuance of fractional Equity Interests or withholding to pay other taxes payable in connection therewith, in the case of each of sub-paragraphs (i) and (ii), shall not be deemed to constitute a Restricted Payment for purposes of this Section 2 or any other provision of this Agreement;

(v) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Parent or any of its Restricted Subsidiaries or any class or series of Preferred Stock of any Restricted Subsidiary issued in accordance with Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) to the extent such dividends or distributions are included in the definition of "Fixed Charges";

(vi)

(A) the declaration and payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by the Parent after the Closing Date;

(B) the declaration and payment of dividends to any direct or indirect parent company of the Parent, the proceeds of which shall be used to fund the payment of dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued by such parent company after the Closing Date; *provided that* the amount of dividends paid pursuant to this sub-paragraph (B) shall not exceed the aggregate amount of cash actually contributed to the Parent from the sale of such Designated Preferred Stock; or

(C) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to paragraph (b)(ii) of this Section 2;

**provided**, in the case of each of paragraph (vi)(A) and (C), that for, at the option of the Parent, (i) the most recently ended four full Financial Quarters or (ii) the most recently ended 12 months, in each case, for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a pro forma basis, the Parent could incur \$1.00 of additional Indebtedness pursuant to paragraph (a) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) above;

(vii) Investments in Unrestricted Subsidiaries having an aggregate fair market value, taken together with all other Investments made pursuant to this paragraph (vii) that

are at the time outstanding, without giving effect to the sale of an Unrestricted Subsidiary to the extent the proceeds of such sale do not consist of Cash Equivalents or marketable securities (until such proceeds are converted to Cash Equivalents), not to exceed the greater of (x) \$90.0 million and (y) 20.0% of LTM EBITDA at the time of such Investment (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments; provided, however, that if any Investment pursuant to this paragraph (vii) is made in any Person that is not a Restricted Subsidiary of the Parent at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to paragraph (a) of the definition of “Permitted Investments” and shall cease to have been made pursuant to this paragraph (vii);

- (viii) payments made or expected to be made by the Parent or any Restricted Subsidiary in respect of withholding or similar taxes payable upon or in connection with the exercise or vesting of Equity Interests or any other equity award by any future, present or former employee, director, officer, member of management or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Parent or any Restricted Subsidiary or any direct or indirect parent company of the Parent and any repurchases or withholdings of Equity Interests in connection with the exercise or vesting of stock options, warrants or the issuance of restricted stock units or similar equity-based awards or payments in lieu of the issuance of fractional Equity Interests with respect to stock options, warrants, restricted stock units or similar equity-based awards;
- (ix) Restricted Payments in an amount not to exceed the sum of:
  - (A) up to 7% per annum of the amount of Net Cash Proceeds from any Equity Offering received by or contributed to the Parent or any of its Restricted Subsidiaries; and
  - (B) an aggregate amount per annum not to exceed 7% of the greater of Market Capitalization;
- (x) Restricted Payments that are made (a) in an amount that does not exceed the aggregate amount of Excluded Contributions received following the Closing Date or (b) without duplication with sub-paragraph (a) above, in an amount not to exceed the cash proceeds from a sale, conveyance, transfer or other disposition in respect of property or assets acquired after the Closing Date, if the acquisition of such property or assets was financed with Excluded Contributions;
- (xi)
  - (A) Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this paragraph (xi)(A) (in the case of Restricted Investments, at the time outstanding (without giving effect to the sale of an Investment to the extent the proceeds of such sale do not consist of, or have not been converted to, Cash Equivalents)) not to exceed

the greater of (x) \$150.0 million and (y) 35.0% of LTM EBITDA at such time (in the case of a Restricted Investment, determined on the date such Investment is made, with the fair market value of such Investment being measured at the time made and without giving effect to subsequent changes in value, plus the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such Investments); *provided*, however, that if any Restricted Payment pursuant to this paragraph (xi)(A) consists of an Investment made in any Person that is not a Restricted Subsidiary of the Parent at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to paragraph (a) of the definition of “Permitted Investments” and shall cease to have been made pursuant to this paragraph (xi)(A); and

(B) any Restricted Payments, so long as, after giving *pro forma* effect to the payment of any such Restricted Payment, the Consolidated Total Debt Ratio shall be no greater than 5.25 to 1.00;

(xii) distributions or payments of Securitization Fees;

(xiii) any Restricted Payment made in connection with the Transactions and the fees and expenses related thereto or used to fund amounts owed in connection with the Transactions (including dividends or distributions to any direct or indirect parent company of the Parent to permit payment by such parent company of such amounts), including the settlement of claims or actions in connection with the Transactions or to satisfy indemnity or other similar obligations or any other earnouts, purchase price adjustments, working capital adjustments or any other payments under the Merger Agreement;

(xiv) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness, Disqualified Stock or Preferred Stock pursuant to the provisions similar to those described under Clause 12.1 (*Change of Control*) and Section 5 (*Asset Sales*), but only if (and to the extent required) the Parent shall have first complied with the terms of Clause 12.1 (*Change of Control*) or Section 5 (*Asset Sales*) below; as applicable, and prepaid all relevant amounts pursuant to that Clause 12.1 (*Change of Control*) or Section 5 (*Asset Sales*) below, as applicable, prior to repurchasing, redeeming, acquiring or retiring for value such Subordinated Indebtedness, Disqualified Stock or Preferred Stock;

(xv) the declaration and payment of dividends or distributions by the Parent to, or the making of loans to, any direct or indirect parent entity of the Parent or any other Restricted Payment in amounts required for any direct or indirect parent entity of the Parent to pay, in each case without duplication:

(A) franchise, excise and similar taxes, and other fees and expenses, required to maintain its corporate or other legal existence;

(B) salary, bonus, severance, indemnity and other benefits payable to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of any direct or indirect

parent company of the Parent to the extent such salaries, bonuses, severance, indemnity and other benefits are attributable to the ownership or operation of the Parent and its Restricted Subsidiaries;

- (C) general organizational, operating, administrative, compliance, overhead, insurance and other costs and expenses (including, without limitation, expenses related to auditing or other accounting or tax reporting matters) and any costs, expenses and liabilities incurred in connection with any litigation or arbitration attributable to the ownership or operations of the Parent or its Restricted Subsidiaries and Public Company Costs;
- (D) fees and expenses related to any equity or debt offering, financing transaction, acquisition, divestiture, investment or other non-ordinary course transaction (whether or not successful) of such parent entity; *provided that* any such transaction was in the good faith judgment of the Parent intended to be for the benefit of the Parent and its Restricted Subsidiaries;
- (E) amounts payable pursuant to the Support and Services Agreement (including any amendment thereto or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Parent to the Lenders when taken as a whole, as compared to the Support and Services Agreement as in effect immediately prior to such amendment or replacement), solely to the extent such amounts are not paid directly by the Parent or its Subsidiaries;
- (F) (i) cash payments in lieu of issuing fractional shares or interests in connection with the exercise of warrants, options, other equity-based awards or other securities convertible into or exchangeable for Equity Interests of the Parent or any direct or indirect parent company of the Parent and any dividend, split or combination thereof or any transaction permitted under this Agreement and (ii) any conversion request by a holder of convertible Indebtedness and cash payments in lieu of fractional shares or interests in connection with any such conversion and payments on convertible Indebtedness in accordance with its terms;
- (G) to finance Investments that would otherwise be permitted to be made pursuant to this Section 2 if made by the Parent or its Restricted Subsidiaries; *provided that* (1) such Restricted Payment shall be made within 180 days of the closing of such Investment; (2) such direct or indirect parent company shall, promptly following the closing thereof, cause (x) all property acquired (whether assets or Equity Interests) to be contributed to the capital of the Parent or its Restricted Subsidiaries or (y) the merger, consolidation or amalgamation of the Person formed or acquired into the Parent or its Restricted Subsidiaries (to the extent not prohibited by Section 7 (*Merger, Consolidation or Sale of All or Substantially All Assets*) below) in order to consummate such Investment; (3) any property received by Parent shall not increase amounts available for Restricted Payments pursuant to paragraph (a)(B) of this Section 2; and (4) such Investment shall be deemed to be made by Parent or such Restricted Subsidiary pursuant to another provision of this Section 2 (other

than pursuant to paragraph (b)(x) of this Section 2) or pursuant to the definition of “Permitted Investments” (other than paragraph (a) thereof);

(H) amounts that would be permitted to be paid by the Parent or its Restricted Subsidiaries under paragraphs (b)(iii), (iv), (viii), (ix), (xiii) and (xiv) of Section 6 (*Transactions with Affiliates*) below; *provided that* the amount of any dividend or distribution under this paragraph (xv)(H) to permit such payment shall reduce, without duplication, Consolidated Net Income of the Parent to the extent, if any, that such payment would have reduced Consolidated Net Income of the Parent if such payment had been made directly by the Parent and increase (or, without duplication of any reduction of Consolidated Net Income, decrease) EBITDA to the extent, if any, that Consolidated Net Income is reduced under this paragraph (xv)(H) and such payment would have been added back to (or, to the extent excluded from Consolidated Net Income, would have been deducted from) EBITDA if such payment had been made directly by the Parent, in each case, in the period such payment is made;

(I) amounts in respect of Indebtedness of such direct or indirect parent company of the Parent which is guaranteed by the Parent or a Restricted Subsidiary; and

(J) to finance Investments in Skrill USA and its subsidiaries, including for purposes of funding Skrill USA’s operations and capital expenditures pending the consummation of the acquisition of Skrill USA pursuant to the Skrill USA Acquisition Agreement.

(xvi) the distribution, by dividend or otherwise, or other transfer of Capital Stock of an Unrestricted Subsidiary (or a Restricted Subsidiary that owns one or more Unrestricted Subsidiaries and no other material assets), or Indebtedness owed to the Parent or a Restricted Subsidiary by an Unrestricted Subsidiary (or a Restricted Subsidiary that owns one or more Unrestricted Subsidiaries and no other material assets), in each case, other than Unrestricted Subsidiaries the primary assets of which are Cash Equivalents received as an Investment from the Parent or a Restricted Subsidiary;

(xvii) mandatory redemptions of Disqualified Stock issued as a Restricted Payment or as consideration for a Permitted Investment so long as the amount of such redemptions are no greater than the amount that constituted such Restricted Payment or Permitted Investment;

(xviii) payments or distributions to dissenting stockholders pursuant to applicable law (including in connection with, or as a result of, exercise of appraisal rights and the settlement of any claims or action (whether actual, contingent or potential)), pursuant to or in connection with any Permitted Investment or a consolidation, merger or transfer of assets that complies with, or is not prohibited by, Section 7 (*Merger, Consolidation or Sale of All or Substantially All Assets*);

(xix) the repurchase, redemption or other acquisition of Equity Interests of the Parent or any Restricted Subsidiary deemed to occur in connection with paying cash in lieu of fractional shares of such Equity Interests in connection with a share dividend,

distribution, share split, reverse share split, merger, consolidation, amalgamation or other business combination of the Parent or any Restricted Subsidiary, in each case, permitted under this Agreement; and

- (xx) payments by the Parent to any direct or indirect parent of the Parent for any taxable period in which the Parent and/or any of its Subsidiaries is a member of a consolidated, combined or similar national, regional or local income or similar tax group that includes the Parent and/or its Subsidiaries and whose common parent is a direct or indirect parent of the Parent, to the extent such income or similar Taxes are attributable to the income of the Parent and/or its Restricted Subsidiaries and, to the extent of any cash amounts actually received from its Unrestricted Subsidiaries for such purpose, to the income of such Unrestricted Subsidiaries, to pay the portion of such national, regional and/or local income or similar Taxes (as applicable) that are attributable to the taxable income, revenue, receipts, gross receipts, gross profits, capital or margin of the Parent and/or its applicable Subsidiaries; *provided that* in each case the amount of such payments in respect of any taxable year does not exceed the amount that the Parent and/or its applicable Restricted Subsidiaries (and, to the extent permitted above, its applicable Unrestricted Subsidiaries), as applicable, would have been required to pay in respect of the relevant national, regional or local income or similar Taxes for such taxable year had the Parent and/or its applicable Subsidiaries (including its Unrestricted Subsidiaries to the extent described above), as applicable, paid such Taxes separately from any such parent company,

*provided that* at the time of and after giving effect to, (x) any Restricted Payment other than a Restricted Investment permitted under paragraph (b)(xi)(B) of this Section 2, no Event of Default shall have occurred and be continuing or would occur as a consequence thereof or (y) any Restricted Investment permitted under paragraph (b)(xi)(B) of this Section 2, no Event of Default under subparagraphs (a), (b) or (f) of Section of Schedule 18 (*Events of Default*) shall have occurred and be continuing or would occur as a consequence thereof.

- (c) For purposes of determining compliance with this Section 2, in the event that a proposed Restricted Payment (or a portion thereof) meets the criteria of paragraphs (b)(i) through (xx) of this Section 2 and/or one or more of the paragraphs contained in the definition of “Permitted Investments,” or is entitled to be made pursuant to paragraph (a) of this Section 2, the Parent shall be entitled to divide or classify or later divide or reclassify (based on circumstances existing on the date of such reclassification) such Restricted Payment (or a portion thereof) between such paragraphs (b)(i) through (xx) of this Section 2 and such paragraph (a) of this Section 2 and/or one or more of the paragraphs contained in the definition of “Permitted Investments,” in any manner that otherwise complies with this Section 2.
- (d) The Parent shall not permit any Unrestricted Subsidiary to become a Restricted Subsidiary except pursuant to the penultimate sentence of the definition of “Unrestricted Subsidiary.” For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Parent and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Restricted Payments in an amount determined as set forth in the penultimate sentence of the definition of “Investments.” Such designation shall be permitted only if a Restricted Payment in such amount would be permitted at such time, pursuant to this Section 2 or pursuant to the



definition of “Permitted Investments,” and if such Subsidiary otherwise meets the definition of an “Unrestricted Subsidiary”. Unrestricted Subsidiaries shall not be subject to any of the restrictive covenants set forth in this Agreement.

- (e) For the avoidance of doubt, this covenant shall not restrict the making of any “AHYDO catch-up payment” with respect to, and required by the terms of, any Indebtedness of Parent or any of its Restricted Subsidiaries permitted to be incurred under the terms of this Agreement.

### 3. Liens

- (a) The Parent shall not, and shall not permit any Obligor to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) (each, a “**Subject Lien**”) that secures Obligations under any Indebtedness or any related guarantee of Indebtedness, on any asset or property of any Borrower or any Guarantor or any income or profits therefrom, or assign or convey any right to receive income therefrom, unless:
- (i) in the case of Subject Liens on any Collateral, the Facilities and the Guarantees are secured by a Lien on such asset, property, income or profits that is senior in priority to such Subject Lien; and
  - (ii) in all other cases, the Facilities and the Guarantees are equally and ratably secured.
- (b) Any Lien created for the benefit of the Lenders pursuant to paragraph (a)(ii) of this Section 3 shall be deemed automatically and unconditionally released and discharged upon (i) the release and discharge of the Subject Lien that gave rise to the obligation to secure the Facilities and/or (ii) otherwise as set forth in any of the Secured Debt Documents.
- (c) In addition, the Parent may, at its option and without consent from any Secured Party, elect to release and discharge any Lien created for the benefit of the Lenders pursuant to paragraph (a)(i) or (a)(ii) of this Section 3 in respect of such Subject Lien.
- (d) With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The “**Increased Amount**” of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness.

### 4. Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries

- (a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries that is not a Borrower or a Guarantor to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary that is not a Borrower or a Guarantor to:
- (i) (A) pay dividends or make any other distributions to any Borrower or any Guarantor on its Capital Stock or with respect to any other interest or participation

in, or measured by, its profits; or (B) pay any Indebtedness owed to any Borrower or any Guarantor;

(ii) make loans or advances to any Borrower or any Guarantor; or

(iii) sell, lease or transfer any of its properties or assets to any Borrower or any Guarantor.

(b) Paragraph (a) above shall not apply to encumbrances or restrictions existing under or by reason of:

(i) (A) the Debt Documents; or (B) any other agreement or instrument, in each case, in effect at or entered into on the date of this Agreement or on the Closing Date;

(ii) Purchase Money Obligations and Financing Lease Obligations that impose restrictions of the nature described in paragraph (a)(iii) above on the property so purchased, leased, expanded, constructed, developed, installed, replaced, relocated, renewed, maintained, upgraded, repaired or improved;

(iii) applicable law or any applicable rule, regulation or order;

(iv) (A) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Parent or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Parent or a Restricted Subsidiary, any agreement or other instrument of such Unrestricted Subsidiary (but, in any such case, not created in contemplation thereof); and (B) any agreement or other instrument of a Person acquired by or merged or consolidated with or into the Parent or any of its Restricted Subsidiaries in existence at the time of such acquisition or at the time it merges with or into the Parent or any of its Restricted Subsidiaries or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired and its Subsidiaries or the property or assets so acquired;

(v) contracts for the sale or disposition of assets, including sale-leaseback agreements, including customary restrictions with respect to a Subsidiary of the Parent pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;

(vi) Indebtedness otherwise permitted to be incurred pursuant to Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) and Section 3 (*Liens*), that limits the right of the debtor to dispose of or incur Liens on the assets securing such Indebtedness;

(vii) restrictions on Cash Equivalents or other deposits or net worth imposed by suppliers, customers or landlords under contracts entered into in the ordinary course of business or consistent with past practice or arising in connection with any Permitted Liens;

- (viii) other Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not a Borrower or a Guarantor permitted to be incurred subsequent to the Closing Date pursuant to the provisions of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) above;
- (ix) customary provisions in joint venture agreements and other similar agreements or arrangements relating to such joint venture;
- (x) provisions contained in leases, sub-leases, licenses, sub-licenses or similar agreements, including with respect to intellectual property and other agreements, in each case, entered into in the ordinary course of business or consistent with industry practices or that in the judgment of the Parent would not materially impair the Borrowers' ability to make payments on the Utilisations made to them under this Agreement when due;
- (xi) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Parent or any of its Restricted Subsidiaries is a party entered into in the ordinary course of business or consistent with past practice, *provided that* such agreement prohibits the encumbrance of solely the property or assets of the Parent or such Restricted Subsidiary that are the subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Parent or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;
- (xii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Restricted Subsidiary or the assignment of any license or sub-license agreement;
- (xiii) provisions restricting assignment of any agreement entered into in the ordinary course of business or consistent with past practice;
- (xiv) restrictions arising in connection with cash or other deposits permitted under Section 3 (*Liens*);
- (xv) any agreement or instrument relating to any Indebtedness, Disqualified or Preferred Stock permitted to be incurred, assumed or issued subsequent to the Closing Date pursuant to, or that is not prohibited by, Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) above if either:
  - (A) the encumbrances and restrictions are not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers (as determined in good faith by the Parent);
  - (B) the encumbrances and restrictions are not materially more restrictive, taken as whole, with respect to such Restricted Subsidiaries, than the restrictions or encumbrances (x) contained in any Debt Document as of the Closing Date or (y) otherwise in effect on the Closing Date; or

(C) either (x) the Parent determines that such encumbrance or restriction will not materially impair the Borrowers' ability to make principal and interest payments on the Utilisations made to them under this Agreement as and when they come due or (y) such encumbrances and restrictions apply only during the continuance of a default in respect of a payment or financial maintenance covenant relating to such Indebtedness;

(xvi) restrictions created in connection with any Qualified Securitization Facility; and

(xvii) any encumbrances or restrictions of the type referred to in paragraphs (a)(i), (ii) and (iii) of this Section 4, imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in paragraphs (b)(i) through (xvi) of this Section 4, *provided that* such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Parent, not materially more restrictive with respect to such encumbrance and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

(c) For purposes of determining compliance with this Section 4, (x) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common equity shall not be deemed a restriction on the ability to make distributions on Capital Stock and (y) the subordination of (including the application of any standstill requirements to) loans and advances made to the Parent or a Restricted Subsidiary to other Indebtedness incurred by the Parent or such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

## 5. Asset Sales

(a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale, unless:

(i) the Parent or such Restricted Subsidiary, as the case may be, receives consideration (including, but not limited to, by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, in connection with, such Asset Sale) at the time of such Asset Sale at least equal to the fair market value (as determined in good faith by the Parent at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of; and

(ii) except in the case of a Permitted Asset Swap, with respect to any Asset Sale in excess of the greater of (x) \$65.0 million and (y) 15.0% of LTM EBITDA, at least 75% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Parent or such Restricted Subsidiary, as the case may be, is in the form of Cash Equivalents; *provided that* the amount of:

(A) the greater of the principal amount and the carrying value of any liabilities (as reflected on the Parent's or such Restricted Subsidiary's most recent consolidated balance sheet or in the footnotes thereto or, if incurred or increased subsequent to the date of such balance sheet, such liabilities that

would have been reflected on the Parent's or such Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or increase had taken place on or prior to the date of such balance sheet, as determined by the Parent) of the Parent or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Facilities (other than intercompany liabilities owing to a Restricted Subsidiary being disposed of), that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) pursuant to a written agreement which releases or indemnifies the Parent or such Restricted Subsidiary from such liabilities or (ii) otherwise cancelled or terminated in connection with the transaction;

(B) any securities, notes or other obligations or assets received by the Parent or such Restricted Subsidiary from such transferee that are converted or reasonably expected by the Parent acting in good faith to be converted by the Parent or such Restricted Subsidiary into Cash Equivalents (to the extent of the Cash Equivalents received or expected to be received) or by their terms are required to be satisfied for Cash Equivalents within 180 days following the closing of such Asset Sale; and

(C) any Designated Non-cash Consideration received by the Parent or such Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this sub-paragraph (C) that is at that time outstanding, not to exceed the greater of (x) \$110.0 million and (y) 25.0% of LTM EBITDA (net of any non-cash consideration converted into Cash Equivalents) at the time of the receipt of such Designated Non-cash Consideration (or, at the Parent's option, at the time of contractually agreeing to such Asset Sale), with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be Cash Equivalents for purposes of this provision and for no other purpose.

(b) Within 18 months after the later of (x) the date of any Asset Sale of Collateral pursuant to the foregoing paragraph and (y) the receipt of any Net Proceeds of such Asset Sale of Collateral, the Parent or such Restricted Subsidiary, at its option, may apply an amount not to exceed the Applicable Asset Sale Percentage of the Net Proceeds from such Asset Sale of Collateral (the "**Applicable Proceeds**");

(i) to reduce or offer to reduce Indebtedness (through a redemption, prepayment, repayment or purchase, as applicable) as follows:

(A) Obligations under this Agreement;

(B) Obligations under any Pari Passu Indebtedness (other than the Obligations under this Agreement) and, in the case of revolving obligations (other than Obligations in respect of any asset-based credit facility or any revolving facility used for working capital purposes), to correspondingly reduce commitments with respect thereto; *provided that* if the Parent or any Restricted Subsidiary shall so reduce any Pari Passu Indebtedness (other

than the Obligations under this Agreement), the Parent or such Restricted Subsidiary will either (a) reduce the Term Loans on a *pro rata* basis with such other Pari Passu Indebtedness, by at its option, (x) prepaying the Term Loans pursuant to Clause 11.4 (*Voluntary prepayment of Facility B*) or Clause 11.6 (*Voluntary prepayment of Incremental Facility Term Loans*) (as applicable) or (y) through a Debt Purchase Transaction entered into in accordance with Clause 29.14 (*Debt Purchase Transactions*) or (b) make an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to each Lender under a Term Facility to prepay outstanding Term Loans (and only to the extent any Term Loans are outstanding) held by any such Lender on a ratable basis with such other Pari Passu Indebtedness for no less than 100% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon up to principal amount of Term Loans to be prepaid;

(C) Obligations of a Restricted Subsidiary that is not an Obligor, other than Indebtedness owed to the Parent or any Restricted Subsidiary; or

(D) to the extent such Applicable Proceeds are from an Asset Sale of property or assets of a Restricted Subsidiary that is not an Obligor or of property or assets not constituting Collateral, Obligations of an Obligor other than Subordinated Indebtedness and other than Indebtedness owed to the Parent or any Restricted Subsidiary and, in the case of revolving obligations (other than Obligations in respect of any asset-based credit facility or any revolving credit facility used for working capital purposes), to correspondingly reduce commitments with respect thereto;

*provided that* to the extent the Parent or any Restricted Subsidiary makes an offer to redeem, prepay, repay or purchase any amount of Obligations pursuant to any of the foregoing paragraphs (A) to (E) at a price of no less than 100% of the principal amount thereof, to the extent the relevant creditors do not accept such offering, the Parent and the Restricted Subsidiaries will be deemed to have applied an amount of the Applicable Proceeds equal to such amount not so accepted in such offer, and such amount shall not increase the amount of Excess Proceeds (and such amount shall be deemed to be Declined Proceeds); or

(ii) to make (A) an Investment in any one or more businesses, *provided that* such Investment in any business is in the form of the acquisition of Capital Stock and results in the Parent or any of its Restricted Subsidiaries, as the case may be, owning an amount of the Capital Stock of such business such that it constitutes or continues to constitute a Restricted Subsidiary, (B) capital expenditures or (C) acquisitions of other properties or assets that, in each of (A), (B) and (C), are used or useful in a Similar Business or replace the businesses, properties and/or assets that are the subject of such Asset Sale; *provided that* the Parent may elect to deem Investments, capital expenditures or acquisitions within the scope of the foregoing paragraphs (A), (B) or (C), as applicable, that occur prior to the receipt of the Applicable Proceeds to have been made in accordance with this paragraph (ii) so long as such deemed Investments, capital expenditures or acquisitions shall have been made no earlier than the earliest of (x) the notice of such Asset Sale to the Agent, (y) the execution of a definitive agreement relating to such Asset Sale or (z) the consummation of such Asset Sale; or

(iii) any combination of the foregoing;

*provided that* a binding commitment or letter of intent entered into not later than the end of such 18-month period shall be treated as a permitted application of the Applicable Proceeds from the date of such commitment or letter of intent so long as the Parent or such Restricted Subsidiary enters into such commitment or letter of intent with the good faith expectation that such Applicable Proceeds shall be applied to satisfy such commitment or letter of intent within six months of the end of such 18-month period (an “**Acceptable Commitment**”) or, in the event any Acceptable Commitment is later cancelled or terminated for any reason before the Applicable Proceeds are applied in connection therewith, the Parent or such Restricted Subsidiary enters into another Acceptable Commitment (a “**Second Commitment**”) within six months of such cancellation or termination; *provided further*, that if any Second Commitment is later cancelled or terminated for any reason before such Applicable Proceeds are applied, then such Applicable Proceeds shall constitute Excess Proceeds.

- (c) Notwithstanding any other provisions of this Section 5, (i) to the extent that the application of any or all of the Applicable Proceeds of any Asset Sale by the Parent or a Subsidiary is (x) prohibited or delayed by or would violate or conflict with applicable local law, (y) restricted by applicable organizational documents or any agreement or (z) subject to other organizational or administrative impediments from being repatriated under applicable local law (including for the avoidance of doubt restrictions, prohibitions or impediments relating to financial assistance, corporate benefit, thin capitalization, capital maintenance and similar legal principles, restrictions on upstreaming and/or cross-streaming of Cash Equivalents intra-group and relating to the fiduciary and/or statutory duties of the directors (or equivalent Persons) of the Parent and/or any of its Subsidiaries) or would conflict with the fiduciary and/or statutory duties of such Subsidiary’s directors (or equivalent Persons), or (B) would result in, or could reasonably be expected to result in, a risk of personal or criminal liability for any officer, director, employee, manager, member of management or consultant of such Subsidiary, an amount equal to the portion of such Applicable Proceeds so affected shall not be required to be applied in compliance with this Section 5, and such amounts may be retained by the Parent or the applicable Subsidiary; *provided that* if at any time within one year following the date on which the respective payment would otherwise have been required, such repatriation of any of such affected Applicable Proceeds is permitted under the applicable local law, the applicable organizational document or agreement or the applicable other impediment, an amount equal to such amount of Applicable Proceeds so permitted to be repatriated shall be promptly applied (net of any taxes, costs or expenses that would be payable or reserved against if such amounts were actually repatriated whether or not they are repatriated) in compliance with this Section 5 and (ii) to the extent that the Parent has determined in good faith that repatriation of any or all of the Applicable Proceeds of any Asset Sale could have a material adverse tax or cost consequence with respect to such Applicable Proceeds (which, for the avoidance of doubt, includes, but is not limited to, any prepayment whereby doing so the Parent, any Restricted Subsidiary or any of their respective Affiliates and/or their equityholders would incur a tax liability, including as a result of a tax dividend, a deemed dividend pursuant to Code Section 956 or a withholding tax), the Applicable Proceeds so affected may be retained by the Parent or the applicable Subsidiary and an amount equal to such Applicable Proceeds shall not be required to be applied in compliance with this Section 5. The non-application of any prepayment amounts as a consequence of the foregoing provisions shall not, for the avoidance of doubt, constitute a Default or an Event of Default. For the avoidance of doubt,

nothing in this Agreement shall be construed to require the Parent or any Subsidiary to repatriate cash.

- (d) Any Applicable Proceeds (other than any amounts excluded from this covenant as set forth in paragraph (c) of this Section 5) that are not invested or applied as provided and within the time period set forth in paragraph (b) of this Section 5 will be deemed to constitute **“Excess Proceeds”**; *provided that* any amount of Applicable Proceeds offered to the Lenders pursuant to paragraph (b)(i)(B) of this Section 5 shall not be deemed to be Excess Proceeds without regard to whether such offer is accepted by any Lenders and any amount of Applicable Proceeds offered to Lenders pursuant to paragraph (b)(i)(B) of this Section 5 that are not accepted shall be deemed to be Declined Proceeds. When the aggregate amount of Excess Proceeds exceeds the greater of (x) \$130.0 million and (y) 30.0% of LTM EBITDA (the **“Excess Proceeds Threshold”**), the Parent shall make an offer (an **“Asset Sale Offer”**) to each Lender under each Term Facility; and if required or permitted by the terms of any Pari Passu Indebtedness, to the holders of such Pari Passu Indebtedness, to prepay outstanding Term Facilities (and only to the extent any Term Facilities are outstanding) held by any such Lender at par, and to purchase the maximum aggregate principal amount (or accreted value, as applicable) of any such Pari Passu Indebtedness that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to the offer price required by the terms thereof, in accordance with the procedures set forth in the agreement(s) governing such Pari Passu Indebtedness.
- (e) The Parent shall commence an Asset Sale Offer with respect to Excess Proceeds within 20 Business Days after the date that Excess Proceeds exceed the Excess Proceeds Threshold by delivering to the Agent the notice required pursuant to the terms of this Agreement. The Parent may satisfy the foregoing obligations with respect to any Applicable Proceeds by making an Asset Sale Offer with respect to such Applicable Proceeds prior to the time period that may be required by this Agreement with respect to all or a part of the available Applicable Proceeds (the **“Advance Portion”**) in advance of being required to do so by this Agreement (an **“Advance Offer”**).
- (f) To the extent that the aggregate amount (or accreted value, if applicable) of outstanding Term Loans prepaid and such other Pari Passu Indebtedness, as the case may be, tendered pursuant to an Asset Sale Offer is less than the amount offered in the Asset Sale Offer (or in the case of an Advance Offer, the Advance Portion) (the **“Declined Proceeds”**), the Parent may use any remaining Excess Proceeds (or in the case of an Advance Offer, the Advance Portion) for any purposes not otherwise prohibited under this Agreement.
- (g) If the aggregate principal amount (or accreted value, if applicable) of Term Loans elected to be repaid or other Pari Passu Indebtedness, as the case may be, surrendered by such holders thereof exceeds the amount offered in the Asset Sale Offer (or in the case of an Advance Offer, the Advance Portion), the relevant Borrower or the Parent shall repay the Term Loans and such Pari Passu Indebtedness, as the case may be, on a pro rata basis based on the aggregate principal amount (or accreted value, if applicable) of the Term Loans offered to be repaid or such Pari Passu Indebtedness, as the case may be, tendered with adjustments as necessary so that no Term Loans to be repaid or Pari Passu Indebtedness, as the case may be, will be repurchased in part in an unauthorized denomination. Upon completion of any such Asset Sale Offer (or Advance Offer), the amount of Excess Proceeds (or in the case of an Advance Offer, the Advance Portion) that resulted in the requirement to make an Asset Sale Offer shall be reset to zero (regardless of whether there are any remaining Excess Proceeds upon such completion). Additionally, the Parent may,



at its option, make an Asset Sale Offer using Applicable Proceeds at any time after the consummation of such Asset Sale. Upon consummation or expiration of any Asset Sale Offer (or Advance Offer), any remaining Applicable Proceeds shall not be deemed Excess Proceeds and the Parent may use such Applicable Proceeds for any purpose not otherwise prohibited under this Agreement.

- (h) Pending the final application of the amount of any Applicable Proceeds pursuant to this Section 5, the Parent and its Restricted Subsidiaries may temporarily reduce Indebtedness, or otherwise use such Applicable Proceeds in any manner not prohibited by this Agreement.

## 6. Transactions with Affiliates

- (a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with any Affiliate of the Parent (each of the foregoing, an “**Affiliate Transaction**”) involving aggregate payments or consideration in excess of the greater of (x) \$65.0 million and (y) 15.0% of LTM EBITDA at such time, unless:
- (i) such Affiliate Transaction is on terms that are not materially less favorable to the Parent or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent or such Restricted Subsidiary with an unrelated Person on an arm’s-length basis or, if in the good faith judgment of the Parent, no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Parent or such Restricted Subsidiary from a financial point of view and when such transaction is taken in its entirety; and
  - (ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of the greater of (x) \$130.0 million and (y) 30.0% of LTM EBITDA at such time, the terms of such transaction have been approved by a majority of the members of the Board of the Parent or any direct or indirect parent of the Parent. Any Affiliate Transaction shall be deemed to have satisfied the requirements of paragraph (a)(ii) of this Section 6 if such Affiliate Transaction is approved by a majority of the Disinterested Directors of the Parent or any direct or indirect parent of the Parent, if any.
- (b) Paragraph (a) above shall not apply to:
- (i) (A) transactions between or among the Parent or any of its Restricted Subsidiaries (or any entity that becomes a Restricted Subsidiary as a result of such transaction) and (B) any merger, amalgamation or consolidation of the Parent into any direct or indirect parent company, *provided that* such merger, amalgamation or consolidation is otherwise consummated in compliance with the terms of this Agreement;
  - (ii) Restricted Payments permitted by Section 2 (*Limitation on Restricted Payments*) above (including any transaction specifically excluded from the definition of

“Restricted Payments”) (other than pursuant to paragraphs (b)(xiii) and (xv)(H) of Section 2 (*Limitation on Restricted Payments*) above) and Permitted Investments;

- (iii) (A) the payment of management, consulting, monitoring, transaction, advisory and other fees, indemnities and expenses pursuant to the Support and Services Agreement (plus any unpaid management, consulting, monitoring, transaction, advisory and other fees, indemnities and expenses accrued in any prior year) and any termination fees (including any such cash lump sum or present value fee upon the consummation of a corporate event, including an initial public equity offering) pursuant to the Support and Services Agreement, or any amendment thereto or replacement thereof so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Parent to the Lenders when taken as a whole, as compared to the Support and Services Agreement as in effect immediately prior to such amendment or replacement and (B) the payment of indemnification and other similar amounts to the Investors and reimbursement of expenses of the Investors;
- (iv) (A) employment agreements, employee benefit and incentive compensation plans and arrangements and (B) the payment of reasonable and customary fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided on behalf of or for the benefit of, future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Parent, any of its direct or indirect parent companies or any of its Restricted Subsidiaries, including in connection with the Transactions;
- (v) transactions in which the Parent or any of its Restricted Subsidiaries, as the case may be, delivers to the Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Parent or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable, when taken as a whole, to the Parent or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent or such Restricted Subsidiary with an unrelated Person on an arm’s-length basis;
- (vi) any agreement or arrangement as in effect as of the Closing Date, or any amendment or replacement thereto (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Parent to the Lenders when taken as a whole as compared to the applicable agreement or arrangement as in effect on the Closing Date);
- (vii) any Intercompany License Agreements;
- (viii) the existence of, or the performance by the Parent or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders, investor rights or similar agreement (including any registration rights agreement or purchase agreement related thereto) to which it (or any parent company of the Parent) is a party as of the Closing Date and any similar agreements which it (or any parent company of the Parent) may enter into thereafter; *provided that* the existence of, or the performance by the Parent or any of its Restricted Subsidiaries (or such parent company) of obligations under any future amendment to any such existing

agreement or under any similar agreement entered into after the Closing Date shall only be permitted by this paragraph (viii) to the extent that the terms of any such amendment or new agreement are not otherwise, when taken as a whole, materially disadvantageous in the good faith judgment of the Parent to the Lenders than those in effect on the Closing Date;

- (ix) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;
- (x) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services or providers of employees or other labor that are Affiliates, in each case in the ordinary course of business or that are consistent with past practice and otherwise in compliance with the terms of this Agreement which are fair to the Parent and its Restricted Subsidiaries, in the reasonable determination of the Parent, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;
- (xi) the issuance or transfer of (A) Equity Interests (other than Disqualified Stock) or Subordinated Shareholder Funding of the Parent to any direct or indirect parent company of the Parent or to any Permitted Holder or to any employee, director, officer, manager, member, partner or consultants (or their respective Affiliates or Immediate Family Members) of the Parent, any of its direct or indirect parent companies or any of its Restricted Subsidiaries and (B) directors' qualifying shares and shares issued to foreign nationals as required by applicable law;
- (xii) sales of accounts receivable, or participations therein, or Securitization Assets or related assets, or other transactions, in connection with any Qualified Securitization Facility;
- (xiii) payments by the Parent or any of its Restricted Subsidiaries to any of the Investors made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with acquisitions, divestitures or financing transactions which payments are approved by the Parent in good faith;
- (xiv) payments and Indebtedness and Disqualified Stock (and cancellation of any thereof) of the Parent and its Restricted Subsidiaries and Preferred Stock (and cancellation of any thereof) of any Restricted Subsidiary to any future, current or former employee, director, officer, manager, member, partner or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Parent, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement that are, in each case, approved by the Parent in good faith; and any employment agreements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) that are, in each case, approved by the Parent in good faith;

- (xv) (A) investments by Affiliates in securities or loans or other Indebtedness of the Parent or any of its Restricted Subsidiaries (and payment of out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Parent or such Restricted Subsidiary generally to other investors on the same or more favorable terms, and (B) payments to Affiliates in respect of securities or loans or other Indebtedness of the Parent or any of its Restricted Subsidiaries contemplated in the foregoing sub-paragraph (A) or that were acquired from Persons other than the Parent and its Restricted Subsidiaries, in each case, in accordance with the terms of such securities or loans;
- (xvi) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice (including any cash management activities related thereto);
- (xvii) payments by the Parent (and any direct or indirect parent company thereof) and its Subsidiaries pursuant to, or the entry into, tax sharing agreements among the Parent (and any such parent company) and its Subsidiaries, to the extent such payments are permitted under paragraph (b)(xx) of Section 2 (*Limitation on Restricted Payments*) above;
- (xviii) any lease entered into between the Parent or any Restricted Subsidiary, as lessee, and any Affiliate of the Parent, as lessor, which is approved by the Parent in good faith;
- (xix) intellectual property licenses and research and development agreements in the ordinary course of business or consistent with past practice;
- (xx) the payment of all reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equityholders of the Parent or any direct or indirect parent thereof pursuant to any equityholders, registration rights or similar agreements;
- (xxi) the pledge of Equity Interests of any Unrestricted Subsidiary to lenders to support the Indebtedness of such Unrestricted Subsidiary owed to such lenders;
- (xxii) Permitted Intercompany Activities and related transactions;
- (xxiii) (A) any transactions with a Person which would constitute an Affiliate Transaction solely because the Parent or its Restricted Subsidiary owns an Equity Interest in or otherwise controls such Person or (B) transactions with a Person which would constitute an Affiliate Transaction solely because a director of such other Person is also a director of the Parent or any direct or indirect parent company; *provided that* such director abstains from voting as a director of the Parent or such direct or indirect parent company, as the case may be, on any matter including such other Person;
- (xxiv) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium;
- (xxv) the Debt Documents;

- (xxvi) any amendment, waiver or other transaction with respect to any Subordinated Shareholder Funding in compliance with the other provisions of this Agreement, the Intercreditor Agreement or any Additional Intercreditor Agreement, as applicable, *provided that* such Subordinated Shareholder Funding, as amended or otherwise modified, will continue to satisfy the requirements described in the definition of “Subordinated Shareholder Funding”;
- (xxvii) any transition services arrangement, supply arrangement or similar arrangement entered into in connection with or in contemplation of a disposition made in accordance with or not prohibited by this Agreement; and
- (xxviii) transactions with Skrill USA pending the consummation of the Skrill USA Acquisition Agreement.

If the Parent or any of its Restricted Subsidiaries (i) purchases or otherwise acquires assets or properties from a Person which is not an Affiliate, the purchase or acquisition by an Affiliate of the Parent of an interest in all or portion of the assets or properties acquired shall not be deemed an Affiliate Transaction (or cause such purchase or acquisition by the Parent or a Restricted Subsidiary to be deemed an Affiliate Transaction) or (ii) sells or otherwise disposes of assets or other properties to a Person who is not an Affiliate, the sale or other disposition by an Affiliate of the Parent of an interest in all or a portion of the assets or properties sold shall not be deemed an Affiliate Transaction (or cause such sale or other disposition by the Parent or a Restricted Subsidiary to be deemed an Affiliate Transaction).

## 7. Merger, Consolidation or Sale of All or Substantially All Assets

- (a) Neither the Parent nor any Original Senior Secured Notes Issuer may consolidate or merge with or into or wind up into (whether or not the Parent or an Original Senior Secured Notes Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:
  - (i)
    - (A) the Parent or such Original Senior Secured Notes Issuer is the surviving Person, or
    - (B) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than the Parent or such Original Senior Secured Notes Issuer as the case may be) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made (such Person being herein called the “**Successor Company**”), (1) expressly assumes, in the case of the Parent, all the obligations of the Parent under this Agreement and the related Guarantee, or in the case of an Original Senior Secured Notes Issuer, all of the obligations of the relevant Original Senior Secured Notes Issuer under this Agreement, in each case, pursuant to a confirmation of the same addressed to the Agent (if already an Obligor) and an Accession Deed (if not already an Obligor) and (2) is a Person organized or existing under the laws of a member country of the Organization for Economic Cooperation and Development (or any successor), the United Kingdom, Luxembourg, any member of the

European Union, the Cayman Islands or the United States, any state thereof, the District of Columbia, or any, territory thereof;

(ii) immediately after such transaction, no Event of Default exists;

(iii) immediately after giving pro forma effect to such transaction and any related financing transactions, as if such transactions had occurred at the beginning of the applicable consecutive 12 month period:

(A) the Parent or the Successor Company, as applicable, would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to paragraph (a) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*); or

(B) either (x) the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries or the Successor Company and its Restricted Subsidiaries, as applicable, would be equal to or greater than the Fixed Charge Coverage Ratio for the Parent and its Restricted Subsidiaries immediately prior to such transaction or (y) the Consolidated Total Debt Ratio for the Parent and its Restricted Subsidiaries or the Successor Company and its Restricted Subsidiaries, as applicable, would be equal to or less than the Consolidated Total Debt Ratio for the Parent and its Restricted Subsidiaries immediately prior to such transaction;

(iv) the Parent or, if applicable, the Successor Company shall have delivered to the Agent an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer complies with this Agreement; and

(v) to the extent any assets of the Person which is merged, consolidated or amalgamated with or into the Parent or an Original Senior Secured Notes Issuer, as applicable, are assets of the type which would constitute Collateral under the Security Documents in accordance with the Agreed Security Principles, the Parent, such Original Senior Secured Notes Issuer or the Successor Company, as applicable, shall take such action, if any, as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the applicable Security Documents in the manner and to the extent required in accordance with the Finance Documents (including the Agreed Security Principles).

(b) The Successor Company shall succeed to, and be substituted for, the Parent or the relevant Original Senior Secured Notes Issuer, as the case may be, under this Agreement and the Guarantees thereof, as applicable, and the Parent or the relevant Original Senior Secured Notes Issuer, as applicable, shall automatically be released and discharged from their respective obligations under the Finance Documents, any applicable Security Documents and the other Debt Documents, as applicable.

(c) Notwithstanding paragraphs (a)(ii) and (iii) above:

(i) the Parent may consolidate or amalgamate with or merge with or into or wind up into, or sell, assign, or transfer, lease, convey or otherwise dispose of all or part of its properties and assets to an Original Senior Secured Notes Issuer or a Guarantor;

- (ii) any Original Senior Secured Notes Issuer may consolidate or amalgamate with or merge with or into wind up into, or sell, assign, or transfer, lease, convey or otherwise dispose of all or part of its properties and assets to another Original Senior Secured Notes Issuer or a Guarantor;
  - (iii) any Restricted Subsidiary may consolidate or amalgamate with or merge with or into or wind up into, or sell, assign, or transfer, lease, convey or otherwise dispose of all or part of its properties and assets to an Original Senior Secured Notes Issuer or a Guarantor; and
  - (iv) any Original Senior Secured Notes Issuer may consolidate or amalgamate with or merge with or into or wind up into, or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its assets to an Affiliate of the Parent or an Original Senior Secured Notes Issuer solely for the purpose of reorganizing the Parent or the relevant Original Senior Secured Notes Issuer in any other jurisdiction so long as the amount of Indebtedness of the Parent and its Restricted Subsidiaries is not increased thereby.
- (d) Unless otherwise permitted by Clause 30 (*Changes to the Obligors*) or the Intercreditor Agreement, no Guarantor shall, and the Parent shall not permit any Guarantor to, consolidate or merge with or into or wind up into (whether or not such Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to any Person unless:
- (i) (A)(1) such Guarantor is the surviving Person or (2) the Person formed by or surviving any such consolidation or merger or winding up (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made (such Person being herein called the “**Successor Person**”) expressly assumes all the obligations of such Guarantor under this Agreement and such Guarantor’s related Guarantee pursuant to a confirmation of the same addressed to the Agent, or such other applicable documents or instruments; and (B) to the extent any assets of the Person which is merged, consolidated or amalgamated with or into such Guarantor are assets of the type which would constitute Collateral under the Transaction Security Documents in accordance with the Agreed Security Principles, such Guarantor or the Successor Person shall take such action, if any, as may be reasonably necessary to cause such property and assets to be made subject to the Lien of the applicable Transaction Security Documents in the manner and to the extent required in accordance with the Finance Documents and shall take all reasonably necessary action so that such Lien is perfected to the extent required by the Agreed Security Principles; or
  - (ii) the transaction is not prohibited by paragraph (a) of Section 5 (*Asset Sales*); or
  - (iii) in the case of assets comprised of Equity Interests of Subsidiaries that are not Guarantors, such Equity Interests are sold, assigned, transferred, leased, conveyed or otherwise disposed of to one or more Restricted Subsidiaries.
- (e) Unless otherwise permitted by Clause 30 (*Changes to the Obligors*) or the Intercreditor Agreement, the Successor Person shall succeed to, and be substituted for, such Guarantor under this Agreement and such Guarantor’s Guarantee, and such Guarantor shall

automatically be released and discharged from its obligations under this Agreement and such Guarantor's Guarantee.

- (f) Notwithstanding the foregoing, any Guarantor may (1) merge or consolidate or amalgamate with or into, wind up into or consummate a Division as the Dividing Person or sell, assign, transfer, lease, convey or dispose of all or part of its properties and assets to a Guarantor or the Parent or an Original Senior Secured Notes Issuer (or a Restricted Subsidiary that is not a Guarantor if that Restricted Subsidiary becomes a Guarantor), (2) consolidate or amalgamate with or merge with or into or wind up into, consummate a Division as the Dividing Person or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to an Affiliate of the Parent solely for the purpose of reorganizing the Guarantor in another jurisdiction, (3) convert into a corporation, partnership, limited partnership, limited liability company, trust or other entity organized or existing under the laws of the jurisdiction of organization of such Guarantor or (4) liquidate, wind up or dissolve or change its legal form if the Parent determines in good faith that such action is in the best interests of the Parent, in each case, without regard to the requirements set forth in paragraph (d) of this Section 7.
- (g) Notwithstanding anything to the contrary in this Section 7, the Parent may contribute Capital Stock of any or all of its Subsidiaries to any Guarantor. Notwithstanding the foregoing, paragraph (a) above will not apply with respect to the sale, assignment, transfer, lease, conveyance or other disposition of substantially all property or assets of the Parent if such sale, assignment, transfer, lease, conveyance or other disposition also constitutes a Change of Control in respect of which a Change of Control Notice (as defined in paragraph (b) of Clause 12.1 (*Change of Control*)) has been delivered by the Parent.

## 8. Suspension of Covenants

- (a) If on any date following the Closing Date, (i) the outstanding Term Loans have achieved an Investment Grade Rating from either of the Rating Agencies and (ii) no Default has occurred and is continuing under this Agreement (the occurrence of the events described in the foregoing sub-paragraphs (i) and (ii) being collectively referred to as a "**Covenant Suspension Event**" and the date thereof being referred to as the "**Suspension Date**"), then, beginning on that day and continuing until the Reversion Date, the covenants set out in the following Sections of this Schedule 17 shall not apply (together, the "**Suspended Covenants**");
- (i) Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*);
  - (ii) Section 2 (*Limitation on Restricted Payments*);
  - (iii) Section 4 (*Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries*);
  - (iv) Section 5 (*Asset Sales*);
  - (v) Section 6 (*Transactions with Affiliates*); and
  - (vi) paragraphs (a)(iii) and (d) of Section 7 (*Merger, Consolidation or Sale of All or Substantially All Assets*).



- (b) During any period that the foregoing covenants have been suspended, the Parent may not designate any of its Subsidiaries as Unrestricted Subsidiaries.
- (c) In the event that the Parent and its Restricted Subsidiaries are not subject to the Suspended Covenants under this Agreement for any period of time as a result of the foregoing, and on any subsequent date (the “**Reversion Date**”) the Term Loans no longer have an Investment Grade Rating or the Rating Agency withdraws its Investment Grade Rating or downgrade the rating assigned to the Term Loans below an Investment Grade Rating (in each case, to the extent given an Investment Grade Rating by such Rating Agency), then the Parent and its Restricted Subsidiaries shall thereafter again be subject to the Suspended Covenants under this Agreement with respect to future events. The period of time between the Suspension Date and the Reversion Date is referred to in this Agreement as the “**Suspension Period**.” The Guarantees of the Guarantors shall be suspended during the Suspension Period. Additionally, upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from any Asset Sales shall be reset to zero.
- (d) During the Suspension Period, the Parent and its Restricted Subsidiaries shall be entitled to incur Liens to the extent provided for under Section 3 (*Liens*) above (including, without limitation, Permitted Liens) and any Permitted Liens which may refer to one or more Suspended Covenants shall be interpreted as though such applicable Suspended Covenant(s) continued to be applicable during the Suspension Period (but solely for purposes of Section 3 (*Liens*) above and the definition of “Permitted Liens” and for no other covenant).
- (e) Notwithstanding the foregoing, in the event of any such reinstatement of the Suspended Covenants, no action taken or omitted to be taken by the Parent or any of its Restricted Subsidiaries prior to such reinstatement shall give rise to a Default or Event of Default under this Agreement, and no Default or Event of Default shall be deemed to exist or have occurred as a result of any failure by the Parent or any Restricted Subsidiary to comply with any of the Suspended Covenants during the Suspension Period; *provided that* (i) with respect to Restricted Payments made after such reinstatement, the amount available to be made as Restricted Payments shall be calculated as though Section 2 (*Limitation on Restricted Payments*) above had been in effect prior to, but not during, the Suspension Period (including with respect to a Limited Condition Transaction entered into during the Suspension Period); (ii) all Indebtedness incurred or committed, or Disqualified Stock or Preferred Stock issued, during the Suspension Period (or deemed incurred or issued in connection with a Limited Condition Transaction entered into during the Suspension Period) shall be classified to have been incurred or issued pursuant to paragraph (ii)(B) of paragraph (b) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) above; (iii) any Affiliate Transaction entered into after such reinstatement pursuant to an agreement entered into during any Suspension Period shall be deemed to be permitted pursuant to paragraph (b)(vi) of Section 6 (*Transactions with Affiliates*) above; (iv) any encumbrance or restriction on the ability of any Restricted Subsidiary that is not a Borrower or a Guarantor to take any action described in paragraphs (a)(i) through (iii) of Section 4 (*Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries*) above that becomes effective during any Suspension Period shall be deemed to be permitted pursuant to paragraph (b)(i) of Section 4 (*Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries*) above; (v) [reserved]; and (vi) all Investments made during the Suspension Period (or deemed made in connection with a Limited Condition Transaction entered into during the Suspension Period) shall be

classified to have been made under paragraph (e) of the definition of “Permitted Investments”.

- (f) Notwithstanding that the Suspended Covenants may be reinstated after the Reversion Date, (1) no Default, Event of Default or breach of any kind shall be deemed to exist under this Agreement with respect to the Suspended Covenants, and none of the Parent or any of its Subsidiaries shall bear any liability for any actions taken or events occurring during the Suspension Period, or any actions taken at any time pursuant to any contractual obligation arising during any Suspension Period, in each case as a result of a failure to comply with the Suspended Covenants during the Suspension Period (or, upon termination of the Suspension Period or after that time based solely on any action taken or event that occurred during the Suspension Period), and (2) following a Reversion Date, the Parent and each Restricted Subsidiary shall be permitted, without causing a Default or Event of Default, to honor, comply with or otherwise perform any contractual commitments or obligations arising during any Suspension Period and to consummate the transactions contemplated thereby.
- (g) The Agent shall have no duty to (i) ascertain whether a Covenant Suspension Event or Reversion Date has occurred or (ii) notify the Lenders of any of the foregoing.

## 9. Additional Intercreditor Agreements

- (a) At the written request of the Parent or an Original Senior Secured Notes Issuer, in connection with the incurrence of any Indebtedness by the Parent or any of its Restricted Subsidiaries that is permitted to share in the Collateral (and which the Parent elects shall share in the Collateral), the Agent and the Security Agent shall enter into with the Parent and the relevant Restricted Subsidiaries and the holders of such Indebtedness (or their duly authorized representatives) one or more intercreditor agreements or deeds (including a restatement, replacement, amendment or other modification of the Intercreditor Agreement) (an “**Additional Intercreditor Agreement**”), on substantially the same terms as the Intercreditor Agreement (or terms that are not materially less favourable to the Lenders) and substantially similar as applies to sharing of the proceeds of security and enforcement of security, priority and release of security; *provided that* such Additional Intercreditor Agreement will not impose any personal obligations on the Agent or Security Agent or adversely affect the personal rights, protections, duties, liabilities, indemnifications or immunities of the Agent or the Security Agent under this Agreement or the Intercreditor Agreement.
- (b) In connection with the foregoing, the Parent or an Original Senior Secured Notes Issuer shall furnish to the Agent and the Security Agent such documentation in relation thereto as they may reasonably require. As used in this Agreement, a reference to the Intercreditor Agreement will also include any Additional Intercreditor Agreement.
- (c) In relation to the Intercreditor Agreement, the Agent shall consent on behalf of the Lenders to the payment, repayment, purchase, repurchase, defeasance, acquisition, retirement or redemption of any obligations subordinated to the Facilities thereby; *provided that* such transaction would comply with Section 2 (*Limitation on Restricted Payments*) above.
- (d) Subject to paragraphs (b)(iii) and (b)(iv) of Clause 40.2 (*Exceptions*), at the written direction of the Parent and without the consent of the Lenders, the Agent and the Security

Agent shall from time to time enter into one or more amendments to any Intercreditor Agreement to:

- (i) cure any ambiguity, omission, defect or inconsistency of any such agreement;
  - (ii) increase the amount or types of Indebtedness covered by any such Intercreditor Agreement that may be incurred by the Parent or its Restricted Subsidiaries that is subject to any such Intercreditor Agreement (*provided that* such Indebtedness is incurred in compliance with this Agreement);
  - (iii) add Guarantors or other Restricted Subsidiaries or their Affiliates to the Intercreditor Agreement in any applicable capacity;
  - (iv) further secure the Facilities and the Original Senior Secured Notes;
  - (v) make provision for pledges of the Collateral to secure the Facilities and the Original Senior Secured Notes or to implement any Permitted Liens; or
  - (vi) make any other change to any such agreement that does not adversely affect the Lenders (taken as a whole) in any material respect, *provided that* the Security Agent shall not be obliged to enter into any amendment to the Intercreditor Agreement or any Additional Intercreditor Agreement that adversely impacts the personal rights, protections, duties, liabilities, indemnifications, immunities or obligations of the Security Agent under the Intercreditor Agreement.
- (e) Each Secured Party shall be deemed to have agreed to and accepted the terms and conditions of the Intercreditor Agreement or any Additional Intercreditor Agreement, (whether then entered into or entered into in the future pursuant to the provisions described herein) and to have authorized, directed and instructed the Agent and the Security Agent to enter into the Intercreditor Agreement and any such Additional Intercreditor Agreement (without any further instruction, consultation or consent from or with the other Secured Parties).

**SCHEDULE 18**  
**EVENTS OF DEFAULT**

Words and expressions in this Schedule 18 shall have the meaning ascribed to them in Schedule 19 (*Certain New York Law Defined Terms*) save that if a word or expression is not given a meaning in Schedule 19 (*Certain New York Law Defined Terms*), it shall be given the meaning ascribed to it in Clause 1 (*Interpretation*) or otherwise pursuant to the recitals in this Agreement. Unless expressly stated herein, Section references in this Schedule 18 are to the sections of this Schedule 18.

**1. Events of Default**

Subject to Sections 2, 3 and 4 below, each of the following is an Event of Default:

(a) default in payment, when due and payable, of the principal amount of any Loan, the amount of any claim in respect of a Letter of Credit pursuant to paragraph (b) of Clause 7.2 (*Claims under a Letter of Credit*) or the principal amount of any Ancillary Outstanding:

(i) on the Termination Date of the applicable Facility (or, in respect of any Ancillary Outstanding, the expiry date of the applicable Ancillary Facility); or

(ii) when required pursuant to Clause 11.1 (*Illegality*), Clause 12 (*Mandatory Prepayment*) or Clause 28.5 (*Acceleration*),  
in each case continued for five Business Days;

(b) default in payment of:

(i) interest in respect of the Loans under the Facilities; or

(ii) fees referred to in the Arrangement Fee Letter, Clause 17.1 (*Commitment fee*), Clause 17.3 (*Interest, commission and fees on Ancillary Facilities*), paragraph (b) of Clause 17.5 (*Fees payable in respect of Letters of Credit*) or Clause 17.8 (*Call Premium*),

in each case continued for 30 days or more from:

(A) (other than in respect of a Compounded Rate Interest Payment) the date of such amounts becoming due and payable; or

(B) (in respect of a Compounded Rate Interest Payment) the later of (x) the date of such amounts becoming due and payable;  
and (y) the date falling three RFR Banking Days after the date on which the Agent has notified the Parent and the relevant Borrower of the amount of that Compounded Rate Interest Payment in accordance with paragraph (b) of Clause 14.5 (*Notification of rates of interest*);

(c) failure by an Obligor to comply with any of its obligations under the Finance Documents (other than those described in Clause 26 (*Financial Covenant*), Clause 28.1 (*Financial covenant*) and paragraph (a) or (b) above), continued for 60 days or more from the date of receipt by the Parent of written notice given by the Agent (acting on the instructions of the Majority Lenders) of such failure to comply;

- (d) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Parent or any of its Restricted Subsidiaries or the payment of which is guaranteed by the Parent or any of its Restricted Subsidiaries, other than Indebtedness owed to the Parent or a Restricted Subsidiary, whether such Indebtedness or guarantee now exists or is created after the date hereof, if both:
- (i) such default has not been remedied or waived and either results from the failure to pay any principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace periods) or relates to an obligation other than the obligation to pay principal of any such Indebtedness at its stated final maturity and results in the holder or holders of such Indebtedness causing such Indebtedness to become due prior to its stated maturity; and
  - (ii) the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at stated final maturity (after giving effect to any applicable grace periods), or the maturity of which has been so accelerated, aggregate the greater of (i) \$150.0 million (or its foreign currency equivalent) and (ii) 35.0% of LTM EBITDA or more outstanding;
- (e) failure by the Parent or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest consolidated financial statements of the Parent for a Financial Quarter end provided as required under Schedule 16 (*Information Undertakings*)) would constitute a Significant Subsidiary) to pay final judgments aggregating in excess of the greater of (i) \$150.0 million (or its foreign currency equivalent) and (ii) 35.0% of LTM EBITDA (net of amounts covered by insurance policies issued by reputable insurance companies), which final judgments remain unpaid, undischarged and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;
- (f) the Parent, any TLB Borrower or any Significant Subsidiary (or any group of Restricted Subsidiaries that together (as of the latest consolidated financial statements of the Parent for a Financial Quarter end provided as required under Schedule 16 (*Information Undertakings*)) would constitute a Significant Subsidiary) (each a “**Material Entity**”), pursuant to or within the meaning of any Bankruptcy Law:
- (i) commences proceedings to be adjudicated bankrupt or insolvent;
  - (ii) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under applicable Bankruptcy Law;
  - (iii) consents to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;
  - (iv) makes a general assignment for the benefit of its creditors; or
  - (v) generally is not paying its debts as they become due;
- (g) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (i) is for relief against any Material Entity, in a proceeding in which such Material Entity is to be adjudicated bankrupt or insolvent;
- (ii) appoints a receiver, liquidator, assignee, trustee, sequestrator or other similar official of any Material Entity, or for all or substantially all of the property of any Material Entity;
- (iii) orders the liquidation of any Material Entity;

and the order or decree remains unstayed and in effect for 60 consecutive days;

- (h) the Guarantee of the Parent or any Guarantor that is a Significant Subsidiary (or any group of Guarantors that together (as of the latest consolidated financial statements of the Parent for a Financial Quarter end provided as required under Schedule 16 (*Information Undertakings*)) would constitute a Significant Subsidiary) shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of the Parent or any Guarantor that is a Significant Subsidiary (or the responsible officers of any group of Guarantors that together (as of the latest consolidated financial statements of the Parent for a Financial Quarter end provided as required under Schedule 16 (*Information Undertakings*)) would constitute a Significant Subsidiary)), as the case may be, denies in writing that it has any further liability under its Guarantee or gives written notice to such effect, other than by reason of the termination of this Agreement or the release of any such Guarantee in accordance with this Agreement and any such Default continues for 10 days;
- (i) only to the extent required in accordance with the Agreed Security Principles, the Liens created by the Transaction Security Documents cease to constitute valid and perfected Liens on any material portion of the Collateral (taken as a whole) and:

- (i) such cessation occurs other than:

- (A) in accordance with the terms of the relevant Transaction Security Document and the other Finance Documents;
- (B) following the satisfaction in full of all Obligations under this Agreement; or
- (C) as a result of any failure by the Security Agent to exercise its right for delivery of documents or otherwise; and

- (ii) such default continues for 60 days after receipt of written notice given by the Agent (acting on the instructions of the Majority Lenders).

2. Subject to the foregoing, the Majority Lenders, by notice to the Agent may on behalf of all Finance Parties waive any existing Default and its consequences under the Finance Documents and rescind any acceleration with respect to any amount or Commitment and its consequences (except if such rescission would conflict with any judgment of a court of competent jurisdiction and except a continuing Default in the payment of interest on, premium, if any, or the principal of, any Loan held by a Non-Consenting Lender).
3. In the event of any Event of Default specified in paragraph (d) of Section 1 of this Schedule 18, such Event of Default and all consequences thereof (excluding any resulting payment default, other

than as a result of acceleration of the Loans) shall be annulled, waived and rescinded, automatically and without any action by the Agent or the Lenders, if within 30 days after such Event of Default arose:

- (a) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged;
- (b) the Majority Lenders have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or
- (c) the default that is the basis for such Event of Default has been cured.

4. Any Default or Event of Default resulting from the failure to deliver a notice, report or certificate under this Agreement shall cease to exist and be cured in all respects if the underlying Default or Event of Default giving rise to such notice, report or certificate requirement shall have ceased to exist and/or be cured (including pursuant to this paragraph). For the avoidance of doubt, each of the Parties agrees that any court of competent jurisdiction may (x) extend or stay any grace period set forth in this Agreement prior to when any actual or alleged Default becomes an actual or alleged Event of Default or (y) stay the exercise of remedies by the Agent or the other Finance Parties contemplated by this Agreement or otherwise upon the occurrence of an actual or alleged Event of Default, in each case of clauses (x) and (y), in accordance with the requirements of applicable law.

## SCHEDULE 19

### CERTAIN NEW YORK LAW DEFINED TERMS

If a word or expression is used, but not given a meaning, in this Schedule 19, it shall be given the meaning ascribed to it in Clause 1 (*Interpretation*), or otherwise pursuant to the recitals in this Agreement. Unless expressly stated herein, Section references in this Schedule 19 are to the sections of this Schedule 19.

“**Accounting Change**” has the meaning given to that term in the definition of “GAAP.”

“**Acquired Indebtedness**” means, with respect to any specified Person,

- (a) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred or assumed in connection with, or in contemplation of, such other Person merging, consolidating or amalgamating with or into or becoming a Restricted Subsidiary of such specified Person; and
- (b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“**Additional Intercreditor Agreement**” has the meaning given to that term in para (a) of Section 9 (*Additonal Intercreditor Agreements*) of Schedule 17 (*General Undertakings*).

“**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. No Person shall be an “Affiliate” of Parent or any Subsidiary solely because it is an unrelated portfolio operating company of an Investor. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“**Affiliate Transaction**” has the meaning given to that term in paragraph (a) of Section 6 (*Transactions with Affiliates*) of Schedule 17 (*General Undertakings*).

“**Alternative Reporting Entity**” has the meaning given to that term in paragraph (a) of Section 3 (*Alternative Reporting*) of Schedule 16 (*Information Undertakings*).

“**Annual Financial Statements**” has the meaning given to that term in paragraph (a) of Section 1 (*Financial Statements*) of Schedule 16 (*Information Undertakings*).

“**Applicable Asset Sale Percentage**” means, (1) 100.0% if the Consolidated First Lien Debt Ratio of the Parent and its Restricted Subsidiaries shall be greater than 4.20 to 1.00 for, at the option of the Parent, (A) the Parent’s most recently ended four full Financial Quarters or (B) the Parent’s most recently ended 12 months, in each case, for which internal financial statements are available immediately preceding the date of the applicable Asset Sale, (2) 50.0% if the Consolidated First Lien Debt Ratio of the Parent and its Restricted Subsidiaries shall be less than or equal to 4.20 to 1.00 and greater than 3.70 to 1.00 for, at the option of the Parent, (A) the Parent’s most recently ended four full Financial Quarters or (B) the Parent’s most recently ended 12 months, in each case, for which internal financial statements are available immediately preceding the date of the applicable Asset Sale and (3) 0.0%, if the Consolidated First Lien Debt Ratio of the Parent and its Restricted Subsidiaries shall be less than or equal to 3.70 to 1.00, in each case, for, at the option of the Parent, (A) the Parent’s most recently ended four full Financial Quarters or (B) the Parent’s most recently ended 12 months, in each case, for which internal financial statements are



available immediately preceding the date of the applicable Asset Sale, and, in each case, calculated after giving *pro forma* effect to such Asset Sale.

“**Applicable Proceeds**” has the meaning given to that term in paragraph (b) of Section 5 (*Asset Sales*) of Schedule 17 (*General Undertakings*).

“**Asset Sale**” means:

- (a) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions (including by way of a Sale and Lease-Back Transaction), of property or assets of the Parent or any of its Restricted Subsidiaries (each referred to in this definition as a “**disposition**”); or
- (b) the issuance or sale of Equity Interests of any Restricted Subsidiary (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with, or in a manner not prohibited by, Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*)), whether in a single transaction or a series of related transactions;

in each case, other than:

- (i) (x) any disposition of Cash Equivalents or Investment Grade Securities or obsolete, non-core, surplus, damaged, unnecessary, unsuitable or worn out equipment, inventory or other property or any disposition of inventory, goods or other assets held for sale or no longer used or useful, or economically practical to maintain in the conduct of the business of the Parent or any of its Restricted Subsidiaries and (y) write-off or write-down of any recoupable loans or advances;
- (ii) the disposition of all or substantially all of the assets of the Parent or any Restricted Subsidiary in a manner permitted pursuant to or not prohibited by Section 7 (*Merger, Consolidation or Sale of All or Substantially All Assets*) of Schedule 17 (*General Undertakings*) or any disposition that constitutes a Change of Control pursuant to this Agreement;
- (iii) (x) any Permitted Investment and the making of any Restricted Payment that is permitted to be made, and is made, under Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*) and the making of any Permitted Payment or (y) any disposition, the proceeds of which are used to fund or make Restricted Payments, Permitted Payments or Permitted Investments;
- (iv) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of related transactions with a fair market value of less than the greater of (x) \$25.0 million and (y) 5.0% of LTM EBITDA;
- (v) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Parent or by the Parent or a Restricted Subsidiary to a Restricted Subsidiary, including pursuant to any Intercompany License Agreement;
- (vi) any swap or exchange of like property for use in a Similar Business;

- (vii) (x) the lease, assignment, sub-lease, license, sub-license or cross-license of any real or personal property in the ordinary course of business or consistent with industry practices or (y) any dispositions and/or terminations of leases, sub-leases, licenses or sub-licenses (including the provision of software under an open source license), which (A) do not materially interfere with the business of the Parent and its Subsidiaries (taken as a whole) or (B) relate to closed facilities or the discontinuation of any product or service line;
- (viii) any issuance, disposition or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary (or a Restricted Subsidiary which owns an Unrestricted Subsidiary so long as such Restricted Subsidiary owns no assets other than the Equity Interests of such Unrestricted Subsidiary);
- (ix) foreclosures, condemnation, expropriation, forced dispositions, eminent domain or any similar action with respect to assets or the granting of Liens not prohibited by this Agreement, and transfers of any property that have been subject to a casualty to the respective insurer of such property as part of an insurance settlement or upon receipt of the net proceeds of such Casualty Event;
- (x) dispositions or discounts without recourse of accounts receivable, or participations therein, or Securitization Assets or related assets, or any disposition of the Equity Interests in a Subsidiary, all or substantially all of the assets of which are Securitization Assets, in each case in connection with any Qualified Securitization Facility or the disposition of an account receivable in connection with the collection or compromise thereof;
- (xi) any financing transaction with respect to property built or acquired by the Parent or any Restricted Subsidiary after the Closing Date, including Sale and Lease-Back Transactions and asset securitizations permitted by this Agreement;
- (xii) the sale, discount or other disposition of inventory, accounts receivable, notes receivable, equipment or other assets in the ordinary course of business or consistent with past practice or the conversion of accounts receivable to notes receivable;
- (xiii) the licensing, sub-licensing or cross-licensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practices;
- (xiv) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practices;
- (xv) the unwinding or termination of any Hedging Obligations;
- (xvi) sales, transfers and other dispositions of Investments in joint ventures or non-Wholly Owned Subsidiary to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (xvii) the lapse, cancellation or abandonment of intellectual property rights, which in the reasonable good faith determination of the Parent are not material to the conduct of the business of the Parent and its Restricted Subsidiaries taken as a whole, or are no longer used or useful or economically practicable or commercially reasonable to maintain;

- (xviii) the granting of a Lien that is permitted under Section 3 (*Liens*) of Schedule 17 (*General Undertakings*);
- (xix) the issuance of directors' qualifying shares and shares issued to foreign nationals or other third parties as required by applicable law;
- (xx) dispositions in connection with or that constitute Permitted Intercompany Activities and related transactions;
- (xxi) transfers of property subject to Casualty Events upon receipt of the Net Proceeds of such Casualty Event; *provided that* any net Cash Equivalents received by the Parent or any of its Restricted Subsidiaries in respect of such Casualty Event shall be deemed to be Net Proceeds of an Asset Sale, and such Net Proceeds shall be applied in accordance with Section 5 (*Asset Sales*) of Schedule 17 (*General Undertakings*);
- (xxii) any disposition to a Captive Insurance Subsidiary;
- (xxiii) any sale of property or assets, if the acquisition of such property or assets was financed with Excluded Contributions and the proceeds of such sale are used to make a Restricted Payment pursuant to paragraph (b)(x)(b) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*);
- (xxiv) the disposition of any assets (including Equity Interests) (i) acquired in a transaction after the Closing Date, which assets are not used or useful in the core or principal business of the Parent and its Restricted Subsidiaries; or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Parent to consummate any acquisition;
- (xxv) any disposition of non-revenue producing assets to a Person who is providing services related to such assets, the provision of which have been or are to be outsourced by the Parent or any Restricted Subsidiary to such Person;
- (xxvi) any sale, transfer or other disposition to effect the formation of any Subsidiary that has been formed upon the consummation of a Division; *provided that* any disposition or other allocation of assets (including any Equity Interests of such Subsidiary) in connection therewith is otherwise not prohibited by this Agreement;
- (xxvii) dispositions of real estate assets and related assets in the ordinary course of business or consistent with past practice in connection with relocation activities for employees, directors, officers, managers, members, partners, independent contractors or consultants of the Parent, any direct or indirect parent entity of the Parent or Subsidiary;
- (xxviii) any dispositions of assets in connection with the closing or sale of an office in the ordinary course of business of the Parent and its Subsidiaries, which consist of leasehold interests in the premises of such office, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such office;
- (xxix) the sale of motor vehicles and information technology equipment purchased at the end of an operating lease and resold thereafter; and

(xxx) dispositions with respect to real property built or acquired by the Parent or any Restricted Subsidiary, including pursuant to any Sale and Lease-Back Transaction or lease-leaseback transaction; *provided that* the fair market value of all real property so disposed of after the Closing Date shall not exceed the greater of (x) \$90.0 million and (y) 20.0% of LTM EBITDA at any time.

In the event that a transaction (or a portion thereof) meets the criteria of a permitted Asset Sale and would also be a permitted Restricted Payment, Permitted Payment or Permitted Investment, the Parent, in its sole discretion, shall be entitled to divide and classify such transaction (or a portion thereof) as an Asset Sale and/or one or more of the types of permitted Restricted Payments, Permitted Payments or Permitted Investments.

In the event that a transaction (or a portion thereof) meets the criteria of more than one of the categories of permitted Asset Sale described in paragraphs (i) through (xxx) above or the Net Proceeds of which are being applied in accordance with Section 5 (*Asset Sales*) of Schedule 17 (*General Undertakings*), the Parent, in its sole discretion, may divide or classify, and may from time to time redivide and reclassify, such permitted Asset Sale (or any portion thereof) and will only be required to include the amount and type of such permitted Asset Sale in one or more of the above paragraphs or to apply the Net Proceeds of which in accordance with Section 5 (*Asset Sales*) of Schedule 17 (*General Undertakings*).

“**Attributable Indebtedness**” means, on any date, in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP as in effect on the Closing Date.

“**Available RP Capacity Amount**” means:

- (a) the amount of Restricted Payments that may be made at the time of determination pursuant to paragraph (a)(B), (b)(iv), (b)(ix), (b)(x) or (b)(xi)(A) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*); *minus*
- (b) the sum of the amount of the Available RP Capacity Amount utilized by the Parent or any Restricted Subsidiary to:
  - (i) make Restricted Payments in reliance on paragraph (a)(B), (b)(iv), (b)(ix), (b)(x) or (b)(xi) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*);
  - (ii) incur Indebtedness pursuant to paragraph (b)(xxv) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*); and
  - (iii) make Permitted Investments in reliance on paragraph (kk) of the definition thereof; plus
- (c) the aggregate principal amount of Indebtedness prepaid prior to or substantially concurrently at such time, solely to the extent such Indebtedness was incurred pursuant to paragraph (b)(xxv) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) (it being understood that the amount under this paragraph (c) shall only be available for use pursuant to paragraph (b)(xxv) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*)).

**“Bank Products”** means any facilities or services related to cash management, including treasury, depository, overdraft, credit or debit card, purchase card, automatic clearinghouse transfer transactions, controlled disbursements, foreign exchange facilities, stored value cards, merchant services, electronic funds transfer and other cash management or similar arrangements, including any Operating Facility.

**“Bankruptcy Law”** means (a) Title 11 of the U.S. Code (as may be amended from time to time) or (b) any other law of the United States, England or the laws of any other relevant jurisdiction or any political subdivision thereof relating to bankruptcy, insolvency, receivership, winding up, liquidation, reorganization or relief of debtors.

**“Blackstone Funds”** means, individually or collectively, any investment fund, co-investment vehicle and/or other similar vehicles or accounts, in each case managed, advised or controlled by The Blackstone Group Inc. or one or more of its Affiliates, or any of their respective successors.

**“Board”** with respect to a Person means the board of directors, board of managers, sole member or managing member or other governing body of such Person, or if such Person is owned or managed by a single entity or has a general partner, the board of directors, board of managers, sole member or managing member or other governing body of such entity or general partner, or in each case, any duly authorized committee thereof, and the term “director” means a member of the applicable Board.

**“Business Expansion”** means (a) each facility which is either a new facility, branch or office or an expansion, relocation, remodeling or substantial modernization of an existing facility, branch or office owned by the Parent or a Restricted Subsidiary and (b) each creation or expansion into new markets (in one or a series of related transactions) of a business unit to the extent such business unit commences operations or each expansion (in one or a series of related transactions) of business into a new market.

**“Capital Stock”** means:

- (a) in the case of a corporation, corporate stock or shares in the capital of such corporation;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

**“Capitalized Software Expenditures”** means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Restricted Subsidiaries during such period in respect of licensed or purchased software or internally developed software and software enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of a Person and its Restricted Subsidiaries.

**“Captive Insurance Subsidiary”** means (i) any Subsidiary of the Parent operating for the purpose of (a) insuring the businesses, operations or properties owned or operated by the Parent or any of its Subsidiaries, including their future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants, and related benefits and/or (b) conducting any activities or business incidental thereto (it being understood and agreed that activities which are relevant or appropriate to qualify as an insurance company for U.S. federal or state tax purposes or other national, regional or local tax

purposes shall be considered “activities or business incidental thereto”) or (ii) any Subsidiary of any such insurance subsidiary operating for the same purpose described in paragraph (i) above.

“**Card Scheme**” means any credit, debit, charge card or other similar scheme.

“**Cash Equivalents**” means:

- (a) United States dollars;
- (b)
  - (i) Canadian dollars, pounds sterling, yen, euros or any national currency of any participating member state of the EMU; or
  - (ii) such other currencies held by the Parent or any Restricted Subsidiary from time to time in the ordinary course of business or consistent with industry practice;
- (c) securities or other direct obligations, issued or directly and fully and unconditionally guaranteed or insured by the United States of America, Canadian, Japanese, Australian, Swiss, Norwegian or United Kingdom governments, the European Union or any member state of the European Union or, in each case, any political subdivision, agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;
- (d) certificates of deposit, time deposits and eurodollar time deposits with maturities of 24 months or less from the date of acquisition, demand deposits, bankers’ acceptances with maturities not exceeding 24 months and overnight bank deposits, in each case with any domestic or foreign commercial bank having combined capital and surplus of not less than \$100 million (or the foreign currency equivalent as of the date of determination);
- (e) repurchase obligations for underlying securities of the types described in paragraphs (c), (d), (g), (h) and (i) of this definition and entered into with any financial institution or recognized securities dealer meeting the qualifications specified in paragraph (d) above;
- (f) commercial paper and variable or fixed rate notes rated at least “P-2” by Moody’s or at least “A-2” by S&P or at least “F-2” by Fitch (or, if at any time none of Moody’s, S&P or Fitch rate such obligations, an equivalent rating from another Rating Agency), if each of the three named Rating Agencies cease publishing ratings of investments or, if no rating is available in respect of the commercial paper, the issuer of which has an equivalent rating in respect of its long-term debt, and in each case maturing within 24 months after the date of creation thereof;
- (g) marketable short-term money market and similar funds having a rating of at least “P-2” or “A-2” or “F-2” from Moody’s, S&P or Fitch, respectively (or, if at any time none of Moody’s, S&P or Fitch rate such obligations, an equivalent rating from another Rating Agency);
- (h) readily marketable direct obligations issued by, or unconditionally guaranteed by, any state, commonwealth or territory of the United States or any political subdivision, agency, public instrumentality or taxing authority thereof with maturities of 24 months or less from the date of acquisition;

- (i) readily marketable direct obligations issued by, or unconditionally guaranteed by, any other nation or government or any political subdivision, agency, public instrumentality or taxing authority thereof, in each case (other than in the case of such obligations issued or guaranteed by any participating member state of the EMU) having an Investment Grade Rating from Moody's, S&P or Fitch (or, if at any time none of Moody's, S&P or Fitch rate such obligations, an equivalent rating from another Rating Agency) with maturities of 24 months or less from the date of acquisition;
- (j) Investments with average maturities of 24 months or less from the date of acquisition in money market funds rated "A" (or the equivalent thereof) or better by S&P or Fitch or "A2" (or the equivalent thereof) or better by Moody's (or, if at any time none of Moody's, S&P or Fitch rate such obligations, an equivalent rating from another Rating Agency);
- (k) securities with maturities of 24 months or less from the date of acquisition backed by standby letters of credit issued by any financial institution or recognized securities dealer meeting the qualifications specified in paragraph (d) above;
- (l) Indebtedness or Preferred Stock issued by Persons with a rating of "BBB-" or higher from S&P or Fitch or "Baa3" or higher from Moody's (or, in each case, if at the time, neither is issuing comparable ratings, then a comparable rating of another Rating Agency) with maturities of 24 months or less from the date of acquisition;
- (m) bills of exchange issued in the United States of America (or any state or commonwealth thereof or the District of Columbia), Canada (or any province thereof), Japan, Australia, Switzerland, Norway, the United Kingdom, the European Union or any member state of the European Union or, in each case, any political subdivision, agency or instrumentality thereof, eligible for rediscount at the relevant central bank and accepted by a bank (or any dematerialized equivalent); and
- (n) interests in any investment company, money market, enhanced high yield fund or other investment fund investing at least 90% of its assets in currencies, instruments or securities of the types described in paragraphs (a) through (m) above.

In addition, in the case of Investments by any Captive Insurance Subsidiary, Cash Equivalents shall also include (a) such Investments with average maturities of 12 months or less from the date of acquisition in issuers rated BBB- (or the equivalent thereof) or better by S&P or Fitch or Baa3 (or the equivalent thereof) or better by Moody's, in each case at the time of such Investment and (b) any Investment with a maturity of more than 12 months that would otherwise constitute Cash Equivalents of the kind described in any of paragraphs (a) through (n) of this definition or paragraph (a) above, if the maturity of such Investment was 12 months or less; *provided that* the effective maturity of such Investment does not exceed 15 years.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in paragraphs (a) and (b) above, *provided that* such amounts are converted into any currency listed in paragraphs (a) and (b) as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

For the avoidance of doubt, any items identified as Cash Equivalents under this definition shall be deemed to be Cash Equivalents for all purposes under this Agreement regardless of the treatment of such items under GAAP.

“**Casualty Event**” means any event that gives rise to the receipt by the Parent or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

“**Code**” means the United States Internal Revenue Code of 1986, as amended.

“**Collateral**” has the meaning given to the term “Charged Property” in Clause 1.1 (*Definitions*).

“**consolidated**” unless otherwise specifically indicated, when used with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries.

“**Consolidated Depreciation and Amortization Expense**” means with respect to any Person for any period, the total amount of depreciation and amortization expense and capitalized fees, including, without limitation, the amortization of capitalized fees or costs related to any Qualified Securitization Facility of such Person and the amortization of media, site and software development costs, intangible assets, content databases, internal labor costs, deferred financing fees or costs, debt issuance costs, commissions, fees and expenses and Capitalized Software Expenditures of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“**Consolidated First Lien Debt Ratio**” means, as of any date of determination, the ratio of:

(a) the aggregate of:

- (i) Consolidated Total Indebtedness of the Parent and its Restricted Subsidiaries that is secured by Liens on the Collateral on a *pari passu* basis with the Facilities as of such date of determination; *plus*
- (ii) in connection with the incurrence of any Indebtedness pursuant to paragraph (a) or (b) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) or the creation or incurrence of any Lien pursuant to the definition of “Permitted Liens”, the Reserved Indebtedness Amount of the Parent and its Restricted Subsidiaries that is secured by Liens on the Collateral on a *pari passu* basis with the Facilities as of such date of determination; *minus*
- (iii) cash and Cash Equivalents that would be stated on the balance sheet of the Parent and its Restricted Subsidiaries as of such date of determination,

in each case with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of “Fixed Charge Coverage Ratio” (and subject, for the avoidance of doubt, to Clause 1.3 (*Calculations*)) and as determined in good faith by Parent; *to*

(b) LTM EBITDA.

“**Consolidated Interest Expense**” means, with respect to any Person for any period, without duplication, the sum of:

- (a) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income including:



- (i) amortization of original issue discount resulting from the issuance of Indebtedness at less than par;
- (ii) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances;
- (iii) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in mark-to-market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP);
- (iv) the interest component of Financing Lease Obligations; and
- (v) net payments, if any made (less net payments, if any, received), pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding:
  - (A) annual agency or similar fees paid to the administrative agents, collateral agents and other agents under any Credit Facilities;
  - (B) any additional interest with respect to failure to comply with any registration rights agreement owing with respect to any securities;
  - (C) costs associated with obtaining Hedging Obligations;
  - (D) any expense resulting from the discounting of any Indebtedness in connection with the application of recapitalization accounting or, if applicable, purchase or acquisition accounting;
  - (E) in connection with the Transactions or any acquisition or other transaction, penalties and interest relating to taxes, any “additional interest” or “liquidated damages” with respect to other securities for failure to timely comply with registration rights obligations, amortization or expensing of deferred financing fees, amendment and consent fees, debt issuance costs, commissions, fees, expenses and discounted liabilities and any other amounts of non-cash interest;
  - (F) any expensing of bridge, commitment and other financing fees and any other fees related to the Transactions or any acquisitions after the Closing Date or other transaction;
  - (G) commissions, discounts, yield and other fees and charges (including any interest expense) related to any Qualified Securitization Facility;
  - (H) any accretion of accrued interest on discounted liabilities and any prepayment, make-whole or breakage premium, penalty or cost;
  - (I) interest expense attributable to a parent entity resulting from push-down accounting; and
  - (J) any lease, rental or other expense in connection with a Non-Financing Lease Obligation; *plus*

(b) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued (but excluding any interest capitalized, accrued, accreted or paid in respect of Subordinated Shareholder Funding); *less*

(c) interest income of such Person and its Restricted Subsidiaries for such period.

For purposes of this definition, interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP (or, if not implicit, as otherwise determined in accordance with GAAP).

**“Consolidated Net Income”** means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; *provided that*, without duplication:

- (a) any after tax effect of extraordinary, exceptional, infrequently occurring, non-recurring or unusual gains or losses (less all fees and expenses relating thereto, but including any extraordinary, exceptional, infrequently occurring, non-recurring or unusual operating expenses directly attributable to the implementation of cost savings initiatives and any accruals or reserves in respect of any extraordinary, exceptional, infrequently occurring, non-recurring or unusual items), charges or expenses (including relating to any strategic initiatives), Transaction Expenses, restructuring and duplicative running costs, restructuring charges or reserves, relocation costs, start-up or initial costs for any project or new production line, division or new line of business, integration and facilities opening costs, facility consolidation and closing costs, severance costs and expenses, one-time charges (including compensation charges), payments made pursuant to the terms of change in control agreements that the Parent or a Subsidiary or a parent entity of the Parent had entered into with any future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of the Parent, a Subsidiary or a parent entity of the Parent, costs relating to pre-opening, opening and conversion costs for facilities, losses, costs or cost inefficiencies related to facility or property disruptions or shutdowns, signing, retention and completion bonuses, recruiting costs, costs incurred in connection with any strategic initiatives, transition costs, litigation and arbitration costs, charges, fees and expenses (including settlements), expenses in connection with one-time rate changes, costs incurred in connection with acquisitions, investments and dispositions (including travel and out-of-pocket costs, professional fees for legal, accounting and other services, human resources costs (including relocation bonuses), litigation and arbitration costs, charges, fees and expenses (including settlements), management transition costs, advertising costs, losses associated with temporary decreases in work volume and expenses related to maintaining underutilized personnel) and non-recurring product and intellectual property development, other business optimization expenses or reserves (including costs and expenses relating to business optimization programs and new systems design and costs or reserves associated with improvements to IT and accounting functions, retention charges (including charges or expenses in respect of incentive plans), system establishment costs and implementation costs) and costs, charges or expenses attributable to the implementation of cost-savings initiatives or operating expense reductions, product margin synergies and other synergies and similar initiatives and other expenses relating to the realization of synergies, and curtailments or modifications to pension and post-retirement employee benefit plans shall be excluded;
- (b) at the election of the Parent with respect to any quarterly period, the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies (including, but not limited to, the impact of Accounting Standards Update 2016-12 Revenue from Contracts with Customers (Topic 606), IFRS 15 (*Revenue from Contracts with*

*Customers*) or similar revenue recognition policies promulgated or that become effective after the Closing Date) during any such period shall be excluded;

- (c) any net after tax effect of gains or losses on (i) disposal, abandonment or discontinuance of disposed, abandoned or discontinued operations as applicable, and any accretion or accrual of discontinued liabilities on the disposal of such disposed, abandoned and discontinued operation and (ii) facilities or distribution centers that have been closed during such period, as applicable, shall be excluded;
- (d) any net after tax effect of gains or losses (less all fees, expenses and charges relating thereto) attributable to (i) asset dispositions or abandonments or the sale or other disposition of any Capital Stock of any Person or (ii) returned surplus assets of any pension plan, in each case other than in the ordinary course of business shall be excluded;
- (e) the Net Income for such period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting shall be excluded; *provided that* Consolidated Net Income of such Person shall be increased by the amount of dividends or distributions or other payments (other than Excluded Contributions pursuant to paragraph (b) of the definition of “Excluded Contribution”) that are actually paid in Cash Equivalents (or to the extent converted, or having the ability to be converted, into Cash Equivalents), or that could, in the reasonable determination of the Parent, have been distributed, to such Person or a Restricted Subsidiary thereof in respect of such period;
- (f) solely for the purpose of determining the amount available for Restricted Payments under paragraph (a)(B)(1) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*), the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule, or governmental regulation applicable to that Restricted Subsidiary or its stockholders (other than restrictions in this Agreement, the Original Senior Secured Notes Indenture, the Intercreditor Agreement and any Additional Intercreditor Agreement), unless such restriction with respect to the payment of dividends or similar distributions has been legally waived or released (or such Person reasonably believes such restriction could be waived or released and is using commercially reasonable efforts to pursue such waiver or release) or such restriction is not prohibited pursuant to Section 4 (*Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries*) of Schedule 17 (*General Undertakings*); *provided that* Consolidated Net Income of such Person shall be increased by the amount of dividends or other distributions or other payments actually paid in Cash Equivalents (or to the extent converted, or having the ability to be converted, into Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;
- (g) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) in such Person’s consolidated financial statements pursuant to GAAP (including in the inventory (including any impact of changes to inventory valuation policy methods, including changes in capitalization of variances), property and equipment, software, loans and leases, goodwill, intangible assets, in-process research and development, deferred revenue and debt line items thereof) resulting from the application of recapitalization accounting or purchase or acquisition accounting, as the case may be, in relation to the Transactions or any consummated

acquisition or joint venture investment or other transaction or the amortization or write-off or write-down of any amounts thereof, net of taxes, shall be excluded;

- (h) any after tax effect of income (loss) from the extinguishment or conversion of (i) Indebtedness, (ii) Hedging Obligations, (iii) Non-Financing Lease Obligations or (iv) other derivative instruments shall be excluded;
- (i) any impairment charge or asset write-off or write-down, including impairment charges or asset write-offs or write-downs related to goodwill, intangible assets, long-lived assets, investments in debt and equity securities and investments recorded using the equity method or as a result of a change in law or regulation, in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded;
- (j) any:
  - (i) equity-based or non-cash compensation or similar charge or expense or reduction of revenue including any such charge, expense or amount arising from grants of stock appreciation or similar rights, stock options, restricted stock, profits interests or other rights or equity or equity-based incentive programs (“**equity incentives**”);
  - (ii) any other management or employee benefit plan or agreement, pension plan or other long-term or post-employment plan, any one-time cash charges associated with the equity incentives or other long-term incentive compensation plans (including under deferred compensation arrangements of the Parent or any of its direct or indirect parent entities or subsidiaries), roll-over, acceleration, or payout of Equity Interests by future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants or business partners of the Parent or any of its direct or indirect parent entities or subsidiaries; and
  - (iii) any cash awards granted to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants or business partners of the Parent and its Subsidiaries or any of its direct or indirect parent entities in replacement for forfeited awards,shall be excluded;
- (k) any fees, costs, expenses, premiums or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, recapitalization, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses, premiums or charges related to (i) the offering and/or issuance of the Original Senior Secured Notes and other securities and the syndication and incurrence of any Credit Facilities (including the Facilities) and (ii) the rating of the Facilities, the Original Senior Secured Notes, other securities or any Credit Facilities by the Rating Agencies), issuance of Equity Interests of the Parent or its direct or indirect parent entities, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Facilities, the Original Senior Secured Notes and other securities and any Credit Facilities (including the Facilities)) or other transaction and including, in each case, any such transaction consummated on or prior to the Closing Date and any such transaction undertaken but not completed, any Public Company Costs and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt the effects of expensing all transaction related expenses in accordance with Financial Accounting Standards

Board Accounting Standards Codification Topic No. 805, Business Combinations and IFRS 3 (*Business Combinations*)), shall be excluded;

- (l) accruals and reserves that are established or adjusted in connection with the Transactions or within 24 months after the closing of any acquisition or transaction that are so required to be established or adjusted as a result of such acquisition or transaction in accordance with GAAP or changes as a result of modifications of accounting policies shall be excluded;
- (m) any expenses, charges or losses to the extent covered by insurance or indemnity and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer or indemnifying party and only to the extent that such amount is in fact reimbursed within 365 days of the date of the insurable or indemnifiable event (net of any amount so added back in any prior period to the extent not so reimbursed within the applicable 365-day period), shall be excluded;
- (n) any non-cash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, Compensation — Stock Compensation, IFRS 2 (*Share-based Payment*) or any other applicable accounting principle relating to the expensing of equity-related compensation, shall be excluded;
- (o) any net pension or post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of Statement of Financial Accounting Standards No. 87, 106 and 112, IAS 19 (*Employee Benefits*) and any other items of a similar nature, shall be excluded;
- (p) the following items shall be excluded:
  - (i) any realized or unrealized net gain or loss (after any offset) resulting in such period from Hedging Obligations and the application of Accounting Standards Codification Topic No. 815, Derivatives and Hedging, IFRS 9 (*Financial Instruments*) or any other comparable applicable accounting standard;
  - (ii) any realized or unrealized net gain or loss (after any offset) resulting in such period from currency translation or transaction gains or losses including those related to currency remeasurements of Indebtedness and Non-Financing Lease Obligations (including any net loss or gain resulting from Hedging Obligations for currency exchange risk and those resulting from intercompany Indebtedness) and any other foreign currency translation or transaction gains and losses to the extent such gains or losses are non-cash items;
  - (iii) in the sole election of the Parent, any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, Guarantees, IAS 37 (*Provisions, Contingent Liabilities and Contingent Assets*), IFRS 9 (*Financial Instruments*), IFRS 15 (*Revenue from Contracts with Customers*) or any comparable applicable accounting standard;
  - (iv) at the sole election of the Parent, with respect to any quarterly period, effects of adjustments to accruals and reserves during a prior period relating to any change in the methodology of calculating reserves for returns, rebates and other chargebacks;

- (v) earn-out, non-compete and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments;
- (vi) the impact of capitalized, accrued or accreting or pay-in-kind interest or principal on Subordinated Shareholder Funding; and
- (q) if such Person is treated as a disregarded entity or partnership for U.S. federal, state and/or local income tax purposes for such period or any portion thereof, the amount of distributions actually made to any direct or indirect parent company of such Person in respect of such period in accordance with paragraph (b)(xx) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*) shall be included in calculating Consolidated Net Income as though such amounts had been paid as taxes directly by such Person for such period.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received or due from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement.

Notwithstanding the foregoing, for the purpose of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*) only (other than paragraph (a)(B)(4) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*)), there shall be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by the Parent and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from the Parent and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by the Parent or any of its Restricted Subsidiaries, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under such covenant pursuant to paragraph (a)(B)(4) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*).

“**Consolidated Secured Debt Ratio**” means, as of any date of determination, the ratio of:

(a) the aggregate of:

- (i) Consolidated Secured Indebtedness of the Parent and its Restricted Subsidiaries as of such date of determination; *plus*
- (ii) in connection with the incurrence of any Indebtedness pursuant to paragraph (a) or paragraph (3) of the proviso to paragraph (b)(xii) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*), the Reserved Indebtedness Amount of the Parent and its Restricted Subsidiaries in respect of Indebtedness that would be included in the definition of “Consolidated Secured Indebtedness” once incurred, as of such date of determination; *minus*
- (iii) cash and Cash Equivalents that would be stated on the balance sheet of the Parent and its Restricted Subsidiaries as of such date of determination,

in each case with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of “Fixed Charge Coverage Ratio” (and subject, for the avoidance of doubt, to Clause 1.3 (*Calculations*)) and as determined in good faith by Parent; *to*

(b) LTM EBITDA.

“**Consolidated Secured Indebtedness**” means Consolidated Total Secured Indebtedness of the Parent and its Restricted Subsidiaries that is Secured Indebtedness.

“**Consolidated Total Debt Ratio**” means, as of any date of determination, the ratio of:

(a) the aggregate of:

- (i) Consolidated Total Indebtedness of the Parent and its Restricted Subsidiaries as of such date of determination; *plus*
- (ii) in connection with the incurrence of any Indebtedness pursuant to paragraph (a) or paragraph (3) of the proviso to paragraph (b)(xii) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*), the Reserved Indebtedness Amount of the Parent and its Restricted Subsidiaries in respect of Indebtedness that would be included in the definition of “Consolidated Total Indebtedness” once incurred, as of such date of determination; *minus*
- (iii) cash and Cash Equivalents that would be stated on the balance sheet of the Parent and its Restricted Subsidiaries as of such date of determination,

in each case with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of “Fixed Charge Coverage Ratio” (and subject, for the avoidance of doubt, to Clause 1.3 (*Calculations*)) and as determined in good faith by Parent; *to*

(b) LTM EBITDA.

“**Consolidated Total Indebtedness**” means, as of any date of determination, an amount equal to the sum of:

(a) the aggregate amount of all outstanding Indebtedness of the Parent and its Restricted Subsidiaries on a consolidated basis, consisting of:

- (i) Indebtedness for borrowed money;
- (ii) Obligations in respect of Financing Lease Obligations; and
- (iii) debt obligations evidenced by bonds, notes, debentures, promissory notes and similar instruments,

as determined in accordance with GAAP (excluding, for the avoidance of doubt all undrawn amounts under revolving credit facilities and letters of credit, all obligations relating to Qualified Securitization Facilities and Non-Financing Lease Obligations and excluding (i) any Settlement Debt and Settlement Liabilities or any other liabilities in connection with Settlement Cash Balances

or other Settlement Assets which would be treated as Indebtedness of the Group and (ii) the effects of any discounting of Indebtedness resulting from the application of repurchase or purchase or acquisition accounting in connection with the Transactions or any acquisition or other transaction); and

(b) in connection with the incurrence of any Indebtedness pursuant to paragraphs (a) or (b)(xii) Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*), the aggregate amount of all outstanding Disqualified Stock of the Parent and all Preferred Stock of its Restricted Subsidiaries on a consolidated basis, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences and maximum fixed repurchase prices, in each case determined on a consolidated basis in accordance with GAAP, *provided that* Consolidated Total Indebtedness shall not include Indebtedness in respect of (A) any letter of credit, except to the extent of unreimbursed amounts under standby letters of credit, *provided that* any unreimbursed amounts under commercial letters of credit shall not be counted as Consolidated Total Indebtedness until five Business Days after such amount is drawn and (B) Hedging Obligations. For purposes hereof, the “maximum fixed repurchase price” of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if:

- (i) such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to this Agreement, and
- (ii) such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Parent.

The Currency Equivalent principal amount of any Indebtedness denominated in a foreign currency may (at the election of the Parent) reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Currency Equivalent principal amount of such Indebtedness.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“**primary obligations**”) of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including, without limitation, 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 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.

**“Controlled Investment Affiliate”** means, as to any Person, any other Person, other than the Investors, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Parent and/or other companies.

**“Credit Facilities”** means, with respect to the Parent or any of its Restricted Subsidiaries, one or more debt facilities, including the Facilities, the Original Senior Secured Notes, or other financing arrangements (including, without limitation, commercial paper facilities, agreements or indentures) providing for revolving credit loans, term loans, letters of credit or other long-term indebtedness, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any indentures, agreements, credit facilities or commercial paper facilities that replace, refund, supplement, extend, amend, restate or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding, supplemental, extending, amended, restating or refinancing facility, arrangement, agreement or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof (*provided that* such increase in borrowings or issuances is permitted under Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*)) or adds Restricted Subsidiaries as additional borrowers or guarantors thereunder and whether by the same or any other agent, trustee, lender or group of lenders or other holders or investors.

**“Cumulative Retained Excess Cash Flow Amount”** means, at any date, an amount, not less than zero in the aggregate, determined on a cumulative basis (since the Closing Date) of Excess Cash Flow not required to be applied to prepay the Loans pursuant to Clause 12.2 (*Excess Cash Flow*).

**“Customary Bridge Loans”** means customary bridge loans with a maturity date of no longer than one year; *provided that*, subject to customary conditions, such bridge loans would either be converted into or required to be exchanged for permanent financing in the form of a loan, note, security or other Indebtedness (a) the Weighted Average Life to Maturity of which is not shorter than the Weighted Average Life to Maturity of the Term Facilities and (b) the final maturity date of which is not earlier than the latest Termination Date in respect of the Facilities, in each case, on the date of the incurrence of such bridge loans.

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

**“Currency Equivalent”** means, with respect to any monetary amount in a currency (the **“second currency”**) other than a specified currency (the **“first currency”**), at any time for determination thereof, the amount of the first currency obtained by converting the amount of the second currency into the first currency at, at the sole election of the Parent:

(a) the spot rate for the purchase of the first currency with the second currency as published in The Wall Street Journal in the *“Exchange Rates”* column under the heading *“Currency Trading”* on the date two Business Days prior to such determination;

- (b) the spot rate for the purchase of the first currency with the second currency as published in The Wall Street Journal in the “*Exchange Rates*” column under the heading “*Currency Trading*” on the Closing Date;
- (c) the average exchange rate for the purchase of the first currency with the second currency over any period reasonably selected by the Parent and not exceeding 12 months; or
- (d) for purposes of determining compliance with any restriction on the incurrence of Indebtedness, Disqualified Stock, Preferred Stock or other financing liabilities or determining the principal amount outstanding of Indebtedness, Disqualified Stock, Preferred Stock or other financing liabilities:
  - (i) such rate reflecting:
    - (A) the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Currency Equivalent principal amount of such Indebtedness, Disqualified Stock, Preferred Stock or other financing liability; or
    - (B) the relevant currency exchange rate in effect on the date:
      - (1) such Indebtedness, Disqualified Stock, Preferred Stock or other financing liability was committed;
      - (2) such Indebtedness, Disqualified Stock, Preferred Stock or other financing liability was incurred; or
      - (3) the definitive documentation in respect of such Indebtedness, Disqualified Stock, Preferred Stock or other financing liability was executed,
  - in each case as determined in good faith by the Parent; or
  - (ii) to the extent refinancing or replacing any existing or previous Indebtedness, Disqualified Stock, Preferred Stock or financing liability, such rate as used to permit the incurrence or issuance of the Indebtedness, Disqualified Stock, Preferred Stock or financing liability being refinanced or replaced.

“**custodian**” means the any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“**CVC Funds**” means, individually or collectively, any investment fund, co-investment vehicle and/or other similar vehicles or accounts, in each case managed, advised or controlled by CVC or one or more of its Affiliates, or any of their respective successors.

“**Debt Documents**” has the meaning given to that term in the Intercreditor Agreement.

“**Default**” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default, *provided that* any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default shall be deemed to be cured if such previous Default is cured or waived prior to becoming an Event of Default.

**“Designated Non-cash Consideration”** means the fair market value of non-cash consideration received by the Parent or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation less the amount of Cash Equivalents received in connection with a subsequent sale, redemption, conversion or repurchase of or collection or payment on such Designated Non-cash Consideration.

A particular item of Designated Non-cash Consideration shall no longer be considered to be outstanding when and to the extent it has been paid, redeemed or otherwise retired or sold or otherwise disposed of in exchange for consideration in the form of Cash Equivalents in compliance with Section 5 (*Asset Sales*) of Schedule 17 (*General Undertakings*).

**“Designated Preferred Stock”** means Preferred Stock of the Parent or any direct or indirect parent company thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Parent or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate on the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in paragraph (a)(B) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*).

**“Disinterested Director”** means, with respect to any Affiliate Transaction, a member of the Board of the Parent or any direct or indirect parent of the Parent having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of the Board of the Parent or any direct or indirect parent of the Parent shall be deemed not to have such a financial interest by reason of such member’s holding Capital Stock of the Parent or any direct or indirect parent of the Parent or any options, warrants or other rights in respect of such Capital Stock.

**“Disqualified Stock”** means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is puttable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable (other than solely for Capital Stock of such Person or any direct or indirect parent entity thereof that would not otherwise constitute Disqualified Stock, and other than solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than solely for Capital Stock of such Person or as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the latest Termination Date in respect of the Facilities or the date the Facilities are no longer outstanding; *provided that* if such Capital Stock is issued pursuant to any plan for the benefit of future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of the Parent or its Subsidiaries or by any such plan to such future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Parent or its Subsidiaries or a direct or indirect parent entity of the Parent in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability or otherwise in accordance with any management equity subscription agreement, stock option, stock appreciation right or other stock award agreement, stock ownership plan, put agreement, stockholder agreement or similar agreement; *provided further*, that any Capital Stock held by any future, current or former employee, director, officer, member, partner, manager or consultants (or their respective Controlled Investment Affiliates or Immediate Family Members) of the Parent, any of its Subsidiaries, any of its direct or indirect parent companies or any other entity in which the Parent or a Restricted Subsidiary has an Investment and is designated in good faith as an “affiliate” by the Board of the Parent or any direct or indirect parent of the Parent, in each case pursuant to any stock subscription or shareholders’ agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement, shall not constitute Disqualified Stock solely because it may be required to be repurchased by

the Parent or its Subsidiaries or any direct or indirect parent of the Parent or in order to satisfy applicable statutory or regulatory obligations.

“**Division**” means the division of the assets, liabilities and/or obligations of a Person (the “**Dividing Person**”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“**E-Money Directive**” means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

“**EBITDA**” means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period:

- (a) increased (without duplication) by the following, in each case (other than with respect to paragraphs (viii), (xi) and the applicable pro forma adjustments in paragraph (xv)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:
  - (i) (A) provision for taxes based on income, profits or capital, including, without limitation, federal, state, municipal, foreign, franchise and similar taxes and withholding taxes (including any future taxes or other levies which replace or are intended to be in lieu of such taxes and any penalties and interest related to such taxes or arising from tax examinations); (B) if such Person is treated as a disregarded entity or partnership for U.S. federal, state and/or local income tax purposes for such period or any portion thereof, the amount of distributions actually made to any direct or indirect parent company of such Person in respect of such period in accordance with paragraph (b)(xx) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*) and (C) the net tax expense associated with any adjustments made pursuant to paragraphs (a) through (q) of the definition of “Consolidated Net Income”; *plus*
  - (ii) Fixed Charges of such Person for such period (including (w) non-cash rent expense, (x) net losses or any obligations on Hedging Obligations or other derivative instruments, (y) bank fees and other financing fees and (z) costs of surety bonds in connection with financing activities, plus amounts excluded from Consolidated Interest Expense as set forth in paragraphs (a)(A) through (J) in the definition thereof); *plus*
  - (iii) Consolidated Depreciation and Amortization Expense of such Person for such period; *plus*
  - (iv) the amount of any equity-based or non-cash compensation charges or expenses, including any such charges or expenses arising from grants of stock appreciation or similar rights, stock options, restricted stock or other rights; *plus*
  - (v) any other non-cash charges, expenses or losses, including non-cash losses on the sale of assets and any write-offs or write-downs reducing Consolidated Net Income for such period and any non-cash expense relating to the vesting of warrants (*provided that* if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (A) the Parent may elect not to add back such non-cash charge in the current period and (B) to the extent the Parent elects to add back such non-cash charge, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent), and excluding amortization of a prepaid cash item that was paid in a prior period; *plus*

- (vi) the amount of any non-controlling interest or minority interest expense or any expense or deduction attributable to non-controlling or minority equity interests of third parties in any non-Wholly Owned Subsidiary; *plus*
- (vii) the amount of (x) Board fees, management, monitoring, consulting, transaction, advisory and other fees (including termination fees) and indemnities, costs and expenses paid or accrued in such period to the Investors or otherwise to any member of the Board of the Parent, any Subsidiary of the Parent or any direct or indirect parent of the Parent, any Permitted Holder or any Affiliate of a Permitted Holder, (y) the amount of payments made to option holders of the Parent or any of its direct or indirect parent companies in connection with, or as a result of, any distribution being made to shareholders of such Person or its direct or indirect parent companies, which payments are being made to compensate such option holders as though they were shareholders at the time of, and entitled to share in, such distribution, including any cash consideration for any repurchase of equity, in each case to the extent permitted in this Agreement and (z) any fees and other compensation paid to the members of the Board of the Parent or any of its parent entities; *plus*
- (viii) the amount of *pro forma* “run rate” (it being understood and agreed that “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or expected to be taken, net of the amount of actual benefits realized during such period from such actions) cost savings, operating improvements and expense reductions, product margin and other synergies and EBITDA pursuant to contracted pricing (at the highest contracted rate) related to mergers, amalgamations and other business combinations, acquisitions, investments, dispositions, divestitures, restructurings, operating improvements and expense reductions, cost savings initiatives, new or revised contracts, discontinued operations, operational changes, Business Expansions and other similar transactions or initiatives (including the modification and renegotiation of contracts and other arrangements) that are reasonably identifiable and factually supportable and projected by the Parent in good faith to result from actions that have been taken or with respect to which substantial steps have been taken (in each case, including from any steps or actions taken in whole or in part prior to the Closing Date or the applicable consummation date of such transaction, initiative or event) or are expected to be taken (in the good faith determination of the Parent) within 36 months after any such transaction, initiative, contract or event is consummated or entered into, net of the amount of actual benefits realized during such period from such actions; in each case, calculated on a *pro forma* basis as though such cost savings, operating improvements and expense reductions, product margin and other synergies and EBITDA pursuant to contracted pricing (at the highest contracted rate) had been realized on the first day of such period for which EBITDA is being determined and as if such cost savings, operating improvements and expense reductions, product margin and other synergies and EBITDA pursuant to contracted pricing (at the highest contracted rate) were realized on the first day of the applicable period for the entirety of such period; *provided that* no cost savings, operating improvements and expense reductions, product margin and other synergies and EBITDA pursuant to contracted pricing (at the highest contracted rate) shall be added pursuant to this paragraph (viii) to the extent duplicative of any expenses or charges otherwise added to EBITDA, whether through a *pro forma* adjustment or otherwise, for such period; *plus*
- (ix) the amount of loss or discount on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Facility; *plus*

- (x) any costs or expense incurred by the Parent or a Restricted Subsidiary or a parent entity of the Parent pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, any severance agreement or any stock subscription or shareholder agreement; *plus*
  - (xi) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing EBITDA or Consolidated Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of EBITDA pursuant to paragraph (b) below for any previous period and not added back; *plus*
  - (xii) any losses, charges, expenses, costs or other payments (including all fees, expenses or charges related thereto):
    - (A) from disposed, abandoned or discontinued operations;
    - (B) in respect of facilities no longer used or useful in the conduct of the business of the Parent or its Restricted Subsidiaries, abandoned, closed, disposed or discontinued operations and any losses on disposal of abandoned, closed or discontinued operations; and
    - (C) attributable to business dispositions or asset dispositions (other than in the ordinary course of business) as determined in good faith by the Parent; *plus*
  - (xiii) at the option of the Parent with respect to any applicable period, an amount equal to the net change in deferred revenue at the end of such period from the deferred revenue at the end of the previous period; *plus*
  - (xiv) compensation expense attributable to positive investment income with respect to funded deferred compensation account balances; *plus*
  - (xv) adjustments, exclusions and add-backs (x) used in connection with or reflected in the calculation of “Pro Forma EBITDA” (or any similar or equivalent term) as set forth in the offering memorandum in respect of the Original Senior Secured Notes, the Base Case Model or any quality of earnings report delivered to the Agent to the extent such adjustments continue to be applicable during the period in which EBITDA is being calculated and other adjustments, exclusions and add-backs of a similar nature to the foregoing, in each case applied in good faith by the Parent and (y) identified or set forth in any quality of earnings report or analysis prepared by independent registered public accountants of recognized national or international standing or any other accounting or valuation firm in connection with any acquisition, merger, consolidation, Investment or other transaction not prohibited by this Agreement; *plus*
  - (xvi) the amount of any gains or losses arising from embedded derivatives in the customer contracts of the Parent or a Restricted Subsidiary and any gain or loss attributable to mark-to-market adjustments in the valuation of pension liabilities, including actuarial gain or loss on pension and post-retirement plans, curtailments and settlements; and
- (b) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

- (i) non-cash gains (including non-cash gains on the sale of assets) increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period and any non-cash gains with respect to cash actually received in a prior period so long as such cash did not increase EBITDA in such prior period; *plus*
  - (ii) any Net Income from disposed, abandoned, closed or discontinued operations or attributable to business dispositions or asset dispositions (other than in the ordinary course of business) as determined in good faith by the Parent; *plus*
  - (iii) the reduction in compensation expense attributable to investment loss with respect to funded deferred compensation account balances; *plus*
  - (iv) claims paid by the Parent or any Captive Insurance Subsidiary and administrative expenses paid to any Captive Insurance Subsidiary; and
- (c) increased or decreased (without duplication) by, as applicable, any non-cash adjustments resulting from the application of FASB Interpretation No. 45 Guarantees, IAS 37 (*Provisions, Contingent Liabilities and Contingent Assets*), IFRS 9 (*Financial Instruments*) or any comparable applicable accounting standard.

“**EMU**” means the economic and monetary union as contemplated in the Treaty on European Union.

“**End Users**” means any person holding or otherwise beneficially entitled to the proceeds of any e-wallet or other account provided or otherwise made available by any members of the Group (including, without limitation, any customer which has accepted the terms and conditions, from time to time, in respect of such account), but excluding any merchant selling any product and/or service which utilizes the payment processing services provided by any member of the Group.

“**Equityholding Vehicle**” means any direct or indirect parent entity of the Parent and any equityholder thereof through which future, present or former employees, directors, officers, managers, members or partners of the Parent or any of its Subsidiaries or direct or indirect parent entities hold Capital Stock of the Parent or such parent entity.

“**equity incentives**” has the meaning set forth in the definition of “Consolidated Net Income.”

“**Equity Interests**” means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

“**Equity Offering**” means any public or private sale or issuance of common equity or Preferred Stock (excluding Disqualified Stock) of the Parent or any of its direct or indirect parent companies, other than:

- (a) public offerings with respect to the Parent or any direct or indirect parent company’s common equity registered on Form S-8;
- (b) issuances to any Subsidiary of the Parent; and
- (c) any such public or private sale or issuance that constitutes an Excluded Contribution.

“**Excess Proceeds**” has the meaning given to that term in paragraph (d) of Section 5 (*Asset Sales*) of Schedule 17 (*General Undertakings*).

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder (and with respect to the definitions of “Change of Control” and “Permitted Holders” only, as in effect on the Closing Date).

“**Excluded Contribution**” means Net Cash Proceeds, marketable securities or Qualified Proceeds received by the Parent after the Closing Date from:

- (a) contributions to its common equity capital;
- (b) dividends, distributions, fees and other payments from any Unrestricted Subsidiaries or joint ventures or Investments in entities that are not Restricted Subsidiaries;
- (c) Subordinated Shareholder Funding; and
- (d) the sale (other than to a Subsidiary of the Parent or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Parent) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Parent or any direct or indirect parent entity of the Parent to the extent contributed as common equity capital to the Parent,

in each case designated as Excluded Contributions pursuant to an Officer’s Certificate, which are (or were) excluded from the calculation set forth in paragraph (a)(B) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*).

“**fair market value**” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Parent in good faith.

“**Financing Lease Obligation**” means an obligation that is accounted for as a financing or capital lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP, subject in each case to paragraph (iii) of the definition of “GAAP”. At the time any determination thereof is to be made, the amount of the liability in respect of a financing or capital lease would be the amount required to be reflected as a liability on such balance sheet (excluding the footnotes thereto) in accordance with GAAP, subject in each case to paragraph (iii) of the definition of “GAAP.”

“**Fitch**” means Fitch Ratings Ltd and any successor to its rating agency business.

“**Fixed Charge Coverage Ratio**” means, with respect to any Person for any period, the ratio of EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that such Person or any Restricted Subsidiary incurs, assumes, guarantees, redeems, repays, retires or extinguishes any Indebtedness (other than Indebtedness incurred under any revolving credit, working capital or letter of credit facility) or issues or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or substantially concurrently with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the “**Fixed Charge Coverage Ratio Calculation Date**”), then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence, assumption, guarantee, redemption, repayment, retirement or extinguishment of Indebtedness, or such issuance or redemption of Disqualified Stock or Preferred Stock (in each case, including a pro forma application of the Net Proceeds therefrom), as if the same had occurred at the beginning of the applicable consecutive 12 month reference period, subject, for the avoidance of doubt, to Clause 1.3 (*Calculations*); *provided that* the pro forma calculation of Fixed Charges for purposes of paragraph (a) or paragraph (3) of the proviso to paragraph (b)(xii) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of



Schedule 17 (*General Undertakings*) (and for the purposes of other provisions of this Agreement that refer to paragraph (a) or paragraph (3) of the proviso to paragraph (b)(xii) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*)) shall not give effect to any Indebtedness being incurred on such date (or on such other subsequent date which would otherwise require pro forma effect to be given to such incurrence) pursuant to paragraph (b) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) (other than Indebtedness incurred pursuant to paragraph (3) of the proviso to paragraph (b)(xii) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*)).

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations (as determined in accordance with GAAP), operational changes, Business Expansions, new or revised contracts and other transactions that have been made by or involving the Parent or any of its Restricted Subsidiaries during the consecutive 12 month reference period or subsequent to such reference period and on or prior to or substantially concurrently with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations, operational changes, Business Expansions, new or revised contracts and other transactions (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the consecutive 12 month reference period; *provided* that at the election of Parent, such pro forma adjustments shall not be required to be determined to the extent the aggregate consideration paid in connection with such acquisition or other transaction was less than \$25.0 million. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Parent or any of its Restricted Subsidiaries since the beginning of such period shall have made any Investment, acquisition, disposition, merger, amalgamation, consolidation, discontinued operation, operational change, Business Expansion, new or revised contract or other transaction that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, acquisition, disposition, merger, amalgamation, consolidation, discontinued operation, operational change, Business Expansion, new or revised contract or other transaction had occurred at the beginning of the applicable consecutive 12 month reference period.

For purposes of this definition, whenever *pro forma* effect is to be given to an Investment, acquisition, disposition, merger, amalgamation, consolidation, discontinued operation, operational change, Business Expansion, new or revised contract or other transaction (including the Transactions), the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Parent or its Restricted Subsidiaries (and may include, for the avoidance of doubt, cost savings, operating improvements and expense reductions and product margin and other synergies resulting from such Investment, acquisition, disposition, merger, amalgamation, consolidation, discontinued operation, operational change, Business Expansion, new or revised contract or other transaction (including the Transactions) which is being given *pro forma* effect) calculated in accordance with and permitted by this Agreement, including paragraphs (a)(viii) and (a)(xv) of the definition of “EBITDA.” If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Parent to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP. For purposes of making the computation referred to in this definition, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth under the first paragraph of this definition. Interest on Indebtedness that may optionally be

determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Parent may designate.

“**Fixed Charge Coverage Ratio Calculation Date**” has the meaning set forth in the definition of “Fixed Charge Coverage Ratio.”

“**Fixed Charges**” means, with respect to any Person for any period, the sum of, without duplication:

- (a) Consolidated Interest Expense of such Person for such period;
- (b) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period; and
- (c) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period.

“**GAAP**” means, at the election of the Parent (1) the accounting standards and interpretations adopted by the International Accounting Standard Board (“**IFRS**”), if the Parent’s financial statements are at such time prepared in accordance with IFRS or (2) generally accepted accounting principles in the United States of America (“**U.S. GAAP**”), if the Parent’s financial statements are at such time prepared in accordance with U.S. GAAP, as in effect on the date of delivery of any applicable financial statements or other financial information and/or calculations (including pro forma financial information and/or calculations) or, at the election of the Parent, as in effect on the date of this Agreement; or the Closing Date; or during all or part of the period to which any applicable financial statements or other financial information and/or calculations (including pro forma financial information and/or calculations) relate, *provided that* (a) all references to codified accounting standards specifically named in this Agreement shall be deemed to include any successor, replacement, amendment or updated accounting standard under IFRS or U.S. GAAP, as applicable, (b) neither IFRS nor U.S. GAAP shall be required to include the policies, rules and regulations of the SEC, the American Institute of Certified Public Accountants, the International Accounting Standards Board or any other applicable regulatory or governing body applicable only to public companies and (c) neither IFRS nor U.S. GAAP shall be required to be calculated using the same accounting standard across multiple quarters.

For the purpose of making any calculation or determination (including the calculation of any restriction, basket, threshold or permission) under this Agreement (i) any calculation or determination in this Agreement that requires the application of GAAP across multiple quarters need not be calculated or determined using the same accounting standard for each constituent quarter (ii) all calculations or determinations in this Agreement shall be made without giving effect to any election under FASB Accounting Standards Topic 825, Financial Instruments, IFRS 9 (*Financial Instruments*) or any successor thereto or comparable accounting principle, to value any Indebtedness or other liabilities at “fair value” (as defined therein), (iii) any liabilities or obligations in connection with any lease, concession or license of property (including capital leases, finance leases and operating leases) shall be (A) subject to paragraph (B) of this definition and unless otherwise elected by the Parent (I) excluded for the purpose of the calculation of “Financing Lease Obligations”, “Fixed Charges”, “Indebtedness” and any ratios, defined terms, calculations and/or determinations under the Finance Documents (or any element thereof) and (II) deemed to constitute Non-Financing Lease Obligations and (B) calculated so as to disregard the impact of any element of IFRS 16 (*Leases*) and any successor standard thereto (or any equivalent under U.S. GAAP) for the purpose of the calculation of “EBITDA” and “LTM EBITDA” (including to the extent used in the calculation of any related ratio, defined term, calculation and/or determination under the Finance Documents (or any element thereof)); *provided that* for such purposes, the Parent may elect to calculate

“EBITDA” and “LTM EBITDA” as EBITDA or LTM EBITDA, as the case may be, less rents, in lieu of disregarding the impact of IFRS 16 (*Leases*) and any successor standard thereto (or any equivalent under U.S. GAAP). For the avoidance of doubt, none of the financial statements delivered pursuant to Schedule 15 (*Information Undertakings*) will be required to include any of the adjustments in the foregoing paragraphs (i) to (iii).

If there occurs a change in IFRS or U.S. GAAP, as the case may be, and such change would cause a change in the method of calculation of any term or measure used in this Agreement (an “**Accounting Change**”), then the Parent may elect, from time to time, that such term or measure shall be calculated as if such Accounting Change had not occurred.

“**Group**” means the Parent and each of its Restricted Subsidiaries from time to time.

“**guarantee**” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“**Guarantee**” means the guarantee by any Guarantor under Clause 23 (*Guarantees and Indemnity*).

“**Hedging Obligations**” means, with respect to any Person, the obligations of such Person under:

- (a) any rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar agreements or transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement; and
- (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Holding Company**” means any Person so long as the Parent is a direct or indirect Subsidiary of such Person, and at the time the Parent became a Subsidiary of such Person, no Person and no group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act as in effect on the Closing Date), including any such group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act as in effect on the Closing Date) (other than any Permitted Holder), shall have beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act as in effect on the Closing Date), directly or indirectly, of more than 50% of the total voting power of the Voting Stock of such Person.

“**IFRS**” has the meaning set forth in the definition of “GAAP”.

“**Immediate Family Members**” means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified partners, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including adoptive

relationships), the estates of such individual and such other individuals above and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation, trust or fund that is controlled by any of the foregoing individuals or any donor-advised foundation, trust or fund of which any such individual is the donor.

“**Increased Amount**” has the meaning given to that term in paragraph (d) of Section 3 (*Liens*) of Schedule 17 (*General Undertakings*).

“**Indebtedness**” means, with respect to any Person, without duplication:

(a) any indebtedness of such Person, whether or not contingent:

(i) representing the principal in respect of borrowed money;

(ii) representing the principal in respect of obligations evidenced by bonds, notes, debentures or similar instruments or ‘letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);

(iii) representing the principal component in respect of obligations to pay the deferred and unpaid balance of the purchase price of any property which purchase price is due more than one year from the date of incurrence of the obligation in respect thereof, except (A) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business, (B) any earn-out obligations or purchase price adjustments (x) until 60 days after such obligation becomes due and payable or (y) is otherwise not treated as a liability on the balance sheet, (C) accruals for payroll and other liabilities accrued in the ordinary course of business, and (D) liabilities associated with customer prepayments and deposits; or

(iv) representing the net obligations under any Hedging Obligations,

if and to the extent that any of the foregoing Indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP; *provided that* Indebtedness of any direct or indirect parent of the Parent appearing upon the balance sheet of the Parent solely by reason of push-down accounting under GAAP shall be excluded;

(b) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, the obligations of the type referred to in paragraph (a) of a third Person (whether or not such items would appear upon the balance sheet of such first Person), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(c) to the extent not otherwise included, the obligations of the type referred to in paragraph (a) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person, *provided that* the amount of any such Indebtedness shall be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such third Person;

*provided that*, notwithstanding the foregoing, Indebtedness shall be deemed not to include:

- (A) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice;
- (B) Non-Financing Lease Obligations, Financing Lease Obligations (unless otherwise elected pursuant to the terms of this Agreement), Qualified Securitization Facilities, straight-line leases, operating leases, Sale and Lease-Back Transactions or lease lease-back transactions;
- (C) obligations under any license, permit or other approval (or guarantees given in respect of such obligations) incurred prior to the Closing Date or in the ordinary course of business or consistent with past practice;
- (D) in connection with the purchase by the Parent or any Restricted Subsidiary of any business, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; *provided that*, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner;
- (E) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller;
- (F) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto;
- (G) accrued expenses and royalties;
- (H) Capital Stock and Disqualified Stock;
- (I) any obligations in respect of workers' compensation claims, unemployment insurance, retirement, post-employment or termination obligations (including pensions and retiree medical care), pension fund obligations or contributions or similar claims, or social security or wage taxes or contributions;
- (J) deferred or prepaid revenues;
- (K) any asset retirement obligations;
- (L) any liability for taxes; or
- (M) Subordinated Shareholder Funding;

*provided further*, that Indebtedness shall be calculated without giving effect to the effects of Financial Accounting Standards Board Accounting Standards Codification Topic No. 815, IFRS 9 (*Financial Instruments*) and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

**“Independent Financial Advisor”** means an accounting, appraisal, investment banking firm or consultant of nationally or internationally recognized standing that is, in the good faith judgment of the Parent, qualified to perform the task for which it has been engaged.

**“Intercompany License Agreement”** means any cost sharing agreement, commission or royalty agreement, license or sub-license agreement, distribution agreement, services agreement, intellectual property rights transfer agreement, any related agreements or other similar agreements, in each case where all parties to such agreement are one or more of the Parent or a Restricted Subsidiary.

**“Investment Grade Rating”** means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s or BBB- (or the equivalent) by S&P, or if the applicable securities are not then rated by Moody’s or S&P, an equivalent rating by any other Rating Agency.

**“Investment Grade Securities”** means:

- (a) securities issued or directly and fully guaranteed or insured by the United States or Canadian government or any agency or instrumentality thereof (other than Cash Equivalents);
- (b) securities issued or directly and fully guaranteed or insured by the United States of America (or any state or commonwealth thereof or the District of Columbia), Japan, Australia, Switzerland, Norway, the United Kingdom, the European Union or any member state of the European Union on the Closing Date or, in each case, any political subdivision, agency or instrumentality thereof (other than Cash Equivalents);
- (c) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Parent and its Subsidiaries;
- (d) investments in any fund that invests at least 90% of its assets in investments of the type described in paragraphs (a) to (c) which fund may also hold immaterial amounts of cash pending investment or distribution; and
- (e) corresponding instruments in countries other than the United States of America customarily utilized for high quality investments.

**“Investments”** means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit, advances to customers, commission, travel and similar advances to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants, in each case made in the ordinary course of business or consistent with past practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Parent in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. For purposes of the definition of “Unrestricted Subsidiary” and Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*):

- (a) “Investments” shall include the portion (proportionate to the Parent’s equity interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Parent at the time that such Subsidiary is designated an Unrestricted Subsidiary;

(b) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value at the time of such transfer; and

(c) if the Parent or any Restricted Subsidiary issues, sells or otherwise disposes of any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any investment by the Parent or any Restricted Subsidiary in such Person remaining after giving effect thereto shall not be deemed to be an Investment at such time;

The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in Cash Equivalents by the Parent or a Restricted Subsidiary in respect of such Investment to the extent such amounts do not increase any other baskets under this Agreement.

“**Investors**” means the Sponsor Funds and any of their respective Affiliates.

“**letter of credit**” means any letter of credit, stand-by letter of credit, bank guarantee, bankers’ acceptance, performance bond or similar instrument.

“**Lien**” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided that* in no event shall Non-Financing Lease Obligations be deemed to constitute a Lien.

“**Limited Condition Transaction**” means (1) any Investment or acquisition (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Capital Stock or otherwise and which may include, for the avoidance of doubt, a transaction that may constitute a Change of Control) or other transaction, (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness, Disqualified Stock or Preferred Stock (3) any Restricted Payment and (4) any Asset Sale or a disposition excluded from the definition of “Asset Sale”.

“**LTM EBITDA**” means EBITDA of the Parent measured for the period of, at the option of the Parent, (i) the most recent four consecutive Financial Quarters or (ii) the most recent 12 consecutive months ending prior to the date of such determination for which internal consolidated financial statements of the Parent are available, with such *pro forma* adjustments giving effect to such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations, operational changes, Business Expansions or other transaction, as applicable, since the start of such consecutive 12 month reference period and on or prior to or substantially concurrently with the date of determination as are consistent with the *pro forma* adjustments set forth in the definition of “Fixed Charge Coverage Ratio.”

“**Management Stockholders**” means the future, present or former employees, directors, officers, managers, members or partners (and their Controlled Investment Affiliates and Immediate Family Members) of the Parent (or its direct or indirect parent entities) or any Restricted Subsidiary who are or become direct or indirect holders of Equity Interests of the Parent or any direct or indirect parent companies of the Parent, including any such future, present or former employees, directors, officers, managers, members or partners owning through an Equityholding Vehicle.

“**Market Capitalization**” means an amount equal to (a) the total number of issued and outstanding shares of common Equity Interests of the Parent (or any direct or indirect parent entity of the Parent) on the date

of the declaration of a Restricted Payment permitted pursuant to paragraph (b)(ix) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*), multiplied by (b) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

“**Master Agreement**” has the meaning given to that term in the definition of “Hedging Obligations.”

“**Merger Agreement**” means the agreement and plan of merger made and entered into as of 7 December 2020, by and among Foley Trasimene Acquisition Corp. II, a Delaware corporation, Paysafe Limited, an exempted limited company incorporated under the laws of Bermuda, Merger Sub Inc., a Delaware corporation and direct, wholly owned subsidiary of Paysafe Limited, Paysafe Bermuda Holding LLC, a Bermuda exempted limited liability company, Pi Jersey Holdco 1.5 Limited, a private limited company incorporated under the laws of Jersey, Channel Islands, and Paysafe Group Holdings Limited, a private limited company incorporated under the laws of England and Wales.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“**Net Cash Proceeds**” means the aggregate Cash Equivalents proceeds received in respect of any Subordinated Shareholder Funding, Equity Offering, sale of Equity Interests or other applicable transaction, in each case net of underwriting fees or discounts in respect of any such Equity Offering, sale or other transaction.

“**Net Income**” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“**Net Proceeds**” means the aggregate Cash Equivalents proceeds received by the Parent or any of its Restricted Subsidiaries in respect of any Asset Sale, including any Cash Equivalents received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of (1) the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including legal, accounting, consulting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, and brokerage and sales commissions and fees, any relocation expenses incurred as a result thereof, other fees and expenses, including survey costs, title, search and recordation expenses and title insurance premiums, (2) taxes, including tax distributions paid pursuant to paragraph (b)(xx) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*) paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement (including transfer taxes, deed or mortgage recording taxes and estimated taxes payable in connection with any repatriation of funds and after taking into account any available tax credits or deductions and any tax sharing arrangements), (3) amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness required (other than required by paragraph (b)(i) of Section 5 (*Asset Sales*) of Schedule 17 (*General Undertakings*)) to be paid as a result of such transaction, (4) the pro rata portion of Net Proceeds thereof (calculated without regard to this paragraph (4)) attributable to minority interests and not available for distribution to or for the account of the Parent and its Restricted Subsidiaries as a result thereof, (5) any costs associated with unwinding any related Hedging Obligations in connection with such transaction, (6) any deduction of appropriate amounts to be provided by the Parent or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Parent or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, (7) any portion of the purchase price from an Asset Sale placed in escrow, whether as a reserve for adjustment of the purchase



price, for satisfaction of indemnities in respect of such Asset Sale or otherwise in connection with such Asset Sale, *provided that* upon the termination of that escrow (other than in connection with a payment in respect of any such adjustment or satisfaction of indemnities), Net Proceeds shall be increased by any portion of funds in the escrow that are released to the Parent or any of its Restricted Subsidiaries and (8) the amount of any liabilities (other than Indebtedness in respect of the Facilities) directly associated with such asset being sold and retained by the Parent or any of its Restricted Subsidiaries; *provided further*, that (i) the proceeds realized in any single transaction or series of related transactions shall not constitute Net Proceeds unless the amount of such proceeds exceeds the greater of (x) \$65.0 million and (y) 15.0% of LTM EBITDA, and (ii) only the aggregate amount of proceeds (excluding, for the avoidance of doubt, Net Proceeds described in the preceding paragraph (i)) in excess of the greater of (x) \$130.0 million and (y) 30.0% of LTM EBITDA in any Financial Year shall constitute “Net Proceeds” under this definition. Any non-cash consideration received in connection with any Asset Sale that is subsequently converted to cash shall become Net Proceeds only at such time as it is so converted.

“**Non-Financing Lease Obligation**” means any lease obligation which is determined not to be a Financing Lease Obligation in accordance with the terms of this Agreement and GAAP.

“**Obligations**” means any principal, interest (including any interest accruing on or subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable law), premium, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker’s acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

“**Officer**” means the Chairman of the Board, any member of the Board, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the President, any Executive Vice President, Senior Vice President, Vice President or Assistant Vice President, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary of a Person or any other officer of such Person designated by any such individuals. Unless otherwise specified, reference to an “Officer” means an Officer of the Parent.

“**Officer’s Certificate**” means a certificate signed on behalf of a Person by an Officer of such Person. Unless otherwise specified, reference to an “Officer’s Certificate” means a certificate signed on behalf of the Parent by an Officer of the Parent.

“**Operating Facility**” means any facility or financial accommodation (including, without limitation, any overdraft or other current account facility, any foreign exchange facility, any guarantee, bonding, documentary or standby letter of credit facility, any credit card or automated payments facility, any short-term loan facility, any derivatives facility, any cash pooling arrangement or other cash management arrangement, chequing or note encashment facility) provided to a member of the Group by an Operating Facility Lender (as defined in the Intercreditor Agreement) which is notified to the Security Agent by the Parent in writing as a facility or financial accommodation to be treated as an “Operating Facility” for the purposes of the Intercreditor Agreement (as defined herein).

“**Opinion of Counsel**” means a written opinion (which opinion may be subject to customary assumptions and exclusions) from legal counsel who is reasonably acceptable to the Agent. The counsel may be an employee of, or outside counsel to, the Parent or a Guarantor.

“**Pari Passu Indebtedness**” means Indebtedness of an Obligor which is secured by Liens on the Collateral on a pari passu basis with the Facilities.

**“Permitted Asset Swap”** means the substantially concurrent purchase and sale or exchange, including as a deposit for future purchases, of Related Business Assets or a combination of Related Business Assets and Cash Equivalents between the Parent or any of its Restricted Subsidiaries and another Person, *provided that* any Cash Equivalents received must be applied in accordance with Section 5 (*Asset Sales*) of Schedule 17 (*General Undertakings*).

**“Permitted Intercompany Activities”** means any transactions (A) between or among the Parent and its Restricted Subsidiaries that are entered into in the ordinary course of business of the Parent and its Restricted Subsidiaries and, in the good faith judgment of the Parent are necessary or advisable in connection with the ownership or operation of the business of the Parent and its Restricted Subsidiaries, including, but not limited to, (a) payroll, cash management, purchasing, insurance and hedging arrangements; (b) management, technology and licensing arrangements; and (c) customer loyalty and rewards programs; and (B) between or among the Parent, its Restricted Subsidiaries and any Captive Insurance Subsidiary.

**“Permitted Investments”** means:

- (a) any Investment in the Parent or any of its Restricted Subsidiaries;
- (b) any Investment in Cash Equivalents or Investment Grade Securities;
- (c) any Investment by the Parent or any of its Restricted Subsidiaries in a Person (including, to the extent constituting an Investment, in assets of a Person that represent all or substantially all of its assets or a division, business unit or product line, including research and development and related assets in respect of any product or other assets) if as a result of such Investment:
  - (i) such Person becomes a Restricted Subsidiary (including by means of a Division); or
  - (ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys all or substantially all of its assets (or such division, business unit or product line or other assets) to, or is liquidated into, the Parent or a Restricted Subsidiary,and, in each case, any Investment held by such Person; *provided that* such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation or transfer;
- (d) any Investment in securities or other assets, including earn-outs, not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to Section 5 (*Asset Sales*) of Schedule 17 (*General Undertakings*) or any other disposition of assets not constituting an Asset Sale;
- (e) any Investment existing on the Closing Date or made pursuant to binding commitments in effect on the Closing Date (including for the avoidance of doubt, Investments pursuant to the Skrill USA Acquisition Agreement) or an Investment consisting of any extension, modification, replacement, reinvestment or renewal of any such Investment or binding commitment existing on the Closing Date; *provided that* the amount of any such Investment may be increased in such extension, modification, replacement, reinvestment or renewal only (i) as required by the terms of such Investment or binding commitment as in existence on the Closing Date (including as a result of the accrual or accretion of interest

or original issue discount or the issuance of pay-in-kind securities) or (ii) as otherwise permitted under this Agreement;

(f) any Investment acquired by the Parent or any of its Restricted Subsidiaries:

(i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business or consistent with past practice;

(ii) in exchange for any other Investment or accounts receivable, endorsements for collection or deposit held by the Parent or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable (including any trade creditor, supplier or customer); or

(iii) in satisfaction of judgments against other Persons; or

(iv) as a result of a foreclosure by the Parent or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(g) Hedging Obligations permitted under paragraph (b)(viii) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*);

(h) any Investment in a Similar Business having an aggregate fair market value taken together with all other Investments made pursuant to this paragraph (h) that are at that time outstanding not to exceed the greater of (x) \$175.0 million and (y) 40.0% of LTM EBITDA (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such investments; *provided*, however, that if any Investment pursuant to this paragraph (h) is made in any Person that is not a Restricted Subsidiary of the Parent at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to paragraph (a) above and shall cease to have been made pursuant to this paragraph (h);

(i) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) or Subordinated Shareholder Funding of the Parent or any of its direct or indirect parent companies, *provided that* such Equity Interests shall not increase the amount available for Restricted Payments under paragraph (a)(B)(2) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*);

(j) guarantees of Indebtedness permitted under Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*), performance guarantees and Contingent Obligations and the creation of Liens on the assets of the Parent or any Restricted Subsidiary in compliance with Section 3 (*Liens*) of Schedule 17 (*General Undertakings*);

- (k) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of paragraph (b) of Section 6 (*Transactions with Affiliates*) of Schedule 16 (*General Undertakings*) (except transactions described in paragraphs (b)(ii), (v), (x) and (xxiii) of Section 6 (*Transactions with Affiliates*) of Schedule 17 (*General Undertakings*));
- (l) Investments consisting of:
- (i) purchases or other acquisitions of inventory, supplies, material or equipment;
  - (ii) the leasing, sub-leasing, licensing, sub-licensing, cross-licensing or contribution of intellectual property in the ordinary course of business or consistent with past practice or pursuant to joint marketing arrangements with other Persons; or
  - (iii) the contribution, assignment, licensing, sub-licensing or other Investment of intellectual property or other general intangibles pursuant to any Intercompany License Agreement and any other Investments made in connection therewith;
- (m) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this paragraph (m) that are at that time outstanding not to exceed the greater of (x) \$175.0 million and (y) 40.0% of LTM EBITDA (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such investments; *provided*, however, that if any Investment pursuant to this paragraph (m) is made in any Person that is not a Restricted Subsidiary of the Parent at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to paragraph (a) above and shall cease to have been made pursuant to this paragraph (m);
- (n) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Parent are necessary or advisable to effect any Qualified Securitization Facility (including any contribution of replacement or substitute assets to such subsidiary) or any repurchase obligation in connection therewith;
- (o) loans and advances to, or guarantees of Indebtedness of, future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants or other service providers not in excess of \$20.0 million outstanding at any one time;
- (p) loans and advances to future, present or former employees, directors, officers, managers, members, partners, independent contractors, consultants or other service providers:
- (i) for business-related travel or entertainment expenses, moving expenses and other similar expenses or payroll advances, in each case incurred in the ordinary course of business or consistent with industry practices; or
  - (ii) to fund such Person's purchase of Equity Interests of the Parent or any direct or indirect parent company thereof or in any management equity vehicle so investing in such Equity Interests;

- (q) (i) advances, loans or extensions of trade credit in the ordinary course of business or consistent with past practice by the Parent or any of its Restricted Subsidiaries and (ii) Investments constituting deposits, prepayments and/or other credits to suppliers;
- (r) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with past practice;
- (s) (i) Investments made as part of, or in connection with, the Transactions and (ii) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with past practice;
- (t) Investments made in the ordinary course of business or consistent with past practice in connection with obtaining, maintaining or renewing client contacts;
- (u) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with past practice;
- (v) Investments in Indebtedness of the Parent and the Restricted Subsidiaries;
- (w) repurchases of the Original Senior Secured Notes or any other notes;
- (x) Investments in the ordinary course of business or consistent with past practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers consistent with past practices;
- (y) Investments consisting of promissory notes issued by the Parent or any Restricted Subsidiary to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants of the Parent or any of its Subsidiaries or their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Parent or any direct or indirect parent thereof, to the extent the applicable Restricted Payment is permitted by Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*);
- (z) Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, or other disputes with, customers and suppliers arising in the ordinary course of business or consistent with past practice or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;
- (aa) any Investment by any Captive Insurance Subsidiary in connection with the provision of insurance to the Parent or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with past practice of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;
- (bb) Investments made in connection with Permitted Intercompany Activities and related transactions;
- (cc) Investments made after the Closing Date in joint ventures of the Parent or any of its Restricted Subsidiaries existing on the Closing Date;

- (dd) Investments in joint ventures or non-Wholly Owned Subsidiaries of the Parent or any of its Restricted Subsidiaries, taken together with all other Investments made pursuant to this paragraph (dd) that are at that time outstanding not to exceed the greater of (x) \$130.0 million and (y) 30.0% of LTM EBITDA (in each case, determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), *plus* the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such investments;
- (ee) Investments made from casualty insurance proceeds in connection with the replacement, substitution, restoration or repair of assets on account of a Casualty Event;
- (ff) earnest money deposits required in connection with any acquisition permitted under this Agreement (or similar Investments);
- (gg) Investments to the extent required by applicable rules under the Exchange Act or by any governmental authority, including any Investment made in order to avoid any early warning or notice requirements under such rules or requirements;
- (hh) contributions to a “rabbi” trust for the benefit of future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants or other service providers or other grantor trusts subject to claims of creditors in the case of bankruptcy of the Parent or any of its Restricted Subsidiaries;
- (ii) pension fund and other employee benefit plan obligations and liabilities;
- (jj) any other Investment, so long as, after giving pro forma effect to such Investment, the Consolidated Total Debt Ratio shall be no greater than 5.50 to 1.00 or the Consolidated Total Debt Ratio is equal to or less than immediately prior to such investment; and
- (kk) Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this paragraph (kk) that are at that time outstanding not to exceed the Available RP Capacity Amount (determined on the date such Investment is made, with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value), plus the amount of any returns (including dividends, payments, interest, distributions, returns of principal, profits on sale, repayments, income and similar amounts) in respect of such investments; *provided*, however, that if any Investment pursuant to this paragraph (kk) is made in any Person that is not a Restricted Subsidiary of the Parent at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to paragraph (a) above and shall cease to have been made pursuant to this paragraph (kk).

For purposes of determining compliance with this definition, in the event that a proposed Investment (or a portion thereof) meets the criteria of paragraphs (a) through (kk) of this definition, the Parent shall be entitled to divide or classify or later divide or reclassify (based on circumstances existing on the date of such reclassification) such Investment (or a portion thereof) between such paragraphs (a) through (kk) in any manner that otherwise complies with this definition.

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

- (a) pledges, deposits or security by such Person under workmen's compensation laws, unemployment insurance, employers' health tax, and other social security laws or similar legislation or other insurance-related obligations (including, but not limited to, in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case incurred in the ordinary course of business or consistent with past practice;
- (b) Liens imposed by law, such as landlords', carriers', warehousemen's, materialmen's, repairmen's, mechanics' and other similar Liens, in each case for sums not yet overdue for a period of more than 60 days or, if more than 60 days overdue, that are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith by appropriate actions or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;
- (c) Liens for taxes, assessments or other governmental charges (including any Lien imposed by any pension authority or similar Liens) not yet overdue for a period of more than 60 days or not yet payable or subject to penalties for non-payment or which are being contested in good faith by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;
- (d) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers acceptances issued, and completion guarantees provided for, in each case, issued pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice;
- (e) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects and irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially interfere with the ordinary conduct of the business of the Parent or any of its Restricted Subsidiaries, taken as a whole, and exceptions on title policies insuring Liens granted on any collateral;
- (f) Liens securing Obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to paragraph (b)(iii), (x), (xi), (xii), (xv), (xxi) or (xxv) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) or any Non-Financing Lease Obligations; *provided that:*
  - (i) Liens securing Obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock to be incurred pursuant to paragraph (b)(iii) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) or Non-Financing Lease Obligations extend only to the assets so

purchased, leased, expanded, constructed, installed, replaced, repaired or improved (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof); *provided further*, that individual financings of assets provided by one lender or group of lenders may be cross-collateralized to other financings of assets by such lender or group of lenders or their affiliates;

- (ii) Liens securing Obligations relating to any Indebtedness permitted to be incurred pursuant to paragraph (b)(xi) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) relate only to Obligations relating to Refinancing Indebtedness that (x) is secured by Liens on all or a portion of the same assets or the same categories or types of assets as the assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof) that secured the Indebtedness being refinanced; *provided further* that individual financings of assets provided by one lender or group of lenders may be cross-collateralized to other financings of assets by such lender or group of lenders or their affiliates or (y) extends, replaces, refunds, refinances, renews or defeases Indebtedness incurred or Disqualified Stock or Preferred Stock issued under paragraph (b)(ii) (solely to the extent such Indebtedness was secured by a Lien prior to such refinancing), (b)(iii), (iv), (x) or (xxv) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*);
- (iii) Liens securing Indebtedness permitted to be incurred pursuant to paragraph (b)(xii)(B) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) shall only be permitted if such Liens are limited to all or a part of the same property or assets, including Capital Stock acquired (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof), or of a Person acquired or merged or consolidated with or into the Parent or any Restricted Subsidiary, in any transaction to which such Indebtedness relates;
- (iv) Liens securing Indebtedness permitted to be incurred pursuant to paragraph (b)(xv) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) shall only be permitted to the extent such guarantee or co-issuance is in respect of Indebtedness otherwise permitted to be secured and specified in this definition of “Permitted Liens”; and
- (v) Liens securing Indebtedness permitted to be incurred pursuant to paragraph (b)(xxi) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) shall only be permitted if such Liens extend only to the assets of Restricted Subsidiaries of the Parent that are not a Borrower or a Guarantor (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof);
- (g) Liens existing on the Closing Date (excluding Liens securing this Agreement, the Facilities, the Hedging Obligations and the Original Senior Secured Notes), including Liens securing any Refinancing Indebtedness of any Indebtedness secured by such Liens;
- (h) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Restricted Subsidiary; *provided that* such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Restricted Subsidiary; *provided further*,



that such Liens may not extend to any other property or other assets owned by the Parent or any of its Restricted Subsidiaries;

- (i) Liens on property or other assets at the time the Parent or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or consolidation with or into the Parent or any of its Restricted Subsidiaries, *provided that* such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation *provided further*, that the Liens may not extend to any other property owned by the Parent or any of its Restricted Subsidiaries;
- (j) Liens securing Obligations relating to any Indebtedness or other obligations of the Parent or a Restricted Subsidiary owing to the Parent or a Restricted Subsidiary permitted to be incurred in accordance with Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*);
- (k) Liens securing (x) Hedging Obligations and (y) obligations in respect of Bank Products;
- (l) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's accounts payable or similar trade obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (m) leases, sub-leases, licenses or sub-licenses granted to others in the ordinary course of business or consistent with past practice which do not materially interfere with the ordinary conduct of the business of the Parent or any of its Restricted Subsidiaries, taken as a whole;
- (n) Liens arising from Uniform Commercial Code (or equivalent statute) financing statement filings regarding operating leases or consignments entered into by the Parent and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statute or practice) financing statements or similar public filings;
- (o) Liens in favor of the Parent or any Guarantor;
- (p) Liens on vehicles or equipment of the Parent or any of its Restricted Subsidiaries granted in the ordinary course of business or consistent with past practice;
- (q) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility;
- (r) Liens to secure any modification, refinancing, refunding, restatement, exchange, extension, renewal or replacement (or successive refinancing, refunding, restatements, exchange, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing paragraphs (f), (g), (h) and (i) of this definition, this paragraph (r) and paragraphs (oo), (pp) and (ss) of this definition, *provided that*:
  - (i) such new Lien shall be limited to all or a part of the same assets or the same categories or types of assets as the assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof) that secured the original Lien; and

- (ii) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of:
- (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under paragraphs paragraphs (f), (g), (h) and (i) of this definition, this paragraph (r) and paragraphs (oo), (pp) and (ss) of this definition at the time the original Lien became a Permitted Lien under this Agreement; and
  - (B) an amount necessary to pay any fees and expenses (including original issue discount, upfront fees or similar fees) and premiums (including tender premiums) and accrued and unpaid interest, related to such modification, refinancing, refunding, extension, renewal or replacement,
- (s) deposits made or other security provided in the ordinary course of business or consistent with past practice to secure liability to insurance carriers;
- (t) Liens securing obligations in an aggregate principal amount outstanding which does not exceed the greater of (x) \$130.0 million and (y) 30.0% of LTM EBITDA (in each case, determined as of the date of such incurrence);
- (u) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with past practice;
- (v) Liens securing judgments, awards, attachments or decrees for the payment of money not constituting an Event of Default under paragraph (e) of Section 1 (*Events of Default*) of Schedule 18 (*Events of Default*);
- (w) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business or consistent with past practice;
- (x) Liens:
- (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code or any comparable or successor provision on items in the course of collection;
  - (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business or consistent with past practice; and
  - (iii) in favour of banking or other financial institutions arising as a matter of law or under general terms and conditions encumbering deposits or other funds maintained with a financial institution (including the right of set-off) and which are within the general parameters customary in the banking industry;
- (y) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*);

- (z) Liens encumbering reasonable customary deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with past practice and not for speculative purposes;
- (aa) Liens that are contractual rights of set-off or netting or rights of pledge (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Parent or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Parent and its Restricted Subsidiaries or consistent with past practice or (iii) relating to purchase orders and other agreements entered into with customers of the Parent or any of its Restricted Subsidiaries in the ordinary course of business or consistent with past practice;
- (bb) Liens securing obligations owed by the Parent or any Restricted Subsidiary in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds;
- (cc) any encumbrance or restriction (including put and call arrangements, rights of first refusal, tag, drag and similar rights) with respect to Capital Stock of any joint venture, non-Wholly Owned Subsidiary or similar arrangement pursuant to any joint venture or similar agreement;
- (dd) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale or purchase of goods entered into by the Parent or any Restricted Subsidiary in the ordinary course of business or consistent with past practice;
- (ee) Liens solely on any cash earnest money deposits made by the Parent or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted by this Agreement;
- (ff) ground leases in respect of real property on which facilities owned or leased by the Parent or any of its Subsidiaries are located;
- (gg) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;
- (hh) Liens on Capital Stock of an Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;
- (ii) Liens constituting (a) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any government, statutory or regulatory authority, developer, landlord or other third party on property over which the Parent or any Restricted Subsidiary has easement rights or on any leased property and subordination or similar arrangements relating thereto and (b) any condemnation or eminent domain proceedings affecting any real property;
- (jj) Liens on property or assets under construction (and related rights) in favour of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets;
- (kk) Liens on the assets and Equity Interests of non-guarantor Restricted Subsidiaries securing Indebtedness of such Subsidiaries that was permitted by the terms of this Agreement to be incurred;

- (ll) Liens on (i) cash advances or Cash Equivalents in favor of (x) the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment or (y) the buyer of any property to be disposed of to secure obligations in respect of indemnification, termination fee or similar seller obligations and (ii) consisting of an agreement to dispose of any property in a disposition, in each case, solely to the extent such Investment or disposition, as the case may be, would have been permitted on the date of the creation of such Lien;
- (mm) any interest or title of a lessor, sub-lessor, franchisor, licensor or sub-licensor or secured by a lessor's, sub-lessor's, franchisor's, licensor's or sub-licensor's interest under leases or licenses entered into by the Parent or any of the Restricted Subsidiaries in the ordinary course of business or consistent with past practice or, with respect to intellectual property, software and other technology licenses that is not material to the conduct of the business of the Parent or its Restricted Subsidiaries, taken as a whole;
- (nn) deposits of cash with the owner or lessor of premises leased and operated by the Parent or any of its Subsidiaries in the ordinary course of business of the Parent and such Subsidiary or consistent with past practice to secure the performance of the Parent's or such Subsidiary's obligations under the terms of the lease for such premises;
- (oo) Liens securing Indebtedness (including Liens securing any Obligations in respect thereof) permitted to be incurred pursuant to Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) (including Indebtedness incurred under one or more Credit Facilities) so long as after giving pro forma effect to such incurrence and such Liens, (x) if such Indebtedness is secured by the Collateral on a *pari passu* basis with the Liens securing the Facilities, the Consolidated First Lien Debt Ratio would have been equal to or less than 4.70 to 1.00 or, if such Indebtedness is incurred, acquired or assumed in connection with an acquisition, merger, amalgamation, consolidation or Investment, the Consolidated First Lien Debt Ratio is equal to or less than immediately prior to such acquisition, merger, amalgamation, consolidation or Investment or (y) if such Indebtedness is secured by the Collateral on a junior lien basis to the Liens securing the Facilities, the Consolidated Secured Debt Ratio shall be equal to or less than 6.75 to 1.00 or, if such Indebtedness is incurred, acquired or assumed in connection with an acquisition, merger, amalgamation, consolidation or Investment, the Consolidated Secured Debt Ratio is equal to or less than immediately prior to such acquisition, merger, amalgamation, consolidation or Investment, in each case for, at the option of the Parent, (A) the Parent's most recently ended four full Financial Quarters or (B) the Parent's most recently ended period of 12 months, in each case, for which internal financial statements are available immediately preceding the date on which such Lien is incurred;
- (pp) Liens securing obligations in respect of (1) Indebtedness and other Obligations permitted to be incurred under one or more Credit Facilities, including any letter of credit facility relating thereto, that was permitted by the terms of this Agreement to be incurred pursuant to paragraph (b)(i) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) and (2) obligations of the Parent or any Subsidiary in respect of any Bank Product or Hedging Obligation;
- (qq) Liens on assets deemed to arise in connection with and solely as a result of the execution, delivery or performance of contracts to sell such assets if such sale is otherwise permitted under this Agreement;

- (rr) Liens on any funds or securities held in escrow accounts or similar arrangements established for the purpose of holding proceeds from issuances of debt securities or incurrences of other Indebtedness by the Parent or any of its Restricted Subsidiaries issued after the Closing Date, together with any additional funds required in order to fund any payment of interest or premium or discount on such Indebtedness (or any costs related to the issuance or incurrence of such Indebtedness), mandatory redemption or sinking fund payment on such debt securities or other Indebtedness;
- (ss) Liens securing (1) the Original Senior Secured Notes and related guarantees and (2) Liens pursuant to the Intercreditor Agreement and the Security Documents;
- (tt) Liens on assets securing any Indebtedness owed to any Captive Insurance Subsidiary by the Parent or any Restricted Subsidiary; and
- (uu) Liens given pursuant to Section 8a of the German Old Age Employees Part Time Act (*Altersteilzeitgesetz*) or Section 7e of the Fourth Book of the German Social Code (*Sozialgesetzbuch IV*).

For purposes of this definition, the term “Indebtedness” shall be deemed to include interest on such Indebtedness. In the event that a Permitted Lien meets the criteria of more than one of the types of Permitted Liens (at the time of incurrence or at a later date), the Parent in its sole discretion may divide, classify or from time to time reclassify all or any portion of such Permitted Lien in any manner that complies with this Agreement and such Permitted Lien shall be treated as having been made pursuant only to the paragraph or paragraphs of the definition of “Permitted Lien” to which such Permitted Lien has been classified or reclassified.

“**Permitted Payments**” has the meaning given to that term in paragraph (b) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*).

“**Permitted Plan**” means any employee benefits plan of the Parent or any of its Affiliates (including any Equityholding Vehicle) and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan.

“**Person**” means any individual, corporation, limited liability company, partnership (including a limited partnership), joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“**Preferred Stock**” means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

“**Public Company Costs**” means costs associated with or in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith, costs relating to compliance with the provisions of the Securities Act and the Exchange Act, as applicable to companies with equity or debt securities held by the public, and the rules of national securities exchanges, as applicable to companies with listed equity or debt securities, listing fees, independent directors’ compensation, fees and expense reimbursement, costs relating to investor relations (including any such costs in the form of investor relations employee compensation), shareholder meetings and reports to shareholders or debtholders, directors’ and officers’ insurance, legal and other professional fees and/or other costs or expenses, in each case, to the extent arising solely as a result of becoming or being a public company.

**“Purchase Money Obligations”** means any Indebtedness incurred to finance or refinance the acquisition, leasing, expansion, construction, development, installation, replacement, relocation, renewal, maintenance, upgrade, repair or improvement of property (real or personal), equipment or any other assets, and whether acquired through the direct acquisition of such property or assets, or otherwise (including through the purchase of Capital Stock of any Person owning such property or assets).

**“Qualified Proceeds”** means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

**“Qualified Securitization Facility”** means any Securitization Facility (i) constituting a securitization financing facility that meets the following conditions: (A) the Board or management of the Parent or any direct or indirect parent entity of the Parent shall have determined in good faith that such Securitization Facility is in the aggregate economically fair and reasonable to the Parent, and (B) all sales and/or contributions of Securitization Assets and related assets to the applicable Securitization Subsidiary or another Person are made at fair market value (as determined in good faith by the Parent) or (ii) constituting a receivables or payables financing or factoring facility.

**“Quarterly Financial Statements”** has the meaning given to that term in paragraph (c) of Section 1 (*Financial Statements*) of Schedule 16 (*Information Undertakings*).

**“Rating Agencies”** means Moody’s and S&P or if Moody’s or S&P or any combination thereof shall not make a rating on the Facilities publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Parent which shall be substituted for Moody’s or S&P or any combination thereof, as the case may be.

**“Ratio-based Basket”** has the meaning given to that term in paragraph (d) of Clause 1.3 (*Calculations*).

**“Refinancing Indebtedness”** has the meaning given to that term in paragraph (b)(xi) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*).

**“Refunding Capital Stock”** has the meaning given to that term in paragraph (b)(ii)(A) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*).

**“Related Business Assets”** means assets (other than Cash Equivalents) used or useful in a Similar Business or any securities of a Person received by the Parent or a Restricted Subsidiary in exchange for assets transferred by the Parent or a Restricted Subsidiary.

**“Relevant Regulator”** means the Isle of Man Financial Services Authority, the Swiss Financial Market Supervisory Authority (FINMA), the UK Financial Conduct Authority, the UK Payment Systems Regulator, the UK Competition and Markets Authority, the Financial Services Commission of Mauritius or any other entity, agency, governmental authority or person that has regulatory authority over the business or operations of any member of the Group.

**“Reserved Indebtedness Amount”** has the meaning given to that term in paragraph (c)(vi) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*).

**“Restricted Investment”** means an Investment other than a Permitted Investment.

“**Restricted Payments**” has the meaning given to that term in paragraph (a) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*).

“**Restricted Subsidiary**” means, with respect to any Person, at any time, any direct or indirect Subsidiary of such Person that is not then an Unrestricted Subsidiary; *provided that* upon an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of “Restricted Subsidiary.” Unless the context otherwise requires, any references to Restricted Subsidiary refer to a Restricted Subsidiary of the Parent.

“**S&P**” means S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, and any successor to its rating agency business.

“**Sale and Lease-Back Transaction**” means any arrangement providing for the leasing (or similar arrangement) by the Parent or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by the Parent or such Restricted Subsidiary to a third Person in contemplation of such leasing (or similar arrangement).

“**SEC**” means the U.S. Securities and Exchange Commission, or any successor thereto.

“**Secured Debt Documents**” has the meaning given to that term in the Intercreditor Agreement.

“**Secured Indebtedness**” means any Indebtedness of the Parent or any of its Restricted Subsidiaries secured by a Lien.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Securitization Assets**” means the accounts receivable, royalty or other revenue streams and other rights to payment and any other assets subject to a Qualified Securitization Facility and the proceeds thereof.

“**Securitization Facility**” means any of one or more receivables, factoring or securitization financing facilities as amended, supplemented, modified, extended, renewed, restated or refunded from time to time, the obligations of which are non-recourse (except for customary representations, warranties, covenants and indemnities made in connection with such facilities) to the Parent or any of its Restricted Subsidiaries (other than a Securitization Subsidiary) pursuant to which the Parent or any of its Restricted Subsidiaries sells or grants a security interest in its accounts receivable, payables or Securitization Assets or assets related thereto to either (a) a Person that is not a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells its accounts receivable, payable or Securitization Assets or assets related thereto to a Person that is not a Restricted Subsidiary.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

“**Securitization Subsidiary**” means any Subsidiary that engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.

“**Security Documents**” has the meaning given to that term in the Intercreditor Agreement.

“**Segregated Accounts**” means a segregated, safeguarding or other similar account established by a member of the Group from time to time into which monies of merchants, other payment service users, other

payment service providers, End Users, Card Schemes, cardholders of any Card Scheme, banks, financial institutions or other similar entity or person are paid pending payment on to the relevant merchants, other payment service users, other payment service providers, End Users, Card Schemes, cardholders of any Card Scheme, banks, financial institutions or other similar entity or person, in accordance with the terms of a license, order, rule, principle, guideline or guidance issued by a Relevant Regulator and/or the Payment Services Directive (PSD, 2007/64/EC), the Second Payment Services Directive (PSD 2, (EU) 2015/2366) or the E-Money Directive or any relevant implementing regulation or legislation (including but not limited to the Electronic Money Regulations 2011, the Payment Services Regulations 2009 and/or the Payment Services Regulations 2017), as amended and/or replaced from time to time.

**“Semi-Annual Financial Statements”** has the meaning given to that term in paragraph (b) of Section 1 (*Financial Statements*) of Schedule 16 (*Information Undertakings*).

**“Settlement Cash Balances”** means, in the case of each relevant member of the Group, cash in hand or credited to any account with a bank, financial institution or other similar entity and which has been received from an End User, Card Scheme, merchant or cardholder of a Card Scheme or a bank, financial institution or other similar entity or person under Settlement Contracts and is held by or on behalf of a member of the Group (including, without limitation, in Segregated Accounts) or by a person who has entered into a sponsorship agreement with a member of the Group and is holding such cash on behalf of that member of the Group in each case, for onward payment to End Users, Card Schemes, merchants, cardholders, banks, financial institutions or other similar entities or persons.

**“Settlement Contracts”** means, in the case of each relevant member of the Group, contracts entered into between the relevant member of the Group and (i) merchants or other parties who may refer or introduce merchants for the provision of point of sale, e-commerce gateway, merchant acquiring or related payment processing services (or a combination of such services) or (ii) End Users, Card Schemes, cardholders, banks, financial institutions or other similar entities or persons for the provision of issuer services/processing activities or related issuer services/processing activities (or a combination of such services).

**“Settlement Debt”** means any indebtedness of a member of the Group (including, without limitation, any intra-day or clearing facility) which together with Settlement Assets are used directly or indirectly to pay Settlement Liabilities.

**“Settlement Liabilities”** means in the case of each relevant member of the Group:

- (a) any amounts due from a member of the Group to an End User, Card Scheme, merchant, cardholder of a Card Scheme, bank, financial institution or other similar entities or persons (including, without limitation, by way of any e-wallet or other account provided or otherwise made available by any member of the Group) under Settlement Contracts; and
- (b) any Settlement Payables.

**“Settlement Payables”** means, in the case of each relevant member of the Group, the amounts payable to an End User, Card Scheme, merchant, cardholder of a Card Scheme, bank, financial institution or other similar entities or persons under Settlement Contracts in respect of transactions which have been notified to the relevant member of the Group including, for the avoidance of doubt, amounts held as deferred settlement or withheld for any other reason from such merchants, End Users, Card Schemes, cardholders, banks, financial institutions or other similar entities or persons.



“**Significant Subsidiary**” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02, clauses (w)(1) or (2) of Regulation S-X promulgated pursuant to the Securities Act, as such regulation is in effect on the Closing Date.

“**Similar Business**” means:

- (a) any business conducted or proposed to be conducted by the Parent or any of its Restricted Subsidiaries on the Closing Date, and any reasonable extension thereof; or
- (b) any business or other activities that are reasonably similar, ancillary, incidental, complementary, synergistic or related to, or a reasonable extension, development or expansion of, the businesses in which the Parent and its Restricted Subsidiaries are engaged or propose to be engaged on the Closing Date.

“**Skrill USA**” means Skrill USA, Inc., a Delaware corporation.

“**Skrill USA Acquisition Agreement**” means that certain Sale and Purchase Agreement, dated 30 March 2021, by and between Paysafe Limited, an exempted limited company incorporated under the laws of Bermuda and Paysafe Group Holdings Limited, a private limited company incorporated under the laws of England and Wales, pursuant to which Paysafe Limited agreed to acquire 100% of the outstanding common stock of Skrill USA.

“**Sponsor Funds**” means the Blackstone Funds and the CVC Funds.

“**Subject Lien**” has the meaning given to that term in paragraph (a) of Section 3 (*Liens*) of Schedule 17 (*General Undertakings*).

“**Subordinated Indebtedness**” means, with respect to the Facilities:

- (a) any Indebtedness of a Borrower which is by its terms subordinated in right of payment to the Facilities; and
- (b) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the Guarantee of such entity of the Facilities.

“**Subordinated Shareholder Funding**” means collectively, any funds provided to the Parent or any Restricted Subsidiary by a direct or indirect parent entity of the Parent or a Permitted Holder in exchange for or pursuant to any security, instrument or agreement other than Capital Stock, in each case issued to and held by a direct or indirect parent entity of the Parent or a Permitted Holder, together with any security, instrument or agreement and any other security or instrument other than Capital Stock issued in payment of any obligation under any Subordinated Shareholder Funding, *provided that* such Subordinated Shareholder Funding:

- (a) does not mature or require any amortization, redemption or other repayment of principal or any sinking fund payment prior to the date that is six months after the Termination Date of Facility B on the Closing Date (other than through conversion or exchange of such funding into Capital Stock (other than Disqualified Stock) of the Parent or any direct or indirect parent entity of the Parent or any funding meeting the requirements of this definition);
- (b) does not require, prior to the date that is six months after the Termination Date of the Facilities, payment of cash, interest, cash withholding amounts or other cash gross ups, or any similar cash amounts;

- (c) contains no change of control or similar provisions and does not accelerate and has no right to declare a default or event of default or take any enforcement action or otherwise require any cash payment, in each case, prior to the date that is six months after the Termination Date of Facility B on the Closing Date;
- (d) does not provide for or require any security interest or encumbrance over any asset of the Parent or any of its Subsidiaries; and
- (e) pursuant to its terms or pursuant to the Intercreditor Agreement and any Additional Intercreditor Agreement, is fully subordinated and junior in right of payment to the Facilities pursuant to any subordination, payment blockage and enforcement limitation terms which are customary in all material respects for similar funding,

*provided further*, that, for the avoidance of doubt, any Indebtedness shall constitute Subordinated Shareholder Funding hereunder if such Indebtedness constitutes “Investor Liabilities” (as defined in the Intercreditor Agreement).

“**Subsidiary**” means, with respect to any Person:

- (a) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and
- (b) any partnership, joint venture, limited liability company or similar entity of which:
  - (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise; and
  - (ii) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

For the avoidance of doubt, unless otherwise specified, any entity that is owned at a 50% or less level (as described in this definition) shall not be a “*Subsidiary*” for any purpose under this Agreement, regardless of whether such entity is consolidated on the Parent’s or any Restricted Subsidiary’s financial statements. For all purposes under this Agreement, no pooled investment vehicle, investment company (or series thereof), collective investment scheme, investment fund, managed account or *société d’investissement à capital variable* for collective investment by bona fide third parties for which and for so long as the Parent or any of its Subsidiaries or Affiliates serves as general partner, managing member, investment manager, investment adviser or sub-adviser or sponsor, as applicable, shall be considered a “Subsidiary” for any purpose under this Agreement, regardless of whether such entity is consolidated on the Parent’s or any Restricted Subsidiary’s financial statements. Unless the context otherwise requires, any references to Subsidiary refer to a Subsidiary of the Parent.

**“Support and Services Agreement”** means the management services or similar agreements or the management services provisions contained in an investor rights agreement or other equityholders’ agreement, as the case may be, between certain of the management companies associated with one or more of the Investors or their advisors or Affiliates, if applicable, and the Parent (and/or its direct or indirect parent companies or Subsidiaries), as in effect from time to time.

**“Taxes”** shall mean all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature (including interest and penalties with respect thereto) that are imposed by any government or other taxing authority.

**“Transaction Expenses”** means any fees or expenses incurred or paid by the Investors, the Parent or any of its (or their) Affiliates in connection with the Transactions (including payments to future, present or former employees, directors, officers, managers, members, partners, independent contractors or consultants as change of control payments, severance payments, consent payments, special or retention bonuses and charges for repurchase or rollover, acceleration or payments of, or modifications to, stock option or other equity-based awards, expenses in connection with hedging transactions related to this Agreement and any original issue discount or upfront fees), the Support and Services Agreement, the Finance Documents, the Original Senior Secured Notes Indenture, the Original Senior Secured Notes and the transactions contemplated hereby and thereby.

**“Transactions”** means

- (a) the entrance into and borrowings under the Facilities and/or the Original Senior Secured Notes;
- (b) the entry into the Finance Documents, the Original Senior Secured Notes Indenture and any related documents;
- (c) the Permitted Transactions and any other transactions in connection with the foregoing (including as contemplated in Clause 3 (*Purpose*) of this Agreement);
- (d) the refinancing of the Existing Senior Facilities;
- (e) other associated transactions taken in relation to any of the foregoing;
- (f) the entry into, closing of, and transactions contemplated by, the Merger Agreement; and
- (g) the payment or incurrence of any fees, expenses, taxes or charges associated with any of the foregoing.

**“Treasury Capital Stock”** has the meaning given to that term in paragraph (b)(ii)(A) of Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*).

**“Uniform Commercial Code”** or **“UCC”** means (i) the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York; or (ii) the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it applies to any item or items of Collateral. References in this Agreement and the Security Documents to specific sections of the Uniform Commercial Code are based on the Uniform Commercial Code as in effect in the State of New York on the Closing Date. In the event such Uniform Commercial Code is amended or another Uniform Commercial Code described in paragraph (ii) is applicable, such section reference shall be deemed to be references to the comparable section in such amended or other Uniform Commercial Code.

**“Unrestricted Subsidiary”** means:

- (a) any Subsidiary of the Parent which at the time of determination is an Unrestricted Subsidiary (as designated by the Parent, as provided below); and
- (b) any Subsidiary of an Unrestricted Subsidiary.

The Parent may designate any Subsidiary of the Parent (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Parent or any Subsidiary of the Parent (other than solely any Subsidiary of the Subsidiary to be so designated); *provided that* either (x) the Subsidiary to be so designated has total consolidated assets of \$1,000 or less or (y) if the Subsidiary to be so designated has total consolidated assets in excess of \$1,000, such designation complies with Section 2 (*Limitation on Restricted Payments*) of Schedule 17 (*General Undertakings*). If, at any time, any Unrestricted Subsidiary would fail 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 such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary of the Parent as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*), the Parent shall be in Default of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*).

The Parent may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided that*, immediately after giving effect to such designation, (i) no Default shall have occurred and be continuing and (ii) (x) any outstanding Indebtedness of such Unrestricted Subsidiary would be permitted to be incurred by a Restricted Subsidiary under Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) (including pursuant to paragraph (b)(xii) of Section 1 (*Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock*) of Schedule 17 (*General Undertakings*) treating such re-designation as an acquisition for the purpose of such paragraph) and shall be deemed to be incurred thereunder and (y) all Liens encumbering the assets of such Unrestricted Subsidiary would be permitted to be incurred by a Restricted Subsidiary under Section 3 (*Liens*) of Schedule 17 (*General Undertakings*) and shall be deemed to be incurred thereunder, in each case calculated on a pro forma basis as if such designation had occurred at the beginning of the applicable reference period.

Any such designation by the Parent shall be notified by the Parent or an Original Senior Secured Notes Issuer to the Agent by promptly filing with the Agent a copy of the resolution of the Board of the Parent or any direct or indirect parent of the Parent giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

**“Voting Stock”** of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of such Person.

**“Weighted Average Life to Maturity”** means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

- (a) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment; by

(b) the sum of all such payments;

*provided that* for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being extended, replaced, refunded, refinanced, renewed or defeased (the “**Applicable Indebtedness**”), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable extension, replacement, refunding, refinancing, renewal or defeasance shall be disregarded.

“**Wholly Owned Subsidiary**” of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors’ qualifying shares and shares issued to foreign nationals as required by applicable law) shall at the time be owned by such Person and/or by one or more Wholly Owned Subsidiaries of such Person.

## SCHEDULE 20

### COMPOUNDED RATE TERMS

**CURRENCY:**

GBP.

***Cost of funds as a fallback***

Cost of funds will apply as a fallback.

***Definitions*****Additional Business Days:**

An RFR Banking Day.

**Break Costs:**

None specified. Clause 12.5 (*Prepayments of Compounded Rate Loans*) shall apply.

**Business Day Conventions:**

(a) If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:

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

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

**Central Bank Rate:**

The Bank of England's Bank Rate as published by the Bank of England from time to time, or any successor rate thereto.

**Central Bank Rate Adjustment:**

In relation to the Central Bank Rate prevailing at close of business on any RFR Banking Day, the 20% trimmed

arithmetic mean (calculated by the Agent, or by any other Finance Party which agrees with the Parent to do so in place of the Agent) of the Central Bank Rate Spreads for the five most immediately preceding RFR Banking Days for which the RFR is available.

**Central Bank Rate Spread:**

In relation to any RFR Banking Day, the difference (expressed as a percentage rate per annum) calculated by the Agent (or by any other Finance Party which agrees the Parent to do so in place of the Agent) of:

- (a) the RFR for that RFR Banking Day; and
- (b) the Central Bank Rate prevailing at close of business on that RFR Banking Day.

**Credit Adjustment Spread:**

The percentage rate per annum specified below in respect of the relevant Interest Period, as determined in accordance with the table below:

<i>Length of Interest Period</i>	<i>Credit Adjustment Spread (percentage rate per annum)</i>
One week	0.0168%
One Month or less but greater than one week	0.0326%
Two Months or less but greater than one Month	0.0633%
Three Months or less but greater than two Months	0.1193%
Six Months or less but greater than three Months	0.2766%
12 Months or less but greater than six Months	0.4644%

**Daily Rate:**

The “**Daily Rate**” for any RFR Banking Day is:

- (a) the RFR for that RFR Banking Day; or
- (b) if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of:
  - (i) the Central Bank Rate for that RFR Banking Day; and
  - (ii) the applicable Central Bank Rate Adjustment; or

(c) if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:

(i) the most recent Central Bank Rate for a day which is no more than five RFR Banking Days before that RFR Banking Day; and

(ii) the applicable Central Bank Rate Adjustment,

rounded, in either case, to four decimal places and if, in either case, the aggregate of that rate and the applicable Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such a rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

**Lookback Period:**

Five RFR Banking Days.

**Market Disruption Rate:**

The Cumulative Compounded RFR Rate for the Interest Period of the relevant Loan.

**Relevant Interbank Market:**

The sterling wholesale market.

**Reporting Day:**

The day which is the Lookback Period prior to the last day of the Interest Period or, if that day is not a Business Day, the immediately following Business Day.

**RFR:**

The SONIA (sterling overnight index average) reference rate displayed on the relevant screen of any authorised distributor of that reference rate.

**RFR Banking Day:**

A day (other than a Saturday or Sunday) on which banks are open for general business in London.

***Interest Periods***



Length of Interest Period in absence of selection (paragraph (c) of Clause 15.1 (*Selection of Interest Periods*)):

Three Months.

Periods capable of selection as Interest Periods (paragraph (d) of Clause 15.1 (*Selection of Interest Periods*)):

One, two, three or six Months.

***Reporting Times***

Deadline for Lenders to report market disruption in accordance with Clause 16.4 (*Market disruption*)

Close of business in London on the Reporting Day for the relevant Loan.

Deadline for Lenders to report their cost of funds in accordance with Clause 16.5 (*Cost of funds*)

Close of business on the date falling one Business Day after the Reporting Day for the relevant Loan (or, if earlier, on the date falling three Business Days before the date on which interest is due to be paid in respect of the Interest Period for that Loan).

## SCHEDULE 21

### DAILY NON-CUMULATIVE COMPOUNDED RFR RATE

The “**Daily Non-Cumulative Compounded RFR Rate**” for any RFR Banking Day “**i**” during an Interest Period for a Compounded Rate Loan is the percentage rate per annum (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose and except as otherwise provided below) calculated as set out below:

$$(UCCDR_i - UCCDR_{i-1}) \times dcc_{ni}$$

where:

“**UCCDR<sub>i</sub>**” means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day “**i**”;

“**UCCDR<sub>i-1</sub>**” means, in relation to that RFR Banking Day “**i**”, the Unannualised Cumulative Compounded Daily Rate for the immediately preceding RFR Banking Day (if any) during that Interest Period;

“**dcc**” means 365 for a Compounded Rate Loan denominated in GBP (or for Compounded Rate Loans in any other currency, the number for quoting the number of days in a year in accordance with the market practice in that Relevant Market);

“**n<sub>i</sub>**” means the number of calendar days from, and including, that RFR Banking Day “**i**” up to, but excluding, the following RFR Banking Day; and

the “**Unannualised Cumulative Compounded Daily Rate**” for any RFR Banking Day (the “**Cumulated RFR Banking Day**”) during that Interest Period is calculated as set out below (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose):

$$ACCDR \times tn_{idcc}$$

where:

“**ACCDR**” means the Annualised Cumulative Compounded Daily Rate for that Cumulated RFR Banking Day;

“**tn<sub>i</sub>**” means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the RFR Banking Day which immediately follows the last day of the Cumulation Period;

“**Cumulation Period**” means the period from, and including, the first RFR Banking Day of that Interest Period to, and including, that Cumulated RFR Banking Day;

“**dcc**” has the meaning given to that term above; and

the “**Annualised Cumulative Compounded Daily Rate**” for that Cumulated RFR Banking Day is the percentage rate per annum (without rounding, to the extent reasonably practicable) calculated as set out below:

$$\hat{i} = 1d01 + \text{DailyRate}_i - LP \times nidcc - 1 \times dcc_{tni}$$

where:

“ **$d_0$** ” means the number of RFR Banking Days in the Cumulation Period;

“**Cumulation Period**” has the meaning given to that term above;

“ **$i$** ” means a series of whole numbers from one to  $d_0$ , each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;

“ **$\text{DailyRate}_{i-LP}$** ” means, for any RFR Banking Day “ **$i$** ” in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day “ **$i$** ”;

“ **$n_i$** ” means, for any RFR Banking Day “ **$i$** ” in the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day “ **$i$** ” up to, but excluding, the following RFR Banking Day;

“ **$dcc$** ” has the meaning given to that term above; and

“ **$tn_i$** ” has the meaning given to that term above.

## SCHEDULE 22

### CUMULATIVE COMPOUNDED RFR RATE

The “**Cumulative Compounded RFR Rate**” for any Interest Period for a Compounded Rate Loan is the percentage rate per annum (rounded to the same number of decimal places as is specified in the definition of “Annualised Cumulative Compounded Daily Rate” in Schedule 21 (*Daily Non-Cumulative Compounded RFR Rate*)) calculated as set out below:

$$\dot{I} = 1d01 + \text{DailyRate}_{i-LP} \times n_{idcc} - 1 \times d_{ccd}$$

where:

“**d<sub>0</sub>**” means the number of RFR Banking Days during the Interest Period;

“**i**” means a series of whole numbers from one to d<sub>0</sub>, each representing the relevant RFR Banking Day in chronological order during the Interest Period;

“**DailyRate<sub>i-LP</sub>**” means for any RFR Banking Day “**i**” during the Interest Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day “**i**”;

“**n<sub>i</sub>**” means, for any RFR Banking Day “**i**”, the number of calendar days from, and including, that RFR Banking Day “**i**” up to, but excluding, the following RFR Banking Day;

“**dcc**” means 360 or, in any case where market practice in the Relevant Interbank Market is to use a different number for quoting the number of days in a year, that number; and

“**d**” means the number of calendar days during that Interest Period.

**Signatories to Senior Facilities Agreement**

**The Parent**

For and on behalf of

**PAYSAFE GROUP HOLDINGS II LIMITED**

/s/ Elliott Wiseman

---

By: Elliott Wiseman

Title: General Counsel & Chief Compliance Officer

**The Company**

For and on behalf of

**PAYSAFE GROUP HOLDINGS III LIMITED**

/s/ Elliott Wiseman

---

By: Elliott Wiseman

Title: General Counsel & Chief Compliance Officer

*[Signature page to Senior Facilities Agreement]*

---

**The Original TLB Borrower**

For and on behalf of

**PAYSAFE HOLDINGS (US) CORP.**

/s/ Philip Ragona

---

By: Philip Ragona

Title: Senior Vice President and Secretary

*[Signature page to Senior Facilities Agreement]*

---

**The Original RCF Borrowers**

For and on behalf of

**PAYSAFE HOLDINGS (US) CORP.**

/s/ Philip Ragona

---

By: Philip Ragona

Title: Senior Vice President and Secretary

*[Signature page to Senior Facilities Agreement]*

---

**The Original RCF Borrowers**

For and on behalf of

**PAYSAFE HOLDINGS UK LIMITED**

/s/ Elliott Wiseman

---

By: Elliott Wiseman

Title: General Counsel & Chief Compliance Officer

*[Signature page to Senior Facilities Agreement]*

---



**The Original RCF Borrowers**

For and on behalf of

**PAYSAFE PAYMENT PROCESSING SOLUTIONS, LLC**

/s/ Philip Ragona

---

By: Philip Ragona

Title: Senior Vice President and Secretary

*[Signature page to Senior Facilities Agreement]*

---

**The Original RCF Borrowers**

For and on behalf of

**PAYSAFE FINANCE PLC**

/s/ Elliott Wiseman

By: Elliott Wiseman

Title: General Counsel & Chief Compliance Officer

*[Signature page to Senior Facilities Agreement]*

**The Original Guarantors**

For and on behalf of

**PAYSAFE GROUP HOLDINGS II LIMITED**

/s/ Elliott Wiseman

---

By: Elliott Wiseman

Title: General Counsel & Chief Compliance Officer

*[Signature page to Senior Facilities Agreement]*

---

**The Original Guarantors**

For and on behalf of

**PAYSAFE GROUP HOLDINGS III LIMITED**

/s/ Elliott Wiseman

---

By: Elliott Wiseman

Title: General Counsel & Chief Compliance Officer

*[Signature page to Senior Facilities Agreement]*

---

**The Original Guarantors**

For and on behalf of

**PAYSAFE HOLDINGS (US) CORP.**

/s/ Philip Ragona

---

By: Philip Ragona

Title: Senior Vice President and Secretary

*[Signature page to Senior Facilities Agreement]*

---

**The Original Guarantors**

For and on behalf of

**PAYSAFE HOLDINGS UK LIMITED**

/s/ Elliott Wiseman

---

By: Elliott Wiseman

Title: General Counsel & Chief Compliance Officer

*[Signature page to Senior Facilities Agreement]*

---

**The Original Guarantors**

For and on behalf of

**PAYSAFE FINANCE PLC**

/s/ Elliott Wiseman

---

By: Elliott Wiseman

Title: General Counsel & Chief Compliance Officer`

*[Signature page to Senior Facilities Agreement]*

---

**The Original Guarantors**

For and on behalf of

**PAYSAFE MERCHANT SERVICES CORP.**

/s/ Philip Ragona

---

By: Philip Ragona

Title: Senior Vice President and Secretary

*[Signature page to Senior Facilities Agreement]*

---



**The Original Guarantors**

For and on behalf of

**PAYSAFE DIRECT, LLC**

/s/ Philip Ragona

---

By: Philip Ragona

Title: Senior Vice President

*[Signature page to Senior Facilities Agreement]*

---

**The Original Guarantors**

For and on behalf of

**PAYSAFE PAYMENT PROCESSING SOLUTIONS, LLC**

/s/ Philip Ragona

---

By: Philip Ragona

Title: Senior Vice President and Secretary

*[Signature page to Senior Facilities Agreement]*

---

**The Arrangers**

For and on behalf of:

**J.P. MORGAN SECURITIES PLC**

/s/ Noah Roth

---

Name: Noah Roth

Title: Executive Director

Notice Details

Address: N/A

Attention: N/A

Telephone: N/A

Email: N/A

*[Signature page to Senior Facilities Agreement]*

---

**The Arrangers**

For and on behalf of:

**CREDIT SUISSE AG, LONDON BRANCH**

/s/ Gintautas Jankauskas

---

Name: Gintautas Jankauskas

Title: Director

/s/ Erkin Yildiz

---

Name: Erkin Yildiz

Title: Managing Director

Notice Details

Address: 1 Cabot Square, London E14 4QJ

Attention: Loan Operations

Telephone: N/A

Email: list.csfb-loans-grp@credit-suisse.com

*[Signature page to Senior Facilities Agreement]*

---

**The Arrangers**

For and on behalf of:

**CREDIT SUISSE LOAN FUNDING LLC**

/s/ Matthew Fishman

---

Name: Matthew Fishman

Title: Managing Director

Notice Details

Address: Eleven Madison Avenue, New York, NY 10010

Attention: N/A

Telephone: N/A

Email: N/A

*[Signature page to Senior Facilities Agreement]*

---

**The Bookrunners**

For and on behalf of:

**J.P. MORGAN SECURITIES PLC**

/s/ Robert S. Cascarino

---

Name: Robert S. Cascarino

Title: Managing Director

Notice Details

Address: N/A

Attention: N/A

Telephone: N/A

Email: N/A

*[Signature page to Senior Facilities Agreement]*

---

**The Bookrunners**

For and on behalf of:

**CREDIT SUISSE AG, LONDON BRANCH**

/s/ Gintautas Jankauskas

---

Name: Gintautas Jankauskas

Title: Director

/s/ Erkin Yildiz

---

Name: Erkin Yildiz

Title: Managing Director

Notice Details

Address: 1 Cabot Square, London E14 4QJ

Attention: Loan Operations

Telephone: N/A

Email: list.csfb-loans-grp@credit-suisse.com

*[Signature page to Senior Facilities Agreement]*

---

**The Bookrunners**

For and on behalf of:

**CREDIT SUISSE LOAN FUNDING LLC**

/s/ Matthew Fishman

---

Name: Matthew Fishman

Title: Managing Director

Notice Details

Address: Eleven Madison Avenue, New York, NY 10010

Attention: N/A

Telephone: N/A

Email: N/A

*[Signature page to Senior Facilities Agreement]*

---



**The Syndication Agents**

For and on behalf of:

**BANK OF MONTREAL, LONDON BRANCH**

/s/ Richard Pittam

---

Name: Richard Pittam

Title: Managing Director

/s/ Scott Matthews

---

Name: Scott Matthews

Title: Managing Director

Notice Details

Address: 95 Queen Victoria Street, London EC4V 4HG

Attention: Richard Pittam

Telephone: N/A

Email: Richard.pittam@bmo.com, Bruno.jarry@bmo.com, Vincent.roy@bmo.com, Gavin.black@bmo.com

*[Signature page to Senior Facilities Agreement]*

---

**The Syndication Agents**

For and on behalf of:

**GOLDMAN SACHS BANK USA**

/s/ Thomas M. Manning

---

Name: Thomas M. Manning

Title: VP, Chief Underwriting Office

Notice Details

Address: Goldman, Sachs & Co., 2001 Ross Ave, 29th Floor, Dallas, TX 75201

Attention: Jamie Minieri

Telephone: N/A

Email: [gsd.link@gs.com](mailto:gsd.link@gs.com)

*[Signature page to Senior Facilities Agreement]*

---

**The Documentation Agents**

For and on behalf of:

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

/s/ Matt Lynn

---

Name: Matt Lynn

Title: Managing Director

Notice Details

Address: One Bryant Park, New York, NY 10036, United States of America

Attention: Perumalla Suman

Telephone: +44 (0) 20 7651 3282

Email: bank\_of\_america\_as\_lender\_2@bofa.com

Fax: 972-728-6160

*[Signature page to Senior Facilities Agreement]*

---

**The Documentation Agents**

For and on behalf of:

**INTESA SANPAOLO S.P.A - LONDON BRANCH**

/s/ Roberto Ravaziol

---

Name: Roberto Ravaziol

Title: Authorized Signatory

/s/ Luigi Napolano

---

Name: Luigi Napolano

Title: Authorized Signatory

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Attention: Roberto Buonerba/ ISPUK-group\_loans / MiddleOfficeLIQ

Telephone: +44 (0) 20 7651 3282

Email: roberto.buonerba@intesasnpaolo.com / ISPUK-group\_loans@intesasnpaolo.com / MiddleOfficeLIQ@intesasnpaolo.com

*[Signature page to Senior Facilities Agreement]*

---

**The Documentation Agents**

For and on behalf of:

**KeyBank National Association**

/s/ Allyn A. Coskun

---

Name: Allyn A. Coskun

Title: Vice President

Notice Details

Address: 127 Public Square / Cleveland, OH 44114

Attention: allyn\_coskun@keybank.com

Telephone: N/A

Email: Ali Coskun

*[Signature page to Senior Facilities Agreement]*

---

**The Documentation Agents**

For and on behalf of:

**PNC BANK, CAPITAL MARKETS LLC**

/s/ John Broeren

---

Name: John Broeren

Title: Managing Director

Notice Details

Address: 609 Main Street, Suite 2700, Houston, TX 77002

Attention: Patrick Greene

Fax: 877-733-1128

Email: patrick.greene@pnc.com

[Signature page to Senior Facilities Agreement]

---

**The Documentation Agents**

For and on behalf of:

**ROYAL BANK OF CANADA**

/s/ Kamran Khan

---

Name: Kamran Khan

Title: Authorized Signatory

Notice Details

Address: 100 Bishopsgate - London, EC2N 4AA

Attention: Ahmed Awad, Maggie Weiyan Tang, Henrique Bruno, Suraj Nair, David Wiltshire, Sheryll Arguna

Telephone: N/A

Email: RBCLondonGLA@rbc.com; Kamran.Khan@rbccm.com; Megan.Montero@rbccm.com

*[Signature page to Senior Facilities Agreement]*

---

**The Lenders**

For and on behalf of:

**JPMORGAN CHASE BANK, N.A.**

/s/ Juan A. Afan Rosa

---

Name: Juan A. Afan Rosa

Title: Executive Director

Notice Details

Address: JPMorgan Chase Bank, N.A., 500 Stanton Christiana Rd., NCC5 / 1st Floor, Newark, DE 19713

Attention: Loan & Agency Services Group

Telephone: N/A

Email: stephanie.polukis@jpmchase.com

*[Signature page to Senior Facilities Agreement]*

---



**The Lenders**

For and on behalf of:

**JPMORGAN CHASE BANK, N.A., LONDON BRANCH**

/s/ Juan A. Afan Rosa

---

Name: Juan A. Afan Rosa

Title: Executive Director

Notice Details

Address: 25 Bank Street, Canary Wharf, London E14 5JP

Attention: N/A

Telephone: N/A

Email: N/A

*[Signature page to Senior Facilities Agreement]*

---

**The Lenders**

For and on behalf of:

**CREDIT SUISSE AG, LONDON BRANCH**

/s/ Gintautas Jankauskas

---

Name: Gintautas Jankauskas

Title: Director

/s/ Erkin Yildiz

---

Name: Erkin Yildiz

Title: Managing Director

**Notice Details**

Address: 1 Cabot Square, London E14 4QJ

Attention: Loan Operations

Telephone: N/A

Email: list.csfb-loans-grp@credit-suisse.com

[Signature page to Senior Facilities Agreement]

---

## **The Lenders**

For and on behalf of:

**BANK OF MONTREAL, LONDON BRANCH**

/s/ Richard Pittam

---

Name: Richard Pittam

Title: Managing Director

/s/ Scott Matthews

---

Name: Scott Matthews

Title: Managing Director

### Notice Details

Address: 95 Queen Victoria Street, London EC4V 4HG

Attention: Richard Pittam

Telephone: N/A

Email: Richard.pittam@bmo.com, Bruno.jarry@bmo.com, Vincent.roy@bmo.com, Gavin.black@bmo.com

*[Signature page to Senior Facilities Agreement]*

---

**The Lenders**

For and on behalf of:

**GOLDMAN SACHS BANK USA**

/s/ Thomas M. Manning

---

Name: Thomas M. Manning

Title: VP, Chief Underwriting Office

Notice Details

Address: Goldman, Sachs & Co., 2001 Ross Ave, 29th Floor, Dallas, TX 75201

Attention: Jamie Minieri

Telephone: N/A

Email: [gsd.link@gs.com](mailto:gsd.link@gs.com)

*[Signature page to Senior Facilities Agreement]*

---

**The Lenders**

For and on behalf of:

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

/s/ Matt Lynn

---

Name: Matt Lynn

Title: Managing Director

Notice Details

Address: One Bryant Park, New York, NY 10036, United States of America

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Email: bank\_of\_america\_as\_lender\_2@bofa.com

Fax: 972-728-6160

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---

**The Lenders**

For and on behalf of:

**PNC BANK, NATIONAL ASSOCIATION**

/s/ Andrew Fraser

---

Name: Andrew Fraser

Title: Vice President

Notice Details

Address: 609 Main Street, Suite 2700, Houston, TX 77002

Attention: Patrick Greene

Fax: 877-733-1128

Email: patrick.greene@pnc.com

*[Signature page to Senior Facilities Agreement]*

---

**The Lenders**

For and on behalf of:

**ROYAL BANK OF CANADA**

/s/ Kamran Khan

---

Name: Kamran Khan

Title: Authorized Signatory

Notice Details

Address: 100 Bishopsgate - London, EC2N 4AA

Attention: Ahmed Awad, Maggie Weiyan Tang, Henrique Bruno, Suraj Nair, David Wiltshire, Sheryll Arguna

Telephone: N/A

Email: RBCLondonGLA@rbc.com; Kamran.Khan@rbccm.com; Megan.Montero@rbccm.com

*[Signature page to Senior Facilities Agreement]*

---

## **The Lenders**

For and on behalf of:

**INTESA SANPAOLO S.P.A - LONDON BRANCH**

/s/ Roberto Ravaziol

---

Name: Roberto Ravaziol

Title: Authorized Signatory

/s/ Luigi Napolano

---

Name: Luigi Napolano

Title: Authorized Signatory

### Notice Details

Address: 90 Queen Street London EC4N 1SA

Attention: Roberto Buonerba/ ISPUK-group\_loans / MiddleOfficeLIQ

Telephone: +44 (0) 20 7651 3282

Email: roberto.buonerba@intesasanpaolo.com / ISPUK-group\_loans@intesasanpaolo.com / MiddleOfficeLIQ@intesasanpaolo.com

*[Signature page to Senior Facilities Agreement]*

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**The Lenders**

For and on behalf of:

**KeyBank National Association**

/s/ Allyn A. Coskun

---

Name: Allyn A. Coskun

Title: Vice President

Notice Details

Address: 127 Public Square / Cleveland, OH 44114

Attention: allyn\_coskun@keybank.com

Telephone: N/A

Email: Ali Coskun

*[Signature page to Senior Facilities Agreement]*

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**The Agent**

For and on behalf of

**J.P. MORGAN AG**

/s/ Grant Keith

---

Name: Grant Keith

Title: Authorized Signatory

Address: 25 Bank Street, Canary Wharf, London E14 5JP

Telephone: +44 (0) 20 7742 1000

Fax: +44 (0)20 7777 2360 (E-Fax 12016395145@tls.ldsprod.com)

Email: emea.london.agency@jpmorgan.com

Attention: Loan Agency Group

*[Signature page to Senior Facilities Agreement]*

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**The Security Agent**  
For and on behalf of  
**LUCID TRUSTEE SERVICES LIMITED**

/s/ Caroline Horvath-Franco

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Name: Caroline Horvath-Franco

Title: Authorized Signatory

[Signature page to Senior Facilities Agreement]

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INTERCREDITOR AGREEMENT

dated 24 June 2021

J.P. MORGAN AG  
as Senior Facility Agent

THE COMPANIES NAMED HEREIN  
as Original Debtors

LUCID TRUSTEE SERVICES LIMITED  
as Security Agent

and others

**Linklaters**

Ref: L-262787

Linklaters LLP

**CONTENTS**  
**CLAUSE PAGE**

1.	Definitions and interpretation	3
2.	Ranking and priority	47
3.	Senior Secured Creditor Liabilities	49
4.	Hedge Counterparties and Hedging Liabilities	58
5.	Permitted Second Lien Financing Creditors and Second Lien Liabilities	67
6.	Senior Parent Creditors and Senior Parent Liabilities	77
7.	Investor Liabilities	90
8.	Intra-Group Lenders and Intra-Group Liabilities	93
9.	Effect of Insolvency Event	95
10.	Turnover of receipts	98
11.	Redistribution	101
12.	Enforcement of Transaction Security	102
13.	Proceeds of disposals and adjustment of mandatory prepayments	106
14.	Application of proceeds	116
15.	Equalisation	121
16.	Additional debt	125
17.	The Security Agent	128
18.	Change of Security Agent and delegation	137
19.	Changes to the Parties	139
20.	Costs and expenses	146
21.	Indemnities	148
22.	Information	149
23.	Notices	151
24.	Preservation	153
25.	Consents, amendments and override	154
26.	Notes Trustee	159
27.	Guarantee and indemnity	164
28.	Counterparts	169
29.	BAIL-IN	169
30.	Governing law	171
31.	Enforcement	171
32.	Acknowledgement regarding any Supported QFCs	172

**THE SCHEDULES**  
**SCHEDULE PAGE**

SCHEDULE 1 Form of Debtor/Third Party Security Provider Accession Deed	174
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THIS AGREEMENT is dated 24 June 2021 and made between:

- (1) J.P. Morgan AG as Senior Facility Agent;
- (2) THE FINANCIAL INSTITUTIONS named on the signing pages as Senior Lenders;
- (3) THE FINANCIAL INSTITUTIONS named on the signing pages as Senior Arrangers;
- (4) PAYSAFE GROUP HOLDINGS II LIMITED, a limited liability company incorporated in England and Wales with registration number 10880277 and having its registered office at Floor 27 25 Canada Square, London, England, E14 5LQ (the "**Parent**");
- (5) PAYSAFE GROUP HOLDINGS III LIMITED, a limited liability company incorporated in England and Wales with registration number 10869332 and having its registered office at Floor 27 25 Canada Square, London, England, E14 5LQ (the "**Company**");
- (6) PAYSAFE FINANCE PLC, a limited liability company incorporated in England and Wales with registration number 13437058 and having its registered office at Floor 27 25 Canada Square, London, England, E14 5LQ ("**UK Finco**");
- (7) PAYSAFE HOLDINGS (US) CORP. a Delaware corporation with registration number 5551109 and having its registered office at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, US ("**US Corp**");
- (8) PAYSAFE HOLDINGS UK LIMITED, a limited liability company incorporated in England and Wales with registration number 03202517 and having its registered office at Floor 27 25 Canada Square, London, England, E14 5LQ ("**UK Corp**");
- (9) PAYSAFE MERCHANT SERVICES CORP., a corporation incorporated in Delaware with registration number 4904974 and having its registered office at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, US ("**Paysafe Merchant**");
- (10) PAYSAFE DIRECT, LLC, a corporation incorporated in Delaware with registration number 4593725 and having its registered office at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, US ("**Paysafe Direct**");
- (11) PAYSAFE PAYMENT PROCESSING SOLUTIONS LLC a Delaware limited liability company with registration number 6422322 and having its registered office at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, US ("**Payment Processing**" and, together with the Parent, the Company, UK Finco, US Corp and UK Corp, Paysafe Merchant and Paysafe Direct, the "**Original Debtors**");
- (12) PAYSAFE US HOLDCO LIMITED, a limited liability company incorporated in England and Wales with registration number 11114225 and having its registered office at Floor 27 25 Canada Square, London, England, E14 5LQ ("**Paysafe US Holdco**");

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- (13) PAYSAFE GROUP LIMITED, a private limited company incorporated in the Isle of Man with registration number 016104V and having its registered office at 3rd Floor, Queen Victoria House, 41-43 Victoria Street, Douglas, Isle Of Man, IM1 2LF ("**Paysafe IoM**" and together with Paysafe US Holdco, the "**Original Third Party Security Providers**");
- (14) PI JERSEY HOLDCO 1.5 LIMITED, a company incorporated in Jersey with registration number 125170 and having its registered office at 1 Waverley Place, Union Street, St Helier, Jersey, Channel Islands JE1 1SG (the "**Original Investor**");
- (15) THE COMPANIES named on the signing pages as the "**Original Intra-Group Lenders**";
- (16) Lucid Trustee Services Limited as security agent and security trustee for the Secured Parties (the "**Security Agent**");
- (17) UPON ACCESSION each other person from time to time a party to this Agreement.

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

"**1992 ISDA Master Agreement**" means the Master Agreement (Multicurrency Cross Border) as published by the International Swaps and Derivatives Association, Inc.

"**2002 ISDA Master Agreement**" means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.

"**Acceleration Event**" means a Senior Facilities Acceleration Event, a Senior Notes Acceleration Event, a Permitted Senior Financing Acceleration Event, a Permitted Second Lien Financing Acceleration Event, a Senior Parent Notes Acceleration Event and/or a Permitted Parent Financing Acceleration Event, as the context requires.

"**Affiliate**" has the meaning given to that term in the Senior Facilities Agreement.

"**Agent**" means each of the Senior Facility Agent, any Senior Notes Trustee, any Senior Parent Notes Trustee, any Senior Creditor Representative, any Second Lien Creditor Representative, any Senior Parent Creditor Representative and the Security Agent, as the context requires.

"**Agent Liabilities**" means all present and future liabilities and obligations, whether actual or contingent, of the Parent and/or any Debtor and/or (to the extent arising from any Third Party Security) any Third Party Security Provider to any Agent under the Debt Documents.

"**Agreed Security Principles**" has the meaning given to that term in the Senior Facilities Agreement.

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

"**Ancillary Facility**" means:

- (a) an "**Ancillary Facility**" as defined in the Senior Facilities Agreement;



(b) any ancillary facility, fronted ancillary facility or similar or equivalent arrangement made available under or pursuant to the terms of any Permitted Senior Financing Document; and/or

(c) any Operating Facility.

**"Ancillary Lender"** means:

(a) each Senior Lender (or Affiliate of a Senior Lender) which makes an Ancillary Facility available pursuant to the terms of the Senior Facilities Agreement;

(b) each Permitted Senior Financing Creditor (or Affiliate of a Permitted Senior Financing Creditor) which makes an Ancillary Facility available under or pursuant to the terms of a Permitted Senior Financing Document; and/or

(c) each Operating Facility Lender.

**"Arranger"** means each Senior Arranger, any Permitted Senior Financing Arranger, any Permitted Second Lien Financing Arranger and any Permitted Parent Financing Arranger.

**"Arranger Liabilities"** means all present and future liabilities and obligations, actual and contingent, of the Parent and/or any Debtor and/or (to the extent arising from any Third Party Security) any Third Party Security Provider to any Arranger under the Debt Documents.

**"Available Restricted Payment Amounts"** means any amounts which any Group Company is permitted by the terms of section 2 (*Limitation on Restricted Payments*) of schedule 17 (*General Undertakings*) to the Senior Facilities Agreement to pay to any Holding Company of the Parent and which it has not at the relevant time paid.

**"Borrowing Liabilities"** means, in relation to a member of the Group, the liabilities (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor, Operating Facility Lender or Debtor in respect of Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities as a **"Borrower"** under and as defined in the Senior Facilities Finance Documents and liabilities as **"Issuer"** under and as defined in the Senior Notes Finance Documents and/or the Senior Parent Notes Finance Documents).

**"Business Day"** has the meaning given to that term in the Senior Facilities Agreement.

**"Capital Requirement"** has the meaning given to that term in the Senior Facilities Agreement.

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

**"Close-Out Netting"** means:

(a) in respect of a Hedging Agreement or a Hedging Ancillary Document based on a 1992 ISDA Master Agreement, any step involved in determining the amount payable in respect of an Early Termination Date (as defined in the 1992 ISDA Master Agreement) under section 6(e) of the 1992 ISDA Master Agreement before the application of any subsequent Set-off (as defined in the 1992 ISDA Master Agreement);

- (b) in respect of a Hedging Agreement or a Hedging Ancillary Document based on a 2002 ISDA Master Agreement, any step involved in determining an Early Termination Amount (as defined in the 2002 ISDA Master Agreement) under section 6(e) of the 2002 ISDA Master Agreement; and
- (c) in respect of a Hedging Agreement or a Hedging Ancillary Document not based on an ISDA Master Agreement, any step involved on a termination of the hedging transactions under that Hedging Agreement pursuant to any provision of that Hedging Agreement which has a similar effect to either provision referenced in paragraphs (a) and (b) above.

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

**"Common Assurance"** means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible and subject to the Agreed Security Principles, given to, or expressed to be given to, the Senior Secured Parties in respect of their Senior Liabilities (for the avoidance of doubt, without prejudice to the ability of any other person to benefit from that guarantee, indemnity or other assurance to the extent not prohibited by this Agreement).

**"Common Currency"** means US dollars.

**"Common Currency Amount"** means, in relation to an amount, that amount converted (to the extent not already denominated in the Common Currency) into the Common Currency at the Security Agent's Spot Rate of Exchange on the Business Day prior to the relevant calculation.

**"Common Transaction Security"** means any Transaction Security which, to the extent legally possible and subject to the Agreed Security Principles:

- (a) is created, or expressed to be created, in favour of the Security Agent as agent or trustee for the other Senior Secured Parties in respect of their Senior Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot reasonably be granted in favour of the Security Agent as agent or trustee for the Secured Parties, is created, or expressed to be created, in favour of:
  - (i) all the Senior Secured Parties in respect of their Senior Liabilities; or
  - (ii) the Security Agent under a parallel debt, joint and several creditorship or other similar or equivalent structure for the benefit of all the Senior Secured Parties,

and which ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*) and/or is expressed to be subject to the terms of this Agreement (in each case, for the avoidance of doubt, without prejudice to the ability of any other person to benefit from that Transaction Security to the extent not prohibited by this Agreement).

**"Consent"** means any consent, approval, release or waiver or agreement to any amendment.

**"Credit Related Close-Out"** means any Permitted Hedge Close-Out which is not a Non-Credit Related Close-Out.

**"Creditor/Agent Accession Undertaking"** means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor/Agent Accession Undertaking*) or in such other form as the Security Agent and the Parent may agree from time to time (which may include any undertaking included in any transfer or assignment document contained in any Permitted Financing Document);
- (b) a Transfer Certificate or an Assignment Agreement (as defined in the relevant Debt Financing Agreement);
- (c) an Incremental Facility Increase Notice (as defined in the relevant Debt Financing Agreement); or
- (d) an Increase Confirmation (as defined in the relevant Debt Financing Agreement),  
as the context may require, or
- (e) in the case of an acceding Debtor which is expressed to accede as an Intra-Group Lender in the relevant Debtor/Third Party Security Provider Accession Deed, that Debtor/Third Party Security Provider Accession Deed.

**"Creditor Conflict"** means, at any time prior to the First/Second Lien Discharge Date, a conflict between:

- (a) the interests of any Senior Secured Creditor; and
- (b) the interests of any Senior Parent Creditor.

**"Creditor Representative"** means a Senior Creditor Representative, a Second Lien Creditor Representative and/or a Senior Parent Creditor Representative, as the context requires.

**"Creditors"** means the Senior Secured Creditors, the Senior Parent Creditors, the Hedge Counterparties, the Intra-Group Lenders and the Investors.

**"Debt Document"** means each of this Agreement, the Hedging Agreements, the Senior Facilities Finance Documents, the Senior Notes Finance Documents, the Senior Parent Notes Finance Documents, the Permitted Senior Financing Documents, the Permitted Second Lien Financing Documents, the Permitted Parent Financing Documents, the Operating Facility Documents, the Security Documents, any agreement evidencing the terms of the Intra-Group Liabilities or the Investor Liabilities (including, for the avoidance of any doubt, any Senior Parent Debt Proceeds Loan Agreement) and any other document designated as such by the Security Agent and the Parent.

**"Debt Financing Agreement"** means the Senior Facilities Agreement, any Senior Notes Indenture, any Permitted Senior Financing Agreement, any Permitted Second Lien Financing Agreement, any Senior Parent Notes Indenture and/or any Permitted Parent Financing Agreement, as the context requires.

**"Debt Refinancing"** has the meaning given to that term in paragraph (a) of Clause 16.1 (*Debt Refinancing*).

**"Debtor"** means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 19 (*Changes to the Parties*).

**"Debtor Liabilities"** means, in relation to a Debtor, any liabilities owed to any other Debtor (whether actual or contingent and whether incurred solely or jointly) by that Debtor.

**"Debtor Relief Laws"** means US Bankruptcy Law and all other liquidation, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the US from time to time in effect and affecting the rights of creditors generally.

**"Debtor Resignation Request"** means a notice substantially in the form set out in Schedule 3 (*Form of Debtor Resignation Request*) or in such other form as the Security Agent and the Parent may agree.

**"Debtor/Third Party Security Provider Accession Deed"** means:

- (a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor/Third Party Security Provider Accession Deed*) or in such other form as the Security Agent and the Parent may agree from time to time (which may include any accession document contained in any Permitted Financing Document); or
- (b) (only in the case of a member of the Group which is acceding as a borrower or guarantor under a Debt Financing Agreement) an Accession Deed (as defined in the relevant Debt Financing Agreement).

**"Default"** means an Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the relevant Debt Financing Agreement or any combination of any of the foregoing) be an Event of Default, provided that any such event or circumstance which requires any determination as to materiality before it becomes an Event of Default shall not be a Default until such determination is made.

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

**"Designated Gross Amount"** means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility's maximum gross amount.

**"Designated Net Amount"** means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility's maximum net amount.

**"Discharge Date"** means the Senior Lender Discharge Date, the Senior Creditor Discharge Date, the Senior Notes Discharge Date, the Permitted Senior Financing Discharge Date, the Permitted Second Lien Financing Discharge Date, the Senior Parent Notes Discharge Date and/or the Permitted Parent Financing Discharge Date, as the context requires.

**"Distressed Disposal"** means a disposal of an asset, or shares of, or shares issued by, a member of the Group or, in the case of a Third Party Security Provider, any asset of a Third Party Security Provider which is subject to Transaction Security, which is:

- (a) being effected at the request of an Instructing Group in circumstances where the Transaction Security has become enforceable in accordance with the terms of the relevant Security Documents;

- (b) being effected by enforcement of the Transaction Security in accordance with the terms of the relevant Security Documents; or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor or a Third Party Security Provider to a person or persons which is not a member of the Group.

**"Distress Event"** means, following the occurrence of an Acceleration Event which is continuing:

- (a) if prior to the First/Second Lien Discharge Date, any of the Senior Facility Agent (acting on the instructions of the Enhanced Majority Senior Lenders), a Senior Notes Trustee (acting on behalf of the Senior Noteholders), a Senior Creditor Representative (to the extent expressly permitted by the relevant Permitted Senior Financing Agreement and acting on the instructions of the Majority Permitted Senior Financing Creditors) or a Second Lien Creditor Representative (to the extent expressly permitted by the relevant Permitted Second Lien Financing Agreement and acting on the instructions of the Majority Permitted Second Lien Financing Creditors) declaring by written notice to the Security Agent, each other Agent and the Parent that a **"Distress Event"** has occurred; or
- (b) if on or after the First/Second Lien Discharge Date, any of a Senior Parent Notes Trustee (acting on behalf of the Senior Parent Noteholders) or a Senior Parent Creditor Representative (to the extent expressly permitted by the relevant Permitted Parent Financing Agreement and acting on the instructions of the Majority Permitted Parent Financing Creditors) declaring by written notice to the Security Agent, each other Agent and the Parent that a **"Distress Event"** has occurred.

**"Enforcement Action"** means:

- (a) in relation to any Liabilities:

- (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Secured Creditor or a Senior Parent Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, any of the Debt Documents);
- (ii) the making of any declaration that any Liabilities are payable on demand;
- (iii) the making of a demand in relation to a Liability that is payable on demand;
- (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
- (v) the exercise of any right to require any member of the Group or Third Party Security Provider to acquire any Liability (including exercising any put or call option against any member of the Group or Third Party Security Provider for the redemption or purchase of any Liability but excluding any such right which arises as a result of clause 29.14 (*Debt Purchase Transactions*) of the Senior Facilities Agreement (or any other similar or equivalent provision of any of the Secured Debt Documents) and/or any other Liabilities Acquisition, acquisition or transaction which any member of the Group or Third Party

Security Provider is not prohibited from entering into by the terms of the Secured Debt Documents and excluding any mandatory offer arising on or as a result of a change of control or asset sale (however described) as set out in the Senior Notes Finance Documents or the Senior Parent Notes Finance Documents (or any other similar or equivalent provision of any of the Secured Debt Documents));

(vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group or Third Party Security Provider in respect of any Liabilities other than the exercise of any such right:

(A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;

(B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;

(C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;

(D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; and/or

(E) which is otherwise permitted by the terms of any of the Secured Debt Documents, in each case to the extent that the exercise of that right gives effect to a Permitted Payment; and

(vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group or Third Party Security Provider to recover any Liabilities;

(b) the premature termination or close-out of any hedging transaction under any Hedging Agreement (except to the extent permitted by this Agreement);

(c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);

(d) the entering into of any composition, compromise, assignment or similar arrangement with any member of the Group or Third Party Security Provider which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 19 (*Changes to the Parties*) or pursuant to any debt buy-back, tender offer, exchange offer or similar or equivalent arrangement not otherwise prohibited by the Debt Documents); or

(e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, receiver and manager, interim receiver, trustee, monitor, examiner, administrator or similar officer) in relation to, the winding-up, dissolution, examinership, administration or reorganisation of any member of the Group or Third Party Security Provider which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's or Third Party Security Provider's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group or Third Party Security Provider, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; or
- (ii) a demand made by an Investor or an Intra-Group Lender in relation to any Investor Liabilities or Intra-Group Liabilities owing to it (respectively) to the extent in respect of (in the case of an Investor) a Permitted Investor Payment and (in the case of an Intra-Group Lender) a Permitted Intra-Group Payment; or
- (iii) a Senior Secured Creditor or a Senior Parent Creditor bringing legal proceedings against any person solely for the purpose of:
  - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or
- (iv) bringing legal proceedings against any person in connection with any securities violation, securities or listing regulations or common law fraud; or
- (v) to the extent entitled by law, the taking of any action against any Creditor (or any agent, trustee or receiver acting on behalf of that Creditor) to challenge the basis on which any sale or disposal is to take place pursuant to the powers granted to those persons under any relevant documentation; or
- (vi) any person consenting to, or the taking of any other action pursuant to or in connection with, any merger, consolidation, reorganisation or any other similar or equivalent step or transaction initiated or undertaken by a member of the Group (or any analogous procedure or step in any jurisdiction) that is not prohibited by the terms of the Secured Debt Documents to which it is a party.

**"Enhanced Majority Second Lien Creditors"** means, at any time, those Permitted Second Lien Financing Creditors whose Second Lien Secured Credit Participations at that time aggregate more than 66⅔ per cent. of the Total Second Lien Secured Credit Participations at that time.

**"Enhanced Majority Senior Lenders"** means, subject to the provisions of the Senior Facilities Agreement affecting the interpretation of the definition of "Majority Lenders" thereunder, a Senior Lender or Senior Lenders whose Commitments aggregate more than 66⅔ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66⅔ per cent. of the Total

Commitments immediately prior to that reduction) (and "**Commitments**" and "**Total Commitments**" for the purposes of this definition have the meaning given to them in the Senior Facilities Agreement).

**"Event of Default"** means any event or circumstance specified as such in any of the Debt Financing Agreements, as the context requires.

**"Excluded Swap Obligation"** means, with respect to any Debtor, (a) any Swap Obligation if, and only to the extent that, all or a portion of the guarantee of such Debtor of, or the grant by such Debtor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the U.S. Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Debtor's failure to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time the guarantee of, or the grant of a security interest by, such Debtor becomes or would become effective with respect to such related Swap Obligation and (b) any other Swap Obligation designated as an "Excluded Swap Obligation" of such Debtor as specified in any agreement between the relevant Debtor and Hedge Counterparty in respect of such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such guarantee or security interest is or becomes illegal.

**"Exposure"** has the meaning given to that term in Clause 15.1 (*Equalisation definitions*).

**"Final Discharge Date"** means the later to occur of the Senior Discharge Date, the Permitted Second Lien Financing Discharge Date and the Senior Parent Discharge Date.

**"Financial Adviser"** means an internationally recognised investment bank or internationally recognised accounting firm selected by the Security Agent or, if all of the internationally recognised investment banks and internationally recognised accounting firms are subject to conflicting and client or potential client issues and are unable to act in relation to the relevant matter, any other third party professional firm which is regularly engaged in providing valuations of businesses or assets similar or comparable to those subject to the relevant Transaction Security.

**"Financing Vehicle"** means a member of the Group (other than the Parent or Company) which:

- (a) has been established for the purpose of, or whose principal purpose is, incurring or issuing indebtedness or making, purchasing or investing in loans, securities or other financial assets;
- (b) does not own any shares or equivalent ownership interests in a member of the Group; and
- (c) is (until the Senior Creditor Discharge Date) a Senior Guarantor, (until the Permitted Second Lien Financing Discharge Date) a Second Lien Guarantor and has acceded to this Agreement as a Debtor.

**"First/Second Lien Discharge Date"** means the later to occur of the Senior Discharge Date and the Permitted Second Lien Financing Discharge Date.

**"Group"** has the meaning given to that term in the Senior Facilities Agreement.

**"Group Company"** means any company that is a member of the Group.



**"Guarantee Agreements"** means the Hedging Agreements and the Operating Facility Documents.

**"Guarantee Liabilities"** means, in relation to a member of the Group, the liabilities under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it has to a Creditor, Operating Facility Lender or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of any of the Secured Debt Documents).

**"Guarantee Parties"** means the Hedge Counterparties and the Operating Facility Lenders.

**"Hedge Counterparty"** means any person which becomes Party as a Hedge Counterparty pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*),

provided that:

- (i) such person has not ceased to be a Hedge Counterparty pursuant to Clause 19.14 (*Resignation of Hedge Counterparties, Operating Facility Lenders and Investors*); and
- (ii) if the Senior Debt Discharge Date has occurred, a person party to this Agreement as a Hedge Counterparty may agree with the Parent that, without prejudice to the rights and obligations of the parties under the relevant Hedging Agreements, any hedging provided by that person shall cease to be subject to the terms of this Agreement and any Liabilities to that person under or in connection with the Hedging Agreements shall cease to constitute Hedging Liabilities (in which case such person shall cease to be a Hedge Counterparty for the purposes of the Secured Debt Documents).

**"Hedge Counterparty Obligations"** means the obligations owed by any Hedge Counterparty to the Debtors under or in connection with the Hedging Agreements.

**"Hedge Transfer"** means a transfer to all or any of the Senior Secured Creditors or the Senior Parent Creditors (or to a nominee or nominees of all or any of the Senior Secured Creditors or the Senior Parent Creditors) of each Hedging Agreement together with:

- (a) all the rights and benefits in respect of the Hedging Liabilities owed by the Debtors and Third Party Security Providers to each Hedge Counterparty; and
  - (b) all the Hedge Counterparty Obligations owed by each Hedge Counterparty to the Debtors and Third Party Security Providers,
- in accordance with Clause 19.4 (*Change of Hedge Counterparty*) as described in, and subject to, Clause 3.9 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*) or 6.14 (*Hedge Transfer: Senior Parent Creditors*).

**"Hedging Agreement"** means, at the election of the Parent, any agreement entered into or to be entered into by a Debtor (or any member of the Group that is to become a Debtor) and a Hedge Counterparty in relation to a derivative or hedging arrangement entered into (or which has or will be allocated):

- (a) to satisfy any minimum hedging requirements under any of the Debt Financing Agreements; and/or

(b) for any purpose not prohibited by the terms of the Debt Financing Agreements at the time the relevant agreement is entered into.

**"Hedging Ancillary Document"** means an Ancillary Document which relates to or evidences the terms of a Hedging Ancillary Facility.

**"Hedging Ancillary Facility"** means an Ancillary Facility which is made available by way of a hedging facility.

**"Hedging Ancillary Lender"** means an Ancillary Lender to the extent that such Ancillary Lender makes available a Hedging Ancillary Facility.

**"Hedging Liabilities"** means the Liabilities owed by any Debtor or (to the extent arising from any Third Party Security) Third Party Security Provider to the Hedge Counterparties under or in connection with the Hedging Agreements, provided that the Hedging Liabilities of any Debtor or Third Party Security Provider shall not include any Excluded Swap Obligations of such Debtor or Third Party Security Provider (as applicable).

**"Hedging Purchase Amount"** means, in respect of a hedging transaction under a Hedging Agreement, the amount that would be payable to (expressed as a positive number) or by (expressed as a negative number) the relevant Hedge Counterparty on the relevant date if:

(a) in the case of a Hedging Agreement which is based on an ISDA Master Agreement:

(i) that date was an Early Termination Date (as defined in the relevant ISDA Master Agreement); and

(ii) the relevant Debtor was the Defaulting Party (under and as defined in the relevant ISDA Master Agreement); or

(b) in the case of a Hedging Agreement which is not based on an ISDA Master Agreement:

(i) that date was the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement; and

(ii) the relevant Debtor was in a position which is similar in meaning and effect to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

in each case as certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

**"Holding Company"** has the meaning given to that term in the Senior Facilities Agreement.

**"Indebtedness"** has the meaning given to that term in the Senior Facilities Agreement.

**"Insolvency Event"** means, in relation to any Group Company or Third Party Security Provider:

(a) any resolution is passed or order made for the winding-up, dissolution, examinership, administration or reorganisation of that Group Company, a moratorium is declared in relation to

any indebtedness of that Group Company or Third Party Security Provider or an administrator is appointed to that Group Company or Third Party Security Provider;

- (b) any composition, compromise, assignment or arrangement is made with its creditors generally;
- (c) the appointment of any liquidator, receiver, administrator, administrative receiver, compulsory manager, examiner or other similar officer in respect of that Group Company or Third Party Security Provider or any of its material assets; or
- (d) any analogous procedure or step is taken in any jurisdiction, including without limitation, any US Insolvency or Liquidation Proceeding, in each case to the extent constituting an Insolvency Event of Default which is continuing and provided that:
  - (i) if prior to the Senior Discharge Date, that Insolvency Event of Default is:
    - (A) a Senior Facilities Insolvency Default and the Senior Facility Agent (acting on the instructions of the Enhanced Majority Senior Lenders) has declared by written notice to the Security Agent, each other Agent and the Parent that an **"Insolvency Event"** has occurred;
    - (B) a Senior Notes Insolvency Default and the relevant Senior Notes Trustee (acting on behalf of the Senior Noteholders) has declared by written notice to the Security Agent, each other Agent and the Parent that an **"Insolvency Event"** has occurred; or
    - (C) a Permitted Senior Financing Insolvency Default and the relevant Senior Creditor Representative (to the extent expressly permitted by the relevant Permitted Senior Financing Agreement and acting on the instructions the Majority Permitted Senior Financing Creditors) has declared by written notice to the Security Agent, each other Agent and the Parent that an **"Insolvency Event"** has occurred;if prior to the Permitted Second Lien Financing Discharge Date, that Insolvency Event of Default is a Permitted Second Lien Financing Insolvency Default and the relevant Second Lien Creditor Representative (to the extent expressly permitted by the relevant Permitted Second Lien Financing Agreement and acting on the instructions the Majority Permitted Second Lien Financing Creditors) has declared by written notice to the Security Agent, each other Agent and the Parent that an **"Insolvency Event"** has occurred; or
  - (ii) if on or after the First/Second Lien Discharge Date, that Insolvency Event of Default is:
    - (A) a Senior Parent Notes Insolvency Default and the relevant Senior Parent Notes Trustee (acting on behalf of the Senior Noteholders) has declared by written notice to the Security Agent, each other Agent and the Parent that an **"Insolvency Event"** has occurred; or
    - (B) a Permitted Parent Financing Insolvency Default and the relevant Senior Parent Creditor Representative (to the extent expressly permitted by the relevant Permitted Senior Financing Agreement and acting on the instructions the Majority Permitted Senior

Financing Creditors) has declared by written notice to the Security Agent, each other Agent and the Parent that an **"Insolvency Event"** has occurred.

**"Insolvency Event of Default"** means:

- (a) prior to the Senior Lender Discharge Date, an Event of Default which is continuing under paragraph (f) and/or (g) of section 1 of schedule 18 (*Events of Default*) to the Senior Facilities Agreement (a **"Senior Facilities Insolvency Default"**);
- (b) prior to the Senior Notes Discharge Date, an Event of Default equivalent to a Senior Facilities Insolvency Default which is continuing under any Senior Notes Indenture (a **"Senior Notes Insolvency Default"**);
- (c) prior to the Senior Parent Notes Discharge Date, an Event of Default equivalent to a Senior Facilities Insolvency Default, which is continuing under any Senior Parent Notes Indenture (a **"Senior Parent Notes Insolvency Default"**);
- (d) prior to the Permitted Senior Financing Discharge Date, an Event of Default equivalent to a Senior Facilities Insolvency Default, which is continuing under any Permitted Senior Financing Agreement (a **"Permitted Senior Financing Insolvency Default"**);
- (e) prior to the Permitted Second Lien Financing Discharge Date, an Event of Default equivalent to a Senior Facilities Insolvency Default, which is continuing under any Permitted Second Lien Financing Agreement (a **"Permitted Second Lien Financing Insolvency Default"**); or
- (f) prior to the Permitted Parent Financing Discharge Date, an Event of Default equivalent to a Senior Facilities Insolvency Default, which is continuing under any Permitted Parent Financing Agreement (a **"Permitted Parent Financing Insolvency Default"**).

**"Instructing Group"** means, at any time:

- (a) prior to the Senior Discharge Date, those Senior Secured Creditors (other than the Permitted Second Lien Financing Creditors) whose Senior Secured Credit Participations at that time aggregate to more than  $66\frac{2}{3}$  per cent. of the Total Senior Secured Credit Participations at that time;
- (b) on or after the Senior Discharge Date but before the Permitted Second Lien Financing Discharge Date, and subject always to Clause 5.7 (*Restrictions on enforcement by Permitted Second Lien Financing Creditors*), those Permitted Second Lien Financing Creditors whose Second Lien Secured Credit Participations at that time aggregate to more than  $66\frac{2}{3}$  per cent. of the Total Second Lien Secured Credit Participations at that time; and
- (c) on or after the First/Second Lien Discharge Date but before the Senior Parent Discharge Date, and subject always to Clause 6.8 (*Restrictions on enforcement by Senior Parent Creditors*), the Majority Senior Parent Creditors.

**"Inter-Hedging Agreement Netting"** means the exercise of any right of set-off, account combination, Close-Out Netting or Payment Netting (whether arising out of a cross agreement, netting agreement or

otherwise) by a Hedge Counterparty against liabilities owed to a Debtor by that Hedge Counterparty under a Hedging Agreement in respect of Hedging Liabilities owed to that Hedge Counterparty by that Debtor under another Hedging Agreement.

**"Inter-Hedging Ancillary Document Netting"** means the exercise of any right of set-off, account combination, Close-Out Netting or Payment Netting (whether arising out of a cross agreement, netting agreement or otherwise) by a Hedging Ancillary Lender against liabilities owed to a Debtor by that Hedging Ancillary Lender under a Hedging Ancillary Document in respect of Senior Lender Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

**"Intra-Group Lenders"** means:

- (a) the Original Intra-Group Lenders; and
- (b) each other member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another Debtor and which becomes a party as an Intra-Group Lender in accordance with the terms of Clause 19 (*Changes to the Parties*).

**"Intra-Group Liabilities"** means the Liabilities owed by any Debtor to any of the Intra-Group Lenders in its capacity as such (for the avoidance of doubt, excluding any Liabilities which are Senior Liabilities or Senior Parent Liabilities).

**"Investor Documents"** means each document evidencing any loan, credit or other financial arrangement made by an Investor to the Parent or other indebtedness incurred by the Parent to an Investor which would in each case, save for sub-paragraph (D) in the definition of "Indebtedness", constitute Indebtedness but, in each case, excluding any document evidencing a loan, credit or other financial arrangement or other indebtedness constituting Senior Liabilities or Senior Parent Liabilities.

**"Investor Liabilities"** means:

- (a) the Liabilities owed to the Investors by the Parent under any preferred equity certificates or the Investor Documents (for the avoidance of doubt, excluding any Liabilities which are Senior Liabilities or Senior Parent Liabilities);
- (b) any other liabilities owed to an Investor by the Parent which have been notified to the Security Agent by that Investor and the Parent in writing as liabilities to be treated as Investor Liabilities for the purposes of this Agreement; and
- (c) any Senior Parent Debt Proceeds Loan Liabilities.

**"Investors"** means the Original Investor and any person which becomes a party to this Agreement as an Investor in accordance with the terms of Clause 19 (*Changes to the Parties*), provided that such person has not ceased to be an Investor pursuant to Clause 19.14 (*Resignation of Hedge Counterparties, Operating Facility Lenders and Investors*).

**"ISDA Benchmarks Supplement"** means the ISDA Benchmarks Supplement as published by the International Swaps and Derivatives Association, Inc. on September 19, 2018.

**"ISDA Master Agreement"** means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement.

**"Issuing Bank"** means:

- (a) each **"Issuing Bank"** under and as defined in the Senior Facilities Agreement; and/or
- (b) each person which becomes an issuing bank (or performs another similar or equivalent role) under or pursuant to the terms of a Permitted Senior Financing Document and is specified by that Permitted Senior Financing Document to be an Issuing Bank for the purpose of this definition.

**"Letter of Credit"** means:

- (a) a **"Letter of Credit"** as defined in the Senior Facilities Agreement; and/or
- (b) any letter of credit, guarantee, indemnity or other similar or equivalent instrument issued by an Issuing Bank under or pursuant to the terms of any Permitted Senior Financing Document.

**"Liabilities"** means all present and future liabilities and obligations at any time of any member of the Group or (to the extent arising from any Third Party Security) any Third Party Security Provider to any Creditor or Operating Facility Lender under the Debt Documents, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor or (to the extent arising from any Third Party Security) any Third Party Security Provider of a Payment on the grounds of preference or otherwise,

including any Post-Petition Interest and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**"Liabilities Acquisition"** means, in relation to a person and to any Liabilities, a transaction where that 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, the rights and benefits in respect of those Liabilities.

**"Majority Permitted Parent Financing Creditors"** means, in relation to any Permitted Parent Financing Debt, the requisite number or percentage of Permitted Parent Financing Creditors under the Permitted Parent Financing Agreement on whose instructions the Senior Parent Creditor Representative is required to act in relation to the relevant matter.

**"Majority Permitted Second Lien Financing Creditors"** means, in relation to any Permitted Second Lien Financing Debt, the requisite number or percentage of Permitted Second Lien Financing Creditors under the Permitted Second Lien Financing Agreement on whose instructions the Second Lien Creditor Representative is required to act in relation to the relevant matter.

**"Majority Permitted Senior Financing Creditors"** means, in relation to any Permitted Senior Financing Debt, the requisite number or percentage of Permitted Senior Financing Creditors under the Permitted Senior Financing Agreement on whose instructions the Senior Creditor Representative is required to act in relation to the relevant matter.

**"Majority Second Lien Creditors"** means, at any time, those Permitted Second Lien Financing Creditors whose Second Lien Secured Credit Participations at that time aggregate more than 50 per cent. of the Total Second Lien Secured Credit Participations at that time.

**"Majority Senior Creditors"** means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate more than 50 per cent. of the total Senior Credit Participations at that time.

**"Majority Senior Lenders"** has the meaning given to the term "Majority Lenders" in the Senior Facilities Agreement.

**"Majority Senior Parent Creditors"** means, at any time, those Senior Parent Creditors whose Senior Parent Credit Participations at that time aggregate more than 50 per cent. of the total aggregate amount of all Senior Parent Credit Participations at that time.

**"Material Adverse Effect"** has the meaning given to that term in the Senior Facilities Agreement.

**"Material Event of Default"** means:

- (a) prior to the Senior Lender Discharge Date, an Event of Default which is continuing under paragraph (c) of section 1 of schedule 18 (*Events of Default*) to the Senior Facilities Agreement (but only to the extent that the Senior Facility Agent (acting on the instructions of the Majority Senior Lenders (acting reasonably)) determines that such Event of Default has a Material Adverse Effect), paragraphs (f) and (g) of section 1 of schedule 18 (*Events of Default*) to the Senior Facilities Agreement;
- (b) prior to the Senior Notes Discharge Date, an Event of Default equivalent to any referred to in paragraph (a) above which is continuing under any Senior Notes Indenture; and
- (c) prior to the Permitted Senior Financing Discharge Date, an Event of Default equivalent to any referred to in paragraph (a) above which is continuing under any Permitted Senior Financing Agreement.

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

**"Multi-account Overdraft Liabilities"** means the Liabilities arising under any Multi-account Overdraft Facility.

**"Non-Credit Related Close-Out"** means a Permitted Hedge Close-Out described in any of paragraph (a)(i), (iii), (v), (vi) or (vii) of Clause 4.9 (*Permitted enforcement: Hedge Counterparties*).

**"Noteholders"** means the Senior Noteholders and/or the Senior Parent Noteholders, as the context requires.

**"Notes Finance Documents"** means:

- (a) in respect of any Senior Notes, the Senior Notes Finance Documents relating to those Senior Notes; and
- (b) in respect of any Senior Parent Notes, the Senior Parent Notes Finance Documents relating to those Senior Parent Notes.

**"Notes Indenture"** means:

- (a) in respect of any Senior Notes, the Senior Notes Indenture relating to those Senior Notes; and
- (b) in respect of any Senior Parent Notes, the Senior Parent Notes Indenture relating to those Senior Parent Notes.

**"Notes Security Costs"** means costs and expenses of any holder of Security in relation to the protection, preservation or enforcement of such Security.

**"Notes Trustee"** means:

- (a) in respect of any Senior Notes, each Senior Notes Trustee appointed under or pursuant to the relevant Senior Notes Indenture; and
- (b) in respect of any Senior Parent Notes, each Senior Parent Notes Trustee appointed under or pursuant to the relevant Senior Parent Notes Indenture.

**"Notes Trustee Amounts"** means the Senior Notes Trustee Amounts and the Senior Parent Notes Trustee Amounts.

**"Operating Facility"** means any facility or financial accommodation (including, without limitation, any overdraft or other current account facility, any foreign exchange facility, any guarantee, bonding, documentary or standby letter of credit facility, any credit card or automated payments facility, any short-term loan facility, any derivatives facility, any cash pooling arrangement or other cash management arrangement, chequing or note encashment facility) provided to a member of the Group by an Operating Facility Lender which is notified to the Security Agent by the Parent in writing as a facility or financial accommodation to be treated as an **"Operating Facility"** for the purposes of this Agreement.



**"Operating Facility Discharge Date"** means the first date on which all Operating Facility Liabilities have been fully and finally discharged (if applicable, including by way of defeasance permitted in accordance with the Operating Facility Documents), whether or not as a result of an enforcement, and the Operating Facility Lenders are under no further obligation to provide any financial accommodation to any of the Debtors under the Operating Facility Documents.

**"Operating Facility Document"** means, at the election of the Parent, any document relating to or evidencing an Operating Facility.

**"Operating Facility Lender"** means any person which becomes Party as an Operating Facility Lender pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*),

provided that:

- (i) such person has not ceased to be an Operating Facility Lender pursuant to Clause 19.14 (*Resignation of Hedge Counterparties, Operating Facility Lenders and Investors*); and
- (ii) if the Senior Debt Discharge Date has occurred, a person party to this Agreement as an Operating Facility Lender may agree with the Parent that, without prejudice to the rights and obligations of the parties under the relevant Operating Facility Documents, any facilities or financial accommodation provided by that person shall cease to be subject to the terms of this Agreement and any Liabilities to that person under or in connection with the Operating Facility Documents shall cease to constitute Operating Facility Liabilities (in which case such person shall cease to be an Operating Facility Lender for the purposes of the Secured Debt Documents).

**"Operating Facility Liabilities"** means the Liabilities owed by any Debtor or (to the extent arising from any Third Party Security) any Third Party Security Provider to the Operating Facility Lenders under or in connection with the Operating Facility Documents or any Operating Facility provided thereunder (for the avoidance of doubt, excluding any Senior Arranger Liabilities, Senior Lender Liabilities, Senior Notes Liabilities, Senior Parent Liabilities, Permitted Senior Financing Arranger Liabilities, Permitted Second Lien Financing Arranger Liabilities, Permitted Senior Financing Liabilities, Permitted Second Lien Financing Liabilities and Permitted Parent Financing Liabilities).

**"Other Liabilities"** means, in relation to a member of the Group or a Third Party Security Provider, any trading and other liabilities (not being Borrowing Liabilities or Guarantee Liabilities) it may have to any Agent, Arranger or Operating Facility Lender under the Debt Documents or to an Intra-Group Lender, Debtor or Third Party Security Provider.

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

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

**"Payment Netting"** means:

(a) in respect of a Hedging Agreement or a Hedging Ancillary Document based on an ISDA Master Agreement, netting under section 2(c) of the relevant ISDA Master Agreement; and

(b) in respect of a Hedging Agreement or a Hedging Ancillary Document not based on an ISDA Master Agreement, netting pursuant to any provision of that Hedging Agreement or a Hedging Ancillary Document which has a similar effect to the provision referenced in paragraph (a) above.

**"Permitted Financing Agreement"** means a Permitted Senior Financing Agreement, a Permitted Second Lien Financing Agreement and/or a Permitted Parent Financing Agreement, as the context requires.

**"Permitted Financing Documents"** means the Permitted Senior Financing Documents, the Permitted Second Lien Financing Documents and the Permitted Parent Financing Documents.

**"Permitted Gross Amount"** means, in relation to a Multi-account Overdraft Facility, any amount, not exceeding the Designated Gross Amount, which is the aggregate gross debit balance of overdrafts comprised in that Multi-account Overdraft Facility.

**"Permitted Hedge Close-Out"** means, in relation to a hedging transaction under a Hedging Agreement, a termination or close-out of that hedging transaction which is permitted pursuant to Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

**"Permitted Hedge Payments"** means the Payments permitted by Clause 4.3 (*Permitted Payments: Hedging Liabilities*).

**"Permitted Intra-Group Payments"** means the Payments permitted by Clause 8.2 (*Permitted Payments: Intra-Group Liabilities*).

**"Permitted Investor Payments"** means the Payments permitted by Clause 7.2 (*Permitted Payments: Investor Liabilities*).

**"Permitted Parent Financing Acceleration Event"** means, in relation to any Permitted Parent Financing Debt and following the occurrence of a Permitted Parent Financing Event of Default which is continuing, the Senior Parent Creditor Representative in respect of that Permitted Parent Financing Debt (or, as the case may be, any of the Permitted Parent Financing Creditors) exercising any of its rights under (and in accordance with the terms of) the Permitted Parent Financing Agreement to accelerate any amount outstanding under the Permitted Parent Financing Agreement or any acceleration provision being automatically invoked under the Permitted Parent Financing Agreement (in each case such that a principal amount outstanding in respect of that Permitted Parent Financing Agreement has become immediately due and payable prior to its scheduled maturity).

**"Permitted Parent Financing Agent Liabilities"** means the Agent Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to the relevant Senior Parent Creditor Representative under or in connection with the Permitted Parent Financing Documents.

**"Permitted Parent Financing Agreement"** means, in relation to any Permitted Parent Financing Debt, the facility agreement, indenture or other equivalent document by which that Permitted Parent Financing Debt is made available or, as the case may be, issued.

**"Permitted Parent Financing Arranger"** means any Arranger under and as defined in a Permitted Parent Financing Agreement.

**"Permitted Parent Financing Arranger Liabilities"** means the Arranger Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to any Permitted Parent Financing Arranger under or in connection with the Permitted Parent Financing Documents.

**"Permitted Parent Financing Creditors"** means, in relation to any Permitted Parent Financing Debt, each of the lenders, holders or other creditors in respect of that Permitted Parent Financing Debt from time to time (including the applicable Senior Parent Creditor Representative).

**"Permitted Parent Financing Debt"** means any indebtedness incurred by a Senior Parent Debt Issuer which is notified to the Security Agent by the Parent in writing as indebtedness to be treated as **"Permitted Parent Financing Debt"** for the purposes of this Agreement, provided that:

(a) incurrence of such indebtedness is not prohibited by the terms of the Secured Debt Documents; and

(b) either:

- (i) the providers of such indebtedness have agreed to become a Party to this Agreement as a Senior Parent Creditor by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking; or
- (ii) the agent, trustee or other relevant representative in respect of that Permitted Parent Financing Debt has agreed to become a Party to this Agreement as a Senior Parent Creditor and Senior Parent Creditor Representative on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking, in each case to the extent that the relevant person is not already party to this Agreement in that capacity.

**"Permitted Parent Financing Discharge Date"** means the first date on which all Permitted Parent Financing Liabilities have been fully and finally discharged (if applicable, including by way of defeasance permitted in accordance with the Permitted Parent Financing Documents), whether or not as a result of an enforcement, and the Permitted Parent Financing Creditors are under no further obligation to provide any financial accommodation to any of the Debtors under the Permitted Parent Financing Documents.

**"Permitted Parent Financing Documents"** means, in relation to any Permitted Parent Financing Debt, the Permitted Parent Financing Agreement, any fee letter entered into under or in connection with the Permitted Parent Financing Agreement and any other document or instrument relating to that Permitted Parent Financing Debt and designated as such by the Parent and the Senior Parent Creditor Representative in respect of that Permitted Parent Financing Debt.

**"Permitted Parent Financing Event of Default"** means, in relation to any Permitted Parent Financing Debt, an event of default (however described) under the Permitted Parent Financing Agreement which entitles the Permitted Parent Financing Creditors to give (or to instruct the Senior Parent Creditor

Representative to give) a notice of acceleration constituting a Permitted Parent Financing Acceleration Event.

**"Permitted Parent Financing Liabilities"** means all Liabilities of any Debtor or (to the extent arising from any Third Party Security) Third Party Security Provider to any Permitted Parent Financing Creditors under or in connection with the Permitted Parent Financing Documents.

**"Permitted Payment"** means a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Senior Parent Payment, a Permitted Second Lien Payment, a Permitted Senior Payment or a Permitted Investor Payment.

**"Permitted Second Lien Financing Acceleration Event"** means, in relation to any Permitted Second Lien Financing Debt and following the occurrence of a Permitted Second Lien Financing Event of Default which is continuing, the Second Lien Creditor Representative in respect of that Permitted Second Lien Financing Debt (or, as the case may be, any of the Permitted Second Lien Financing Creditors) exercising any of its rights under (and in accordance with the terms of) the Permitted Second Lien Financing Agreement to accelerate any amount outstanding under the Permitted Second Lien Financing Agreement or any acceleration provision being automatically invoked under the Permitted Second Lien Financing Agreement (in each case such that a principal amount outstanding in respect of that Permitted Second Lien Financing Agreement has become immediately due and payable prior to its scheduled maturity).

**"Permitted Second Lien Financing Agent Liabilities"** means the Agent Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to the relevant Second Lien Creditor Representative under or in connection with the Permitted Second Lien Financing Documents.

**"Permitted Second Lien Financing Agreement"** means, in relation to any Permitted Second Lien Financing Debt, the facility agreement, indenture or other equivalent document by which that Permitted Second Lien Financing Debt is made available or, as the case may be, issued.

**"Permitted Second Lien Financing Arranger"** means any Arranger under and as defined in a Permitted Second Lien Financing Agreement.

**"Permitted Second Lien Financing Arranger Liabilities"** means the Arranger Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to any Permitted Second Lien Financing Arranger under or in connection with the Permitted Second Lien Financing Documents.

**"Permitted Second Lien Financing Creditors"** means, in relation to any Permitted Second Lien Financing Debt, each of the lenders, holders or other creditors in respect of that Permitted Second Lien Financing Debt from time to time (including the applicable Second Lien Creditor Representative).

**"Permitted Second Lien Financing Debt"** means any indebtedness incurred by any Second Lien Borrower and which is notified to the Security Agent by the Parent in writing as indebtedness to be treated as "Permitted Second Lien Financing Debt" for the purposes of this Agreement provided that:

(a) incurrence of such indebtedness is not prohibited by the terms of the Secured Debt Documents; and

(b) either:

- (i) the providers of such indebtedness have agreed to become a party to this Agreement as a Permitted Second Lien Financing Creditor by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking; or
- (ii) the agent, trustee or other relevant representative in respect of that Permitted Second Lien Financing Debt has agreed to become a Party to this Agreement as a Permitted Second Lien Financing Creditor and Second Lien Creditor Representative on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking, in each case to the extent that the relevant person is not already party to this Agreement in that capacity.

**"Permitted Second Lien Financing Discharge Date"** means the first date on which all Permitted Second Lien Financing Liabilities have been fully and finally discharged (if applicable, including by way of defeasance permitted in accordance with the Permitted Second Lien Financing Documents), whether or not as a result of an enforcement, and the Permitted Second Lien Financing Creditors are under no further obligation to provide any financial accommodation to any of the Debtors under the Permitted Second Lien Financing Documents.

**"Permitted Second Lien Financing Documents"** means, in relation to any Permitted Second Lien Financing Debt, the Permitted Second Lien Financing Agreement, any fee letter entered into under or in connection with the Permitted Second Lien Financing Agreement and any other document or instrument relating to that Permitted Second Lien Financing Debt and designated as such by the Parent and the Second Lien Creditor Representative in respect of that Permitted Second Lien Financing Debt.

**"Permitted Second Lien Financing Event of Default"** means, in relation to any Permitted Second Lien Financing Debt, an event of default (however described) under the Permitted Second Lien Financing Agreement which entitles the Permitted Second Lien Financing Creditors to give (or to instruct the Second Lien Creditor Representative to give) a notice of acceleration constituting a Permitted Second Lien Financing Acceleration Event.

**"Permitted Second Lien Financing Liabilities"** means all Liabilities of any Debtor or (to the extent arising from any Third Party Security) Third Party Security Provider to any Permitted Second Lien Financing Creditors under or in connection with the Permitted Second Lien Financing Documents.

**"Permitted Second Lien Payments"** means the Payments permitted by Clause 5.2 (*Permitted Payments: Second Lien Liabilities*).

**"Permitted Senior Financing Acceleration Event"** means, in relation to any Permitted Senior Financing Debt and following the occurrence of a Permitted Senior Financing Event of Default which is continuing, the Senior Creditor Representative in respect of that Permitted Senior Financing Debt (or, as the case may be, any of the Permitted Senior Financing Creditors) exercising any of its rights under (and in accordance with the terms of) the Permitted Senior Financing Agreement to accelerate any amount outstanding under the Permitted Senior Financing Agreement or any acceleration provision being automatically invoked under

the Permitted Senior Financing Agreement (in each case such that a principal amount outstanding in respect of that Permitted Senior Financing Agreement has become immediately due and payable prior to its scheduled maturity).

**"Permitted Senior Financing Agent Liabilities"** means the Agent Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to the relevant Senior Creditor Representative under or in connection with the Permitted Senior Financing Documents.

**"Permitted Senior Financing Agreement"** means, in relation to any Permitted Senior Financing Debt, the facility agreement, indenture or other equivalent document by which that Permitted Senior Financing Debt is made available or, as the case may be, issued.

**"Permitted Senior Financing Arranger"** means any Arranger under and as defined in a Permitted Senior Financing Agreement.

**"Permitted Senior Financing Arranger Liabilities"** means the Arranger Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to any Permitted Senior Financing Arranger under or in connection with the Permitted Senior Financing Documents.

**"Permitted Senior Financing Creditors"** means, in relation to any Permitted Senior Financing Debt, each of the lenders, holders or other creditors in respect of that Permitted Senior Financing Debt from time to time (including the applicable Senior Creditor Representative).

**"Permitted Senior Financing Debt"** means any indebtedness incurred by any member of the Group which is notified to the Security Agent by the Parent in writing as indebtedness to be treated as **"Permitted Senior Financing Debt"** for the purposes of this Agreement provided that:

(a) incurrence of such indebtedness is not prohibited by the terms of the Secured Debt Documents; and

(b) either:

(i) the providers of such indebtedness have agreed to become a party to this Agreement as a Senior Secured Creditor by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking; or

(ii) the agent, trustee or other relevant representative in respect of that Permitted Senior Financing Debt has agreed to become a Party to this Agreement as a Senior Secured Creditor and Senior Creditor Representative on behalf of the providers of such indebtedness by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking, in each case to the extent that the relevant person is not already party to this Agreement in that capacity.

**"Permitted Senior Financing Discharge Date"** means the first date on which all Permitted Senior Financing Liabilities have been fully and finally discharged (if applicable, including by way of defeasance permitted in accordance with the Permitted Senior Financing Documents), whether or not as a result of an

enforcement, and the Permitted Senior Financing Creditors are under no further obligation to provide any financial accommodation to any of the Debtors under the Permitted Senior Financing Documents.

**"Permitted Senior Financing Documents"** means, in relation to any Permitted Senior Financing Debt, the Permitted Senior Financing Agreement, any fee letter entered into under or in connection with the Permitted Senior Financing Agreement and any other document or instrument relating to that Permitted Senior Financing Debt and designated as such by the Parent and the Senior Creditor Representative in respect of that Permitted Senior Financing Debt.

**"Permitted Senior Financing Event of Default"** means, in relation to any Permitted Senior Financing Debt, an event of default (however described) under the Permitted Senior Financing Agreement which entitles the Permitted Senior Financing Creditors to give (or to instruct the Senior Creditor Representative to give) a notice of acceleration constituting a Permitted Senior Financing Acceleration Event.

**"Permitted Senior Financing Liabilities"** means all Liabilities of any Debtor or (to the extent arising from any Third Party Security) Third Party Security Provider to any Permitted Senior Financing Creditors under or in connection with the Permitted Senior Financing Documents.

**"Permitted Senior Parent Payments"** means the Payments permitted by Clause 6.2 (*Permitted Senior Parent Payments*).

**"Permitted Senior Payments"** means the Payments permitted by Clause 3.1 (*Payment of Senior Liabilities*).

**"Post-Petition Interest"** means interest, fees, expenses and other charges that pursuant to the Debt Documents continue to accrue after the commencement of any US Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under any Debtor Relief Law or other applicable legal requirements or in any such US Insolvency or Liquidation Proceeding.

**"Primary Creditors"** means the Senior Secured Creditors and the Senior Parent Creditors.

**"Priority Revolving Facility"** means any facility which is notified to the Security Agent by the Parent in writing as a facility to be treated as a **"Priority Revolving Facility"** for the purposes of this Agreement, in each case provided that such facility is made available on terms consistent with those set out in Schedule 4 (*Priority Revolving Facility*).

**"Public Auction"** means an auction (public or private) or other competitive sale process in which more than one bidder participates or is invited to participate, which may or may not be conducted through a court or other legal proceeding, and which is conducted with the advice of a Financial Adviser.

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

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

**"Qualified Equity Interests"** has the meaning given to the term "Equity Interests" in the Senior Facilities Agreement.

**"Receiver"** means a receiver, an interim receiver, a receiver and manager or administrative receiver, in each case, of the whole or any part of the Charged Property.

**"Recoveries"** has the meaning given to that term in paragraph (a) of Clause 14.1 (*Order of application*).

**"Regulated Entity"** has the meaning given to that term in the Senior Facilities Agreement.

**"Relevant Ancillary Lender"** means, in respect of any SFA Cash Cover, the Ancillary Lender (if any) for which that SFA Cash Cover is provided.

**"Relevant Issuing Bank"** means, in respect of any SFA Cash Cover, the Issuing Bank (if any) for which that SFA Cash Cover is provided.

**"Relevant Liabilities"** means:

(a) in the case of a Creditor or an Operating Facility Lender:

- (i) the Arranger Liabilities owed to an Arranger ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Creditor or, as the case may be, Operating Facility Lender;
- (ii) the Liabilities owed to Creditors and Operating Facility Lenders ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Creditor or, as the case may be, Operating Facility Lender together with all Agent Liabilities owed to the Agent of those Creditors and Operating Facility Lenders; and
- (iii) all present and future liabilities and obligations, actual and contingent, of the Debtors and (to the extent arising from any Third Party Security) Third Party Security Providers to the Security Agent; and

(b) in the case of a Debtor or (to the extent arising from any Third Party Security) Third Party Security Provider, the Liabilities owed to the Creditors and the Operating Facility Lenders together with the Agent Liabilities owed to the Agent of those Creditors and Operating Facility Lenders, the Arranger Liabilities and all present and future liabilities and obligations, actual and contingent, of the Debtors or, as the case may be, Third Party Security Providers to the Security Agent.

**"Required Second Lien Consent"** means, in relation to any proposed matter, step or action (the **"Proposed Action"**) if any Permitted Second Lien Financing Debt has been incurred and the Proposed Action is prohibited by the terms of the relevant Permitted Second Lien Financing Agreement, the prior consent of the Majority Permitted Second Lien Financing Creditors or the Creditor Representative in respect of that Permitted Second Lien Financing Debt.



**"Required Senior Consent"** means, in relation to any proposed matter, step or action (the **"Proposed Action"**), the prior consent of:

- (a) if the Proposed Action is prohibited by the terms of the Senior Facilities Agreement, the Majority Senior Lenders;
- (b) if any Senior Notes have been issued and the Proposed Action is prohibited by the terms of the relevant Senior Notes Indenture, the Senior Notes Trustee; and
- (c) if any Permitted Senior Financing Debt has been incurred and the Proposed Action is prohibited by the terms of the relevant Permitted Senior Financing Agreement, the Majority Permitted Senior Financing Creditors or the Creditor Representative in respect of that Permitted Senior Financing Debt.

**"Responsible Officer"** means any officer within the corporate trust, agency or securities services department (however described) of any Notes Trustee, including any director, associate director, vice president, assistant vice president, assistant treasurer, trust officer or any other officer of such Notes Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement and any Senior Notes Indenture, Senior Parent Notes Indenture or Permitted Financing Agreement (as applicable) to which that Notes Trustee is a party.

**"Retiring Security Agent"** has the meaning given to that term in paragraph (d) of Clause 18.1 (*Resignation of the Security Agent*).

**"Second Lien Borrower"** means any person that becomes a borrower or issuer of Second Lien Liabilities.

**"Second Lien Creditor Representative"** means, in relation to any Permitted Second Lien Financing Debt, the agent, trustee or other relevant representative in respect of that Permitted Second Lien Financing Debt.

**"Second Lien Guarantor"** has the meaning given to the term **"Guarantor"** in any Permitted Second Lien Financing Agreement.

**"Second Lien Liabilities"** means any Permitted Second Lien Financing Liabilities.

**"Second Lien Payment Default"** means a Senior Event of Default arising by reason of non-payment of any amount which is immediately due and payable under the Permitted Second Lien Financing Documents, other than in respect of non-payment of any amount (a) not constituting principal or interest or (b) not exceeding USD1,000,000 (or its equivalent in other currencies).

**"Second Lien Secured Credit Participation"** means in relation to a Permitted Second Lien Financing Creditor, the aggregate amount of its commitments under each Permitted Second Lien Financing Agreement (drawn or undrawn) and/or the principal amount of outstanding Permitted Second Lien Financing Debt held by that Permitted Second Lien Financing Creditor (as applicable and without double counting).

**"Secured Debt Documents"** means the Senior Facilities Finance Documents, the Senior Notes Finance Documents, the Permitted Senior Financing Documents, the Hedging Agreements, the Operating Facility Documents, the Permitted Second Lien Financing Documents, the Senior Parent Notes Finance Documents and/or the Permitted Parent Financing Documents, as the context requires.

**"Secured Obligations"** means:

- (a) in the case of all Security Documents other than the Shared Security, to the extent legally possible, all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group to any Senior Secured Party under the Secured Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity; and
- (b) in the case of the Shared Security, to the extent legally possible, all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group to any Secured Party (in the case of any Senior Parent Creditor and any Shared Security, to the extent the Parent has agreed that the relevant Senior Parent Notes or relevant Permitted Parent Financing Debt (as applicable) is to benefit from that Shared Security) under the Secured Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

**"Secured Party"** means, to the extent legally possible, each of the Security Agent, any Receiver or Delegate and each of the Agents, the Arrangers, the Operating Facility Lenders, the Senior Secured Creditors and the Senior Parent Creditors from time to time but, to the extent required by this Agreement, only if it is a party to this Agreement or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*).

**"Security"** means a mortgage, charge, pledge, lien or other security interest having a similar effect.

**"Security Agent's Spot Rate of Exchange"** means, in respect of the conversion of one currency (the **"First Currency"**) into another currency (the **"Second Currency"**), the Security Agent's spot rate of exchange for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11.00 am (London time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (d) of Clause 17.7 (*Security Agent's obligations*).

**"Security Documents"** means:

- (a) each of the Transaction Security Documents; and
- (b) any other document entered into at any time by any of the Debtors or Third Party Security Providers creating or expressed to create any Security over all or any part of its assets in respect of, to the extent legally possible and subject to the Agreed Security Principles, any of the obligations of any member of the Group to any of the Secured Parties (in such capacity) under any of the Secured Debt Documents.

**"Security Property"** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as agent or trustee for the Secured Parties (or under or pursuant to any parallel debt, joint and several creditorship or similar or equivalent structure) and/or in favour of all or any relevant Secured Parties (as applicable under the relevant governing law) and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor or (to the extent arising from any Third Party Security) Third Party Security Provider to pay amounts in respect of the Liabilities to the Security Agent as agent or trustee for the Secured Parties (or under or pursuant to any parallel debt, joint and several creditorship or similar or equivalent structure) and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor or a Third Party Security Provider in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 10 (*Turnover of Receipts*); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for (or otherwise for the benefit of) the Secured Parties.

**"Senior Acceleration Event"** means a Senior Facilities Acceleration Event, a Senior Notes Acceleration Event and/or a Permitted Senior Financing Acceleration Event, as the context requires.

**"Senior Agent"** means each of the Senior Facility Agent, any Senior Notes Trustee, any Senior Creditor Representative and/or any Second Lien Creditor Representative, as the context requires.

**"Senior Agent Liabilities"** means the Agent Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to the Senior Facility Agent under or in connection with the Senior Facilities Finance Documents.

**"Senior Arranger"** means any Arranger under and as defined in the Senior Facilities Agreement.

**"Senior Arranger Liabilities"** means the Arranger Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to any Senior Arranger under or in connection with the Senior Facilities Finance Documents.

**"Senior Borrower"** has the meaning given to the term **"Borrower"** in the Senior Facilities Agreement.

**"Senior Cash Collateral"** means any cash collateral provided by:

- (a) a Senior Lender to an Issuing Bank pursuant to clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower's option to provide cash cover*) of the Senior Facilities Agreement; and
- (b) a Permitted Senior Financing Creditor to an Issuing Bank pursuant to the terms of a Permitted Senior Financing Agreement.

**"Senior Commitment"** means a "Facility B Commitment", an "Incremental Facility Commitment" or a "Revolving Facility Commitment", each as defined in the Senior Facilities Agreement.

**"Senior Credit Participation"** means, in relation to a Senior Creditor, the aggregate of:

- (a) its aggregate Senior Commitments (whether drawn or undrawn), if any; and
- (b) in respect of any hedging transaction of that Senior Creditor under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Senior Creditor and as calculated in accordance with the relevant Hedging Agreement); and
- (c) in respect of any hedging transaction of that Senior Creditor under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out:
  - (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
  - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),that amount, in each case, to be certified by the relevant Senior Creditor and as calculated in accordance with the relevant Hedging Agreement.

**"Senior Creditor Discharge Date"** means the first date on which all the Senior Lender Liabilities and the Hedging Liabilities have been fully and finally discharged, whether or not as the result of an enforcement, and the Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Senior Facilities Finance Documents.

**"Senior Creditor Liabilities"** means the Senior Lender Liabilities, the Hedging Liabilities and the Operating Facility Liabilities.

**"Senior Creditor Representative"** means, in relation to any Permitted Senior Financing Debt, the agent, trustee or other relevant representative in respect of that Permitted Senior Financing Debt.

**"Senior Creditors"** means the Senior Lenders and the Hedge Counterparties.

**"Senior Debt Discharge Date"** means the first date on which each of the Senior Lender Discharge Date, the Senior Notes Discharge Date and the Permitted Senior Financing Discharge Date has occurred.

**"Senior Debt Documents"** means the Senior Facilities Finance Documents, the Senior Notes Finance Documents, the Permitted Senior Financing Documents and/or the Permitted Second Lien Financing Documents, as the context requires.

**"Senior Discharge Date"** means the first date on which each of the Senior Creditor Discharge Date, the Senior Notes Discharge Date and the Permitted Senior Financing Discharge Date has occurred.

**"Senior Distress Event"** means, following the occurrence of a Senior Acceleration Event which is continuing, any of the Senior Facility Agent (acting on the instructions of the Enhanced Majority Senior Lenders), a Senior Notes Trustee (acting on behalf of the Senior Noteholders) or a Senior Creditor Representative (to the extent expressly permitted by the relevant Permitted Senior Financing Agreement and acting on the instructions of the Majority Permitted Senior Financing Creditors) declaring by written notice to the Security Agent, each other Agent and the Parent that a Senior Distress Event has occurred.

**"Senior Event of Default"** means an Event of Default under a Senior Financing Agreement.

**"Senior Facilities Acceleration Event"** means the occurrence of a "Declared Default" under and as defined in the Senior Facilities Agreement.

**"Senior Facilities Agreement"** means the senior facilities agreement dated on or about the date of this Agreement and made between the Parent, the Senior Lenders, the Senior Facility Agent and others.

**"Senior Facilities Finance Documents"** has the meaning given to the term **"Finance Document"** in the Senior Facilities Agreement.

**"Senior Facility"** has the meaning given to the term **"Facility"** in the Senior Facilities Agreement, and, for the avoidance of doubt, includes any Incremental Facility provided thereunder.

**"Senior Facility Agent"** means the Agent under and as defined in the Senior Facilities Agreement.

**"Senior Financing Agreement"** means the Senior Facilities Agreement, any Senior Notes Indenture, any Permitted Senior Financing Agreement and/or any Permitted Second Lien Financing Agreement, as the context requires.

**"Senior Guarantor"** has the meaning given to the term **"Guarantor"** in the Senior Facilities Agreement.

**"Senior Lender Discharge Date"** means the first date on which all Senior Lender Liabilities have been fully and finally discharged, whether or not as the result of an enforcement, and the Senior Lenders are under no further obligation to provide financial accommodation to any of the Debtors under any of the Senior Facilities Finance Documents.

**"Senior Lender Liabilities"** means the Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to the Senior Lenders under the Senior Facilities Finance Documents.

**"Senior Lenders"** means each Lender under and as defined in the Senior Facilities Agreement, together with each Issuing Bank and Ancillary Lender under the Senior Facilities Finance Documents.

**"Senior Liabilities"** means the Senior Creditor Liabilities, the Senior Notes Liabilities, the Permitted Senior Financing Liabilities and the Permitted Second Lien Financing Liabilities.

**"Senior Liabilities Transfer"** means a transfer of the Senior Lender Liabilities and the Operating Facility Liabilities to all or any of the Senior Secured Creditors described in paragraph (a) of Clause 3.8 (*Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors*).

**"Senior Noteholders"** means the registered holders from time to time of the applicable Senior Notes, as determined in accordance with the relevant Senior Notes Indenture(s).

**"Senior Notes"** means high yield notes, exchange notes, debt securities and/or other debt instruments issued or to be issued by any member of the Group which are notified to the Security Agent by the Parent in writing as indebtedness to be treated as **"Senior Notes"** for the purposes of this Agreement.

**"Senior Notes Acceleration Event"** means following the occurrence of a Senior Event of Default which is continuing under a Senior Notes Indenture, the Senior Notes Trustee (or any Senior Noteholder) exercising any of its rights under (and in accordance with the terms of) the Senior Notes Indenture to accelerate any amount outstanding under the Senior Notes or Senior Notes Indenture or any acceleration provision being automatically invoked under any Senior Notes Indenture (in each case such that a principal amount outstanding under the Senior Notes or Senior Notes Indenture has become immediately due and payable prior to its scheduled maturity).

**"Senior Notes Creditors"** means, on and from the first Senior Notes Issue Date, the Senior Noteholders and each Senior Notes Trustee.

**"Senior Notes Discharge Date"** means the first date on which all the Senior Notes Liabilities have been fully and finally discharged, including by way of defeasance permitted in accordance with the Senior Notes Finance Documents, whether or not as the result of an enforcement.

**"Senior Notes Finance Documents"** means the Senior Notes, each Senior Notes Indenture, each guarantee granted by a member of the Group in respect of the Senior Notes, this Agreement, the Security Documents and any other document entered into in connection with the Senior Notes and designated a Senior Notes Finance Document by the Parent and the applicable Senior Notes Trustee (which, for the avoidance of doubt, excludes any document to the extent it sets out rights of the initial purchasers of the Senior Notes (in their capacities as initial purchasers) against any member of the Group).

**"Senior Notes Finance Parties"** means any Senior Notes Trustee (on behalf of itself and the Senior Noteholders which it represents), any Senior Noteholder and the Security Agent.

**"Senior Notes Indenture"** means each indenture pursuant to which any Senior Notes are issued.

**"Senior Notes Issue Date"** means, in respect of each Senior Notes Indenture, the first date on which a Senior Note is issued pursuant to that Senior Notes Indenture.

**"Senior Notes Liabilities"** means the Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to the Senior Notes Finance Parties under the Senior Notes Finance Documents (excluding any Senior Notes Trustee Amounts).

**"Senior Notes/Permitted Financing Credit Participations"** means the aggregate of all the Senior Secured Credit Participations at any time of the Senior Notes Creditors and the Permitted Senior Financing Creditors.

**"Senior Notes Representative"** means after the first Senior Notes Issue Date, each Senior Notes Trustee in respect of any Senior Notes that are outstanding.

**"Senior Notes Trustee"** means any entity acting as trustee under any issue of Senior Notes (to the extent it has acceded to this Agreement in such capacity pursuant to Clause 19.8 (*Accession of Senior Notes Trustee*)), in each case as the context requires.

**"Senior Notes Trustee Amounts"** means, in relation to a Senior Notes Trustee, amounts in respect of costs and expenses (including legal fees and together with any applicable VAT) payable to that Senior Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof under the Senior Notes Finance Documents, any provisions (including indemnity provisions) for costs and expenses in favour of that Senior Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof contained in the Senior Notes Finance Documents, all compensation for services provided by that Senior Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof which is payable to that Senior Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof pursuant to the terms of the Senior Notes Finance Documents and all out-of-pocket costs and expenses properly incurred by that Senior Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof in carrying out its duties or performing any service pursuant to the terms of the Senior Notes Finance Documents, including, without limitation, (a) compensation for the costs and expenses of the collection by that Senior Notes Trustee of any amount payable to that Senior Notes Trustee for the benefit of the Senior Noteholders and (b) costs and expenses of that Senior Notes Trustee's advisers, receivers, delegates, attorneys, agents or appointees (but excluding (i) any payment in relation to any unpaid costs and expenses incurred in respect of any litigation initiated by that Senior Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee on behalf of that Senior Notes Trustee against any of the Senior Creditors or the Permitted Senior Financing Creditors and (ii) any payment made, directly or indirectly, on or in respect of any amounts owing under any Senior Notes (including principal, interest, premium or any other amounts to any of the Senior Noteholders)), all such amounts above including VAT where applicable.

**"Senior Parent Agent"** means any Senior Parent Notes Trustee and/or any Senior Parent Creditor Representative, as the context requires.

**"Senior Parent Creditor Representative"** means, in relation to any Permitted Parent Financing Debt, the agent, trustee or other relevant representative in respect of that Permitted Parent Financing Debt.

**"Senior Parent Creditors"** means the Senior Parent Notes Creditors and any Permitted Parent Financing Creditors.

**"Senior Parent Credit Participation"** means:

- (a) in relation to a Senior Parent Noteholder, the principal amount of outstanding Senior Parent Notes Liabilities held by that Senior Parent Noteholder; and
- (b) in relation to a Permitted Parent Financing Creditor, the aggregate amount of its commitments under each Permitted Parent Financing Agreement (drawn or undrawn and calculated in a manner consistent with the Senior Commitments) and/or the principal amount of outstanding Permitted Parent Financing Debt held by that Permitted Parent Financing Creditor (as applicable and without double counting).

**"Senior Parent Debt Issuer"** means, in relation to any Senior Parent Notes or Permitted Parent Financing Debt, the member of the Group or any Holding Company of the Parent which is the issuer or, as the case may be, the borrower of those Senior Parent Notes or that Permitted Parent Financing Debt, provided that no member of the Group which is:

- (a) an issuer or, as the case may be, a borrower of any outstanding Senior Term Debt, outstanding Senior Notes, outstanding Permitted Senior Financing Debt, outstanding Permitted Second Lien Financing Debt or the Company; or
- (b) a Subsidiary of a member of the Group falling within paragraph (a) above (other than a Subsidiary which is a Financing Vehicle), may be a Senior Parent Debt Issuer.

**"Senior Parent Debt Issuer Security"** means:

- (a) any Transaction Security granted by a Senior Parent Debt Issuer (which is a member of the Group) over the shares directly held by it in its immediate Subsidiaries; and
- (b) any Transaction Security granted by a Senior Parent Debt Issuer (which is a member of the Group) over any loan receivables due to it from another member of the Group.

**"Senior Parent Debt Proceeds Loan"** means any loan made by any entity which is not a member of the Group for the purposes of lending or on-lending (directly or indirectly) the proceeds of any Senior Parent Notes or Permitted Parent Financing Debt issued or incurred by any Senior Parent Debt Issuer which is not a member of the Group, together with any additional or replacement loan made on substantially the same terms in respect of the proceeds of any Senior Parent Notes or Permitted Parent Financing Debt issued or incurred by any Senior Parent Debt Issuer which is not a member of the Group.

**"Senior Parent Debt Proceeds Loan Agreement"** means any loan agreement, instrument or other agreement documenting a Senior Parent Debt Proceeds Loan.

**"Senior Parent Debt Proceeds Loan Liabilities"** means the Liabilities owed by any Debtor under any Senior Parent Debt Proceeds Loan.

**"Senior Parent Discharge Date"** means the first date on which each of the Senior Parent Notes Discharge Date and the Permitted Parent Financing Discharge Date has occurred.



**"Senior Parent Enforcement Notice"** has the meaning given to that term in paragraph (b) of Clause 6.9 (*Permitted Senior Parent enforcement*).

**"Senior Parent Event of Default"** means an Event of Default under a Senior Parent Financing Agreement.

**"Senior Parent Finance Documents"** means the Senior Parent Notes Finance Documents and the Permitted Parent Financing Documents.

**"Senior Parent Finance Parties"** means the Senior Parent Notes Finance Parties and the Permitted Parent Financing Creditors.

**"Senior Parent Financing Agreement"** means any Senior Parent Notes Indenture and/or any Permitted Parent Financing Agreement, as the context requires.

**"Senior Parent Guarantee"** means each guarantee by a member of the Group of any obligations of a member of the Group under the Senior Parent Finance Documents which is expressly subject to the provisions of this Agreement in a legally binding manner (which shall include any guarantee included in a Senior Parent Financing Agreement which is expressed to be subject to the terms of this Agreement).

**"Senior Parent Guarantors"** means any member of the Group which has given a Senior Parent Guarantee under or in connection with a Senior Parent Finance Document, unless it has ceased to be a Senior Parent Guarantor in accordance with the terms of the relevant Senior Parent Finance Documents.

**"Senior Parent Liabilities"** means the Senior Parent Notes Liabilities and any Permitted Parent Financing Liabilities.

**"Senior Parent Noteholders"** means the registered holders from time to time of the applicable Senior Parent Notes, as determined in accordance with the relevant Senior Parent Notes Indenture(s).

**"Senior Parent Notes"** means high yield notes, exchange notes, debt securities and/or other debt instruments issued or to be issued by a Senior Parent Debt Issuer, which are notified to the Security Agent by the Parent in writing as indebtedness to be treated as **"Senior Parent Notes"** for the purposes of this Agreement.

**"Senior Parent Notes Acceleration Event"** means following the occurrence of a Senior Parent Event of Default which is continuing under a Senior Parent Notes Indenture, the Senior Parent Notes Trustee (or any Senior Parent Noteholder) exercising any of its rights under (and in accordance with the terms of) the Senior Parent Notes Indenture to accelerate any amount outstanding under the Senior Parent Notes or Senior Parent Notes Indenture or any acceleration provision being automatically invoked under any Senior Parent Notes Indenture (in each case such that a principal amount outstanding under the Senior Parent Notes or Senior Parent Notes Indenture has become immediately due and payable prior to its scheduled maturity).

**"Senior Parent Notes Creditors"** means, on and from the first Senior Parent Notes Issue Date, the Senior Parent Noteholders and each Senior Parent Notes Trustee.

**"Senior Parent Notes Discharge Date"** means the first date on which all the Senior Parent Notes Liabilities have been fully and finally discharged, including by way of defeasance permitted in accordance with the Senior Parent Notes Finance Documents, whether or not as the result of an enforcement.

**"Senior Parent Notes Finance Documents"** means the Senior Parent Notes, each Senior Parent Notes Indenture, the Senior Parent Guarantees in respect of the Senior Parent Notes, this Agreement, the Security Documents (if and to the extent creating Shared Security) and any other document entered into in connection with the Senior Parent Notes and designated a Senior Parent Notes Finance Document by the Parent and the applicable Senior Parent Notes Trustee (which, for the avoidance of doubt, excludes any document to the extent it sets out rights of the initial purchasers of the Senior Parent Notes (in their capacities as initial purchasers) against any member of the Group).

**"Senior Parent Notes Finance Parties"** means any Senior Parent Notes Trustee (on behalf of itself and the Senior Parent Noteholders which it represents), any Senior Parent Noteholder and (to the extent of the Shared Security) the Security Agent.

**"Senior Parent Notes Indenture"** means each indenture pursuant to which any Senior Parent Notes are issued.

**"Senior Parent Notes Issue Date"** means, in respect of each Senior Parent Notes Indenture, the first date on which a Senior Parent Note is issued pursuant to that Senior Parent Notes Indenture.

**"Senior Parent Notes Liabilities"** means the Liabilities owed by the Debtors or (to the extent arising from any Third Party Security) Third Party Security Providers to the Senior Parent Notes Finance Parties under the Senior Parent Notes Finance Documents (excluding any Senior Parent Notes Trustee Amounts).

**"Senior Parent Notes Representative"** means each Senior Parent Notes Trustee in respect of any Senior Parent Notes that are outstanding.

**"Senior Parent Notes Trustee"** means any entity acting as trustee under any issue of Senior Parent Notes (to the extent it has acceded to this Agreement in such capacity pursuant to Clause 19.9 (*Accession of Senior Parent Notes Trustee*)), in each case as the context requires.

**"Senior Parent Notes Trustee Amounts"** means, in relation to a Senior Parent Notes Trustee, amounts in respect of costs and expenses (including legal fees together with any applicable VAT) payable to that Senior Parent Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof under the Senior Parent Notes Finance Documents, any provisions (including indemnity provisions) for costs and expenses in favour of that Senior Parent Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof contained in the Senior Parent Notes Finance Documents, all compensation for services provided by that Senior Parent Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof which is payable to that Senior Parent Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof pursuant to the terms of the Senior Parent Notes Finance Documents and all out-of-pocket costs and expenses properly incurred by that Senior Parent Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee thereof in carrying out its duties or performing any service pursuant to the terms of Senior Parent Notes Finance Documents, including,

without limitation, (a) compensation for the costs and expenses of the collection by that Senior Parent Notes Trustee of any amount payable to that Senior Parent Notes Trustee for the benefit of the Senior Parent Noteholders and (b) costs and expenses of that Senior Parent Notes Trustee's advisers, receivers, delegates, attorneys, agents or appointees (but excluding (i) any payment in relation to any unpaid costs and expenses incurred in respect of any litigation initiated by that Senior Parent Notes Trustee or any adviser, receiver, delegate, attorney, agent or appointee on behalf of that Senior Parent Notes Trustee against any of the Senior Secured Creditors and (ii) any payment made, directly or indirectly, on or in respect of any amounts owing under any Senior Parent Notes (including principal, interest, premium or any other amounts to any of the Senior Parent Noteholders)), all such amounts above including VAT where applicable.

**"Senior Parent Payment Stop Notice"** has the meaning given to that term in paragraph (a)(ii) of Clause 6.3 (*Issue of Senior Parent Payment Stop Notice*).

**"Senior Parent Standstill Period"** has the meaning given to that term in paragraph (a) of Clause 6.10 (*Senior Parent Standstill Period*).

**"Senior Payment Default"** means a Senior Event of Default arising by reason of non-payment of any amount which is immediately due and payable under the Senior Debt Documents (other than the Permitted Second Lien Financing Documents), other than in respect of non-payment of any amount (a) not constituting principal or interest or (b) not exceeding USD1,000,000 (or its equivalent in other currencies).

**"Senior Secured Creditors"** means the Senior Creditors, the Senior Notes Creditors, the Permitted Senior Financing Creditors and/or the Permitted Second Lien Financing Creditors, as the context requires.

**"Senior Secured Credit Participation"** means:

- (a) in relation to a Senior Creditor, its Senior Credit Participation in relation to the Senior Facilities Agreement and the Hedging Agreements only;
- (b) in relation to a Senior Noteholder, the principal amount of outstanding Senior Notes Liabilities held by that Senior Noteholder; and
- (c) in relation to a Permitted Senior Financing Creditor, the aggregate amount of its commitments under each Permitted Senior Financing Agreement (drawn or undrawn and calculated in a manner consistent with the Senior Commitments) and/or the principal amount of outstanding Permitted Senior Financing Debt held by that Permitted Senior Financing Creditor (as applicable and without double counting).

**"Senior Secured Liabilities"** means the Senior Lender Liabilities, the Senior Notes Liabilities, any Permitted Senior Financing Liabilities and any Permitted Second Lien Financing Liabilities.

**"Senior Secured Liabilities Transfer"** means a transfer of the Senior Lender Liabilities, the Senior Notes Liabilities, any Permitted Senior Financing Liabilities and the Operating Facility Liabilities to all or any of the Permitted Second Lien Financing Creditors as described in Clause 5.12 (*Option to purchase: Permitted Second Lien Financing Creditors*) or to all or any of the Senior Parent Creditors as described in Clause 6.13 (*Option to purchase: Senior Parent Creditors*).

**"Senior Secured Parties"** means the Secured Parties other than the Senior Parent Finance Parties.

**"Senior Term Debt"** means Indebtedness outstanding under Facility B (as defined in the Senior Facilities Agreement) and/or under any Incremental Term Facility (as defined in the Senior Facilities Agreement).

**"SFA Cash Cover"** has the interpretation given to the term **"cash cover"** in the Senior Facilities Agreement (or any equivalent term or concept in any relevant Permitted Senior Financing Agreement or Operating Facility Document).

**"SFA Cash Cover Document"** means, in relation to any SFA Cash Cover:

- (a) in the case of any SFA Cash Cover provided pursuant to the Senior Facilities Agreement, any Senior Facilities Finance Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that SFA Cash Cover by paragraph (iii) of the term **"cash cover"** as used in the Senior Facilities Agreement;
- (b) in the case of any SFA Cash Cover provided pursuant to a Permitted Senior Financing Agreement, any Permitted Senior Financing Document which creates or evidences, or is expressed to create or evidence, any Security required to be provided over that SFA Cash Cover by the terms of that Permitted Senior Financing Agreement; and
- (c) in the case of any SFA Cash Cover provided pursuant to an Operating Facility Document, any Operating Facility Document which creates or evidences, or is expressed to create or evidence, any Security required to be provided over that SFA Cash Cover by the terms of that Operating Facility Document.

**"Shared Security"** means any Transaction Security which, at the election of the Parent, is to secure all or any part of the Senior Parent Liabilities.

**"Subordinated Shareholder Funding"** has the meaning given to that term in the Senior Facilities Agreement.

**"Subsidiary"** has the meaning given to that term in the Senior Facilities Agreement.

**"Swap"** means any agreement, contract, or transaction that constitutes a **"swap"** within the meaning of section 1a(47) of the Commodity Exchange Act.

**"Swap Obligation"** means, with respect to any person, any obligation to pay or perform under any Swap.

**"Taxes"** has the meaning given to that term in the Senior Facilities Agreement.

**"Third Party Security"** means any Transaction Security provided by a Third Party Security Provider in such capacity.

**"Third Party Security Provider"** means:

- (a) each Original Third Party Security Provider; and
- (b) any person that has provided Transaction Security over any or all of its assets (including Shared Security) but is not a Debtor in respect of any of the direct Borrowing Liabilities or Guarantee

Liabilities of the Secured Obligations to which that Transaction Security relates (other than Senior Parent Liabilities) and which is designated as such by the Parent (in its discretion) by written notice to each Agent who is a party to this Agreement at such time,

and, in each case, which person has not ceased to be a Third Party Security Provider in accordance with the terms of this Agreement.

**"Total Second Lien Secured Credit Participations"** means the aggregate of all the Second Lien Secured Credit Participations at any time.

**"Total Senior Secured Credit Participations"** means the aggregate of all the Senior Secured Credit Participations at any time.

**"Transaction Security"** means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents.

**"Transaction Security Documents"** has the meaning given to that term in the Senior Facilities Agreement.

**"Unrestricted Asset"** has the meaning given to that term in the Senior Facilities Agreement.

**"U.S. Debtor"** means a Debtor that is a U.S. Person.

**"U.S. Internal Revenue Code"** means the United States Internal Revenue Code of 1986, as amended.

**"U.S. Person"** means a "United States person" as defined in Section 7701(a)(30) of the U.S. Internal Revenue Code and includes an entity disregarded as being an entity separate from its owner for U.S. federal income tax purposes if such owner is a "United States person".

**"US Bankruptcy Law"** has the meaning given to that term in the Senior Facilities Agreement.

**"US Insolvency or Liquidation Proceeding"** means any of the following under a Debtor Relief Law:

- (a) any voluntary or involuntary case or proceeding with respect to a Debtor or any other member of the Group;
- (b) the appointment of or taking possession by a receiver, interim receiver, receiver and manager, (preliminary) insolvency receiver, liquidator, sequestrator, trustee or other custodian for all or a substantial part of the property of a Debtor or any other member of the Group;
- (c) except as expressly permitted under the Debt Documents, any liquidation, administration (or the appointment of an administrator), dissolution, reorganization or winding up of an Obligor or any other member of the Group whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or
- (d) any general assignment for the benefit of creditors or any other marshaling of assets and liabilities of a Debtor or any other member of the Group.

**"VAT"** means:

- (a) any value added tax imposed by the Value Added Tax Act 1994

(b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

(c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.

## 1.2 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) any **"Agent"**, **"Ancillary Lender"**, **"Arranger"**, **"Creditor"**, **"Debtor"**, **"Group Company"**, **"Hedge Counterparty"**, **"Intra-Group Lender"**, **"Investor"**, **"Issuing Bank"**, **"Operating Facility Lender"**, **"Parent"**, **"Party"**, **"Permitted Parent Financing Arranger"**, **"Permitted Parent Financing Creditor"**, **"Permitted Second Lien Financing Arranger"**, **"Permitted Second Lien Financing Creditor"**, **"Permitted Senior Financing Arranger"**, **"Permitted Senior Financing Creditor"**, **"Primary Creditor"**, **"Second Lien Borrower"**, **"Second Lien Guarantor"**, **"Second Lien Creditor Representative"**, **"Security Agent"**, **"Senior Agent"**, **"Senior Arranger"**, **"Senior Borrower"**, **"Senior Creditor"**, **"Senior Guarantor"**, **"Senior Lender"**, **"Senior Creditor Representative"**, **"Senior Noteholder"**, **"Senior Notes Trustee"**, **"Senior Parent Creditor"**, **"Senior Parent Creditor Representative"**, **"Senior Parent Noteholder"**, **"Senior Parent Notes Trustee"** or **"Third Party Security Provider"** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (ii) any **"Agent"**, **"Ancillary Lender"**, **"Arranger"**, **"Creditor"**, **"Debtor"**, **"Hedge Counterparty"**, **"Investor"**, **"Issuing Bank"**, **"Operating Facility Lender"**, any **"Party"** or the **"Security Agent"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees (including the surviving entity of any merger involving that person) and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
- (iii) **"assets"** includes present and future properties, revenues and rights of every description;
- (iv) a **"Debt Document"** or any other agreement or instrument is to be construed as a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated (however fundamentally) and includes any increase in, addition to or extension of or other change to any facility made available under any such agreement or instrument (in each case to the extent not prohibited by this Agreement);
- (v) **"enforcing"** (or any derivation) the Transaction Security shall include the appointment of an administrator of a Debtor or a Third Party Security Provider by the Security Agent;
- (vi) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (vii) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any two or more of the foregoing;
- (viii) 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 being one with which it is the practice of the relevant person to comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (ix) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default or an Event of Default is **"continuing"** if it has not been remedied or waived. If any Default or Event of Default has occurred but is no longer continuing (as **"Cured Default"**), any other Default or Event of Default which would not have arisen had the Cured Default not occurred, shall be deemed not to be continuing automatically upon, and simultaneously with, the remedy or waiver of the Cured Default. For the avoidance of doubt, any Default in respect of a failure to comply with any obligation in a Debt Document to deliver any notice, certificate or other document or information, as applicable, within a prescribed time period shall be deemed to be cured upon performance of such obligation even though such performance is not within the prescribed period specified in any Debt Document.
- (d) An Acceleration Event is **"continuing"** if it has not been revoked or otherwise ceases to be continuing in accordance with the terms of the relevant Debt Financing Agreement.
- (e) The right or requirement of any Party to take or not take any action on or following the occurrence of an Insolvency Event shall cease to apply if the relevant Insolvency Event of Default in respect of that Insolvency Event is no longer continuing (unless an Acceleration Event has occurred and is continuing and without prejudice to any action taken or not taken in accordance with the terms of this Agreement while that Insolvency Event of Default was continuing).
- (f) The determination that a Second Lien Payment Stop Notice is **"outstanding"** is to be made by reference to the provisions of Clause 5.3 (*Issue of Second Lien Payment Stop Notice*).
- (g) The determination that a Senior Parent Payment Stop Notice is **"outstanding"** is to be made by reference to the provisions of Clause 6.3 (*Issue of Senior Parent Payment Stop Notice*).
- (h) Any reference in this Agreement to a Debtor or member of the Group or Third Party Security Provider being able to make any Payment or take any other action shall include a reference to that Debtor or member of the Group or Third Party Security Provider being permitted to make any arrangement in respect of that Payment or action or take any step or enter into any transaction to facilitate the making of that Payment or the taking of that action.
- (i) Notwithstanding anything to the contrary, where any provision of this Agreement refers to or otherwise contemplates any consent, approval, release, waiver, agreement, notification or other step or action being required from or by any person:

- (i) which is not a Party;
  - (ii) in respect of any agreement which is not in existence;
  - (iii) in respect of any indebtedness which has not been committed or incurred;
  - (iv) in respect of Liabilities or Creditors or Operating Facility Lenders (or other persons) for which the relevant Discharge Date has occurred, unless otherwise agreed or specified by the Parent, that consent, approval, release, waiver, agreement, notification or other step or action shall not be required and no such provision shall, or shall be construed so as to, in any way prohibit or restrict the rights or actions of any member of the Group. Further, for the avoidance of doubt, no reference to any agreement which is not in existence shall, or shall be construed so as to, in any way prohibit or restrict the rights or actions of any member of the Group.
- (j) References to the Senior Notes Trustee acting on behalf of the Senior Noteholders means such Senior Notes Trustee acting on behalf of the Senior Noteholders which it represents or, if applicable, with the consent of the requisite number of Senior Noteholders required under and in accordance with the applicable Senior Notes Indenture. A Senior Notes Trustee will be entitled to seek instructions from the Senior Noteholders which it represents to the extent required by the applicable Senior Notes Indenture as to any action to be taken by it under this Agreement.
- (k) References to the Senior Parent Notes Trustee acting on behalf of the Senior Parent Noteholders means such Senior Parent Notes Trustee acting on behalf of the Senior Parent Noteholders which it represents or, if applicable, with the consent of the requisite number of Senior Parent Noteholders required under and in accordance with the applicable Senior Parent Notes Indenture. A Senior Parent Notes Trustee will be entitled to seek instructions from the Senior Parent Noteholders which it represents to the extent required by the applicable Senior Parent Notes Indenture as to any action to be taken by it under this Agreement.
- (l) References to a Senior Creditor Representative acting on behalf of the Permitted Senior Financing Creditors means such Senior Creditor Representative acting on behalf of the Permitted Senior Financing Creditors which it represents or, if applicable, with the consent of the requisite number of Permitted Senior Financing Creditors required under and in accordance with the applicable Permitted Senior Financing Agreement. A Senior Creditor Representative will be entitled to seek instructions from the Permitted Senior Financing Creditors which it represents to the extent required by the applicable Permitted Senior Financing Agreement as to any action to be taken by it under this Agreement.
- (m) References to a Second Lien Creditor Representative acting on behalf of the Permitted Second Lien Financing Creditors means such Second Lien Creditor Representative acting on behalf of the Permitted Second Lien Financing Creditors which it represents or, if applicable, with the consent of the requisite number of Permitted Second Lien Financing Creditors required under and in accordance with the applicable Permitted Second Lien Financing Agreement. A Second Lien Creditor Representative will be entitled to seek instructions from the Permitted Second Lien Financing Creditors which it represents to the extent required by the applicable Permitted Second Lien Financing Agreement as to any action to be taken by it under this Agreement.



- (n) References to a Senior Parent Creditor Representative acting on behalf of the Permitted Parent Financing Creditors means such Senior Parent Creditor Representative acting on behalf of the Permitted Parent Financing Creditors which it represents or, if applicable, with the consent of the requisite number of Permitted Parent Financing Creditors required under and in accordance with the applicable Permitted Parent Financing Agreement. A Senior Parent Creditor Representative will be entitled to seek instructions from the Permitted Parent Financing Creditors which it represents to the extent required by the applicable Permitted Parent Financing Agreement as to any action to be taken by it under this Agreement.
- (o) In the event that any Permitted Senior Financing Debt is incurred by way of an issue of high yield notes, debt securities or other similar instruments, if and to the extent required by the Parent, the Senior Creditor Representative in respect of that Permitted Senior Financing Debt shall be treated in the same manner as a Senior Notes Trustee for all relevant purposes under this Agreement (including, without limitation, as regards amounts owing to that Senior Creditor Representative being, and ranking and being secured in the same manner as, Senior Notes Trustee Amounts and that Senior Creditor Representative benefiting from all rights and protections provided to the Senior Notes Trustees under or pursuant to Clause 26 (*Notes Trustee*)). If the Parent requires that this Clause should operate in relation to any Senior Creditor Representative it shall notify the Security Agent in writing accordingly (such notice to include details of which provisions of this Agreement will apply to that Senior Creditor Representative and to what extent). Following receipt of any such notice by the Security Agent this Agreement shall be construed for all purposes in accordance with the terms of this paragraph (o) and that notice.
- (p) In the event that any Permitted Second Lien Financing Debt is incurred by way of an issue of high yield notes, debt securities or other similar instruments, if and to the extent required by the Parent, the Second Lien Creditor Representative in respect of that Permitted Second Lien Financing Debt shall be treated in the same manner as a Senior Notes Trustee for all relevant purposes under this Agreement (including, without limitation, as regards amounts owing to that Second Lien Creditor Representative being, and ranking and being secured in the same manner as, Senior Notes Trustee Amounts and that Second Lien Creditor Representative benefiting from all rights and protections provided to the Senior Notes Trustees under or pursuant to Clause 26 (*Notes Trustee*)). If the Parent requires that this Clause 1.2 should operate in relation to any Second Lien Creditor Representative it shall notify the Security Agent in writing accordingly (such notice to include details of which provisions of this Agreement will apply to that Second Lien Creditor Representative and to what extent). Following receipt of any such notice by the Security Agent this Agreement shall be construed for all purposes in accordance with the terms of this paragraph (p) and that notice.
- (q) In the event that any Permitted Parent Financing Debt is incurred by way of an issue of high yield notes, debt securities or other similar instruments, if and to the extent required by the Parent, the Senior Parent Creditor Representative in respect of that Permitted Parent Financing Debt shall be treated in the same manner as a Senior Parent Notes Trustee for all relevant purposes under this Agreement (including, without limitation, as regards amounts owing to that Senior Parent Creditor Representative being, and ranking and being secured in the same manner as, Senior Parent Notes Trustee Amounts and that Senior Parent Creditor Representative benefiting from all rights and protections provided to the Senior Parent Notes

Trustees under or pursuant to Clause 26 (*Notes Trustee*)). If the Parent requires that this Clause 1.2 should operate in relation to any Senior Parent Creditor Representative it shall notify the Security Agent in writing accordingly (such notice to include details of which provisions of this Agreement will apply to that Senior Parent Creditor Representative and to what extent). Following receipt of any such notice by the Security Agent this Agreement shall be construed for all purposes in accordance with the terms of this paragraph (q) and that notice.

(r) Prior to the Senior Lender Discharge Date:

- (i) terms defined in the Senior Facilities Agreement shall have the same meaning when used in this Agreement (unless separately defined in this Agreement); and
- (ii) the provisions of clause 1.2 (*Construction*) of the Senior Facilities Agreement apply to this Agreement as though they were set out in full in this Agreement (except that references to the Senior Facilities Agreement are to be construed as references to this Agreement).

Following the Senior Lender Discharge Date, references in this Agreement to any term being defined by reference to a definition in, or the provisions of clause 1.2 (*Construction*) of, the Senior Facilities Agreement shall:

- (A) be construed as a reference to the relevant definition in, or the provisions of such clause of, the Senior Facilities Agreement as at the Senior Lender Discharge Date; or
- (B) if required by the Parent, be construed as a reference to any equivalent term or terms in, or provision or provisions of, any other Secured Debt Documents which remain in existence (in each case as notified in writing by the Parent to the Security Agent from time to time).

(s) In the event that the proceeds of any Senior Notes, Senior Parent Notes, Permitted Senior Financing Debt, Permitted Second Lien Financing Debt and/or Permitted Parent Financing Debt are held in escrow (or similar or equivalent arrangements) prior to being released to a member of the Group, until such time as the relevant proceeds are released from such escrow (or those similar or equivalent arrangements), the provisions of this Agreement shall not apply to or create any restriction in respect of any arrangement pursuant to which the proceeds are subject and this Agreement shall not govern the rights and obligations of the Creditors concerned until such proceeds are released from such escrow arrangement (or those similar or equivalent arrangements) in accordance with the terms thereof.

(t) Notwithstanding anything to the contrary in this Agreement or any other Debt Document, nothing in this Agreement or any Debt Document shall prohibit a non-cash contribution of any asset (including, without limitation, any participation, claim, commitment, rights, benefits and/or obligations in respect of any Liabilities and/or any other indebtedness borrowed or issued by any member of the Group from time to time) to the Parent (and subsequently any other members of the Group).

(u) If the terms of any Secured Debt Document:

- (i) do not require the relevant Agent, Creditors or Operating Facility Lenders to provide approval (or deem approval to have been provided) for a particular matter, step or action (for the avoidance of

doubt, excluding any such terms which expressly entitle the relevant Agent, Creditors or Operating Facility Lenders to withhold their approval for that matter, step or action); or

- (ii) do not seek to regulate a particular matter, step or action (which shall be the case if the relevant matter, step or action is not the subject of an express requirement or restriction in that Secured Debt Document),

for the purpose of this Agreement that matter, step or action shall not be prohibited by the terms of that Secured Debt Document.

- (v) In determining whether any indebtedness or other amount (including, without limitation, any Debt Refinancing, any Permitted Senior Financing Debt, any Permitted Second Lien Financing Debt and any Permitted Parent Financing Debt) is prohibited by the terms of any Debt Document, the terms of any Debt Documents which:

- (i) relate to any Liabilities which are to be refinanced or otherwise replaced with such indebtedness or other amount; or
- (ii) will not exist or will cease to be in effect on the date on which such indebtedness or other amount is incurred by a member of the Group, shall not be taken into account.

- (w) In determining whether or not any Liabilities have been fully and finally discharged, contingent liabilities (such as the risk of clawback flowing from a preference) will be disregarded, except to the extent that there is a reasonable likelihood that those liabilities will become actual liabilities.

- (x) For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement or any other Debt Document, nothing in this Agreement shall prohibit any debt exchange, non-cash rollover or other similar or equivalent transaction in relation to any Liabilities.

- (y) If there is any conflict between the terms of this Agreement and any other Debt Document, the terms of this Agreement will prevail (save to the extent that to do so would result in or have the effect of any member of the Group contravening any applicable law or regulation, or present a material risk of liability for any member of the Group and/or its directors or officers, or give rise to a material risk of breach of fiduciary or statutory duties).

- (z) Notwithstanding anything to the contrary in this Agreement or any other Debt Document, no payments made by or amounts received or recovered from a CFC or FSHCO, or amounts received or recovered in respect of greater than 65 per cent. of the voting equity interests (and 100 per cent. of the non-voting equity interests) of a CFC or FSHCO, shall be applied to any obligations of a U.S. Person (whether under Clause 14 (*Application of proceeds*) or otherwise).

- (aa) To the extent that any member of the Group or any Affiliate thereof is a party to this Agreement in more than one capacity, and a payment is permitted to be made or received or a right is granted in respect of one of those capacities (or with respect to specific Liabilities associated with that capacity), then such payment or right shall not be restricted or limited by the terms of this Agreement relating to any other

capacity that such member of the Group or Affiliate has assumed (or as a result of the treatment of specific Liabilities associated with that capacity).

### 1.3 Third Party rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Rights Act**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in Clause 17.10 (*No proceedings*) may, subject to this Clause 1.3 and the Third Parties Rights Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Rights Act shall apply to this Agreement in respect of any Senior Noteholder, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor, Senior Parent Noteholder or Permitted Parent Financing Creditor which, by holding a Senior Note, Permitted Senior Financing Debt, Permitted Second Lien Financing Debt, a Senior Parent Note or Permitted Parent Financing Debt, as the case may be, has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party hereto. For the purposes of the preceding sentence, upon any such person becoming a Senior Noteholder, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor, Senior Parent Noteholder or Permitted Parent Financing Creditor, that person shall be deemed a Party to this Agreement, provided that such person is deemed to be a Party to this Agreement under the terms of the relevant Notes Indenture, Permitted Senior Financing Agreement, Permitted Second Lien Financing Agreement or Permitted Parent Financing Agreement. In relation to any amendment or waiver of this Agreement, no such person that is deemed to be a party to this Agreement by virtue of this Clause 1.3 is required to consent to or execute any amendment or waiver in order for such amendment or waiver to be effective.

### 1.4 Termination

Unless otherwise notified by the Parent in writing on or prior to the Final Discharge Date, this Agreement shall terminate in full and cease to have any further effect on the Final Discharge Date.

### 1.5 Personal liability

No director, officer or employee of the Parent, of any other member of the Group or of any of its or their respective Affiliates shall be personally liable for any representation or statement made by it in any Debt Document, certificate or other document required to be delivered under any Debt Document save in the case of fraud in which case liability (if any) will be determined in accordance with applicable law.

### 1.6 No shareholder recourse

No past, present or future member, partner or direct or indirect equityholder of the Parent or any member of the Group or of any of their direct or indirect parent companies (other than in such equityholder's capacity as a Creditor, Debtor or Third Party Security Provider) shall have any liability, for any obligations of the

Creditors, Debtors or Third Party Security Providers under the Debt Documents or this Agreement or for any claim based on, in respect of, or by reason of such obligations or their creation.

#### 1.7 Existing intercreditor agreement

The Parties hereby acknowledge and confirm that by their execution of, or accession to, this Agreement, all rights powers, obligations and undertakings under the intercreditor agreement dated 20 December 2017 and made between, amongst others, the Parent, the Company, the Senior Facility Agent, the Security Agent and the Original Debtors (each as defined therein) shall be terminated.

## 2. RANKING AND PRIORITY

### 2.1 Primary Creditor Liabilities

Subject to Clause 2.3 (*Senior Parent Liabilities and Transaction Security*), each of the Parties agrees that:

- (a) the Liabilities owed by the Debtors (other than any Senior Parent Debt Issuer to the extent relating to Liabilities in respect of Senior Parent Notes and/or Permitted Parent Financing Debt where that Senior Parent Debt Issuer is the issuer or, as the case may be, the borrower) to the Primary Creditors and the Operating Facility Lenders shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:
  - (i) **first**, the Senior Lender Liabilities, the Senior Notes Liabilities, the Permitted Senior Financing Liabilities, the Hedging Liabilities, the Operating Facility Liabilities, the Permitted Second Lien Financing Liabilities, the Senior Arranger Liabilities, the Senior Agent Liabilities, the Senior Notes Trustee Amounts, the Permitted Senior Financing Agent Liabilities, the Permitted Senior Financing Arranger Liabilities, the Permitted Second Lien Financing Agent Liabilities, the Permitted Second Lien Financing Arranger Liabilities and the Senior Parent Notes Trustee Amounts *pari passu* and without any preference amongst them; and
  - (ii) **second**, the Senior Parent Notes Liabilities, the Permitted Parent Financing Liabilities and the Permitted Parent Financing Arranger Liabilities *pari passu* and without any preference amongst them; and
- (b) the Liabilities owed by any Senior Parent Debt Issuer (to the extent relating to Liabilities in respect of Senior Parent Notes and/or Permitted Parent Financing Debt where that Senior Parent Debt Issuer is the issuer or, as the case may be, the borrower) to the Primary Creditors and the Operating Facility Lenders, in respect of the Senior Lender Liabilities, the Senior Notes Liabilities, the Permitted Senior Financing Liabilities, the Hedging Liabilities, the Operating Facility Liabilities, the Permitted Second Lien Financing Liabilities, the Senior Arranger Liabilities, the Senior Agent Liabilities, the Senior Notes Trustee Amounts, the Permitted Senior Financing Agent Liabilities, the Permitted Senior Financing Arranger Liabilities, the Permitted Second Lien Financing Agent Liabilities, the Permitted Second Lien Financing Arranger Liabilities, the Senior Parent Notes Trustee Amounts, the Senior Parent Notes Liabilities, the Permitted Parent Financing Liabilities and the Permitted Parent Financing Arranger Liabilities, shall rank *pari passu* in right and priority of payment without any preference amongst them.

## 2.2 Transaction Security

Each of the Parties agrees that the Transaction Security shall secure the Liabilities (but only to the extent that such Transaction Security is expressed to secure those Liabilities) in the following order:

- (a) **first**, the Senior Lender Liabilities, the Senior Notes Liabilities, the Permitted Senior Financing Liabilities, the Hedging Liabilities, the Operating Facility Liabilities, the Senior Arranger Liabilities, the Senior Agent Liabilities, the Senior Notes Trustee Amounts, the Permitted Senior Financing Agent Liabilities, the Permitted Senior Financing Arranger Liabilities, the Permitted Second Lien Financing Agent Liabilities, the Permitted Second Lien Financing Arranger Liabilities and the Senior Parent Notes Trustee Amounts *pari passu* and without any preference amongst them;
- (b) **second**, the Permitted Second Lien Financing Liabilities *pari passu* and without any preference amongst them; and
- (c) **third** (to the extent of any Shared Security), the Senior Parent Notes Liabilities, the Permitted Parent Financing Liabilities and the Permitted Parent Financing Arranger Liabilities *pari passu* and without any preference amongst them.

## 2.3 Senior Parent Liabilities and Transaction Security

- (a) The Parties acknowledge that the Senior Parent Liabilities owed (if any) by a Senior Parent Debt Issuer (to the extent relating to Liabilities in respect of Senior Parent Notes and/or Permitted Parent Financing Debt where that Senior Parent Debt Issuer is the issuer or, as the case may be, the borrower) are senior obligations of that Senior Parent Debt Issuer.
- (b) Notwithstanding paragraph (a) above, the Senior Parent Creditors agree that, until the First/Second Lien Discharge Date, they may not take any steps to appropriate the assets of a Senior Parent Debt Issuer subject to the Security Documents in connection with any Enforcement Action, other than as expressly permitted by this Agreement. For the avoidance of doubt, nothing in this Agreement shall impair the right of the Senior Parent Creditors to institute suit for the recovery of any payment due by a Senior Parent Debt Issuer in respect of the Senior Parent Liabilities (to the extent relating to Liabilities in respect of Senior Parent Notes and/or Permitted Parent Financing Debt where that Senior Parent Debt Issuer is the issuer or, as the case may be, the borrower).

## 2.4 Investor Liabilities and Intra-Group Liabilities

- (a) Each of the Parties agrees that the Investor Liabilities and the Intra-Group Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Primary Creditors and the Operating Facility Lenders.
- (b) This Agreement does not purport to rank any of the Investor Liabilities or the Intra-Group Liabilities as between themselves.

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## 2.5 Additional and/or Refinancing debt

(a) The Creditors and the Operating Facility Lenders acknowledge that the Debtors (or any of them) may wish to:

- (i) incur incremental Borrowing Liabilities and/or Guarantee Liabilities in respect of incremental Borrowing Liabilities; or
- (ii) refinance or replace Borrowing Liabilities and/or incur Guarantee Liabilities in respect of any such refinancing or replacement of Borrowing Liabilities, which in any such case is intended to rank *pari passu* with any other Liabilities and/or share *pari passu* in any Transaction Security and/or to rank behind any other Liabilities and/or to share in any Transaction Security behind any such other Liabilities.

(b) The Creditors and the Operating Facility Lenders each confirm and undertake that, if and to the extent a financing, refinancing or replacement referred to in paragraph (a) above and such ranking and such Security is not prohibited by the terms of the Debt Financing Agreements at such time, they will (at the cost of the Debtors) co-operate with the Parent and the Debtors with a view to enabling and facilitating such financing, refinancing or replacement and such sharing in the Security to take place in a timely manner. In particular, but without limitation, each of the Secured Parties hereby authorise and direct each of their respective Agents and the Security Agent to (unless such Secured Party is required under applicable law to act in its own name, in which case it shall) execute any amendment to this Agreement and such other Debt Documents required by the Parent to reflect, enable and/or facilitate any such arrangements (including as regards the ranking of any such arrangements) to the extent such financing, refinancing, replacement and/or sharing is not prohibited by the Debt Financing Agreements to which the relevant Secured Party is a party. This Clause 2.5 is without prejudice to any obligations of any Secured Party set out in or contemplated by Clause 16 (*Additional debt*).

## 3. SENIOR SECURED CREDITOR LIABILITIES

### 3.1 Payment of Senior Liabilities

(a) Subject to Clause 4 (*Hedge Counterparties and Hedging Liabilities*), Clause 5 (*Permitted Second Lien Financing Creditors and Second Lien Liabilities*) and paragraph (b) below, the Parent and the Debtors may make Payments of the Senior Liabilities at any time.

(b) Following the occurrence of a Senior Acceleration Event or an Insolvency Event:

- (i) any Payment of the Senior Lender Liabilities, Operating Facility Liabilities, Senior Notes Liabilities or Permitted Senior Financing Liabilities that is owing by any Debtor or Third Party Security Provider shall be paid by that Debtor or Third Party Security Provider (as applicable) to the Security Agent (rather than to any other Senior Secured Creditor); and
- (ii) no Senior Secured Creditor nor Operating Facility Lender may receive and retain any Payment of the Senior Lender Liabilities, Operating Facility Liabilities, Senior Notes Liabilities or Permitted Senior Financing Liabilities that (notwithstanding paragraph (i) above) it may receive from a Debtor, but (for the avoidance of doubt) may receive and retain:

(A) Recoveries distributed in accordance with Clause 14 (*Application of proceeds*); or

(B) other amounts with the consent of the Majority Senior Creditors and of any relevant Senior Notes Trustee (before the Senior Creditor Discharge Date) or with the consent of the Majority Second Lien Creditors (thereafter).

### 3.2 Amendments and waivers: Senior Secured Creditors

The Senior Secured Creditors, the Operating Facility Lenders, the Parent, the Debtors and the Third Party Security Providers may at any time amend or waive any of the terms of the Senior Facilities Finance Documents, the Senior Notes Finance Documents, the Permitted Senior Financing Documents, the Permitted Second Lien Financing Documents and/or the Operating Facility Documents in accordance with their respective terms from time to time (and subject only to any consent required under them).

### 3.3 Security and guarantees: Senior Secured Creditors

Any of the Senior Secured Creditors and the Operating Facility Lenders (and/or the Security Agent, a Senior Agent and/or any other person acting on behalf of any of them) may take, accept or receive the benefit of:

- (a) any Security from any member of the Group or any Third Party Security Provider (the "**Security Provider**") in respect of any of the Senior Liabilities (in addition to the Common Transaction Security) provided that (except for any Security permitted under paragraphs (a) to (f) of Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)), to the extent legally possible and subject to the Agreed Security Principles:
  - (i) the Security Provider becomes party to this Agreement as a Debtor or Third Party Security Provider (as applicable) (if not already a Party in that capacity);
  - (ii) all amounts actually received or recovered by any Senior Secured Creditor or Operating Facility Lender with respect to any such Security shall immediately be paid to the Security Agent and applied in accordance with Clause 14 (*Application of Proceeds*); and
  - (iii) such Security may only be enforced in accordance with Clause 12.6 (*Security held by other Creditors*),  
provided that all amounts received or recovered by any Senior Secured Creditor or any Operating Facility Lender with respect to such Security are immediately paid to the Security Agent and held and applied in accordance with Clause 14 (*Application of proceeds*);
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group or Third Party Security Provider (the "**Guarantee Provider**") in respect of any of the Senior Liabilities in addition to those in:
  - (i) the Senior Facilities Agreement, any Senior Notes Indenture, any Permitted Senior Financing Document, any Permitted Second Lien Financing Document or any Operating Facility Document;
  - (ii) this Agreement; or



(iii) any Common Assurance,

provided that (except for any guarantee, indemnity or other assurance against loss permitted under paragraphs (a) to (f) of Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)), to the extent legally possible and subject to the Agreed Security Principles:

(A) the Guarantee Provider becomes party to this Agreement as a Debtor or Third Party Security Provider (as applicable) (if not already a party in that capacity); and

(B) such guarantee, indemnity or assurance against loss is expressed to be subject to the terms of this Agreement; and

(c) any Security, guarantee, indemnity or other assurance against loss from any member of the Group or Third Party Security Provider in connection with:

(i) any escrow or similar or equivalent arrangements entered into in respect of amounts which are being held (or will be held) by a person which is not a member of the Group prior to release of those amounts to a member of the Group; or

(ii) any actual or proposed defeasance, redemption, prepayment, repayment, purchase or other discharge of any Senior Lender Liabilities, Operating Facility Liabilities, Senior Notes Liabilities, Permitted Senior Financing Liabilities and/or Second Lien Liabilities (in each case provided that such defeasance, redemption, prepayment, repayment, purchase or other discharge is not prohibited by the terms of this Agreement).

### **3.4 Security: Ancillary Lenders and Issuing Banks**

No Ancillary Lender or Issuing Bank will, unless the prior consent of the Majority Senior Lenders (in the case of any Ancillary Lender or Issuing Bank under the Senior Facilities Agreement or in respect of an Operating Facility) or the Majority Permitted Senior Financing Creditors (in the case of any Ancillary Lender or Issuing Bank under a Permitted Senior Financing Agreement or in respect of an Operating Facility) is obtained, take, accept or receive from any member of the Group or Third Party Security Provider the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

(a) the Common Transaction Security;

(b) each guarantee, indemnity or other assurance against loss contained in:

(i) the Senior Facilities Agreement, any Permitted Senior Financing Document or any Operating Facility Document;

(ii) this Agreement; or

(iii) any Common Assurance;

(c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;

- (d) any SFA Cash Cover permitted under the Senior Facilities Agreement, the relevant Permitted Senior Financing Agreement or the relevant Operating Facility Document (as the case may be) relating to any Ancillary Facility or for any Letter of Credit issued by the Issuing Bank;
- (e) the indemnities or any netting or set-off arrangements contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities or any netting or set-off arrangements which are similar in meaning and effect to those indemnities, netting or set-off arrangements (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement);
- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities; or
- (g) any Security, guarantee, indemnity or other assurance against loss permitted under Clause 3.3 (*Security and guarantees: Senior Secured Creditors*).

**3.5 Restrictions on enforcement: Senior Lenders, Operating Facility Lenders, Senior Notes Creditors and Permitted Senior Financing Creditors**

- (a) No Senior Lender, Operating Facility Lender, Senior Notes Creditor or Permitted Senior Financing Creditor may take any Enforcement Action under paragraph (c) of the definition thereof without the prior written consent of an Instructing Group.
- (b) If an Instructing Group provides consent to any Senior Lender, Operating Facility Lender, Senior Notes Creditor, Permitted Senior Financing Creditor or Hedge Counterparty to take any Enforcement Action, such consent shall apply equally to all Senior Lenders, Operating Facility Lenders, Senior Notes Creditors, Permitted Senior Financing Creditors and Hedge Counterparties to take the same Enforcement Action (in each case to the extent permitted by the terms of the relevant Debt Documents) and notice of any such consent shall be provided to all the Agents, the Security Agent and each Hedge Counterparty as soon as reasonably practicable.
- (c) Notwithstanding paragraph (a) above or anything to the contrary in this Agreement, after the occurrence of an Insolvency Event in relation to the Parent or a Debtor (the "**Insolvent Party**"), each Senior Lender, Operating Facility Lender, Senior Notes Creditor and/or Permitted Senior Financing Creditor may, to the extent it is permitted to do so by the terms of the relevant Debt Documents, take Enforcement Action under paragraph (e) of that definition against the Insolvent Party and/or claim in any winding-up, dissolution, administration, reorganisation or other similar insolvency event or process in relation to the Insolvent Party for Liabilities owing to it (provided that no Senior Secured Creditor or Operating Facility Lender may give any directions to the Security Agent pursuant to or in reliance on this paragraph (c) in relation to any enforcement of any Transaction Security).

**3.6 Restriction on enforcement: Ancillary Lenders and Issuing Banks**

Subject to Clause 3.7 (*Permitted enforcement: Ancillary Lenders and Issuing Banks*):

- (a) in the case of any Ancillary Lender or Issuing Bank under the Senior Facilities Finance Documents, so long as any of the Senior Lender Liabilities (other than any Liabilities owed to the Ancillary Lenders or Issuing Banks) are or may be outstanding, none of the Ancillary Lenders nor the Issuing Banks shall (in such capacity) be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it;
- (b) in the case of any Ancillary Lender or Issuing Bank under the Permitted Senior Financing Documents, so long as any of the Permitted Senior Financing Liabilities in relation to those Permitted Senior Financing Documents (other than any Liabilities owed to the Ancillary Lenders or Issuing Banks) are or may be outstanding, none of the Ancillary Lenders nor the Issuing Banks shall (in such capacity) be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it; and
- (c) in the case of any Ancillary Lender under an Operating Facility Document, so long as any of the Senior Lender Liabilities or the Permitted Senior Financing Liabilities are or may be outstanding, none of the Ancillary Lenders shall (in such capacity) be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it.

### **3.7 Permitted enforcement: Ancillary Lenders and Issuing Banks**

(a) The Ancillary Lenders and Issuing Banks may take Enforcement Action if:

(i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of:

- (A) in the case of any Ancillary Lender or Issuing Bank under the Senior Facilities Finance Documents, the Senior Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders and the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Senior Lender Liabilities;
- (B) in the case of any Ancillary Lender or Issuing Bank under the Permitted Senior Financing Documents, the Permitted Senior Financing Liabilities in relation to those Permitted Senior Financing Documents (excluding the Liabilities owing to Ancillary Lenders and the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Permitted Senior Financing Liabilities; or
- (C) in the case of any Ancillary Lender under an Operating Facility Document, the Senior Lender Liabilities or the Permitted Senior Financing Liabilities, in which case the Ancillary Lenders may take the same Enforcement Action as has been taken in respect of those Senior Lender Liabilities or, as the case may be, those Permitted Senior Financing Liabilities;

(ii) that action is contemplated by, and can be taken by the Ancillary Lenders or Issuing Bank, as the case may be, under, the Senior Facilities Agreement, any relevant Permitted Senior Financing

Agreement, any relevant Operating Facility Document or Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*) (as applicable);

- (iii) that Enforcement Action is taken in respect of SFA Cash Cover which has been provided in accordance with the Senior Facilities Agreement or, as the case may be, the relevant Permitted Senior Financing Agreement;
- (iv) at the same time as or prior to, that action, the consent of the Majority Senior Lenders (in the case of any Ancillary Lender or Issuing Bank under the Senior Facilities Finance Documents or in respect of an Operating Facility) or the Majority Permitted Senior Financing Creditors (in the case of any Ancillary Lender or Issuing Bank under a Permitted Senior Financing Agreement or in respect of an Operating Facility) to that Enforcement Action is obtained; or
- (v) an Insolvency Event has occurred in relation to any member of the Group or Third Party Security Provider, in which case after the occurrence of that Insolvency Event, each Ancillary Lender and each Issuing Bank shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group or Third Party Security Provider to:
  - (A) accelerate any of that member of the Group's or Third Party Security Provider's Senior Lender Liabilities, Permitted Senior Financing Liabilities or Operating Facility Liabilities (as the case may be) or declare them prematurely due and payable on demand;
  - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group or Third Party Security Provider in respect of any Senior Lender Liabilities, Permitted Senior Financing Liabilities or Operating Facility Liabilities (as the case may be);
  - (C) exercise any right of set-off or take or receive any Payment in respect of any Senior Lender Liabilities or, as the case may be, Permitted Senior Financing Liabilities of that member of the Group or Third Party Security Provider; or
  - (D) claim and prove in the liquidation of that member of the Group or Third Party Security Provider for the Senior Lender Liabilities or, as the case may be, Permitted Senior Financing Liabilities owing to it.
- (b) Clause 3.6 (*Restriction on enforcement: Ancillary Lenders and Issuing Banks*) shall not restrict any right of an Ancillary Lender to net or set-off in relation to a Multi-account Overdraft Facility, in accordance with the terms of the Senior Facilities Agreement, the relevant Permitted Senior Financing Agreement or the relevant Operating Facility Document (as the case may be), to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount.

### 3.8 Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors

- (a) Senior Notes Creditors holding at least a simple majority of the Senior Notes Liabilities or Permitted Senior Financing Creditors holding at least a simple majority of the Permitted Senior Financing Liabilities (the "**Senior Secured Acquiring Creditors**") may, after an Acceleration Event which is continuing, by giving

not less than 10 days' notice to the Security Agent (with the first notice to prevail in the event that more than one set of Creditors serves such a notice), require the transfer to them (or to a nominee or nominees), in accordance with Clause 19.3 (*Change of Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor*), of all, but not part, of the rights, benefits and obligations in respect of the Senior Lender Liabilities and the Operating Facility Liabilities if:

- (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the Senior Facilities Agreement and the Operating Facility Documents;
- (ii) any conditions relating to such a transfer contained in the Senior Facilities Agreement and the Operating Facility Documents are complied with, other than:
  - (A) any requirement to obtain the consent of, or consult with, a member of the Group or Third Party Security Provider in relation to such transfer, which consent or consultation shall not be required; and
  - (B) to the extent to which all the Senior Secured Acquiring Creditors provide cash cover for any Letter of Credit, the consent of the relevant Issuing Bank relating to such transfer;
- (iii) the Senior Facility Agent, on behalf of the Senior Lenders, is paid an amount equal to the aggregate of:
  - (A) any amounts provided as cash cover by the Senior Secured Acquiring Creditors for any Letter of Credit (as envisaged in paragraph (a)(ii)(B) above);
  - (B) all of the Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Facilities Agreement if the Senior Facilities were being prepaid by the relevant Debtors on the date of that payment; and
  - (C) all costs and expenses (including legal fees) incurred by the Senior Facility Agent and/or the Senior Lenders and/or the Security Agent as a consequence of giving effect to that transfer;
- (iv) the Operating Facility Lenders are paid an amount equal to the aggregate of:
  - (A) all of the Operating Facility Liabilities at that time (whether or not due), including all amounts that would have been payable under the Operating Facility Documents if the Operating Facilities were being prepaid by the relevant Debtors on the date of that payment; and
  - (B) all costs and expenses (including legal fees) incurred by the Operating Facility Lenders and/or the Security Agent as a consequence of giving effect to that transfer;
- (v) as a result of that transfer:
  - (A) the Senior Lenders have no further actual or contingent liability to a Debtor under the Senior Facilities Finance Documents; and

- (B) the Operating Facility Lenders have no further actual or contingent liability to a Debtor under the Operating Facility Documents;
- (vi) an indemnity is provided from each of the Senior Secured Acquiring Creditors (other than any Senior Agent) or from another third party acceptable to all the Senior Lenders and the Operating Facility Lenders in a form reasonably satisfactory to each Senior Lender and Operating Facility Lender in respect of all costs, expenses, losses and liabilities which may be sustained or incurred by any Senior Lender or Operating Facility Lender in consequence of any sum received or recovered by any Senior Lender or Operating Facility Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Lender or Operating Facility Lender for any reason;
- (vii) the transfer is made without recourse to, or representation or warranty from, the Senior Lenders or the Operating Facility Lenders, except that each Senior Lender and Operating Facility Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer; and
- (viii) the Senior Parent Creditors have not exercised their rights under Clause 6.13 (*Option to purchase: Senior Parent Creditors*) or, having exercised such rights, have not failed to complete the acquisition of the relevant Senior Secured Liabilities in accordance with Clause 6.13 (*Option to purchase: Senior Parent Creditors*).
- (b) Subject to paragraph (b) of Clause 3.9 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*) the Senior Secured Acquiring Creditors may only require a Senior Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 3.9 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 3.9 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*), no Senior Liabilities Transfer may be required to be made.
- (c) At the request of a Senior Agent (on behalf of the Senior Secured Acquiring Creditors):
- (i) the Senior Facility Agent shall notify that Senior Agent of:
- (A) the sum of the amounts described in paragraphs (a)(iii)(B) and (C) above; and
- (B) the amount of each Letter of Credit for which cash cover is to be provided to it by the Senior Secured Acquiring Creditors; and
- (ii) the Operating Facility Lenders shall notify that Senior Agent of the sum of the amounts described in paragraphs (a)(iv)(A) and (B) above.

### **3.9 Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors**

- (a) Senior Notes Creditors holding at least a simple majority of the Senior Notes Liabilities or Permitted Senior Financing Creditors holding at least a simple majority of the Permitted Senior Financing Liabilities (the "**Acquiring Hedge Creditors**") may, after an Acceleration Event which is continuing, by giving not less

than 10 days' notice to the Security Agent (with the first notice to prevail in the event that more than one set of Creditors serves such a notice), require a Hedge Transfer:

(i) if either:

- (A) the Acquiring Hedge Creditors require, at the same time, a Senior Liabilities Transfer under Clause 3.8 (*Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors*); or
- (B) the Acquiring Hedge Creditors require that Hedge Transfer at any time on or after the Senior Lender Discharge Date; and

(ii) if:

- (A) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements, in which case no Debtor, or Third Party Security Provider or other member of the Group party to the relevant Hedging Agreements shall be entitled to withhold its consent to that transfer;
- (B) any conditions (other than the consent of, or any consultation with, any Debtor, Third Party Security Provider or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
- (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (1) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (2) all costs and expenses (including legal fees) incurred by such Hedge Counterparty as a consequence of giving effect to that transfer;
- (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements;
- (E) an indemnity is provided from each of the Acquiring Hedge Creditors (other than any Senior Agent) which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form reasonably satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason;
- (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer; and
- (G) the Senior Parent Creditors have not exercised their rights under Clause 6.14 (*Hedge Transfer: Senior Parent Creditors*) or, having exercised such rights, have not failed to

complete the Hedge Transfer concerned in accordance with Clause 6.14 (*Hedge Transfer: Senior Parent Creditors*).

- (b) The Acquiring Hedge Creditors and any Hedge Counterparty may agree (in respect of the Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by the Acquiring Hedge Creditors pursuant to paragraph (a) above shall not apply to that Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under that Hedging Agreement(s).
- (c) If the Acquiring Hedge Creditors are entitled to require a Hedge Transfer under this Clause 3.9, the Hedge Counterparties shall at the request of a Senior Agent (on behalf of the Acquiring Hedge Creditors) provide details of the amounts referred to in paragraph (a)(ii)(C) above.

#### **4. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES**

##### **4.1 Identity of Hedge Counterparties**

- (a) Subject to paragraph (b) below, no person providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity under any of the Secured Debt Documents in respect of any of the liabilities arising in relation to those hedging arrangements nor shall those liabilities be treated as Hedging Liabilities unless that person is or becomes a party to this Agreement as a Hedge Counterparty.
- (b) Paragraph (a) above shall not apply to a Hedging Ancillary Lender.

##### **4.2 Restriction on Payment: Hedging Liabilities**

Prior to the Senior Debt Discharge Date, the Debtors and the Third Party Security Providers shall not, and the Parent shall procure that no other member of the Group will, make any Payment of the Hedging Liabilities at any time unless:

- (a) that Payment is permitted under Clause 4.3 (*Permitted Payments: Hedging Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 4.9 (*Permitted enforcement: Hedge Counterparties*).

##### **4.3 Permitted Payments: Hedging Liabilities**

(a) Any member of the Group may at any time make any Payment of the Hedging Liabilities:

- (i) if the Payment is a scheduled Payment arising under a Hedging Agreement (or another ordinary course payment under a Hedging Agreement, including any payment in relation to fees, costs and expenses) or if the Payment is an Adjustment Payment (as such term is defined in the ISDA Benchmarks Supplement), or (if the Hedging Agreement is not based on an ISDA Master Agreement) any equivalent adjustment payment made pursuant to terms similar in purpose and effect to the ISDA Benchmarks Supplement;
- (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of:



- (A) any of sections 2(d) (Deduction or Withholding for Tax), 2(e) (Default Interest; Other Amounts), 8(a) (Payment in the Contractual Currency), 8(b) (Judgments) and 11 (Expenses) of the 1992 ISDA Master Agreement of that Hedging Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
  - (B) any of sections 2(d) (Deduction or Withholding for Tax), 8(a) (Payment in the Contractual Currency), 8(b) (Judgments), 9(h)(i) (Prior to Early Termination) and 11 (Expenses) of the 2002 ISDA Master Agreement of that Hedging Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
  - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraph (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
- (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
- (iv) to the extent that:
- (A) the relevant Debtor's obligation to make the Payment arises from a Credit Related Close-Out in relation a Hedging Agreement; and
  - (B) no Senior Event of Default is continuing at the time of that Payment;
- (v) subject to Clause 4.13 (*On or after Senior Lender Discharge Date/Senior Debt Discharge Date*), if the Majority Senior Creditors and the relevant member of the Group give prior consent to the Payment being made;
- (vi) if the Payment is a Payment pursuant to Clause 14.1 (*Order of application*) or Clause 14.2 (*Liabilities of the Senior Parent Debt Issuer*); or
- (vii) if the Payment arises directly or indirectly as a result of any close-out, termination or other similar or equivalent action by a member of the Group (provided that the Group will remain in compliance with any minimum hedging requirements under the Senior Financing Agreements).
- (b) Without prejudice to the terms and requirements of any Hedging Agreement, nothing in this Agreement obliges a Hedge Counterparty to make a payment to a Debtor under a Hedging Agreement to which they are both party if any scheduled Payment due from that Debtor to the Hedge Counterparty under that Hedging Agreement is due but unpaid. This provision shall not affect any Payment which is due from a Hedge Counterparty to a Debtor as a result of a Hedging Agreement to which they are both a party being terminated or closed out.

#### **4.4 Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 4.2 (*Restriction on Payment: Hedging Liabilities*) and 4.3 (*Permitted Payments: Hedging Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

#### 4.5 No acquisition of Hedging Liabilities

Prior to the Senior Debt Discharge Date, the Debtors and the Third Party Security Providers shall not, and shall procure that no other member of the Group will:

- (a) enter into any Liabilities Acquisition in respect of any of the Hedging Liabilities with any person which is not a member of the Group; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition in respect of any of the Hedging Liabilities (unless that Liabilities Acquisition would not have been prohibited by this Clause 4.5 if made by a member of the Group),  
in each case pursuant to which payment is made by a member of the Group to a person which is not a member of the Group in respect of Hedging Liabilities, unless:
  - (i) subject to Clause 4.13 (*On or after Senior Lender Discharge Date/Senior Debt Discharge Date*), the prior consent of the Majority Senior Lenders is obtained; or
  - (ii) the relevant Liabilities Acquisition relates to Hedging Liabilities (or rights, benefits and/or obligations in relation thereto) in respect of which a Payment could be made under Clause 4.3 (*Permitted Payments: Hedging Liabilities*) (including any Hedging Liabilities in respect of which a Payment could be made under paragraph (a)(vi) of that Clause following a close-out, termination or any other similar or equivalent action by a member of the Group).

#### 4.6 Amendments and waivers: Hedging Agreements

- (a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty and any member of the Group may at any time amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement from time to time (and subject only to any consent required under that Hedging Agreement) if that amendment or waiver does not breach another term of this Agreement.
- (c) Notwithstanding any other provision of any Debt Document, a Hedge Counterparty and the relevant Debtor may amend the terms of a Hedging Agreement to agree a Continuation Amendment (as such term is defined in the ISDA Benchmarks Supplement) or (if the Hedging Agreement is not based on an ISDA Master Agreement) to agree any equivalent adjustment to the terms of the Hedging Agreement pursuant to terms similar in purpose and effect to the ISDA Benchmarks Supplement.

#### 4.7 Security: Hedge Counterparties

The Hedge Counterparties may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group or Third Party Security Provider in respect of the Hedging Liabilities other than:

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
  - (i) the Senior Facilities Agreement or any Permitted Senior Financing Agreement;

- (ii) this Agreement;
  - (iii) any Common Assurance; or
  - (iv) the relevant Hedging Agreement (provided any such guarantee, indemnity or other assurance against loss is no greater in extent than any of those referred to in paragraphs (i) to (iii) above, ignoring for this purpose any limitations applicable to any guarantee, indemnity or other assurance referred to in paragraphs (i) to (iii) above);
- (c) as otherwise contemplated by Clause 3.3 (*Security and guarantees: Senior Secured Creditors*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

#### 4.8 Restriction on enforcement: Hedge Counterparties

Subject to Clause 4.9 (*Permitted enforcement: Hedge Counterparties*) and Clause 4.10 (*Required enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clause 12.2 (*Enforcement instructions*) and Clause 12.3 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

#### 4.9 Permitted enforcement: Hedge Counterparties

- (a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:
- (i) if, prior to a Senior Acceleration Event, the Parent has certified to that Hedge Counterparty that that termination or close out would not result in a breach of the terms of any Debt Document;
  - (ii) if a Senior Acceleration Event has occurred and is continuing;
  - (iii) if:
    - (A) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
      - (I) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
      - (II) an event similar in meaning and effect to a "**Force Majeure Event**" (as defined in paragraph (B) below),  
has occurred in respect of that Hedging Agreement;
    - (B) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as

defined in the 2002 ISDA Master Agreement) has occurred in respect of that Hedging Agreement; or

(C) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraph (A) or (B) above has occurred under and in respect of that Hedging Agreement;

(iv) if an Insolvency Event of Default has occurred and is continuing in relation to a Debtor which is party to that Hedging Agreement;

(v) subject to Clause 4.13 (*On or after Senior Lender Discharge Date/Senior Debt Discharge Date*), if the Majority Senior Creditors and the member of the Group party to the relevant Hedging Agreement give prior consent to that termination or close-out being made;

(vi) for the purpose of ensuring that the aggregate notional amount of all hedging entered into by the Group with one or more Hedge Counterparty in respect of any specific indebtedness or other exposure does not exceed the maximum aggregate amount of that indebtedness or other exposure from time to time (in each case to the extent agreed by the member of the Group party to that Hedging Agreement, it being noted that the Group may wish to enter into basis rate swaps and/or other arrangements which may result in the notional amount of hedging being increased as part of a general hedging strategy); or

(vii) in accordance with a close-out or termination right which arises pursuant to Section 1.5 (*No fault termination right*) of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement, to the extent incorporated by reference into the relevant Hedging Agreement.

(b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than five Business Days after notice of that default has been given to the Security Agent pursuant to paragraph (i) of Clause 22.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:

(i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and

(ii) until the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced, or that any formal steps are being taken to enforce the Transaction Security, in each case in accordance with the terms of this Agreement and the relevant Security Documents, shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.

(c) After the occurrence of an Insolvency Event in relation to any Group Company or Third Party Security Provider, to the extent permitted by the relevant Hedging Agreement, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that Group Company or Third Party Security Provider to:

- (i) prematurely close-out or terminate any Hedging Liabilities of that Group Company or Third Party Security Provider in accordance with the terms of the relevant Hedging Agreement;
- (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Group Company or Third Party Security Provider in respect of any relevant Hedging Liabilities;
- (iii) exercise any right of set-off or take or receive any Payment in respect of any relevant Hedging Liabilities of that Group Company or Third Party Security Provider; or
- (iv) claim and prove in the liquidation of that Group Company or Third Party Security Provider for the Hedging Liabilities owing to it.

#### **4.10 Required enforcement: Hedge Counterparties**

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
  - (i) the occurrence of a Senior Acceleration Event which is continuing and delivery to it of a notice from the Security Agent that such Senior Acceleration Event has occurred and is continuing; and
  - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of an Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that such Senior Acceleration Event occurred as a result of an arrangement made between any Debtor or Third Party Security Provider and any Primary Creditor with the purpose of bringing about that Senior Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 4.9 (*Permitted enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of an Instructing Group).

#### **4.11 Treatment of Payments due to Debtors on termination of hedging transactions**

- (a) If, on termination of any hedging transaction under any Hedging Agreement occurring after a Distress Event, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to the relevant Debtor then that amount shall be paid by that Hedge Counterparty to the Security Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement.
- (b) The payment of that amount by the Hedge Counterparty to the Security Agent in accordance with paragraph (a) above shall discharge the Hedge Counterparty's obligation to pay that amount to that Debtor.

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#### 4.12 Terms of Hedging Agreements

- (a) The Hedge Counterparties (to the extent party to the Hedging Agreement in question) and the Debtors party to the Hedging Agreements shall ensure that, at all times:
- (i) each Hedging Agreement is based either:
    - (A) on an ISDA Master Agreement; or
    - (B) on another framework agreement which is similar in effect to an ISDA Master Agreement;
  - (ii) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
    - (A) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
    - (B) an event similar in meaning and effect to either of those described in paragraph (A) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),that Hedging Agreement will:
    - (I) if it is based on a 1992 ISDA Master Agreement, provide for payments under the "Second Method" and will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;
    - (II) if it is based on a 2002 ISDA Master Agreement, make no material amendment to the provisions of section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement; or
    - (III) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour; and
  - (iii) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date (as defined in the relevant ISDA Master Agreement) or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to paragraphs (a) and (b) of Clause 4.10 (*Required enforcement: Hedge Counterparties*).
- (b) Unless otherwise agreed by the Parent from time to time:
- (i) each Hedging Agreement shall be documented using an ISDA Master Agreement;
  - (ii) each Hedging Agreement shall include only standard ISDA representations and undertakings (and not, for the avoidance of doubt, any additional representations and undertakings contained in the Senior Financing Agreements), in each case amended as necessary so as to be no more onerous on any member of the Group than the provisions of the Senior Financing Agreements;

(iii) no Hedging Agreement shall contain any events of default (however described) other than the following:

- (A) failure by the member of the Group party to that Hedging Agreement to pay on the due date any amount payable by it under that Hedging Agreement (subject to any applicable grace period);
- (B) the occurrence of a Senior Acceleration Event which is continuing; and
- (C) the occurrence of an Insolvency Event of Default in relation to the member of the Group which is party to that Hedging Agreement, provided that, for the avoidance of doubt, a Hedging Agreement may contain standard ISDA termination events relating to illegality, tax events and *force majeure*;

(iv) in the event of any refinancing, replacement, increase or other restructuring of all or any part of the Senior Secured Liabilities, the Operating Facility Liabilities or the Senior Parent Liabilities (a "**Refinancing**") each Hedge Counterparty shall promptly provide its consent to any amendment to, request under and/or replacement of any Hedging Agreement or other Debt Document required by the Parent in order to facilitate that Refinancing (a "**Refinancing Request**"), in each case unless such Refinancing is materially prejudicial to the interests of that Hedge Counterparty (provided that such Refinancing shall not be considered materially prejudicial if any amended or replacement intercreditor arrangements place that Hedge Counterparty in substantially the same, or a better, position relative to the other Senior Secured Creditors as it was in under the intercreditor arrangements existing immediately prior to such amendment or replacement); and

(v) in the event that a Hedge Counterparty (1) does not consent to any Refinancing Request (without prejudice to its obligations under sub-paragraph (iv) above) or (2) does not consent to any other amendment or waiver requested by a member of the Group pursuant to Clause 25 (*Consents, amendments and override*) (in each case within the time period specified by the relevant member of the Group for consent to be provided, which shall not be shorter than five Business Days from the date the relevant request is made by a member of the Group), each member of the Group shall be entitled to:

- (A) terminate any hedging arrangements with that Hedge Counterparty (the "**Non-Consenting Counterparty**") (and the amount payable to or by the Non-Consenting Counterparty on such early termination shall be calculated on the basis that an Additional Termination Event has occurred and that both the Non-Consenting Counterparty and the relevant member of the Group are Affected Parties or on such other basis as may be agreed by the Non-Consenting Counterparty and the relevant member of the Group); and/or
- (B) require that any of those arrangements (the "**Transferred Arrangements**") be transferred (and the "**Non-Consenting Counterparty**" will so transfer) to another person selected by the Parent (the "**Acquiring Counterparty**") willing to assume the same (with the transfer price payable by the Acquiring Counterparty or, as the case may be, the Non-Consenting

Counterparty being equal to the amount that would have been payable to or by the Non-Consenting Counterparty upon the early termination of the Transferred Arrangements under the relevant Hedging Agreements by reason of an Additional Termination Event on the proposed transfer date, and on the basis that both the Non-Consenting Counterparty and the relevant Debtor are Affected Parties or as otherwise agreed by the Non-Consenting Counterparty and the relevant member of the Group),

where the terms "**Additional Termination Event**" and "**Affected Parties**" as used above shall have the meaning given to them in the relevant Hedging Agreements (or if a Hedging Agreement is not based on an ISDA Master Agreement, such terms shall have the meaning given to the equivalent provisions used in that Hedging Agreement).

Each Hedge Counterparty will, on the request of the Parent, as soon as reasonably practical execute any document and/or take such other action as is reasonably required to effect any amendment, replacement, waiver or release of a Hedging Agreement or other Debt Document requested by the Parent in accordance with paragraph (iv) above.

- (c) Notwithstanding anything to the contrary in any Secured Debt Document but without prejudice to any minimum hedging requirements in the Debt Financing Agreements, no default (however described) under the terms of a Hedging Agreement (or the termination of a Hedging Agreement) shall constitute an Event of Default (other than any non-payment default constituting a Senior Payment Default).
- (d) Notwithstanding anything to the contrary in any Hedging Agreement, no Hedging Agreement shall prohibit or restrict any action by any member of the Group not prohibited or restricted under the Senior Financing Agreements.
- (e) Any hedging agreement executed by any member of the Group prior to the date on which it became a member of the Group which the Parent intends should become a Hedging Agreement (an "**Existing Hedging Agreement**") shall be deemed amended by this Agreement to the extent necessary so as to ensure that the terms of such Existing Hedging Agreement comply with the terms of this Agreement in all respects (and the relevant Debtor and the Hedge Counterparty party to such Existing Hedging Agreement each consent and agree to all such amendments by their execution of, or accession to, this Agreement and acknowledge and confirm that the Existing Hedging Agreement will be construed accordingly).
- (f) To the extent that the terms of a Hedging Agreement are inconsistent with the terms of this Agreement the terms of this Agreement shall prevail.

#### **4.13 On or after Senior Lender Discharge Date/Senior Debt Discharge Date**

At any time on or after the Senior Debt Discharge Date, any action which is permitted under any of Clause 4.3 (*Permitted Payments: Hedging Liabilities*), Clause 4.5 (*No acquisition of Hedging Liabilities*) or Clause 4.9 (*Permitted enforcement: Hedge Counterparties*) by reason of the prior consent of the Majority Senior Creditors will, unless otherwise agreed by the Parent by reference to this Clause 4.13, be permitted to the



extent that such action would not result in the Group ceasing to be in compliance with any minimum hedging requirements under:

- (a) any Permitted Second Lien Financing Agreement (unless the prior consent of the relevant Senior Agent is obtained or the Permitted Second Lien Financing Discharge Date has occurred); and
- (b) any Senior Parent Financing Agreement (unless the prior consent of the relevant Senior Parent Agent is obtained or the Senior Parent Discharge Date has occurred).

#### 4.14 Notice and acknowledgement of Transaction Security

- (a) Each Debtor that has created Transaction Security over any of its rights under any Hedging Agreement hereby gives notice (including in terms as required by the applicable Security Document) to each Hedge Counterparty of the Transaction Security over such Hedging Agreements created pursuant to the Security Documents.
- (b) Each Hedge Counterparty, by its entry into this Agreement (or, as the case may be, by its entry into a Creditor/Agent Accession Undertaking as a Hedge Counterparty):
  - (i) agrees and consents to any Debtor granting Transaction Security (by way of assignment, charge or otherwise) over all or any part of its rights under any Hedging Agreement to which that Hedge Counterparty is a party; and
  - (ii) acknowledges receipt of the notice given under paragraph (a) above and that it will continue to deal solely with the relevant Debtor in relation to that Hedging Agreement until such time as it receives any written notice (as permitted by the applicable Security Document) to the contrary from the Security Agent following the occurrence of an Acceleration Event which is continuing.

### 5. PERMITTED SECOND LIEN FINANCING CREDITORS AND SECOND LIEN LIABILITIES

#### 5.1 Restriction on Payment: Second Lien Liabilities

Prior to the Senior Discharge Date, the Debtors and the Third Party Security Providers shall not, and the Parent shall procure that no other member of the Group will, make any Payment of the Second Lien Liabilities at any time unless:

- (a) that Payment is permitted under Clause 5.2 (*Permitted Payments: Second Lien Liabilities*), Clause 9.5 (*Filing of claims*) or Clause 16 (*Additional debt*); or
- (b) the taking or receipt of that Payment is permitted under Clause 5.8 (*Permitted Second Lien enforcement*).

#### 5.2 Permitted Payments: Second Lien Liabilities

Any member of the Group or Third Party Security Provider may:

- (a) prior to the Senior Discharge Date, directly or indirectly make any Payment directly or indirectly in respect of the Second Lien Liabilities at any time:
  - (i) if:
    - (A) the Payment is of:

- (I) any of the principal amount of the Second Lien Liabilities which is either:
  - (1) not prohibited by the Senior Financing Agreements; or
  - (2) paid on or after the final maturity date of the relevant Second Lien Liabilities (provided that, unless the Senior Lender Discharge Date has occurred or as otherwise agreed by the Majority Senior Lenders and the Parent, such final maturity date does not breach any maturity restrictions applicable to such Second Lien Liabilities in the Senior Financing Agreements (as applicable) (or, in the case of any amendment which has the effect of shortening the maturity date applicable to such Second Lien Liabilities, would not breach any such maturity restrictions applicable to such Second Lien Liabilities in the Senior Financing Agreements (as applicable) were that Second Lien Liability to be incurred at the time of that amendment and with that amended maturity date)); or
- (II) any other amount which is not an amount of principal (including any interest which has been capitalised to become an amount of principal);
- (B) no Second Lien Payment Stop Notice is outstanding; and
- (C) no Senior Payment Default has occurred and is continuing;
- (ii) if the Required Senior Consent has been obtained;
- (iii) if the Payment is of Permitted Second Lien Financing Agent Liabilities;
- (iv) of any Notes Security Costs;
- (v) of costs, commissions, taxes, fees and expenses incurred in respect of or in relation to (or reasonably incidental to) any Permitted Second Lien Financing Documents (including in relation to any reporting or listing requirements under the Permitted Second Lien Financing Documents);
- (vi) if the Payment is funded directly or indirectly with Permitted Second Lien Financing Debt, Permitted Parent Financing Debt and/or the proceeds of any indebtedness incurred under or pursuant to any Permitted Second Lien Financing Document and/or Senior Parent Notes;
- (vii) if the Payment is funded directly or indirectly with the proceeds of Qualified Equity Interests or Subordinated Shareholder Funding of the Parent or Available Restricted Payment Amounts; or
- (viii) if the Payment is of any principal amount of the Second Lien Liabilities (together with any related accrued but unpaid interest) in accordance with a provision in any Permitted Second Lien Financing Agreement which is substantially equivalent to:
  - (A) clause 11.1 (*Illegality*) of the Senior Facilities Agreement;

(B) clause 11.8 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*) of the Senior Facilities Agreement; or

(C) to the extent an equivalent payment has been made (to the extent required) pursuant to the terms of the Senior Financing Agreements (excluding, for this purpose, any Permitted Second Lien Financing Agreement), clause 12.1 (*Change of Control*) of the Senior Facilities Agreement; or

(ix) for so long as a Permitted Second Lien Financing Event of Default is continuing, if the Payment is of all or part of the Second Lien Liabilities as a result of those Second Lien Liabilities being released or otherwise discharged solely in consideration of the issue of shares in the Parent or in any Holding Company of the Parent (each a **"Debt for Equity Swap"**) and provided that no cash or cash equivalent payment is made in respect of the Second Lien Liabilities and any Liabilities owed by a Group Company to another Group Company, the Investors or any other Holding Company of the Parent that arise as a result of any such Debt for Equity Swap are subordinated to the Senior Secured Liabilities pursuant to this Agreement and any Liabilities owed by a Group Company to another Group Company arising as a result of such Debt for Equity Swap are subject to Transaction Security; or

(x) of any other amount not exceeding USD5,000,000 (or its equivalent in other currencies) in aggregate in any financial year of the Parent; and

(b) on or after the Senior Discharge Date, make any Payment directly or indirectly in respect of the Second Lien Liabilities at any time.

A reference in this Clause 5.2 to a Payment shall be construed to include any other direct or indirect step, matter, action or dealing in relation to any Second Lien Liabilities which are otherwise prohibited under Clause 5.1 (*Restriction on Payment: Second Lien Liabilities*).

### 5.3 Issue of Second Lien Payment Stop Notice

(a) Until the Senior Discharge Date, except with the Required Senior Consent, no Debtor shall make (and the Parent shall procure that no member of the Group will make), and no Permitted Second Lien Financing Creditor may receive from any member of the Group, any Permitted Second Lien Payment (other than Permitted Second Lien Financing Agent Liabilities and except as provided in paragraphs (a)(ii) to (x) of Clause 5.2 (*Permitted Payments: Second Lien Liabilities*)) if:

(i) a Senior Payment Default is continuing; or

(ii) a Material Event of Default is continuing, from the date which is one Business Day after the date on which any Senior Agent delivers a notice (a **"Second Lien Payment Stop Notice"**) specifying the event or circumstance in relation to that Material Event of Default to the Parent, the Security Agent and the Second Lien Creditor Representatives until the earliest of:

(A) the date falling 120 days after delivery of that Second Lien Payment Stop Notice;

- (B) in relation to payments of Second Lien Liabilities, if a Second Lien Standstill Period is in effect at any time after delivery of that Second Lien Payment Stop Notice, the date on which that Second Lien Standstill Period expires;
- (C) the date on which the relevant Material Event of Default has been remedied or waived in accordance with the applicable Senior Financing Agreement;
- (D) the date on which the Senior Agent which delivered the relevant Second Lien Payment Stop Notice delivers a notice to the Parent, the Security Agent and the Second Lien Creditor Representatives cancelling the Second Lien Payment Stop Notice;
- (E) the Senior Discharge Date; and
- (F) the date on which the Security Agent or a Second Lien Creditor Representative takes Enforcement Action permitted under this Agreement against a Debtor.

(b) Unless each of the Second Lien Creditor Representatives waives this requirement:

- (i) a new Second Lien Payment Stop Notice may not be delivered unless and until 360 days have elapsed since the delivery of the immediately prior Second Lien Payment Stop Notice; and
- (ii) no Second Lien Payment Stop Notice may be delivered by a Senior Agent in reliance on a Material Event of Default more than 120 days after the date that Senior Agent received notice of that Material Event of Default.

(c) The Senior Agents may only serve one Second Lien Payment Stop Notice with respect to the same event or set of circumstances. Subject to paragraph (b) above, this shall not affect the right of the Agents to issue a Second Lien Payment Stop Notice in respect of any other event or set of circumstances.

(d) No Second Lien Payment Stop Notice may be served by an Agent in respect of a Material Event of Default which had been notified to the Agents at the time at which an earlier Second Lien Payment Stop Notice was issued.

(e) For the avoidance of doubt, this Clause 5.3:

- (i) acts as a suspension of payment and not as a waiver of the right to receive payment on the date such payments are due;
- (ii) will not prevent the accrual or capitalisation of interest (including default interest) in accordance with the Permitted Second Lien Financing Documents; and
- (iii) will not prevent the payment of any Permitted Second Lien Financing Agent Liabilities.

#### **5.4 Effect of Second Lien Payment Stop Notice or Senior Payment Default**

Any failure to make a Payment due under the Permitted Second Lien Financing Documents as a result of the issue of a Second Lien Payment Stop Notice or the occurrence of a Senior Payment Default shall not prevent:

(a) the occurrence of a Permitted Second Lien Financing Event of Default as a consequence of that failure to make a Payment in relation to the relevant Permitted Second Lien Financing Document; or

(b) the issue of a Second Lien Enforcement Notice on behalf of the Permitted Second Lien Financing Creditors.

#### **5.5 Payment obligations and capitalisation of interest continue**

(a) No Debtor or Third Party Security Provider shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Permitted Second Lien Financing Document by the operation of Clauses 5.1 (*Restriction on Payment: Second Lien Liabilities*) to 5.4 (*Effect of Second Lien Payment Stop Notice or Senior Payment Default*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

(b) The accrual and capitalisation of interest (if any) in accordance with the Permitted Second Lien Financing Documents shall continue notwithstanding the issue of a Second Lien Payment Stop Notice.

#### **5.6 Cure of Payment stop: Permitted Second Lien Financing Creditors**

If:

(a) at any time following the issue of a Second Lien Payment Stop Notice or the occurrence of a Senior Payment Default, that Second Lien Payment Stop Notice ceases to be outstanding and/or, as the case may be, the Senior Payment Default ceases to be continuing; and

(b) any Debtor then promptly pays to the Permitted Second Lien Financing Creditors an amount equal to any Payments which had accrued under the Permitted Second Lien Financing Documents and which would have been Permitted Second Lien Payments but for that Second Lien Payment Stop Notice or Senior Payment Default,

then any Event of Default (including any cross default or similar provision under any other Debt Document) which may have occurred as a result of that suspension of Payments shall be waived and any Second Lien Enforcement Notice which may have been issued as a result of that Event of Default shall be waived, in each case without any further action being required on the part of the Permitted Second Lien Financing Creditors or any other Creditor or Operating Facility Lender.

#### **5.7 Restrictions on enforcement by Permitted Second Lien Financing Creditors**

Until the Senior Discharge Date, except with the prior consent of or as required by an Instructing Group:

(a) no Permitted Second Lien Financing Creditor shall direct the Security Agent to enforce or otherwise require the enforcement of any Transaction Security; and

(b) no Permitted Second Lien Financing Creditor shall take or require the taking of any Enforcement Action in relation to the Second Lien Liabilities, except as permitted under Clause 5.8 (*Permitted Second Lien enforcement*), provided, however, that no such action required by the Security Agent need be taken except to the extent the Security Agent is otherwise entitled under this Agreement to direct such action.

#### 5.8 Permitted Second Lien enforcement

- (a) Subject to Clause 5.11 (*Enforcement on behalf of Permitted Second Lien Financing Creditors*), the restrictions in Clause 5.7 (*Restrictions on enforcement by Permitted Second Lien Financing Creditors*) will not apply if:
- (i) a Permitted Second Lien Financing Event of Default (the "**Relevant Second Lien Default**") is continuing;
  - (ii) each Senior Agent has received a notice of the Relevant Second Lien Default specifying the event or circumstance in relation to the Relevant Second Lien Default from the relevant Second Lien Creditor Representative;
  - (iii) a Second Lien Standstill Period (as defined below) has elapsed; and
  - (iv) the Relevant Second Lien Default is continuing at the end of the relevant Second Lien Standstill Period.
- (b) Promptly upon becoming aware of a Permitted Second Lien Financing Event of Default, the relevant Second Lien Creditor Representative may by notice (a "**Second Lien Enforcement Notice**") in writing notify the Senior Agents of the existence of such Permitted Second Lien Financing Event of Default.

#### 5.9 Second Lien Standstill Period

In relation to a Relevant Second Lien Default, a Second Lien Standstill Period shall mean the period beginning on the date (the "**Second Lien Standstill Start Date**") the relevant Second Lien Creditor Representative serves a Second Lien Enforcement Notice on each of the Senior Agents in respect of such Relevant Second Lien Default and ending on the earliest to occur of:

- (a) the date falling 120 days after the Second Lien Standstill Start Date;
- (b) the date the Senior Secured Parties (other than the Permitted Second Lien Financing Creditors) take any Enforcement Action in relation to a particular Second Lien Borrower or Second Lien Guarantor, provided, however, that if a Second Lien Standstill Period ends pursuant to this paragraph (b), the Permitted Second Lien Financing Creditors may only take the same Enforcement Action in relation to the relevant Second Lien Borrower or Second Lien Guarantor as the Enforcement Action taken by the Senior Secured Parties (other than the Permitted Second Lien Financing Creditors) against such Second Lien Borrower or Second Lien Guarantor and not against any other member of the Group;
- (c) the date of an Insolvency Event in relation to the relevant Second Lien Borrower or a particular Second Lien Guarantor against whom Enforcement Action is to be taken;
- (d) the expiry of any other Second Lien Standstill Period outstanding at the date such first-mentioned Second Lien Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy);
- (e) the date on which the consent of each of the Senior Facility Agent (acting on the instructions of the Majority Senior Lenders), any Senior Notes Trustee (acting on behalf of the Senior

Noteholders) and any Senior Creditor Representative (acting on the instructions of the Majority Permitted Senior Financing Creditors) has been obtained; and

- (f) a failure to pay the principal amount outstanding under any Permitted Second Lien Financing Debt at the final stated maturity of the amounts outstanding on that Permitted Second Lien Financing Debt (provided that, unless the Senior Lender Discharge Date has occurred or as otherwise agreed by the Majority Senior Lenders and the Parent, such final stated maturity does not breach any maturity restrictions applicable to such Second Lien Liabilities in the Senior Financing Agreements (as applicable) (or, in the case of any amendment which has the effect of shortening the maturity date applicable to such Second Lien Liabilities, would not breach any such maturity restrictions applicable to such Second Lien Liabilities in the Senior Financing Agreements (as applicable) were that Second Lien Liability to be incurred at the time of that amendment and with that amended maturity date)),

the "Second Lien Standstill Period".

**5.10 Subsequent Permitted Second Lien Financing Event of Default**

The Permitted Second Lien Financing Creditors may take Enforcement Action under Clause 5.8 (*Permitted Second Lien enforcement*) in relation to a Relevant Second Lien Default even if, at the end of any relevant Second Lien Standstill Period or at any later time, a further Second Lien Standstill Period has begun as a result of any other Permitted Second Lien Financing Event of Default.

**5.11 Enforcement on behalf of Permitted Second Lien Financing Creditors**

If the Security Agent has notified the Second Lien Creditor Representatives that it is enforcing Security created pursuant to any Security Document over shares of a Second Lien Borrower or a Second Lien Guarantor, no Permitted Second Lien Financing Creditor may take any action referred to in Clause 5.8 (*Permitted Second Lien enforcement*) against that Second Lien Borrower or Second Lien Guarantor (or any Subsidiary of that Second Lien Borrower or Second Lien Guarantor) while the Security Agent is taking steps to enforce that Security in accordance with the instructions of an Instructing Group where such action might be reasonably likely to adversely affect such enforcement or the amount of proceeds to be derived therefrom.

**5.12 Option to purchase: Permitted Second Lien Financing Creditors**

- (a) Subject to paragraphs (b) and (c) below, any of the Second Lien Creditor Representative(s) (on behalf of the Permitted Second Lien Financing Creditors) may, after a Senior Acceleration Event, by giving not less than 10 days' notice to the Security Agent, require the transfer to the Permitted Second Lien Financing Creditors (or to a nominee or nominees), in accordance with Clause 19.3 (*Change of Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor*), of all, but not part, of the rights, benefits and obligations in respect of the Senior Lender Liabilities, the Senior Notes Liabilities, any Permitted Senior Financing Liabilities and the Operating Facility Liabilities if:

- (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the Senior Facilities Agreement (in the case of the Senior Lender Liabilities), any Senior Notes

Indenture(s) pursuant to which any Senior Notes remain outstanding (in the case of the Senior Notes Liabilities), any Permitted Senior Financing Agreement pursuant to which any relevant Permitted Senior Financing Liabilities remain outstanding (in the case of the Permitted Senior Financing Liabilities) and/or any Operating Facility Documents pursuant to which any relevant Operating Facility Liabilities remain outstanding (in the case of the Operating Facility Liabilities);

(ii) any conditions relating to such a transfer contained in the Senior Facilities Agreement (in the case of the Senior Lender Liabilities), any Senior Notes Indenture(s) pursuant to which any Senior Notes remain outstanding (in the case of the Senior Notes Liabilities), any Permitted Senior Financing Agreement pursuant to which any relevant Permitted Senior Financing Liabilities remain outstanding (in the case of the Permitted Senior Financing Liabilities) and/or any Operating Facility Documents pursuant to which any relevant Operating Facility Liabilities remain outstanding (in the case of the Operating Facility Liabilities) are complied with, other than:

(A) any requirement to obtain the consent of, or consult with, any Debtor, Third Party Security Provider or other member of the Group relating to such transfer, which consent or consultation shall not be required; and

(B) to the extent to which all the Permitted Second Lien Financing Creditors (acting as a whole) provide cash cover for any Letter of Credit, the consent of the relevant Issuing Bank relating to such transfer;

(iii)

(A) the Senior Facility Agent, on behalf of the Senior Lenders, is paid an amount equal to the aggregate of:

(I) any amounts provided as cash cover by the Permitted Second Lien Financing Creditors for any Letter of Credit (as envisaged in paragraph (ii)(B) above);

(II) all of the Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Facilities Agreement if the Senior Facilities were being prepaid by the relevant Debtors on the date of that payment; and

(III) all costs and expenses (including legal fees) incurred by the Senior Facility Agent, the Senior Lenders and/or the Security Agent as a consequence of giving effect to that transfer; and

(B) the applicable Senior Notes Trustee, on behalf of the relevant Senior Notes Creditors, is paid an amount equal to the aggregate of:

(I) all of the Senior Notes Liabilities at that time (whether or not due), including all amounts that would have been payable (including any prepayment premium or make-whole amount) under the Senior Notes Indenture if the Senior Notes were being redeemed by the relevant Debtors on the date of that payment; and



- (II) all costs and expenses (including legal fees) incurred by the Senior Notes Trustee and/or the Senior Notes Creditors as a consequence of giving effect to that transfer;
- (C) the applicable Senior Creditor Representative, on behalf of the relevant Permitted Senior Financing Creditors, is paid an amount equal to the aggregate of:
  - (I) any amount provided as cash cover by the Senior Parent Creditors for any Letter of Credit (as envisaged in paragraph (a)(ii)(B) above);
  - (II) all of the Permitted Senior Financing Liabilities at that time (whether or not due), including all amounts that would have been payable (including any prepayment premium or make-whole amount) under the Permitted Senior Financing Documents if the Permitted Senior Financing Debt was being prepaid or redeemed (as applicable) by the relevant Debtors on the date of that payment; and
  - (III) all costs and expenses (including legal fees) incurred by the Senior Creditor Representative, the Permitted Senior Financing Creditors and/or the Security Agent as a consequence of giving effect to that transfer; and
- (D) the Operating Facility Lenders are paid an amount equal to the aggregate of:
  - (I) all of the Operating Facility Liabilities at that time (whether or not due), including all amounts that would have been payable under the Operating Facility Documents if the Operating Facilities were being prepaid by the relevant Debtors on the date of that payment; and
  - (II) all costs and expenses (including legal fees) incurred by the Operating Facility Lenders and/or the Security Agent as a consequence of giving effect to that transfer;
- (iv) as a result of that transfer the Senior Lenders, the Senior Notes Creditors, the Permitted Senior Financing Creditors and the Operating Facility Lenders have no further actual or contingent liability to the Parent or any other Debtor under the relevant Secured Debt Documents;
- (v) an indemnity is provided from each Permitted Second Lien Financing Creditor (other than any Second Lien Creditor Representative) (or from another third party acceptable to all the Senior Lenders, the Senior Notes Creditors, the Permitted Senior Financing Creditors and the Operating Facility Lenders) in a form reasonably satisfactory to each Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor and Operating Facility Lender in respect of all costs, expenses, losses and liabilities which may be sustained or incurred by any Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor or Operating Facility Lender in consequence of any sum received or recovered by any Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor or Operating Facility Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor or Operating Facility Lender for any reason; and

- (vi) the transfer is made without recourse to, or representation or warranty from, the Senior Lenders, the Senior Notes Creditors, the Permitted Senior Financing Creditors or the Operating Facility Lenders, except that each Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor and Operating Facility Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Subject to paragraph (b) of Clause 5.13 (*Hedge Transfer: Permitted Second Lien Financing Creditors*), a Second Lien Creditor Representative (on behalf of all the Permitted Second Lien Financing Creditors) may only require a Senior Secured Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 5.13 (*Hedge Transfer: Permitted Second Lien Financing Creditors*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 5.13 (*Hedge Transfer: Permitted Second Lien Financing Creditors*), no Senior Secured Liabilities Transfer may be required to be made.
- (c) At the request of a Second Lien Creditor Representative (on behalf of all the Permitted Second Lien Financing Creditors):
- (i) the Senior Facility Agent shall notify the Second Lien Creditor Representatives of:
    - (A) the sum of the amounts described in paragraphs (a)(iii)(A)(II) and (III) above; and
    - (B) the amount of each Letter of Credit for which cash cover is to be provided to it by all the Permitted Second Lien Financing Creditors (acting as a whole);
  - (ii) any relevant Senior Notes Trustee shall notify the Second Lien Creditor Representatives of the sum of amounts described in paragraphs (a)(iii)(B)(I) and (II) above;
  - (iii) any relevant Senior Creditor Representative shall notify the Second Lien Creditor Representatives of:
    - (A) the sum of the amounts described in paragraphs (a)(iii)(C)(II) and (III) above; and
    - (B) the amount of each Letter of Credit for which cash cover is to be provided to it by all the Permitted Second Lien Financing Creditors (acting as a whole); and
  - (iv) the Operating Facility Lenders shall notify the Senior Agents of the sum of amounts described in paragraphs (a)(iii)(D)(I) and (II) above.

**5.13 Hedge Transfer: Permitted Second Lien Financing Creditors**

- (a) A Second Lien Creditor Representative (on behalf of all the Permitted Second Lien Financing Creditors, acting as a whole) may, by giving not less than 10 days' notice to the Security Agent, require a Hedge Transfer:
- (i) if either:
    - (A) the Permitted Second Lien Financing Creditors require, at the same time, a Senior Secured Liabilities Transfer under Clause 5.12 (*Option to purchase: Permitted Second Lien Financing Creditors*); or

(B) all the Permitted Second Lien Financing Creditors (acting as a whole) require that Hedge Transfer at any time on or after the Senior Discharge Date; and

(ii) if:

- (A) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements, in which case no Debtor, Third Party Security Provider or other member of the Group shall be entitled to withhold its consent to that transfer;
- (B) any conditions (other than the consent of, or any consultation with, any Debtor, Third Party Security Provider or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
- (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (1) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (2) all costs and expenses (including legal fees) incurred by such Hedge Counterparty as a consequence of giving effect to that transfer;
- (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements;
- (E) an indemnity is provided from each Permitted Second Lien Financing Creditors (other than any Second Lien Creditor Representative) which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form reasonably satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason; and
- (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

(b) A Second Lien Creditor Representative (acting on behalf of all the Permitted Second Lien Financing Creditors) and any Hedge Counterparty may agree (in respect of the Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by all the Permitted Second Lien Financing Creditors (acting as a whole) pursuant to paragraph (a) above shall not apply to that/those Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under that/those Hedging Agreement(s).

(c) If a Second Lien Creditor Representative is entitled to require a Hedge Transfer under this Clause 5.13, the Hedge Counterparties shall at the request of any Second Lien Creditor Representative provide details of the amounts referred to in paragraph (a)(ii)(C) above.

## 6. SENIOR PARENT CREDITORS AND SENIOR PARENT LIABILITIES

### 6.1 Restriction on Payment and dealings: Senior Parent Liabilities

Until the First/Second Lien Discharge Date, no Senior Parent Debt Issuer which is a member of the Group shall (and the Parent shall ensure that no other member of the Group will):

- (a) pay, repay, prepay, redeem, acquire or defease any principal, interest or other amount on or in respect of, or make any distribution in respect of, any Senior Parent Liabilities in cash or in kind or apply any such money or property in or towards discharge of any Senior Parent Liabilities except as permitted by Clause 6.2 (*Permitted Senior Parent Payments*), Clause 6.9 (*Permitted Senior Parent enforcement*), Clause 9.5 (*Filing of claims*) or Clause 16 (*Additional debt*);
- (b) exercise any set-off against any Senior Parent Liabilities, except as permitted by Clause 6.2 (*Permitted Senior Parent Payments*), Clause 6.8 (*Restrictions on enforcement by Senior Parent Creditors*), Clause 9.5 (*Filing of claims*) or Clause 16 (*Additional debt*); or
- (c) create or permit to subsist any Security over any assets of any member of the Group or assets of any Third Party Security Provider which are subject to Transaction Security or give any guarantee (and the Senior Parent Agents may not, and no Senior Parent Creditor may, accept the benefit of any such Security or guarantee from any Group Company or Third Party Security Provider) for, or in respect of, any Senior Parent Liabilities other than:
  - (i) the Senior Parent Guarantees;
  - (ii) at the option of the Parent, all or any of the Transaction Security (provided that, for the avoidance of doubt, each of the Parties agrees that the Transaction Security shall rank and secure the Senior Parent Liabilities as set out in Clause 2.2 (*Transaction Security*));
  - (iii) any Security over any assets of any Senior Parent Debt Issuer that is a member of the Group (other than, without prejudice to paragraph (ii) above and paragraph (v) below, any such assets subject to the Senior Parent Debt Issuer Security);
  - (iv) any other Security or guarantee provided by a member of the Group (the "**Credit Support Provider**") provided that, to the extent legally possible and subject to the Agreed Security Principles:
    - (A) the Credit Support Provider becomes party to this Agreement as a Debtor or Third Party Security Provider (as applicable) (if not already a Party in that capacity);
    - (B) all amounts actually received or recovered by any Senior Parent Agent or Senior Parent Creditor with respect to any such Security shall immediately be paid to the Security Agent and applied in accordance with Clause 14 (*Application of proceeds*);

(C) any such Security may only be enforced in accordance with Clause 12.6 (*Security held by other Creditors*); and

(D) any such guarantee is expressed to be subject to the terms of this Agreement;

(v) the Shared Security; and

(vi) any Security, guarantee, indemnity or other assurance against loss from any member of the Group in connection with:

(A) any escrow or similar or equivalent arrangements entered into in respect of amounts which are being held (or will be held) by a person which is not a member of the Group prior to release of those amounts to a member of the Group; or

(B) any actual or proposed defeasance, redemption, prepayment, repayment, purchase or other discharge of any Senior Lender Liabilities, Operating Facility Liabilities, Senior Notes Liabilities and/or Permitted Senior Financing Liabilities (in each case provided that such defeasance, redemption, prepayment, repayment, purchase or other discharge is not prohibited by the terms of this Agreement),

provided that, for the avoidance of doubt, nothing in this Clause 6.1 shall restrict any person which is not a member of the Group from creating or permitting to subsist any Security over any assets of such person or giving any guarantee for, or in respect of, any Senior Parent Liabilities.

## 6.2 Permitted Senior Parent Payments

Any Senior Parent Debt Issuer, Third Party Security Provider or member of the Group may:

(a) prior to the First/Second Lien Discharge Date, directly or indirectly make any Payment directly or indirectly in respect of the Senior Parent Liabilities at any time:

(i) if:

(A) the Payment is of:

(I) any of the principal amount of the Senior Parent Liabilities which is either:

(1) not prohibited by the Senior Financing Agreements; or

(2) paid on or after the final maturity date of the relevant Senior Parent Liabilities (provided that (i) unless the Senior Lender Discharge Date has occurred or as otherwise agreed by the Majority Senior Lenders and the Parent, such final maturity date does not breach any maturity restrictions in the Senior Financing Agreements (or, in the case of any amendment which has the effect of shortening the maturity date of any Senior Parent Liabilities, would not breach any such maturity restrictions applicable to such Senior Parent Liabilities in the Senior Financing Agreements (as applicable) were that Senior Parent Liability to be incurred at the time of that amendment and with that amended maturity date) and (ii) unless

the Permitted Second Lien Financing Discharge Date has occurred or as otherwise agreed by the Majority Second Lien Creditors and the Parent, such final stated maturity does not breach any maturity restrictions applicable to such Senior Parent Liabilities in any Permitted Second Lien Financing Agreement (as applicable) (or, in the case of any amendment which has the effect of shortening the maturity date of any Senior Parent Liabilities, would not breach any such maturity restrictions applicable to such Senior Parent Liabilities in any Permitted Second Lien Financing Agreement (as applicable) were that Senior Parent Liability to be incurred at the time of that amendment and with that amended maturity date)); or

(II) any other amount which is not an amount of principal (including any interest which has been capitalised to become an amount of principal);

(B) no Senior Parent Payment Stop Notice is outstanding;

(C) no Senior Payment Default has occurred and is continuing; and

(D) no Second Lien Payment Default has occurred and is continuing;

(ii) if the Required Senior Consent and the Required Second Lien Consent has been obtained;

(iii) if the Payment is of a Senior Parent Notes Trustee Amount;

(iv) if the Payment is made by the relevant Senior Parent Debt Issuer and funded directly or indirectly with amounts which have not been received by that Senior Parent Debt Issuer from a member of the Group;

(v) of any Notes Security Costs;

(vi) of costs, commissions, taxes, fees and expenses incurred in respect of or in relation to (or reasonably incidental to) any Senior Parent Finance Documents (including in relation to any reporting or listing requirements under the Senior Parent Finance Documents);

(vii) if the Payment is funded directly or indirectly with Permitted Parent Financing Debt and/or the proceeds of any indebtedness incurred under or pursuant to any Senior Parent Notes;

(viii) if the Payment is funded directly or indirectly with the proceeds of Qualified Equity Interests or Subordinated Shareholder Funding of the Parent or Available Restricted Payment Amounts; or

(ix) if the Payment is of any principal amount of the Senior Parent Liabilities (together with any related accrued but unpaid interest) in accordance with the provisions under any Senior Parent Finance Documents which are substantially equivalent to:

(A) clause 11.1 (*Illegality*) of the Senior Facilities Agreement;

(B) clause 11.8 (*Right of cancellation and repayment in relation to a single Lender or Issuing Bank*) of the Senior Facilities Agreement; or

(C) clause 12.1 (*Change of Control*) of the Senior Facilities Agreement but only to the extent that an equivalent payment(s) has been made (to the extent required) pursuant to the terms of the Senior Financing Agreements; or

(x) for so long as a Senior Event of Default, a Permitted Second Lien Financing Event of Default or a Senior Parent Event of Default is continuing, if the Payment is of all or part of the Senior Parent Liabilities as a result of those Senior Parent Liabilities being released or otherwise discharged solely in consideration of the issue of shares in the Parent or in any Holding Company of the Parent (each a **"Senior Parent Debt for Equity Swap"**) and provided that no cash or cash equivalent payment is made in respect of the Senior Parent Liabilities and any Liabilities owed by a Group Company to another Group Company, the Investors or any other Holding Company of the Parent that arise as a result of any such Senior Parent Debt for Equity Swap are subordinated to the Senior Secured Liabilities and to the Second Lien Liabilities pursuant to this Agreement and any Liabilities owed by a Group Company to another Group Company arising as a result of such Senior Parent Debt for Equity Swap are subject to Transaction Security; or

(xi) of any other amount not exceeding USD5,000,000 (or its equivalent in other currencies) in aggregate in any financial year of the Parent; and

(b) on or after the First/Second Lien Discharge Date, make any Payment directly or indirectly in respect of the Senior Parent Liabilities at any time.

A reference in this Clause 6.2 to a Payment shall be construed to include any other direct or indirect step, matter, action or dealing in relation to any Senior Parent Liabilities which are otherwise prohibited under Clause 6.1 (*Restriction on Payment and dealings: Senior Parent Liabilities*).

### 6.3 Issue of Senior Parent Payment Stop Notice

(a) Until the Senior Discharge Date, except with the Required Senior Consent, and until the Permitted Second Lien Financing Discharge Date, except with the Required Second Lien Consent, no Senior Parent Debt Issuer which is a member of the Group shall make (and the Parent shall procure that no other member of the Group will make), and no Senior Parent Finance Party may receive from any member of the Group, any Permitted Senior Parent Payment (other than Senior Parent Notes Trustee Amounts and except as provided in paragraphs (a)(ii) to (x), in each case, of Clause 6.2 (*Permitted Senior Parent Payments*)) if:

(i) a Senior Payment Default or a Second Lien Payment Default is continuing; or

(ii) a Senior Event of Default (other than a Senior Payment Default) or a Permitted Second Lien Financing Event of Default (other than a Second Lien Payment Default) is continuing, from the date which is one Business Day after the date on which any Senior Agent delivers a notice (a **"Senior Parent Payment Stop Notice"**) specifying the event or circumstance in relation to that

Senior Event of Default to the Parent, the Security Agent and the Senior Parent Agents until the earliest of:

- (A) the date falling 179 days after delivery of that Senior Parent Payment Stop Notice;
  - (B) in relation to payments of Senior Parent Liabilities, if a Senior Parent Standstill Period is in effect at any time after delivery of that Senior Parent Payment Stop Notice, the date on which that Senior Parent Standstill Period expires;
  - (C) the date on which the relevant Senior Event of Default or Permitted Second Lien Financing Event of Default has been remedied or waived in accordance with the applicable Senior Financing Agreement;
  - (D) the date on which the Senior Agent which delivered the relevant Senior Parent Payment Stop Notice delivers a notice to the Parent, the Security Agent and the Senior Parent Agents cancelling the Senior Parent Payment Stop Notice;
  - (E) the First/Second Lien Discharge Date; and
  - (F) the date on which the Security Agent or a Senior Parent Agent takes Enforcement Action permitted under this Agreement against a Debtor.
- (b) Unless each of the Senior Parent Agents waives this requirement:
- (i) a new Senior Parent Payment Stop Notice may not be delivered unless and until 360 days have elapsed since the delivery of the immediately prior Senior Parent Payment Stop Notice; and
  - (ii) no Senior Parent Payment Stop Notice may be delivered by a Senior Agent in reliance on a Senior Event of Default more than 45 days after the date that Senior Agent received notice of that Senior Event of Default or Permitted Second Lien Financing Event of Default (as applicable).
- (c) The Senior Agents may only serve one Senior Parent Payment Stop Notice with respect to the same event or set of circumstances. Subject to paragraph (b) above, this shall not affect the right of the Agents to issue a Senior Parent Payment Stop Notice in respect of any other event or set of circumstances.
- (d) No Senior Parent Payment Stop Notice may be served by an Agent in respect of a Senior Event of Default which had been notified to the Agents at the time at which an earlier Senior Parent Payment Stop Notice was issued.
- (e) For the avoidance of doubt, this Clause 6.3:
- (i) acts as a suspension of payment and not as a waiver of the right to receive payment on the date such payments are due;
  - (ii) will not prevent the accrual or capitalisation of interest (including default interest) in accordance with the Senior Parent Finance Documents; and
  - (iii) will not prevent the payment of any Senior Parent Notes Trustee Amounts or other amounts funded directly or indirectly with amounts which have not been received by the relevant Senior Parent Debt Issuer from another member of the Group.



#### **6.4 Effect of Senior Parent Payment Stop Notice, Senior Payment Default or Second Lien Payment Default**

Any failure to make a Payment due under the Senior Parent Finance Documents as a result of the issue of a Senior Parent Payment Stop Notice or the occurrence of a Senior Payment Default or Second Lien Payment Default shall not prevent:

- (a) the occurrence of a Senior Parent Event of Default as a consequence of that failure to make a Payment in relation to the relevant Senior Parent Finance Document; or
- (b) the issue of a Senior Parent Enforcement Notice on behalf of the Senior Parent Creditors.

#### **6.5 Payment obligations and capitalisation of interest continue**

- (a) The relevant Senior Parent Debt Issuer, Debtor or Third Party Security Provider shall not be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Senior Parent Finance Document by the operation of Clauses 6.1 (*Restriction on Payment and dealings: Senior Parent Liabilities*) to 6.4 (*Effect of Senior Parent Payment Stop Notice, Senior Payment Default or Second Lien Payment Default*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.
- (b) The accrual and capitalisation of interest (if any) in accordance with the Senior Parent Finance Documents shall continue notwithstanding the issue of a Senior Parent Payment Stop Notice.

#### **6.6 Cure of Payment stop: Senior Parent Creditors**

If:

- (a) at any time following the issue of a Senior Parent Payment Stop Notice or the occurrence of a Senior Payment Default or Second Lien Payment Default, that Senior Parent Payment Stop Notice ceases to be outstanding and/or, as the case may be, the Senior Payment Default or Second Lien Payment Default ceases to be continuing; and
  - (b) the relevant Senior Parent Debt Issuer or the relevant Debtor or Third Party Security Provider then promptly pays to the Senior Parent Creditors an amount equal to any Payments which had accrued under the Senior Parent Finance Documents and which would have been Permitted Senior Parent Payments but for that Senior Parent Payment Stop Notice, Senior Payment Default or Second Lien Payment Default,
- then any Event of Default (including any cross default or similar provision under any other Debt Document) which may have occurred as a result of that suspension of Payments shall be waived and any Senior Parent Enforcement Notice which may have been issued as a result of that Event of Default shall be waived, in each case without any further action being required on the part of the Senior Parent Creditors or any other Creditor or Operating Facility Lender.

#### **6.7 Amendments and waivers: Senior Parent Creditors**

The Senior Parent Creditors, the relevant Senior Parent Debt Issuer, the Debtors and Third Party Security Providers may at any time amend or waive the terms of the Senior Parent Notes Finance Documents

and/or the Permitted Parent Financing Documents in accordance with their respective terms from time to time (and subject only to any consent required under them).

#### 6.8 Restrictions on enforcement by Senior Parent Creditors

Until the First/Second Lien Discharge Date, except with the prior consent of or as required by an Instructing Group:

- (a) no Senior Parent Creditor shall direct the Security Agent to enforce or otherwise require the enforcement of any Shared Security; and
- (b) no Senior Parent Creditor shall take or require the taking of any Enforcement Action in relation to the Senior Parent Guarantees, except as permitted under Clause 6.9 (*Permitted Senior Parent enforcement*), provided, however, that no such action required by the Security Agent need be taken except to the extent the Security Agent is otherwise entitled under this Agreement to direct such action.

#### 6.9 Permitted Senior Parent enforcement

- (a) Subject to Clause 6.12 (*Enforcement on behalf of Senior Parent Creditors*), the restrictions in Clause 6.8 (*Restrictions on enforcement by Senior Parent Creditors*) will not apply if:
  - (i) a Senior Parent Event of Default (the "**Relevant Senior Parent Default**") is continuing;
  - (ii) each Senior Agent has received a notice of the Relevant Senior Parent Default specifying the event or circumstance in relation to the Relevant Senior Parent Default from the relevant Senior Parent Agent;
  - (iii) a Senior Parent Standstill Period (as defined below) has elapsed; and
  - (iv) the Relevant Senior Parent Default is continuing at the end of the relevant Senior Parent Standstill Period.
- (b) Promptly upon becoming aware of a Senior Parent Event of Default, the relevant Senior Parent Agent may by notice (a "**Senior Parent Enforcement Notice**") in writing notify the Senior Agents of the existence of such Senior Parent Event of Default.

#### 6.10 Senior Parent Standstill Period

In relation to a Relevant Senior Parent Default, a Senior Parent Standstill Period shall mean the period beginning on the date (the "**Senior Parent Standstill Start Date**") the relevant Senior Parent Agent serves a Senior Parent Enforcement Notice on each of the Senior Agents in respect of such Relevant Senior Parent Default and ending on the earliest to occur of:

- (a) the date falling 179 days after the Senior Parent Standstill Start Date;
- (b) the date the Senior Secured Parties take any Enforcement Action in relation to a particular Senior Parent Guarantor, provided, however, that if a Senior Parent Standstill Period ends pursuant to this paragraph (b), the Senior Parent Finance Parties may only take the same Enforcement Action in relation to the Senior Parent Guarantor as the Enforcement Action taken by the Senior Secured

Parties against such Senior Parent Guarantor and not against any other member of the Group or (to the extent not a Senior Parent Guarantor) Third Party Security Provider;

- (c) the date of an Insolvency Event in relation to the relevant Senior Parent Debt Issuer or a particular Senior Parent Guarantor against whom Enforcement Action is to be taken;
- (d) the expiry of any other Senior Parent Standstill Period outstanding at the date such first-mentioned Senior Parent Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy);
- (e) the date on which the consent of each of the Senior Facility Agent (acting on the instructions of the Majority Senior Lenders), any Senior Notes Trustee (acting on behalf of the Senior Noteholders), any Senior Creditor Representative (acting on the instructions of the Majority Permitted Senior Financing Creditors) and any Second Lien Creditor Representative (acting on the instructions the Majority Permitted Second Lien Financing Creditors) has been obtained; and
- (f) a failure to pay the principal amount outstanding on any Senior Parent Notes or on any Permitted Parent Financing Debt, as the case may be, at the final stated maturity of the amounts outstanding on the Senior Parent Notes or on the Permitted Parent Financing Debt, as the case may be (provided that (i) unless the Senior Lender Discharge Date has occurred or as otherwise agreed by the Majority Senior Lenders and the Parent, such final stated maturity does not breach any maturity restrictions applicable to such Senior Parent Liabilities in the Senior Financing Agreements (as applicable) (or, in the case of any amendment which has the effect of shortening the maturity date of any Senior Parent Liabilities, would not breach any such maturity restrictions applicable to such Senior Parent Liabilities in the Senior Financing Agreements (as applicable) were that Senior Parent Liability to be incurred at the time of that amendment and with that amended maturity date) and (ii) unless the Permitted Second Lien Financing Discharge Date has occurred or as otherwise agreed by the Majority Second Lien Creditors and the Parent, such final stated maturity does not breach any maturity restrictions applicable to such Senior Parent Liabilities in the Permitted Second Lien Financing Documents (as applicable) (or, in the case of any amendment which has the effect of shortening the maturity date of any Senior Parent Liabilities, would not breach any such maturity restrictions applicable to such Senior Parent Liabilities in the Permitted Second Lien Financing Documents (as applicable) were that Senior Parent Liability to be incurred at the time of that amendment and with that amended maturity date)),

the "**Senior Parent Standstill Period**".

#### 6.11 Subsequent Senior Parent Notes Defaults

The Senior Parent Finance Parties may take Enforcement Action under Clause 6.9 (*Permitted Senior Parent enforcement*) in relation to a Relevant Senior Parent Default even if, at the end of any relevant Senior Parent Standstill Period or at any later time, a further Senior Parent Standstill Period has begun as a result of any other Senior Parent Event of Default.

#### 6.12 Enforcement on behalf of Senior Parent Creditors

If the Security Agent has notified the Senior Parent Agents that it is enforcing Security created pursuant to any Security Document over shares of a Senior Parent Guarantor, no Senior Parent Creditor may take any action referred to in Clause 6.9 (*Permitted Senior Parent enforcement*) against that Senior Parent Guarantor while the Security Agent is taking steps to enforce that Security in accordance with the instructions of an Instructing Group where such action might be reasonably likely to adversely affect such enforcement or the amount of proceeds to be derived therefrom.

#### 6.13 Option to purchase: Senior Parent Creditors

- (a) Subject to paragraphs (b) and (c) below, any of the Senior Parent Agent(s) (on behalf of the Senior Parent Creditors) may, after a Senior Acceleration Event, by giving not less than 10 days' notice to the Security Agent, require the transfer to the Senior Parent Creditors (or to a nominee or nominees), in accordance with Clause 19.3 (*Change of Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor*), of all, but not part, of the rights, benefits and obligations in respect of the Senior Secured Liabilities and the Operating Facility Liabilities if:
- (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the Senior Facilities Agreement (in the case of the Senior Lender Liabilities), any Senior Notes Indenture(s) pursuant to which any Senior Notes remain outstanding (in the case of the Senior Notes Liabilities), any Permitted Senior Financing Agreement pursuant to which any relevant Permitted Senior Financing Liabilities remain outstanding (in the case of the Permitted Senior Financing Liabilities), any Permitted Second Lien Financing Agreement pursuant to which any relevant Permitted Second Lien Financing Liabilities remain outstanding (in the case of the Permitted Second Lien Financing Liabilities) and/or any Operating Facility Documents pursuant to which any relevant Operating Facility Liabilities remain outstanding (in the case of the Operating Facility Liabilities);
  - (ii) any conditions relating to such a transfer contained in the Senior Facilities Agreement (in the case of the Senior Lender Liabilities), any Senior Notes Indenture(s) pursuant to which any Senior Notes remain outstanding (in the case of the Senior Notes Liabilities), any Permitted Senior Financing Agreement pursuant to which any relevant Permitted Senior Financing Liabilities remain outstanding (in the case of the Permitted Senior Financing Liabilities), any Permitted Second Lien Financing Agreement pursuant to which any relevant Permitted Second Lien Financing Liabilities remain outstanding (in the case of the Permitted Second Lien Financing Liabilities) and/or any Operating Facility Documents pursuant to which any relevant Operating Facility Liabilities remain outstanding (in the case of the Operating Facility Liabilities) are complied with, other than:
    - (A) any requirement to obtain the consent of, or consult with, any Debtor, Third Party Security Provider or other member of the Group relating to such transfer, which consent or consultation shall not be required; and
    - (B) to the extent to which all the Senior Parent Creditors (acting as a whole) provide cash cover for any Letter of Credit, the consent of the relevant Issuing Bank relating to such transfer;

(iii)

(A) the Senior Facility Agent, on behalf of the Senior Lenders, is paid an amount equal to the aggregate of:

- (I) any amounts provided as cash cover by the Senior Parent Creditors for any Letter of Credit (as envisaged in paragraph (ii)(B) above);
- (II) all of the Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Facilities Agreement if the Senior Facilities were being prepaid by the relevant Debtors on the date of that payment; and
- (III) all costs and expenses (including legal fees) incurred by the Senior Facility Agent, the Senior Lenders and/or the Security Agent as a consequence of giving effect to that transfer;

(B) the applicable Senior Notes Trustee, on behalf of the relevant Senior Notes Creditors, is paid an amount equal to the aggregate of:

- (I) all of the Senior Notes Liabilities at that time (whether or not due), including all amounts that would have been payable (including any prepayment premium or make-whole amount) under the Senior Notes Indenture if the Senior Notes were being redeemed by the relevant Debtors on the date of that payment; and
- (II) all costs and expenses (including legal fees) incurred by the Senior Notes Trustee and/or the Senior Notes Creditors as a consequence of giving effect to that transfer;

(C) the applicable Senior Creditor Representative, on behalf of the relevant Permitted Senior Financing Creditors, is paid an amount equal to the aggregate of:

- (I) any amount provided as cash cover by the Senior Parent Creditors for any Letter of Credit (as envisaged in paragraph (ii)(B) above);
- (II) all of the Permitted Senior Financing Liabilities at that time (whether or not due), including all amounts that would have been payable (including any prepayment premium or make-whole amount) under the Permitted Senior Financing Documents if the Permitted Senior Financing Debt was being prepaid or redeemed (as applicable) by the relevant Debtors on the date of that payment; and
- (III) all costs and expenses (including legal fees) incurred by the Senior Creditor Representative, the Permitted Senior Financing Creditors and/or the Security Agent as a consequence of giving effect to that transfer;

(D) the Operating Facility Lenders are paid an amount equal to the aggregate of:

- (I) all of the Operating Facility Liabilities at that time (whether or not due), including all amounts that would have been payable under the Operating Facility Documents

- if the Operating Facilities were being prepaid by the relevant Debtors on the date of that payment; and
- (II) all costs and expenses (including legal fees) incurred by the Operating Facility Lenders and/or the Security Agent as a consequence of giving effect to that transfer; and
- (E) the applicable Second Lien Creditor Representative, on behalf of the relevant Permitted Second Lien Financing Creditors, is paid an amount equal to the aggregate of:
- (I) all of the Permitted Second Lien Financing Liabilities at that time (whether or not due), including all amounts that would have been payable (including any prepayment premium or make-whole amount) under the Permitted Second Lien Financing Documents if the Permitted Second Lien Financing Debt was being prepaid or redeemed (as applicable) by the relevant Debtors on the date of that payment; and
- (II) all costs and expenses (including legal fees) incurred by the Second Lien Creditor Representative, the Permitted Second Lien Financing Creditors and/or the Security Agent as a consequence of giving effect to that transfer;
- (iv) as a result of that transfer the Senior Lenders, the Senior Notes Creditors, the Permitted Senior Financing Creditors, the Permitted Second Lien Financing Creditors and the Operating Facility Lenders have no further actual or contingent liability to the Parent or any other Debtor under the relevant Secured Debt Documents;
- (v) an indemnity is provided from each Senior Parent Creditor (other than any Senior Parent Agent) (or from another third party acceptable to all the Senior Lenders, the Senior Notes Creditors, the Permitted Senior Financing Creditors, the Permitted Second Lien Financing Creditors and the Operating Facility Lenders) in a form reasonably satisfactory to each Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor and Operating Facility Lender in respect of all costs, expenses, losses and liabilities which may be sustained or incurred by any Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Operating Facility Lender in consequence of any sum received or recovered by any Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Operating Facility Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Operating Facility Lender for any reason; and
- (vi) the transfer is made without recourse to, or representation or warranty from, the Senior Lenders, the Senior Notes Creditors, the Permitted Senior Financing Creditors, the Permitted Second Lien Financing Creditors or the Operating Facility Lenders, except that each Senior Lender, Senior Notes Creditor, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor and Operating Facility Lender shall be deemed to have represented and warranted on the date of

that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

(b) Subject to paragraph (b) of Clause 6.14 (*Hedge Transfer: Senior Parent Creditors*), a Senior Parent Agent (on behalf of all the Senior Parent Creditors) may only require a Senior Secured Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 6.14 (*Hedge Transfer: Senior Parent Creditors*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 6.14 (*Hedge Transfer: Senior Parent Creditors*), no Senior Secured Liabilities Transfer may be required to be made.

(c) At the request of a Senior Parent Agent (on behalf of all the Senior Parent Creditors):

(i) the Senior Facility Agent shall notify the Senior Parent Agents of:

(A) the sum of the amounts described in paragraphs (a)(iii)(A)(II) and (III) above; and

(B) the amount of each Letter of Credit for which cash cover is to be provided to it by all the Senior Parent Creditors (acting as a whole);

(ii) any relevant Senior Notes Trustee shall notify the Senior Parent Agents of the sum of amounts described in paragraphs (a)(iii)(B)(I) and (II) above;

(iii) any relevant Senior Creditor Representative shall notify the Senior Parent Agents of:

(A) the sum of the amounts described in paragraphs (a)(iii)(C)(II) and (III) above; and

(B) the amount of each Letter of Credit for which cash cover is to be provided to it by all the Senior Parent Creditors (acting as a whole);

(iv) the Operating Facility Lenders shall notify the Senior Parent Agents of the sum of amounts described in paragraphs (a)(iii)(D)(I) and (II) above;

(v) the Second Lien Facility Agent shall notify the Senior Parent Agents of the sum of amounts described in paragraphs (a)(iii)(E)(I) and (II) above; and

(vi) any relevant Second Lien Creditor Representative shall notify the Senior Parent Agents of the sum of amounts described in paragraphs (a)(iii)(E)(I) and (II) above.

#### **6.14 Hedge Transfer: Senior Parent Creditors**

(a) A Senior Parent Agent (on behalf of all the Senior Parent Creditors, acting as a whole) may, by giving not less than 10 days' notice to the Security Agent, require a Hedge Transfer:

(i) if either:

(A) the Senior Parent Creditors require, at the same time, a Senior Secured Liabilities Transfer under Clause 6.13 (*Option to purchase: Senior Parent Creditors*); or

(B) all the Senior Parent Creditors (acting as a whole) require that Hedge Transfer at any time on or after the First/Second Lien Discharge Date; and

(ii) if:

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- (A) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements, in which case no Debtor, Third Party Security Provider or other member of the Group shall be entitled to withhold its consent to that transfer;
  - (B) any conditions (other than the consent of, or any consultation with, any Debtor, Third Party Security Provider or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
  - (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (1) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (2) all costs and expenses (including legal fees) incurred by such Hedge Counterparty as a consequence of giving effect to that transfer;
  - (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements;
  - (E) an indemnity is provided from each Senior Parent Creditor (other than any Senior Parent Agent) which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form reasonably satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason; and
  - (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) A Senior Parent Agent (acting on behalf of all the Senior Parent Creditors) and any Hedge Counterparty may agree (in respect of the Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by all the Senior Parent Creditors (acting as a whole) pursuant to paragraph (a) above shall not apply to that/those Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under that/those Hedging Agreement(s).
- (c) If a Senior Parent Agent is entitled to require a Hedge Transfer under this Clause 6.14, the Hedge Counterparties shall at the request of any Senior Parent Agent provide details of the amounts referred to in paragraph (a)(ii)(C) above.

## **7. INVESTOR LIABILITIES**

### **7.1 Restriction on Payment: Investor Liabilities**

Prior to the Final Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will, make any Payment of the Investor Liabilities at any time unless:



- (a) that Payment is permitted under Clause 7.2 (*Permitted Payments: Investor Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under Clause 7.6 (*Permitted enforcement: Investors*).

#### **7.2 Permitted Payments: Investor Liabilities**

Any member of the Group may directly or indirectly make any Payments in respect of Investor Liabilities (whether of principal, interest or otherwise) at any time if:

- (a) subject to paragraph (c) below (in the case of any Senior Parent Debt Proceeds Loan Liabilities), the Payment is not prohibited by the Debt Financing Agreements;
- (b) in relation to each Debt Financing Agreement that prohibits the Payment, the requisite Senior Secured Creditors or, as the case may be, Senior Parent Creditors under that Debt Financing Agreement consent to that Payment being made; or
- (c) in the case of any payments in respect of Senior Parent Debt Proceeds Loan Liabilities, that Payment would, if it were a Payment of the Senior Parent Notes Liabilities, constitute a Permitted Senior Parent Payment at that time.

#### **7.3 Payment obligations continue**

- (a) Neither the Parent nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document (including, without limitation, any Senior Parent Debt Proceeds Loan Agreement) by the operation of Clauses 7.1 (*Restriction on Payment: Investor Liabilities*) and 7.2 (*Permitted Payments: Investor Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.
- (b) The accrual and/or capitalisation of interest (if any) in accordance with any Senior Parent Debt Proceeds Loan Agreements (as the case may be) shall continue notwithstanding the operation of Clauses 7.1 (*Restriction on Payment: Investor Liabilities*) and Clause 7.2 (*Permitted Payments: Investor Liabilities*).

#### **7.4 No acquisition of Investor Liabilities**

Prior to the Final Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will:

- (a) enter into any Liabilities Acquisition in respect of any of the Investor Liabilities with any person which is not a member of the Group; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition in respect of any of the Investor Liabilities (unless that Liabilities Acquisition would not have been prohibited by this paragraph (b) if made by a member of the Group),  
  
in each case pursuant to which any payment is made by a member of the Group to a person which is not a member of the Group in respect of Investor Liabilities, unless:
  - (i) that action is not prohibited by the Debt Financing Agreements;

- (ii) the relevant Liabilities Acquisition relates to Investor Liabilities (or rights, benefits and/or obligations in relation thereto) in respect of which a Payment could be made under Clause 7.2 (*Permitted Payments: Investor Liabilities*); or
- (iii) in relation to each Debt Financing Agreement that prohibits that action, the requisite Senior Secured Creditors or, as the case may be, Senior Parent Creditors under that Debt Financing Agreement consent to that action.

#### **7.5 Restrictions on enforcement: Investors**

Subject to Clause 7.6 (*Permitted enforcement: Investors*):

- (a) in the case of any Enforcement Action in respect of any Senior Parent Debt Proceeds Loan, such Enforcement Action is being taken by a Senior Parent Finance Party (or any agent, trustee or other representative on its behalf) and such Enforcement Action would be permitted to be taken by such person if such Enforcement Action were instead in respect of Senior Parent Liabilities and taken pursuant to Clause 6.8 (*Restrictions on enforcement by Senior Parent Creditors*) and Clause 6.9 (*Permitted Senior Parent enforcement*); or
- (b) unless otherwise agreed by an Instructing Group,  
the Investors shall not be entitled to take any Enforcement Action in respect of any Investor Liabilities at any time prior to the Final Discharge Date.

#### **7.6 Permitted enforcement: Investors**

After the occurrence of an Insolvency Event in relation to the Parent, the Investors may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of the Investors in accordance with Clause 9.5 (*Filing of claims*)), exercise any right it may otherwise have against the Parent to:

- (a) accelerate any of the Investor Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss given in respect of any Investor Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Investor Liabilities; or
- (d) claim and prove in the liquidation of the Parent for any Investor Liabilities owing to it.

#### **7.7 Investor Liabilities: exceptions**

Notwithstanding anything to the contrary, nothing in this Agreement or any of the Secured Debt Documents shall prohibit or restrict:

- (a) any Payment made to an Investor under and in accordance with the terms of any Secured Debt Document (provided that, for the avoidance of doubt, this paragraph (a) shall not apply to a Payment which is not made under a Secured Debt Document or a Payment which is expressly prohibited by Clause 4 (*Hedge Counterparties and Hedging Liabilities*), Clause 5 (*Permitted*

*Second Lien Financing Creditors and Second Lien Liabilities) and/or Clause 6 (Senior Parent Creditors and Senior Parent Liabilities));*

- (b) any Payment or other return made by way of a roll-up or capitalisation of any amount, an issue of shares, an incurrence of indebtedness constituting Investor Liabilities (including the issue of payment-in-kind instruments) or any other similar or equivalent step, action or arrangement;
- (c) any forgiveness, write-off or capitalisation of Investor Liabilities (or any other similar or equivalent step or action);
- (d) any payment made (whether cash or in kind) or other step or action taken to facilitate any Payment (or other matter) in respect of any Investor Liabilities (in each case to the extent that such Payment or other matter is not prohibited by this Clause 7);
- (e) any Liabilities Acquisition (including pursuant to clause 29.14 (*Debt Purchase Transactions*) of the Senior Facilities Agreement and any equivalent provisions of the other Debt Financing Agreements) and any payments or other actions arising in connection therewith (in each case unless that Liabilities Acquisition is otherwise prohibited by the terms of the Debt Financing Agreements); or
- (f) any Investor from granting any Security over or in relation to the Investor Liabilities or any related rights in respect thereof.

## **8. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES**

### **8.1 Restriction on Payment: Intra-Group Liabilities**

Prior to the Final Discharge Date, the Debtors shall not, and the Parent shall procure that no other member of the Group will, make any Payments of the Intra-Group Liabilities at any time unless:

- (a) that Payment is permitted under Clause 8.2 (*Permitted Payments: Intra-Group Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 8.7 (*Permitted enforcement: Intra-Group Lenders*).

### **8.2 Permitted Payments: Intra-Group Liabilities**

- (a) Subject to paragraph (b) below, any member of the Group may directly or indirectly make any Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) at any time.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred and is continuing and the Security Agent (acting on the instructions of an Instructing Group) has delivered a written notice to the Parent stating that no Payments may be made in respect of the Intra-Group Liabilities, in each case unless:
  - (i) an Instructing Group consents to that Payment being made; or
  - (ii) in relation to each Debt Financing Agreement that prohibits that Payment being made, the requisite Senior Secured Creditors or, as the case may be, Senior Parent Creditors under that Debt Financing Agreement consent to that action; or

(iii) that Payment is made to facilitate Payment of:

(A) prior to the First/Second Lien Discharge Date, any Senior Liabilities, any Agent Liabilities, Senior Notes Trustee Amounts and/or Senior Parent Notes Trustee Amounts; and

(B) on or after the First/Second Lien Discharge Date, any Senior Parent Liabilities or, as the case may be, Senior Parent Debt Proceeds Loan Liabilities.

### 8.3 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clause 8.1 (*Restriction on Payment: Intra-Group Liabilities*) and Clause 8.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

### 8.4 Acquisition of Intra-Group Liabilities

(a) Subject to paragraph (b) below, each Debtor may, and may permit any other member of the Group to:

(i) enter into any Liabilities Acquisition; or

(ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition, in respect of any Intra-Group Liabilities at any time.

(b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if, at the time of that action, an Acceleration Event has occurred and is continuing and the Security Agent (acting on the instructions of an Instructing Group) has delivered a written notice to the Parent stating that no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities.

(c) The restrictions in paragraph (b) above shall not apply if:

(i) an Instructing Group consents to that action; or

(ii) that action is taken to facilitate Payment of:

(A) prior to the First/Second Lien Discharge Date, any Senior Liabilities, any Agent Liabilities, Senior Notes Trustee Amounts and/or Senior Parent Notes Trustee Amounts; and

(B) on or after the First/Second Lien Discharge Date, any Senior Parent Liabilities or, as the case may be, Senior Parent Debt Proceeds Loan Liabilities.

### 8.5 Security: Intra-Group Lenders

Prior to the Final Discharge Date, the Intra-Group Lenders may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities unless:

(a) that Security, guarantee, indemnity or other assurance against loss is not prohibited by the Debt Financing Agreements;

- (b) prior to the First/Second Lien Discharge Date, in relation to each Senior Financing Agreement that prohibits that Security, guarantee, indemnity or other assurance against loss, the requisite Senior Secured Creditors under that Senior Financing Agreement consent to that Security, guarantee, indemnity or other assurance against loss; or
- (c) on or after the First/Second Lien Discharge Date, in relation to each Senior Parent Financing Agreement that prohibits that Security, guarantee, indemnity or other assurance against loss, the requisite Senior Parent Creditors under that Senior Parent Financing Agreement consent to that Security, guarantee, indemnity or other assurance against loss.

#### **8.6 Restriction on enforcement: Intra-Group Lenders**

Subject to Clause 8.7 (*Permitted enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

#### **8.7 Permitted enforcement: Intra-Group Lenders**

After the occurrence of an Insolvency Event in relation to any Group Company, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 9.5 (*Filing of claims*)), exercise any right it may otherwise have against that Group Company to:

- (a) accelerate any of that Group Company's Intra-Group Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss given by that Group Company in respect of any Intra-Group Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Intra-Group Liabilities of that Group Company; or
- (d) claim and prove in the liquidation of that Group Company for the Intra-Group Liabilities owing to it.

#### **8.8 Intra-Group Liabilities: exceptions**

Notwithstanding anything to the contrary in this Agreement or any other Secured Debt Document and without imposing any additional obligation or restriction on any member of the Group, nothing in this Agreement (including this Clause 8 or Clause 19 (*Changes to the Parties*)) or any other Secured Debt Document shall prohibit or restrict any capitalisation, forgiveness, write-off, waiver, release, transfer or other discharge of any Intra-Group Liabilities (or any amounts due, payable or owing in connection therewith) or any other amount due, payable or owing by one member of the Group to another member of the Group, in the case of Intra-Group Liabilities unless an Acceleration Event has occurred and is continuing and the Security Agent (acting on the instructions of an Instructing Group) has delivered a written notice to the Parent stating that no such action shall be permitted without the prior consent of an Instructing Group.

## 9. EFFECT OF INSOLVENCY EVENT

### 9.1 SFA Cash Cover

This Clause 9 is subject to Clause 15.4 (*Turnover of enforcement proceeds*) and, in the case of a Notes Trustee only, to Clause 26.1 (*Liability*).

### 9.2 Payment of distributions

- (a) After the occurrence of an Insolvency Event in relation to any Debtor or Third Party Security Provider or, following an Acceleration Event which is continuing, any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group or (to the extent arising from any Third Party Security) Third Party Security Provider in respect of Liabilities owed to that Party shall (in the case of any Creditor or Operating Facility Lender, only to the extent that such distribution would otherwise constitute a receipt or recovery of a type subject to the provisions of Clause 10.2 (*Turnover by the Creditors*)) and, in all cases if prior to a Distress Event, only if required by the Security Agent acting on the instructions of an Instructing Group), subject to receiving payment instructions and any other relevant information from the Security Agent and to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group or Third Party Security Provider to pay that distribution to the Security Agent until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 14 (*Application of proceeds*).

### 9.3 Set-Off

- (a) Subject to paragraph (b) below, to the extent that any member of the Group's or Third Party Security Provider's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor and any Operating Facility Lender which benefited from that set-off shall (in the case of any Creditor or Operating Facility Lender, only to the extent that the relevant discharge constitutes a receipt or recovery of a type subject to the provisions of Clause 10.2 (*Turnover by the Creditors*)) and, in all cases if prior to a Distress Event, only if required by the Security Agent acting on the instructions of an Instructing Group), subject to receiving payment instructions and any other relevant information from the Security Agent, pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 14 (*Application of proceeds*).
- (b) Paragraph (a) above shall not apply to:
- (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction from a Permitted Gross Amount of a Multi-account Overdraft Facility to or towards its Designated Net Amount;
  - (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty;
  - (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; and

- (vi) any set-off which gives effect to a Permitted Payment (or another payment or distribution not prohibited by the terms of this Agreement) which is otherwise permitted to be made under this Agreement notwithstanding the occurrence of the relevant Insolvency Event.

#### 9.4 Non-cash distributions

Subject to Clause 13.1 (*Non-Distressed Disposals*) and Clause 13.2 (*Distressed Disposals*), if the Security Agent or any other Secured Party receives a distribution in a form other than in cash in respect of any of the Liabilities, the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

#### 9.5 Filing of claims

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount), after the occurrence of an Insolvency Event in relation to any Debtor or Third Party Security Provider (or, following an Acceleration Event which is continuing, any member of the Group), each Creditor and each Operating Facility Lender (in the case of a Senior Parent Creditor, to the extent relating to or affecting the Shared Security or the assets secured by such Security only) irrevocably authorises the Security Agent (acting in accordance with Clause 9.7 (*Security Agent instructions*)), on its behalf, to:

- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against that member of the Group or Third Party Security Provider;
- (b) demand, sue, prove and give receipt for any or all of that member of the Group's or Third Party Security Provider's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of that member of the Group's or Third Party Security Provider's Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that member of the Group's or Third Party Security Provider's Liabilities.

#### 9.6 Creditors' actions

Each Creditor and each Operating Facility Lender will:

- (a) do all things that the Security Agent (acting in accordance with Clause 9.7 (*Security Agent instructions*)) reasonably requests in order to give effect to this Clause 9; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 9 or if the Security Agent (acting in accordance with Clause 9.7 (*Security Agent instructions*)) requests that a Creditor or an Operating Facility Lender take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with Clause 9.7 (*Security Agent instructions*)) or grant a power of attorney to the Security Agent (on such terms as the Security Agent (acting in accordance with Clause 9.7 (*Security Agent instructions*)) may reasonably require, although no Notes Trustee shall be under any obligation to grant such powers of attorney) to enable the Security Agent to take such action.

#### 9.7 Security Agent instructions

For the purposes of Clause 9.5 (*Filing of claims*) and Clause 9.6 (*Creditors' actions*) the Security Agent shall act:

- (a) (except in relation to a Senior Parent Debt Issuer to the extent relating to Liabilities in respect of Senior Parent Notes and/or Permitted Parent Financing Debt where that Senior Parent Debt Issuer is the issuer or, as the case may be, the borrower) on the instructions of the group of Primary Creditors entitled, at that time, to give instructions under Clause 12.2 (*Enforcement instructions*) or Clause 12.3 (*Manner of enforcement*); or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

#### 10. TURNOVER OF RECEIPTS

##### 10.1 SFA Cash Cover

This Clause 10 is subject to Clause 14.4 (*Treatment of SFA Cash Cover and Senior Lender cash collateral*) and, in the case of a Notes Trustee only, to Clause 26.1 (*Liability*).

##### 10.2 Turnover by the Creditors

Subject to Clause 10.3 (*Exclusions*), Clause 10.4 (*Permitted assurance and receipts*), Clause 16 (*Additional debt*) and, in the case of a Notes Trustee only, to Clause 26.1 (*Liability*), if at any time prior to the Final Discharge Date, any Creditor or Operating Facility Lender receives or recovers from any member of the Group or (in relation to any Third Party Security) any Third Party Security Provider:

- (a) any Payment or distribution of, or on account of or in relation to:
  - (i) any of the Liabilities which is prohibited by the terms of this Agreement; or
  - (ii) following the occurrence of a Senior Distress Event which is continuing, any Senior Lender Liabilities, Hedging Liabilities, Senior Notes Liabilities, Permitted Senior Financing Liabilities or Operating Facility Liabilities;
- (b) other than where Clause 9.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment (or another payment or distribution not otherwise prohibited by the terms of this Agreement);
- (c) notwithstanding paragraphs (a) and (b) above, and other than where Clause 9.3 (*Set-Off*) applies, any amount:
  - (i) on account of, or in relation to, any of the Liabilities after the occurrence of a Distress Event (including as a result of any litigation or proceedings against a member of the Group or Third Party Security Provider, other than after the occurrence of an Insolvency Event in respect of that member of the Group or Third Party Security Provider); or
  - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event, other than, in each case:



(A) any amount received or recovered in accordance with Clause 14 (*Application of proceeds*); and

(B) in the case of Intra-Group Liabilities, any amount received or recovered in accordance with Clause 8 (*Intra-Group Lenders and Intra-Group Liabilities*) (to the extent permitted to be received or recovered notwithstanding that an Acceleration Event is continuing);

(d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 14 (*Application of proceeds*); or

(e) other than where Clause 9.3 (*Set-Off*) or Clause 16 (*Additional debt*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group or Third Party Security Provider which is not in accordance with Clause 14 (*Application of proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group or Third Party Security Provider,

that Creditor or Operating Facility Lender will (in the case of any receipts and recoveries referred to in paragraph (e) above, if a Distress Event has not occurred, only if required by the Security Agent acting on the instructions of an Instructing Group):

(i) in relation to receipts and recoveries not received or recovered by way of set-off:

(A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and, subject to receiving payment instructions and any other relevant information from the Security Agent, promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement; and

(B) subject to receiving payment instructions and any other relevant information from the Security Agent, promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and

(ii) in relation to receipts and recoveries received or recovered by way of set-off, subject to receiving payment instructions and any other relevant information from the Security Agent, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

### 10.3 Exclusions

Clause 10.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

(a) by way of:

(i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;

(ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;

(iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or

- (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that that netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount);
- (c) made in accordance with Clause 15 (*Equalisation*);
- (d) to the extent that such receipt or recovery was funded directly or indirectly with Permitted Senior Financing Debt, Permitted Second Lien Financing Debt, Permitted Parent Financing Debt and/or the proceeds of any indebtedness incurred under or pursuant to any Senior Notes and/or Senior Parent Notes;
- (e) in respect of funds received by the Security Agent for its own account; or
- (f) that has been distributed by a Senior Notes Trustee to the Senior Noteholders in accordance with the Senior Notes Finance Documents or by a Senior Parent Notes Trustee to the Senior Parent Noteholders in accordance with the Senior Parent Finance Documents, unless the Senior Notes Trustee or the Senior Parent Notes Trustee, as applicable, had received at least two Business Days' prior notice that an Acceleration Event or an Insolvency Event has occurred in relation to a Debtor or that the receipt or recovery falls within Clause 10.2 (*Turnover by the Creditors*) in each case prior to distribution of the relevant amount.

#### 10.4 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Primary Creditor, Operating Facility Lender or Investor to:

- (a) arrange with any person which is not a member of the Group or Third Party Security Provider any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub participation); or
- (b) make any assignment or transfer permitted by Clause 19 (*Changes to the Parties*),  
which:
  - (i) is not prohibited by any Debt Financing Agreement; and
  - (ii) is not in breach of:
    - (A) Clause 4.5 (*No acquisition of Hedging Liabilities*); or
    - (B) Clause 7.4 (*No acquisition of Investor Liabilities*),

and that Primary Creditor, Operating Facility Lender or Investor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

#### 10.5 Sums received by Debtors and Third Party Security Providers

If any of the Debtors or (to the extent arising from any Third Party Security) any Third Party Security Provider receives or recovers any sum which, under the terms of any of the Secured Debt Documents, should have been paid to the Security Agent, that Debtor or Third Party Security Provider will:

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and, unless otherwise agreed by the Security Agent and subject to receiving payment instructions and any other relevant information from the Security Agent, promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement; and
- (b) unless otherwise agreed by the Security Agent and subject to receiving payment instructions and any other relevant information from the Security Agent, promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement.

#### 10.6 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 10 should fail or be unenforceable, the affected Creditor, Operating Facility Lender, Debtor or Third Party Security Provider will, unless otherwise agreed by the Security Agent and subject to receiving payment instructions and any other relevant information from the Security Agent, promptly pay an amount equal to that receipt or recovery to the Security Agent for application in accordance with the terms of this Agreement.

### 11. REDISTRIBUTION

#### 11.1 Recovering Creditor's rights

- (a) Any amount paid by a Creditor or an Operating Facility Lender (a "**Recovering Creditor**") to the Security Agent under Clause 9 (*Effect of Insolvency Event*) or Clause 10 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Debtor or Third Party Security Provider and distributed to the Security Agent, other Agents, Arrangers, Primary Creditors and Operating Facility Lenders (each a "**Sharing Creditor**") in accordance with the terms of this Agreement.
- (b) On a distribution by the Security Agent under paragraph (a) above of a Payment received by a Recovering Creditor from a Debtor or Third Party Security Provider, as between the relevant Debtor or Third Party Security Provider and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Security Agent (the "**Shared Amount**") will be treated as not having been paid by that Debtor or Third Party Security Provider (as applicable).

#### 11.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor or Third Party Security Provider and is repaid by that Recovering Creditor to that Debtor or Third Party Security Provider, then:
  - (i) each Sharing Creditor shall, upon request of the Security Agent, pay to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the

Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and

- (ii) as between the relevant Debtor or Third Party Security Provider, each Recovering Creditor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Debtor or Third Party Security Provider.

- (b) The Security Agent shall not be obliged to pay any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

#### 11.3 Deferral of subrogation

- (a) No Creditor, Operating Facility Lender, Debtor or (to the extent relating to any Third Party Security) Third Party Security Provider will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor or Operating Facility Lender which ranks ahead of it in accordance with the priorities set out in Clause 2 (*Ranking and priority*) until such time as all of the Liabilities owing to each prior ranking Creditor and Operating Facility Lender (or, in the case of any Debtor or Third Party Security Provider, owing to each Creditor and Operating Facility Lender) have been irrevocably paid in full.
- (b) No Investor or Intra-Group Lender will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any other prior ranking Creditor or Operating Facility Lender until such time as all of the Liabilities owing to each prior ranking Creditor and Operating Facility Lender have been irrevocably paid in full.

### 12. ENFORCEMENT OF TRANSACTION SECURITY

#### 12.1 SFA Cash Cover

This Clause 12 is subject to Clause 14.4 (*Treatment of SFA Cash Cover and Senior Lender cash collateral*).

#### 12.2 Enforcement instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by:

- (i) an Instructing Group;
- (ii) if required under paragraph (c) below, the Enhanced Majority Second Lien Creditors; or
- (iii) if required under paragraph (d) below, the Majority Senior Parent Creditors.

- (b) Subject to the Transaction Security having become enforceable in accordance with its terms:

- (i) an Instructing Group; or
- (ii) to the extent permitted to enforce or to require the enforcement of the Transaction Security prior to the Senior Discharge Date under Clause 5.8 (*Permitted Second Lien enforcement*), the Enhanced Majority Second Lien Creditors; or

(iii) to the extent permitted to enforce or to require the enforcement of the Transaction Security prior to the First/Second Lien Discharge Date under Clause 6.9 (*Permitted Senior Parent enforcement*), the Majority Senior Parent Creditors,

may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.

(c) Prior to the Senior Discharge Date:

(i) if an Instructing Group has instructed the Security Agent not to enforce or to cease enforcing the Transaction Security; or

(ii) in the absence of instructions from an Instructing Group,

and, in each case, an Instructing Group has not required any Debtor or Third Party Security Provider to make a Distressed Disposal, the Security Agent shall give effect to any instructions to enforce the Transaction Security which the Enhanced Majority Second Lien Creditors are then entitled to give to the Security Agent under Clause 5.8 (*Permitted Second Lien enforcement*).

(d) Prior to the First/Second Lien Discharge Date:

(i) if an Instructing Group has instructed the Security Agent not to enforce or to cease enforcing the Transaction Security; or

(ii) in the absence of instructions from an Instructing Group,

and, in each case, an Instructing Group has not required any Debtor or Third Party Security Provider to make a Distressed Disposal, the Security Agent shall give effect to any instructions to enforce the Shared Security which the Majority Senior Parent Creditors are then entitled to give to the Security Agent under Clause 6.9 (*Permitted Senior Parent enforcement*).

(e) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 12.2.

(f) Subject to Clause 12.6 (*Security held by other Creditors*), no Secured Party:

(i) shall have any independent power to enforce, or to have recourse to, any Transaction Security or to exercise any rights or powers arising under the Security Documents; or

(ii) may enforce or have recourse to any Transaction Security,

except through the Security Agent in the manner contemplated by this Agreement.

### 12.3 Manner of enforcement

If the Transaction Security is being enforced pursuant to Clause 12.2 (*Enforcement instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator, examiner or equivalent officer of any Debtor or Third Party Security Provider to be appointed by the Security Agent) as:

(a) an Instructing Group;

(b) prior to the Senior Discharge Date, if:

(i) the Security Agent has, pursuant to paragraph (c) of Clause 12.2 (*Enforcement instructions*), given effect to instructions given by the Enhanced Majority Second Lien Creditors to enforce the Transaction Security; and

(ii) an Instructing Group has not given instructions as to the manner of enforcement of the Transaction Security,

the Enhanced Majority Second Lien Creditors; or

(c) prior to the First/Second Lien Discharge Date, if:

(i) the Security Agent has, pursuant to paragraph (d) of Clause 12.2 (*Enforcement instructions*), given effect to instructions given by the Majority Senior Parent Creditors to enforce the Transaction Security; and

(ii) an Instructing Group has not given instructions as to the manner of enforcement of the Transaction Security,

the Majority Senior Parent Creditors,

shall instruct or, in the absence of any such instructions, as the Security Agent sees fit (it being understood that, absent such instructions the Security Agent may elect to take no action).

#### **12.4 Exercise of voting rights**

(a) To the fullest extent permitted under applicable law, each Creditor (other than any Notes Trustee and, in the case of a Senior Parent Creditor, to the extent relating to or affecting the Shared Security or the assets secured by the Shared Security only) and each Operating Facility Lender agrees with the Security Agent that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre insolvency or rehabilitation or similar proceedings relating to any member of the Group or Third Party Security Provider as instructed by the Security Agent.

(b) The Security Agent shall give instructions for the purposes of paragraph (a) above as directed by an Instructing Group.

(c) Nothing in this Clause 12.4 entitles any Party to exercise or require any other Creditor or Operating Facility Lender to exercise such power of voting or representation to waive, reduce, discharge, extend the due date for payment or otherwise reschedule any of the Liabilities owed to that Creditor or Operating Facility Lender.

#### **12.5 Waiver of rights**

To the extent permitted under applicable law and subject to Clause 12.2 (*Enforcement instructions*), Clause 12.3 (*Manner of enforcement*), Clause 14 (*Application of proceeds*) and paragraph (c) of Clause 13.2 (*Distressed Disposals*), each of the Secured Parties, the Debtors and the Third Party Security Providers waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by

virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

#### 12.6 Security held by other Creditors

If any Transaction Security is held by a Creditor or Operating Facility Lender other than the Security Agent, then that Creditor or Operating Facility Lender may only enforce that Transaction Security in accordance with instructions given by an Instructing Group pursuant to this Clause 12 (and, for this purpose, reference to the "**Security Agent**" shall be construed as references to that Creditor or Operating Facility Lender).

#### 12.7 Consultation Period

- (a) Subject to paragraph (b) below, before giving any instructions to the Security Agent to enforce the Transaction Security or refrain or cease from enforcing the Transaction Security or to take any other Enforcement Action, the Agent(s) of the Creditors represented in the Instructing Group concerned (and, if applicable, any relevant Hedge Counterparties) shall consult with each other Agent, each other Hedge Counterparty, each Operating Facility Lender and the Security Agent in good faith about the instructions to be given by the Instructing Group for a period of not less than five Business Days (or, in the case of any consultation involving a Senior Notes Trustee, a Senior Parent Notes Trustee or a Creditor Representative in respect of any high yield notes, debt securities or other similar instruments, 15 days) from the date on which details of the proposed instructions are received by such Agents, Hedge Counterparties, Operating Facility Lenders and the Security Agent (or such shorter period as each Agent, Hedge Counterparty, Operating Facility Lender and the Security Agent shall agree) (the "**Consultation Period**"), and only following the expiry of a Consultation Period shall the Instructing Group be entitled to give any instructions to the Security Agent to enforce the Transaction Security or refrain or cease from enforcing the Transaction Security or take any other Enforcement Action.
- (b) No Agent or Hedge Counterparty shall be obliged to consult in accordance with paragraph (a) above and an Instructing Group shall be entitled to give any instructions to the Security Agent to enforce the Transaction Security or take any other Enforcement Action prior to the end of a Consultation Period (in each case provided that such instructions are consistent with any applicable requirements of this Agreement and the Security Documents) if:
- (i) the Transaction Security has become enforceable as a result of an Insolvency Event; or
  - (ii) the Instructing Group or any Agent of the Creditors represented in the Instructing Group determines in good faith (and notifies each other Agent, the Hedge Counterparties and the Security Agent) that to enter into such consultations and thereby delay the commencement of enforcement of the Transaction Security would reasonably be expected to have a material adverse effect on:
    - (A) the Security Agent's ability to enforce any of the Transaction Security; or
    - (B) the realisation proceeds of any enforcement of the Transaction Security,
- and, where this paragraph (b) applies:
- (I) any instructions shall be limited to those necessary to protect or preserve the interests of the Senior Secured Creditors on behalf of which the relevant Instructing

Group is acting in relation to the matters referred to in paragraphs (A) and (B) above; and

(II) the Security Agent shall act in accordance with the instructions first received.

- (c) As soon as reasonably practicable following receipt of any instructions from an Instructing Group to enforce the Transaction Security, refrain or cease from enforcing the Transaction Security or, as the case may be, take any other Enforcement Action, the Security Agent shall provide a copy of such instructions to each Agent, Hedge Counterparty and Operating Facility Lender (unless it received those instructions from that person).

#### **12.8 Duties owed**

Each of the Secured Parties and the Debtors and the Third Party Security Providers acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security prior to the First/Second Lien Discharge Date, the duties of the Security Agent and of any Receiver or Delegate owed to the Senior Parent Creditors in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to paragraph (c) of Clause 13.2 (*Distressed Disposals*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors or Third Party Security Providers under general law.

### **13. PROCEEDS OF DISPOSALS AND ADJUSTMENT OF MANDATORY PREPAYMENTS**

#### **13.1 Non-Distressed Disposals**

- (a) The Security Agent (on behalf of itself and the Secured Parties) hereby agrees (and is irrevocably authorised and instructed to do so without any consent, sanction, authority or further confirmation from any Creditor, Operating Facility Lender or Debtor) that it shall (at the request and cost of the relevant Debtor, Third Party Security Provider or the Parent) promptly release (or procure that any other relevant person releases) from the Transaction Security and the Secured Debt Documents:

(i) any Security (and/or any other claim relating to a Debt Document) over any asset which is the subject of:

(A) a disposal not prohibited by the terms of any Debt Financing Agreement (including a disposal to a member of the Group), but without prejudice to any obligation of any member of the Group in a Debt Financing Agreement to provide replacement security; or

(B) any other transaction not prohibited by the terms of any Debt Financing Agreement pursuant to which that asset will cease to be held or owned by a member of the Group or a Third Party Security Provider;

(ii) any Security (and/or any other claim relating to a Debt Document) over any document or other agreement requested in order for any member of the Group or any Third Party Security Provider to effect any amendment or waiver in respect of that document or agreement or otherwise exercise any rights, comply with any obligations or take any action in relation to that document or agreement (in each case to the extent not prohibited by the terms of any Debt Financing Agreement);



- (iii) any Security (and/or any other claim relating to a Debt Document) over any asset of any member of the Group which has ceased to be a Debtor or Third Party Security Provider (or will cease to be a Debtor or Third Party Security Provider simultaneously with such release); and
- (iv) any Security (and/or any other claim relating to a Debt Document) over any other asset to the extent that such release is in accordance with the terms of the Debt Financing Agreements.

In the case of a disposal of shares or other ownership interests in a Debtor or Third Party Security Provider (or any Holding Company of any Debtor or Third Party Security Provider), or any other transaction pursuant to which a Debtor or Third Party Security Provider (or any Holding Company of any Debtor or Third Party Security Provider) will cease to be a member of the Group or a Debtor or Third Party Security Provider (including, without limitation, pursuant to Clause 19.13 (*Resignation of a Debtor*) or Clause 19.15 (*Cessation of Third Party Security Provider*)), the Security Agent (on behalf of itself and the Secured Parties) hereby agrees (and is irrevocably authorised and instructed to do so without any consent, sanction, authority or further confirmation from any Creditor, Operating Facility Lender, other Secured Party, Debtor or Third Party Security Provider) that it shall (at the request and cost of the relevant Debtor, Third Party Security Provider or the Parent) promptly release (or procure that any other relevant person releases) that Debtor or Third Party Security Provider and, in each case, its Subsidiaries from all present and future liabilities (both actual and contingent) under the Secured Debt Documents and the respective assets of such Debtor or Third Party Security Provider and, in each case, its Subsidiaries (and the shares in any such Debtor, Third Party Security Provider and/or Subsidiary) from the Transaction Security and the Secured Debt Documents (including any claim relating to a Debt Document and any Guarantee Liabilities or Other Liabilities).

(b) When making any request for a release pursuant to paragraph (a)(i), (ii) or (iv) above, the Parent shall confirm in writing to the Security Agent that:

- (i) in the case of any release requested pursuant to paragraph (a)(i) or (ii) above, the relevant disposal or other action is not prohibited by the terms of any Debt Financing Agreement; or
- (ii) in the case of any release requested pursuant to paragraph (a)(iv) above, the relevant release is in accordance with the terms of the Debt Financing Agreements,

and the Security Agent shall be entitled to rely on that confirmation for all purposes under the Secured Debt Documents.

(c) The Security Agent shall (at the cost and expense of the relevant Debtor or the Parent but without the need for any further consent, sanction, authority or further confirmation from any Creditor, Operating Facility Lender, other Secured Party or Debtor) promptly enter into (or procure that any relevant person enters into) and deliver such documentation and/or take such other action as the Parent (acting reasonably) shall require to give effect to any release or other matter contemplated by this Clause 13.1 (including the issuance of any certificates of non-crystallisation of floating charges, any consent to dealing or any other similar or equivalent document that may be required or desirable).

- (d) Without prejudice to the foregoing and for the avoidance of doubt, if requested by the Parent in accordance with the terms of any of the Debt Financing Agreements (and provided that the requested action is not expressly prohibited by any of the other Debt Financing Agreements), the Security Agent and the other Creditors and Operating Facility Lenders shall (at the cost of the relevant Debtor, Third Party Security Provider and/or the Parent) promptly execute any guarantee, security or other release and/or any amendment, supplement or other documentation relating to the Security Documents as contemplated by the terms of any of the Debt Financing Agreements (and the Security Agent is authorised to execute, and will promptly execute if requested by the Parent, without the need for any further consent, sanction, authority or further confirmation from any Creditor or Operating Facility Lender, any such release or document on behalf of the Creditors and the Operating Facility Lenders). When making any request pursuant to this paragraph (d) the Parent shall confirm in writing to the Security Agent that such request is in accordance with the terms of a Debt Financing Agreement (and the requested action is not expressly prohibited by any of the other Debt Financing Agreements) and the Security Agent shall be entitled to rely on that confirmation for all purposes under the Secured Debt Documents.
- (e) For the avoidance of doubt and notwithstanding anything to the contrary in any Debt Document, nothing in any Security Document shall operate or be construed so as to prevent any transaction, matter or other step not prohibited by the terms of this Agreement or the Debt Financing Agreements (a "**Permitted Action**"). The Security Agent (on behalf of itself and the Secured Parties) hereby agrees (and is irrevocably authorised and instructed to do so without any consent, sanction, authority or further confirmation from any Party) that it shall (at the request and cost of the relevant Debtor or the Parent) promptly execute any release or other document and/or take such other action under or in relation to any Debt Document (or any asset subject or expressed to be subject to any Security Document) as is requested by the Parent in order to complete, implement or facilitate a Permitted Action. In the event that the Parent makes any request pursuant to and in reliance on the preceding sentence, the Security Agent shall be permitted to request a confirmation from the Parent that the relevant transaction, matter or other step is a Permitted Action and the Security Agent shall be entitled to rely on that confirmation for all purposes under the Secured Debt Documents.
- (f) For the avoidance of doubt and notwithstanding anything to the contrary in the Senior Parent Finance Documents, if any member of the Group is required or permitted under the Senior Debt Documents to apply the proceeds of any disposal or other transaction in prepayment, redemption or any other discharge or reduction of any Senior Liabilities:
- (i) no such application of those proceeds shall require the consent of any Party or Senior Parent Creditor or will result in a direct or indirect breach of any Senior Parent Finance Document; and
  - (ii) any such application shall discharge in full any obligation to apply those proceeds in prepayment, redemption or any other discharge or reduction of any Senior Parent Liabilities.

This paragraph (f) is without prejudice to any right of any member of the Group to apply any proceeds of any disposal or other transaction in prepayment, redemption or any other discharge or reduction of any Senior Parent Liabilities to the extent permitted or contemplated by this Agreement or any other Senior Debt Document.

(g) The Security Agent is irrevocably authorised by each Secured Party to (and will on the request and at the cost of the Parent):

(i) release the Transaction Security; and

(ii) release each Investor, each Debtor and each other member of the Group from all liabilities, undertakings and other obligations under the Secured Debt Documents,

on the Final Discharge Date (or at any time following such date on the request of the Parent).

### 13.2 Distressed Disposals

(a) Subject to paragraphs (d), (e), (f) and (g) below, if a Distressed Disposal is being effected the Security Agent is irrevocably authorised (at the cost of the relevant Debtor, Third Party Security Provider or the Parent and without any consent, sanction, authority or further confirmation from any Creditor, Operating Facility Lender, other Secured Party, Debtor or Third Party Security Provider):

(i) *release of Transaction Security/non-crystallisation certificates*: to release the Transaction Security or any other claim over the asset which is the subject of the Distressed Disposal and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;

(ii) *release of liabilities and Transaction Security on a share sale (Debtor)*: if the asset which is disposed of consists of shares in the capital of a Debtor, to release:

(A) that Debtor and any Subsidiary of that Debtor from all or any part of:

(I) its Borrowing Liabilities;

(II) its Guarantee Liabilities; and

(III) its Other Liabilities;

(B) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and

(C) any other claim of any Investor, Intra-Group Lender or other Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors, Operating Facility Lenders, Third Party Security Providers, Debtors and Agents;

(iii) *release of liabilities and Transaction Security on a share sale (Holding Company)*: if the asset which is disposed of consists of shares in the capital of any Holding Company of a Debtor, to release:

(A) that Holding Company and any Subsidiary of that Holding Company from all or any part of:

(I) its Borrowing Liabilities;

- (II) its Guarantee Liabilities; and
  - (III) its Other Liabilities;
  - (B) any Transaction Security granted by that Holding Company or any Subsidiary of that Holding Company over any of its assets; and
  - (C) any other claim of any Investor, Intra-Group Lender or other Debtor over that Holding Company's assets or over the assets of any Subsidiary of that Holding Company,
- on behalf of the relevant Creditors, Operating Facility Lenders, Third Party Security Providers, Debtors and Agents;
- (iv) *disposal of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent (acting in accordance with paragraph (h) below) decides to dispose of all or any part of:
- (A) the Liabilities; or
  - (B) the Debtor Liabilities,
- owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company:
- (I) (if the Security Agent, acting in accordance with paragraph (h) below, does not intend that any transferee of those Liabilities or Debtor Liabilities (the "**Transferee**") will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtor Liabilities, provided that, notwithstanding any other provision of any Debt Document, the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement; and
  - (II) (if the Security Agent, acting in accordance with paragraph (e) below, does intend that any Transferee will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of:
    - (1) all (and not part only) of the Liabilities owed to the Primary Creditors and the Operating Facility Lenders; and
    - (2) all or part of any other Liabilities and the Debtor Liabilities,
 on behalf of, in each case, the relevant Creditors, Operating Facility Lenders, Third Party Security Providers and Debtors;
- (v) *transfer of obligations in respect of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "**Disposed Entity**") and the Security Agent (acting in accordance with paragraph (h) below) decides to transfer

to another Debtor (the "**Receiving Entity**") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:

(A) the Intra-Group Liabilities; or

(B) the Debtor Liabilities,

to execute and deliver or enter into any agreement to:

(I) transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and

(II) (if the Receiving Entity is a Holding Company of the Disposed Entity which is also a guarantor of Senior Liabilities) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities are to be transferred.

(b) The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to paragraph (a)(iv) above) shall be paid to the Security Agent for application in accordance with Clause 14 (*Application of proceeds*) (to the extent that the asset disposed of constituted Charged Property, as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to paragraph (a)(iv)(II) above, as if that disposal of Liabilities or Debtor Liabilities had not occurred).

(c) In the case of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv)(II) above) effected by or at the request of the Security Agent (acting in accordance with paragraph (h) below), the Security Agent shall take reasonable care to obtain a fair market price in the prevailing market conditions (though the Security Agent shall have no obligation to postpone any such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).

(d) Where Borrowing Liabilities, Guarantee Liabilities and/or Other Liabilities would otherwise be released pursuant to paragraph (a) above, the Creditor or Operating Facility Lender concerned may elect to have those Borrowing Liabilities, Guarantee Liabilities and/or, as the case may be, Other Liabilities transferred to the Parent in which case the Security Agent is irrevocably authorised (to the extent legally possible and at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor, Operating Facility Lender, other Secured Party or Debtor) to execute such documents as are required to so transfer those Borrowing Liabilities, Guarantee Liabilities and/or, as the case may be, Other Liabilities.

(e) Subject to paragraphs (f) and (g) below, in the case of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv)(II) above) effected by or at the request of the Security Agent (acting in accordance with paragraph (h) below), unless the consent of each Senior Agent is otherwise obtained, it is a further condition to any release, transfer or disposal under paragraph (a) above that:

- (i) the proceeds of such disposal are in cash (or substantially all in cash); and
  - (ii) such sale or disposal is made:
    - (A) pursuant to a Public Auction in respect of which the Primary Creditors are entitled to participate; or
    - (B) where a Financial Adviser selected by the Security Agent has delivered an opinion in respect of such sale or disposal that the amount received in connection therewith is fair from a financial point of view, taking into account all relevant circumstances, including the method of enforcement, provided that the liability of such Financial Adviser may be limited to the amount of its fees in respect of such engagement (it being acknowledged that the Security Agent shall have no obligation to select or engage any Financial Adviser unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction).
  - (f) If prior to the Permitted Second Lien Financing Discharge Date a Distressed Disposal is being effected such that any Second Lien Liabilities will be released or disposed of, or any Transaction Security securing the Second Lien Liabilities will be released, it is a further condition to the release that either:
    - (i) each Second Lien Creditor Representative has approved the release; or
    - (ii) where shares or assets of a Second Lien Borrower or a Second Lien Guarantor are sold:
      - (A) the proceeds of such sale or disposal are in cash (or substantially in cash); and
      - (B) all claims of the Senior Creditors, the Senior Notes Creditors, the Permitted Senior Financing Creditors and the Operating Facility Lenders (other than in relation to performance bonds or guarantees or similar instruments) against a member of the Group (if any) all of whose shares (other than any minority interest not owned by members of the Group) are sold or disposed of pursuant to such Enforcement Action, are unconditionally released and discharged or sold or disposed of concurrently with such sale (and are not assumed by the purchaser or one of its Affiliates) and all Security under the Security Documents in respect of the assets that are sold or disposed of is simultaneously and unconditionally released and discharged concurrently with such sale, provided that if each of the Senior Facility Agent, any Senior Notes Trustee and any Senior Creditor Representative (acting reasonably and in good faith):
        - (I) determines that the Senior Secured Creditors will recover a greater amount if any such claim is sold or otherwise transferred to the purchaser or one of its Affiliates and not released and discharged; and
        - (II) serves a written notice on the Security Agent confirming the same,
- (C) such sale or disposal is made:

(I) pursuant to a Public Auction in respect of which the Primary Creditors are entitled to participate; or

(II) where a Financial Adviser selected by the Security Agent has delivered an opinion in respect of such sale or disposal that the amount received in connection therewith is fair from a financial point of view, taking into account all relevant circumstances, including the method of enforcement, provided that the liability of such Financial Adviser may be limited to the amount of its fees in respect of such engagement (it being acknowledged that the Security Agent shall have no obligation to select or engage any Financial Adviser unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction).

For the purposes of this Agreement, "**entitled to participate**" shall be interpreted to mean that any offer, or indication of a potential offer, that a holder of any Senior Liabilities or Senior Parent Liabilities makes shall be considered by those running the Public Auction against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder. For the avoidance of doubt, if, after having applied those same criteria, the offer or indication of a potential offer made by a holder of any Senior Liabilities or Senior Parent Liabilities is not considered by those running the Public Auction to be sufficient to continue in the sale process, such consideration being against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder (such continuation may include being invited to review additional information or being invited to have an opportunity to make a subsequent or revised offer, whether in another round of bidding or otherwise), then the right to participate which a holder of any Senior Liabilities or Senior Parent Liabilities under this Agreement shall be deemed to be satisfied.

(g) If prior to the Senior Parent Discharge Date a Distressed Disposal is being effected such that the Senior Parent Guarantees or any Shared Security over assets of a Senior Parent Debt Issuer or assets of or shares in any Senior Parent Guarantor will be released and/or any Senior Parent Liabilities will be released or disposed of, it is a further condition to the release that either:

(i) each Senior Parent Agent has approved the release; or

(ii) where shares or assets of a Senior Parent Guarantor or assets of a Senior Parent Debt Issuer are sold:

(A) the proceeds of such sale or disposal are in cash (or substantially in cash); and

(B) all claims of the Senior Secured Creditors and the Operating Facility Lenders (other than in relation to performance bonds or guarantees or similar instruments) against a member of the Group (if any) all of whose shares (other than any minority interest not owned by members of the Group) are sold or disposed of pursuant to such Enforcement Action, are unconditionally released and discharged or sold or disposed of concurrently with such sale (and are not assumed by the purchaser or one of its Affiliates) and all Security under the Security Documents in respect of the assets that are sold or disposed of is simultaneously

and unconditionally released and discharged concurrently with such sale, provided that if each Senior Agent (acting reasonably and in good faith):

(I) determines that the Senior Secured Creditors will recover a greater amount if any such claim is sold or otherwise transferred to the purchaser or one of its Affiliates and not released and discharged; and

(II) serves a written notice on the Security Agent confirming the same,

the Security Agent shall be entitled to sell or otherwise transfer such claim to the purchaser or one of its Affiliates; and

(C) such sale or disposal is made:

(I) pursuant to a Public Auction in respect of which the Primary Creditors are entitled to participate; or

(II) where a Financial Adviser selected by the Security Agent has delivered an opinion in respect of such sale or disposal that the amount received in connection therewith is fair from a financial point of view, taking into account all relevant circumstances, including the method of enforcement, provided that the liability of such Financial Adviser may be limited to the amount of its fees in respect of such engagement (it being acknowledged that the Security Agent shall have no obligation to select or engage any Financial Adviser unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction).

For the purposes of this Agreement, "**entitled to participate**" shall be interpreted to mean that any offer, or indication of a potential offer, that a holder of any Senior Liabilities or Senior Parent Liabilities makes shall be considered by those running the Public Auction against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder. For the avoidance of doubt, if, after having applied those same criteria, the offer or indication of a potential offer made by a holder of any Senior Liabilities or Senior Parent Liabilities is not considered by those running the Public Auction to be sufficient to continue in the sale process, such consideration being against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder (such continuation may include being invited to review additional information or being invited to have an opportunity to make a subsequent or revised offer, whether in another round of bidding or otherwise), then the right to participate which a holder of any Senior Liabilities or Senior Parent Liabilities under this Agreement shall be deemed to be satisfied.

(h) For the purposes of paragraphs (a)(ii), (iii), (iv), (v), (c), (f) and (g) above, the Security Agent shall act:

(i) if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 12.3 (*Manner of enforcement*); and

(ii) in any other case:

(A) on the instructions of an Instructing Group; or

(B) in the absence of any such instructions, as the Security Agent sees fit.



- (i) If any Transaction Security proposed to be released under this Clause 13.2 includes SFA Cash Cover, the Security created or evidenced, or expressed to be created or evidenced, under or pursuant to the relevant document in relation to such cash cover shall not be released without the consent of the Security Agent or the Issuing Bank or Ancillary Lender with which that SFA Cash Cover is held.

### 13.3 Claims and proceeds (before Distress Event)

- (a) So long as the requirements of paragraph (b) below are met (or the Parent has confirmed that if and when applicable they will be met), if any contractual, insurance or other claim is to be made, or is made, by a member of the Group prior to a Distress Event and that claim (or the proceeds of any such claim) is or are expressed to be subject to the Transaction Security, the Security Agent is irrevocably authorised (and shall at the request and the cost of the relevant Debtor or the Parent and without need of any letter of authority or further confirmation from any Creditor, Operating Facility Lender, other Secured Party or Debtor) to:
- (i) give a consent under or release the Transaction Security, or any other claim, over any relevant document, policy or other asset to the extent necessary to allow that member of the Group to make that claim (and to allow each member of the Group to comply with any obligations in respect of that claim and those proceeds under the Secured Debt Documents); and
  - (ii) execute and deliver or enter into any such consent under or release of that Transaction Security, or claim, that may, in the discretion of the Parent, be necessary or desirable.
- (b) If any claim proceeds the subject of any action taken under paragraph (a)(i) or (ii) above are required to be applied in mandatory prepayment of any Senior Liabilities and/or Senior Parent Liabilities, then, subject to Clause 13.4 (*Adjustment of mandatory prepayments*), those proceeds shall be applied as required by the terms of the Secured Debt Documents (provided that, notwithstanding anything to the contrary in the Senior Parent Finance Documents, in the event of any conflict between the terms of the Senior Debt Documents and the Senior Parent Finance Documents, any application in accordance with the terms of the Senior Debt Documents shall satisfy all obligations of the Group in respect of such proceeds and no consent of any other Party or Creditor shall be required for that application).

### 13.4 Adjustment of mandatory prepayments

If the making of any mandatory prepayment by any member of the Group in respect of any of the Senior Lender Liabilities, the Senior Notes Liabilities, the Permitted Second Lien Financing Liabilities, the Senior Parent Notes Liabilities, the Permitted Senior Financing Liabilities, the Permitted Parent Financing Liabilities and/or the Operating Facility Liabilities (an "**Original Mandatory Prepayment**") would directly or indirectly result in a payment (a "**Hedge Reduction Payment**") being made to any Hedge Counterparty as a consequence of any close-out or termination (in whole or in part) which is intended to ensure that the maximum aggregate notional amount of any hedging does not exceed the maximum aggregate amount of any indebtedness or the exposure the subject of that hedging, if elected by the Parent, the maximum aggregate amount of the mandatory prepayment required to be made by the Group will be reduced so that the aggregate of:

- (a) the amount of the reduced mandatory prepayment; and
- (b) each Hedge Reduction Payment which would result from that reduced mandatory payment,

is equal to the amount of the Original Mandatory Prepayment.

### 13.5 Creditors', Third Party Security Providers' and Debtors' actions

(a) Each Creditor, Third Party Security Provider, Operating Facility Lender and Debtor will:

- (i) do all things that the Security Agent reasonably requests in order to give effect to this Clause 13 (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by this Clause 13); and
- (ii) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 13 or if the Security Agent requests that any Creditor, Third Party Security Provider, Operating Facility Lender, other Secured Party or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of any relevant disposal or other step or action are applied in accordance with Clause 13.1 (*Non-Distressed Disposals*) or Clause 13.2 (*Distressed Disposals*) as the case may be.

(b) Each Secured Party irrevocably authorises and instructs the Security Agent (at the cost of the relevant Secured Party and without any consent, sanction, authority or further confirmation from any Secured Party) to be its agent to do anything which that Secured Party has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement, but has failed to do (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary) to give effect to the release and disposals contemplated by this Clause 13.

## 14. APPLICATION OF PROCEEDS

### 14.1 Order of application

(a) Subject to Clause 14.2 (*Liabilities of the Senior Parent Debt Issuer*), Clause 14.3 (*Prospective liabilities*) and Clause 14.4 (*Treatment of SFA Cash Cover and Senior Lender cash collateral*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 14, the "**Recoveries**") shall be applied by the Security Agent at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 14), in the following order of priority:

- (i) in discharging any sums owing to the Senior Agent (in respect of Senior Agent Liabilities), any Senior Creditor Representative (in respect of Permitted Senior Financing Agent Liabilities), any Second Lien Creditor Representative (in respect of Permitted Second Lien Financing Agent Liabilities), any Senior Parent Creditor Representative (in respect of Permitted Parent Financing Agent Liabilities) or any Senior Notes Trustee Amounts or Senior Parent Notes Trustee Amounts, or any sums owing to the Security Agent, any Receiver or any Delegate on a pro rata and *pari passu* basis;

(ii) in payment of all costs and expenses incurred by any Agent, Primary Creditor or Operating Facility Lender in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 9.6 (*Creditors' actions*);

(iii) in payment to:

(A) the Senior Facility Agent on its own behalf and on behalf of the Senior Arrangers and the Senior Lenders;

(B) the Hedge Counterparties;

(C) the Operating Facility Lenders;

(D) each Senior Notes Trustee on its own behalf and on behalf of the Senior Noteholders; and

(E) each Senior Creditor Representative on its own behalf and on behalf of the Permitted Senior Financing Arrangers and the Permitted Senior Financing Creditors,

for application towards the discharge of:

(I) the Senior Arranger Liabilities and the Senior Lender Liabilities (in accordance with the terms of the Senior Facilities Finance Documents);

(II) the Hedging Liabilities (on a pro rata basis between the Hedging Liabilities of each Hedge Counterparty);

(III) the Operating Facility Liabilities (on a pro rata basis between the Operating Facility Liabilities of each Operating Facility Lender);

(IV) the Senior Notes Liabilities (other than sums owing to the Security Agent) (in accordance with the terms of the Senior Notes Finance Documents); and

(V) the Permitted Senior Financing Arranger Liabilities and the Permitted Senior Financing Liabilities (other than the Permitted Senior Financing Agent Liabilities) (in accordance with the terms of the Permitted Senior Financing Documents and, if there is more than one Permitted Senior Financing Agreement, on a pro rata basis between the Permitted Senior Financing Debt in respect of each Permitted Senior Financing Agreement),

on a pro rata basis and *pari passu* between paragraphs (I) to (V) above;

(iv) in payment to each Second Lien Creditor Representative on its own behalf and on behalf of the Permitted Second Lien Financing Arrangers and the Permitted Second Lien Financing Creditors for application towards the discharge of the Permitted Second Lien Financing Arranger Liabilities and the Permitted Second Lien Financing Liabilities (other than the Permitted Second Lien Financing Agent Liabilities) (in accordance with the terms of the Permitted Second Lien Financing Documents and, if there is more than one Permitted Second Lien Financing Agreement, on a pro

- rata basis between the Permitted Second Lien Financing Debt in respect of each Permitted Second Lien Financing Agreement);
- (v) to the extent attributable to the Shared Security or the Senior Parent Guarantees, in payment to:
- (A) each Senior Parent Notes Trustee on its own behalf and on behalf of the Senior Parent Noteholders; and
  - (B) each Senior Parent Creditor Representative on its own behalf and on behalf of the Permitted Parent Financing Arrangers and the Permitted Parent Financing Creditors,
- for application towards the discharge of:
- (I) the Senior Parent Notes Liabilities (other than any sums owing to the Security Agent) (in accordance with the terms of the Senior Parent Notes Finance Documents); and
  - (II) the Permitted Parent Financing Arranger Liabilities and the Permitted Parent Financing Liabilities (other than the Permitted Parent Financing Agent Liabilities) (in accordance with the terms of the Permitted Parent Financing Documents and, if there is more than one Permitted Parent Financing Agreement, on a pro rata basis between the Permitted Parent Financing Debt in respect of each Permitted Parent Financing Agreement),
- on a pro rata basis and *pari passu* between paragraphs (I) and (II) above;
- (vi) if none of the Debtors or Third Party Security Providers is under any further actual or contingent liability under any Secured Debt Document, in payment to any person to whom the Security Agent is obliged to pay in priority to any Debtor or Third Party Security Provider; and
- (vii) the balance, if any, in payment to the relevant Debtor.
- (b) Each Secured Party authorises the Security Agent to hold any non-cash consideration received or recovered in connection with the realisation or enforcement of all or any part of the Transaction Security until cash is received for any such non-cash consideration, provided that the Security Agent may distribute any such non-cash consideration to a Secured Party which has agreed, on terms satisfactory to the Security Agent, to receive such non-cash consideration and the Liabilities owed to that Secured Party shall be reduced by an amount equal to the value of that non-cash consideration upon receipt by that Secured Party of that non-cash consideration.

#### **14.2 Liabilities of the Senior Parent Debt Issuer**

Subject to Clause 14.3 (*Prospective liabilities*) and Clause 14.4 (*Treatment of SFA Cash Cover and Senior Lender cash collateral*), all amounts from time to time received or recovered by the Security Agent from or in respect of a Senior Parent Debt Issuer pursuant to the terms of any Debt Document (but only to the extent that Senior Parent Debt Issuer owes any Liabilities to a Secured Party under such Debt Document) (other than in connection with the realisation or enforcement of all or any part of the Transaction Security) shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion)

sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 14), in the following order of priority:

- (a) in accordance with paragraph (a)(i) of Clause 14.1 (*Order of application*);
- (b) in accordance with paragraph (a)(ii) of Clause 14.1 (*Order of application*);
- (c) in accordance with paragraphs (a)(iii) to (a)(v) of Clause 14.1 (*Order of application*), provided that payments will be made on a pro rata basis and *pari passu* between paragraphs (a)(iii) and (to the extent relating to Liabilities in respect of Senior Parent Notes and/or Permitted Parent Financing Debt where the relevant Senior Parent Debt Issuer is the issuer or, as the case may be, the borrower) (v);
- (d) if none of the Debtors or Third Party Security Providers is under any further actual or contingent liability under any Secured Debt Document, in payment to any person to whom the Security Agent is obliged to pay in priority to any Debtor or Third Party Security Provider; and
- (e) the balance, if any, in payment to the relevant Debtor.

#### 14.3 Prospective liabilities

Following an Acceleration Event the Security Agent may, in its discretion, hold any amount of the Recoveries not in excess of the Expected Amount (as defined below) in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit or until otherwise directed by an Instructing Group (the interest being credited to the relevant account) for later application under Clause 14.1 (*Order of application*) or, as the case may be, Clause 14.2 (*Liabilities of the Senior Parent Debt Issuer*) in respect of:

- (a) any sum to any Agent, any Receiver or any Delegate; and
- (b) any part of the Liabilities, the Agent Liabilities or the Arranger Liabilities,

that the Security Agent reasonably considers, in each case, is reasonably likely to become due or owing at any time in the future (the "**Expected Amount**").

#### 14.4 Treatment of SFA Cash Cover and Senior Lender cash collateral

- (a) Nothing in this Agreement shall prevent any Issuing Bank or Ancillary Lender taking any Enforcement Action in respect of any SFA Cash Cover which has been provided for it in accordance with the Senior Facilities Agreement, a Permitted Senior Financing Agreement or an Operating Facility Document.
- (b) To the extent that any SFA Cash Cover is not held with the Relevant Issuing Bank or Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that SFA Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:
  - (i) to the Relevant Issuing Bank or Relevant Ancillary Lender towards the discharge of the Senior Lender Liabilities, the Permitted Senior Financing Liabilities or the Operating Facility Liabilities (as the case may be) for which that SFA Cash Cover was provided; and

(ii) the balance, if any, in accordance with Clause 14.1 (*Order of application*) or, as the case may be, Clause 14.2 (*Liabilities of the Senior Parent Debt Issuer*).

(c) To the extent that any SFA Cash Cover is held with the Relevant Issuing Bank or Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Issuing Bank or Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.

(d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Senior Cash Collateral provided for it in accordance with the terms of the Senior Facilities Agreement or, as the case may be, a Permitted Senior Financing Agreement.

#### **14.5 Investment of proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 14.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of those proceeds (but not in excess of the amounts due or to become due, and while so held the excess of the interest charged on the Liabilities shall not exceed the interest earned on such account(s)) in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 14.

#### **14.6 Currency conversion**

(a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the Security Agent's Spot Rate of Exchange.

(b) The obligations of any Debtor or Third Party Security Provider to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

#### **14.7 Permitted deductions**

The Security Agent shall be entitled, in its discretion, to (a) set aside by way of reserve amounts required to meet and (b) make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or by virtue of its capacity as Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

#### **14.8 Good discharge**

(a) Any payment to be made in respect of the Secured Obligations by the Security Agent:

(i) may be made to the relevant Agent on behalf of its Creditors;

(ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 14.4 (*Treatment of SFA Cash Cover and Senior Lender cash collateral*);

(iii) shall be made directly to the Operating Facility Lenders; or

(iv) shall be made directly to the Hedge Counterparties,

and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.

(b) The Security Agent is under no obligation to make the payments to the Agents, the Operating Facility Lenders or the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Creditor or Operating Facility Lender are denominated.

#### 14.9 Calculation of amounts

For the purpose of calculating any person's share of any sum payable to or by it, the Security Agent shall be entitled to:

- (a) notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the Security Agent's Spot Rate of Exchange in respect of the conversion of the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made into the notional base currency; and
- (b) assume that all moneys received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen.

### 15. EQUALISATION

#### 15.1 Equalisation definitions

For the purposes of this Clause 15:

**"Enforcement Date"** means the first date (if any) on which a Secured Party takes Enforcement Action of the type described in paragraph (a)(i), (iii), (iv) or (c) of the definition of **"Enforcement Action"** in accordance with the terms of this Agreement.

**"Exposure"** means:

- (a) in relation to a Senior Lender or a Permitted Senior Financing Creditor, the aggregate amount of its participation (if any, and without double counting) in all utilisations outstanding under the Senior Facilities Agreement or, as the case may be, the Permitted Senior Financing Agreement at the Enforcement Date (whether by way of loan, Letter of Credit or otherwise and assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims in respect of amounts outstanding under each Ancillary Facility (and any related facilities under which the Ancillary Facilities are provided) in accordance with the terms of the Senior Facilities Agreement or, as the case may be, any Permitted Senior Financing Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Facilities Agreement or, as the case may be, any

Permitted Senior Financing Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding:

- (i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent that that amount would not be outstanding but for a breach by that Senior Lender or, as the case may be, Permitted Senior Financing Creditor of any provision of clause 9 (*Ancillary Facilities*) of the Senior Facilities Agreement or any equivalent provision of any relevant Permitted Senior Financing Agreement;
- (ii) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Senior Lender or, as the case may be, Permitted Senior Financing Creditor pursuant to the relevant SFA Cash Cover Document; and
- (iii) any amount outstanding in respect of a Letter of Credit to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Senior Lender or, as the case may be, Permitted Senior Financing Creditor pursuant to the relevant SFA Cash Cover Document,

plus, in each case, all other Senior Lender Liabilities owed by the Debtors to that Senior Lender or, as the case may be, all other Permitted Senior Financing Liabilities owed by the Debtors and Third Party Security Providers to that Permitted Senior Financing Creditor, to the extent not already taken into account in the foregoing provisions of this paragraph (a);

(b) in relation to a Senior Notes Creditor, the Senior Notes Liabilities owed by the Debtors or Third Party Security Providers to that Senior Notes Creditor;

(c) in relation to a Hedge Counterparty:

- (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and

- (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:

- (A) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or



(B) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case, to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement;

(d) in relation to an Operating Facility Lender, the Operating Facility Liabilities owed by the Debtors and Third Party Security Providers to that Operating Facility Lender but excluding:

- (i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent that that amount would not be outstanding but for a breach by that Operating Facility Lender of any provision of Clause 3.6 (*Restriction on enforcement: Ancillary Lenders and Issuing Banks*); and
- (ii) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Operating Facility Lender pursuant to the relevant SFA Cash Cover Document,

that amount, in each case, to be certified by the relevant Operating Facility Lender and as calculated in accordance with the relevant Operating Facility Document; and

(e) in relation to a Senior Parent Creditor, the Senior Parent Liabilities owed by the Debtors or Third Party Security Providers to that Senior Parent Creditor.

#### 15.2 Implementation of equalisation

The provisions of this Clause 15 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate. Without prejudice to the generality of the preceding sentence, if the provisions of this Clause 15 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the Senior Secured Creditors shall make appropriate adjustment payments amongst themselves.

#### 15.3 Equalisation

If, for any reason, any Senior Creditor Liabilities, Senior Notes Liabilities, Permitted Senior Financing Liabilities or Operating Facility Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the relevant Senior Secured Creditors and the Operating Facility Lenders in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures

of all the relevant Senior Secured Creditors and the Operating Facility Lenders at the Enforcement Date, the relevant Senior Secured Creditors and the Operating Facility Lenders will make such payments amongst themselves as the Security Agent shall require to put the relevant Senior Secured Creditors and the Operating Facility Lenders in such a position that (after taking into account such payments) those losses are borne in those proportions (or, as the case may be, to otherwise reflect the order of priority contemplated in Clause 14.1 (*Order of application*)).

#### 15.4 Turnover of enforcement proceeds

If:

(a) the Security Agent or the relevant Agent is not entitled, for reasons of applicable law, to pay amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security (or, in the case of the Senior Parent Creditors, the Shared Security only) to the Senior Secured Creditors, the Operating Facility Lenders or the Senior Parent Creditors (as applicable) but is entitled to distribute those amounts to Creditors (such Creditors, the "**Receiving Creditors**") who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the Senior Secured Creditors, the Operating Facility Lenders and the Senior Parent Creditors (as the case may be); and

(b) the First/Second Lien Discharge Date or the Senior Parent Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments to the Senior Secured Creditors, the Operating Facility Lenders and the Senior Parent Creditors (as applicable) as the Security Agent shall require to place the Senior Secured Creditors, the Operating Facility Lenders and the Senior Parent Creditors (as applicable) in the position they would have been in had such amounts been available for application against the Senior Liabilities, the Operating Facility Liabilities and the Senior Parent Liabilities (as applicable), provided that this Clause 15.4 shall not apply to any receipt or recovery that has been distributed by:

(i) a Senior Notes Trustee to the Senior Noteholders in accordance with the Senior Notes Finance Documents;

(ii) a Senior Parent Notes Trustee to the Senior Parent Noteholders in accordance with the Senior Parent Notes Finance Documents;

(iii) a Senior Creditor Representative to the Permitted Senior Financing Creditors in accordance with the Permitted Senior Financing Documents (in each case to the extent that paragraph (o) of Clause 1.2 (*Construction*) has been applied in respect of that Senior Creditor Representative);

(iv) a Second Lien Creditor Representative to the Permitted Second Lien Financing Creditors in accordance with the Permitted Second Lien Financing Documents (in each case to the extent that paragraph (p) of Clause 1.2 (*Construction*) has been applied in respect of that Second Lien Creditor Representative); or

(v) a Senior Parent Creditor Representative to the Permitted Parent Financing Creditors in accordance with the Permitted Parent Financing Documents (in each case to the extent that

paragraph (q) of Clause 1.2 (*Construction*) has been applied in respect of that Senior Parent Creditor Representative),

unless the Senior Notes Trustee, the Senior Parent Notes Trustee, the Senior Creditor Representative, the Second Lien Creditor Representative or the Senior Parent Creditor Representative (as applicable) had received at least two Business Days' prior written notice (in accordance with this Agreement) that an Acceleration Event or an Insolvency Event in relation to a Debtor had occurred or that the receipt or recovery falls within Clause 10.2 (*Turnover by the Creditors*) prior to distribution of the relevant amount.

#### 15.5 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 15, the Security Agent shall send notice to each Hedge Counterparty, each Operating Facility Lender and each relevant Agent (on behalf of the relevant Senior Secured Creditors) requesting that it notify it of, respectively, its Exposure and that of each Senior Secured Creditor (if any).

#### 15.6 Default in payment

If a Creditor or an Operating Facility Lender fails to make a payment due from it under this Clause 15, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Secured Creditor(s) and the Operating Facility Lender(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Secured Creditor(s) and Operating Facility Lender(s) in respect of costs) but shall have no liability or obligation towards such Senior Secured Creditor(s) or any other Senior Secured Creditor, Creditor or Operating Facility Lender as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

### 16. ADDITIONAL DEBT

#### 16.1 Debt Refinancing

(a) Notwithstanding anything to the contrary in this Agreement or any Security Document:

- (i) any of the Liabilities (or any other liabilities and obligations subject to the terms of this Agreement from time to time) may be refinanced, replaced, increased or otherwise restructured in whole or in part from time to time (including, without limitation, by way of the incurrence of Permitted Senior Financing Debt, Permitted Second Lien Financing Debt and/or Permitted Parent Financing Debt, the issue of additional Senior Notes and/or Senior Parent Notes or the establishment of new or additional Operating Facilities); and
- (ii) any Priority Revolving Facility may become subject to and benefit from the provisions of this Agreement on terms as determined by the Parent (subject to the provisions of Schedule 4 (*Priority Revolving Facility*)),

a "**Debt Refinancing**", in each case provided that the terms of that Debt Refinancing are not otherwise prohibited by the Debt Financing Agreements.

(b) Notwithstanding anything to the contrary in any Secured Debt Document, each Party shall be required to enter into any amendment to or replacement of the then current Secured Debt Documents (including for the purpose of reflecting the terms and ranking of any Debt Refinancing in the Secured Debt Documents

and/or any amendment required by the Parent pursuant to Clause 16.3 (*Senior Facilities Refinancing*)) and/or take such other action as is required by the Parent in order to facilitate any Debt Refinancing, including in relation to any changes to, the taking of, or the release coupled with the retaking of, any guarantee or Security, provided that the Security Agent shall not be required to execute a release of assets from any existing Transaction Security pursuant to this paragraph (b) unless the Parent has confirmed in writing to the Security Agent that it has determined in good faith (taking into account any applicable legal limitations and other relevant considerations in relation to the Debt Refinancing) that it is either not possible or not desirable to implement the Debt Refinancing on terms satisfactory to the Parent by instead granting additional Transaction Security and/or amending the terms of the existing Transaction Security. Each Agent and the Security Agent is irrevocably authorised and instructed by each Party (other than the Debtors), each Secured Party and each Primary Creditor to (unless such Party, Secured Party and/or Primary Creditor is required under applicable law to act in its own name, in which case it shall) execute any such amended or replacement Secured Debt Documents and/or take such action on behalf of the Parties, the Secured Parties and the Primary Creditors (or, as the case may be, in its own name) (and shall in each case promptly do so on the request of and at the cost of the Parent).

#### **16.2 Debt Refinancing terms**

For the avoidance of doubt, at the option of the Parent:

- (a) a Debt Refinancing may be made available on a basis which is senior to, *pari passu* with or junior to any of the other Liabilities;
- (b) a Debt Refinancing shall be entitled to benefit from all or any of the Transaction Security;
- (c) a Debt Refinancing may be made available on a secured or unsecured basis (without prejudice to Clause 3.3 (*Security and guarantees: Senior Secured Creditors*) or Clause 6.1 (*Restriction on Payment and dealings: Senior Parent Liabilities*));
- (d) a Debt Refinancing may be effected in whole or in part by way of a debt exchange, non-cash rollover or other similar or equivalent transaction, in each case unless otherwise prohibited by this Agreement or the Debt Financing Agreements.

#### **16.3 Senior Facilities Refinancing**

- (a) In the event of any refinancing or replacement of all or any part of the Senior Lender Liabilities (or any such refinancing or replacement indebtedness from time to time), the Parent shall be entitled to require that the definition of Instructing Group is amended such that the relevant refinancing or replacement indebtedness is treated in the same manner as the Senior Facilities (meaning that for the purpose of calculating the voting entitlement of any person, at the option of the Parent all or any part of the relevant refinancing or replacement indebtedness may be treated as Senior Secured Credit Participations of the Senior Creditors and not Senior Notes/Permitted Financing Credit Participations).
- (b) In the event that any Priority Revolving Facility becomes subject to the provisions of this Agreement, the Parent shall be entitled to require that all or any part of the Hedging Liabilities and/or the Operating Facility Liabilities shall rank in right and priority of payment *pari passu* with that Priority Revolving Facility (which,

for the avoidance of doubt, may result in such Hedging Liabilities and/or, as the case may be, Operating Facility Liabilities ranking ahead of the Senior Notes Liabilities, the Permitted Senior Financing Liabilities, the Senior Parent Notes Liabilities and/or the Permitted Parent Financing Liabilities), in each case unless otherwise prohibited by the Debt Financing Agreements.

#### 16.4 Further assurance

Without prejudice to the other provisions of this Clause 16, each Agent, each Secured Party and each Primary Creditor agrees that it shall co-operate with the Parent, each other member of the Group, Third Party Security Provider and each Agent in order to facilitate any Debt Refinancing (including by way of, at the request and cost of the Parent, executing any document or agreement and/or giving instructions to any person).

#### 16.5 Additional Priority Revolving Facilities

For the avoidance of doubt, unless otherwise agreed by the Majority Senior Lenders and for the benefit of the Senior Lenders only, the provisions of Clause 16.1 (*Debt Refinancing*) shall not entitle the Parent to require amendments to this Agreement for the purpose of establishing a Priority Revolving Facility which would:

- (a) become subject to and benefit from the provisions of this Agreement; and
- (b) rank in right and priority of payment under this Agreement ahead of the Senior Lender Liabilities (other than as regards amounts of the type set out in paragraphs (a)(i) and (ii) of Clause 14.1 (*Order of application*)).

#### 16.6 Supplemental Security

- (a) Without prejudice to Clause 2 (*Ranking and priority*), Clause 14 (*Application of proceeds*) and the other rights of the Debtors and Third Party Security Providers under this Agreement and the Debt Documents, if any member of the Group enters into any Hedging Agreement or Operating Facility Document at any time after the date of this Agreement (which is not already secured by the Transaction Security which has been granted at the time such Hedging Agreement or, as the case may be, Operating Facility Document is so entered into (any such Transaction Security, "**Original Transaction Security**")), any Debtor or Third Party Security Provider may, subject to the terms of this Agreement, at any time grant to the relevant Hedge Counterparty or, as the case may be, Operating Facility Lender Transaction Security over any Charged Property subject to Original Transaction Security (any such Transaction Security, "**Supplemental Security**") securing all or any Hedging Liabilities arising under the relevant Hedging Agreement or, as the case may be, all or any Operating Facility Liabilities arising under the relevant Operating Facility Document.
- (b) Each of the beneficiaries of the Original Transaction Security (the "**Relevant Original Transaction Security Beneficiaries**") agree that Supplemental Security may be granted by any Debtor or Third Party Security Provider in order to secure all or any part of any Hedging Liabilities and/or any Operating Facility Liabilities.

(c) For the avoidance of doubt, nothing in this Clause 16.6 shall:

- (i) restrict the rights of the Relevant Original Transaction Security Beneficiaries to enforce and/or to release all or any part of any Original Transaction Security in accordance with the terms of this Agreement and the other Debt Documents; or
- (ii) restrict, limit or prejudice the rights and other benefits of the Debtors, Third Party Security Providers or any member of the Group under this Agreement or any other Debt Document.

(d) Each of the Secured Parties agrees not to take any action to challenge the validity or enforceability of the Supplemental Security by reason of it being expressed to be second ranking (or any other lower ranking).

## 17. THE SECURITY AGENT

### 17.1 Appointment by Secured Parties

- (a) Each Secured Party (other than the Security Agent) irrevocably appoints the Security Agent to act as its agent, trustee, joint and several creditor or beneficiary of parallel debt (as the case may be) under this Agreement and with respect to the Security Documents and irrevocably authorises the Security Agent on its behalf to execute each Security Document expressed to be executed by the Security Agent on its behalf and perform such duties and exercise such rights and powers under this Agreement and the Security Documents as are specifically delegated to the Security Agent by the terms thereof, together with such rights, powers and discretions as are reasonably incidental thereto, including, without limitation, enforcing the Security Documents in accordance with the terms of this Agreement and the relevant Security Documents.
- (b) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (c) Each of the Parties to this Agreement agrees that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Security Documents to which the Security Agent is expressed to be a party (and no others shall be implied).
- (d) The Security Agent shall be and is hereby authorised by each of the Secured Parties (and to the extent it may have any interest therein, every other Party) to execute on behalf of itself and each Secured Party and other Party where relevant:
  - (i) following the occurrence of the Final Discharge Date, any release of any Transaction Security granted under the Security Documents; and
  - (ii) to the extent contemplated or otherwise permitted or required under the terms of this Agreement and/or any relevant Debt Document, any other release of any Transaction Security.
- (e) For the purposes of the grant of security under the laws of the Province of Quebec which may now or in the future be required to be provided by any member of the Group, the Security Agent is, as part of its duties as Security Agent, hereby irrevocably authorised and appointed by each Secured Party to act as hypothecary representative (within the meaning of Article 2692 of the Civil Code of Quebec) for all present and future Secured Parties (in such capacity, the "**Hypothecary Representative**") in order to hold any

hypothec granted under the laws of the Province of Québec and to exercise such rights and duties as are conferred upon the Hypothecary Representative under the relevant deed of hypothec and applicable laws (with the power to delegate any such rights or duties). The execution prior to the date hereof by the Security Agent in its capacity as the Hypothecary Representative of any deed of hypothec or other security documents made pursuant to the laws of the Province of Québec, is hereby ratified and confirmed. Any person who becomes a Secured Party or successor Security Agent shall be deemed to have consented to and ratified the foregoing appointment of the Security Agent as the Hypothecary Representative on behalf of all Secured Parties, including such person and any Affiliate of such person designated above as a Secured Party. For greater certainty, the Security Agent, acting as the Hypothecary Representative, shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favour of the Security Agent in this Agreement, which shall apply *mutatis mutandis*. In the event of the resignation of the Security Agent (which shall include its resignation as the Hypothecary Representative) and appointment of a successor Security Agent, such successor Security Agent shall also act as the Hypothecary Representative, as contemplated above.

**17.2 Parallel debt (Covenant to pay the Security Agent)**

(a) In this Clause 17.2:

**"Secured Creditor Claim"** means any amount which a Debtor or (to the extent arising from Third Party Security) Third Party Security Provider owes to a Secured Party under or in connection with the Secured Debt Documents (and, for the avoidance of doubt, any note holder whose Agent has acceded to this Agreement in accordance with Clause 19 (*Changes to the Parties*) below will be considered a Secured Party for the purposes of this Clause 17).

**"Security Agent Claim"** means any amount which a Debtor or Third Party Security Provider owes to the Security Agent under this Clause 17.2.

(b) Unless expressly provided to the contrary in any Debt Document and to the extent legally possible under applicable law, the Security Agent holds:

- (i) any Security created by a Security Document governed by any law other than English law or the law of the United States of America (and any other law agreed in writing by the Parent and the Security Agent from time to time);
- (ii) the benefit of any Security Agent Claims; and
- (iii) any proceeds of Transaction Security,  
for the benefit, and as the property, of the Secured Parties and so that they are not available to the personal creditors of the Security Agent.

(c) Each Debtor and Third Party Security Provider must pay the Security Agent as an independent and separate creditor, an amount equal to each Secured Creditor Claim on its due date.

(d) The Security Agent may enforce performance of any Security Agent Claim in its own name as an independent and separate right. This includes any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in respect of any kind of insolvency proceeding.

(e) Each Secured Party must, at the request of the Security Agent, perform any act required in connection with the enforcement of any Security Agent Claim. This includes joining in any proceedings as co-claimant with the Security Agent.

(f)

(i) Discharge by a Debtor or Third Party Security Provider of a Secured Creditor Claim will discharge the corresponding Security Agent Claim in the same amount.

(ii) Discharge by a Debtor or Third Party Security Provider of a Security Agent Claim will discharge the corresponding Secured Creditor Claim in the same amount.

(g) The aggregate amount of the Security Agent Claims will never exceed the aggregate amount of Secured Creditor Claims.

(h) A defect affecting a Security Agent Claim against a Debtor or Third Party Security Provider will not affect any Secured Creditor Claim.

(i) A defect affecting a Secured Creditor Claim against a Debtor or Third Party Security Provider will not affect any Security Agent Claim.

(j) If the Security Agent returns to any Debtor or Third Party Security Provider, whether in any kind of insolvency proceedings or otherwise, any recovery in respect of which it has made a payment to a Secured Party, that Secured Party must repay an amount equal to that recovery to the Security Agent. For the avoidance of doubt, the relevant Secured Creditor Claim and Security Agent Claim will not be deemed discharged to the extent of any amount returned to that Debtor or Third Party Security Provider (as applicable).

(k) Paragraphs (c) to (i) above apply, *inter alia*, for the purpose of determining the Secured Obligations in the Security Documents governed by any law other than English law or the law of the United States of America (and any other law agreed in writing by the Parent and the Security Agent from time to time).

#### **17.3 No independent power**

Subject to Clause 12.6 (*Security held by other Creditors*) and Clause 14.4 (*Treatment of SFA Cash Cover and Senior Lender cash collateral*), the Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents (excluding, for the avoidance of doubt, any relevant Debt Financing Agreement) except through the Security Agent.

#### **17.4 Instructions to Security Agent and exercise of discretion**

(a) Subject to paragraphs (d) and (e) below, the Security Agent shall act in accordance with any instructions given to it by an Instructing Group or, if so instructed by an Instructing Group, refrain from exercising any right, power, authority or discretion vested in it as Security Agent and shall be entitled to assume that (i) any instructions received by it from an Agent, the Creditors or a group of Creditors are duly given in accordance with the terms of the Debt Documents and (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.

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- (b) The Security Agent shall be entitled to request instructions, or clarification of any direction, from an Instructing Group (or from the Enhanced Majority Second Lien Creditors or the Majority Senior Parent Creditors, to the extent they are entitled to give instructions to the Security Agent) as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Save as provided in Clause 12 (*Enforcement of Transaction Security*), any instructions given to the Security Agent by an Instructing Group shall override any conflicting instructions given by any other Parties.
- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in this Agreement (including under Clause 25 (*Consents, amendments and override*));
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role as Security Agent for the Secured Parties including, without limitation, the provisions set out in Clause 17.6 (*Security Agent's discretions*) to Clause 17.21 (*Disapplication*);
  - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
    - (A) Clause 13.1 (*Non-Distressed Disposals*);
    - (B) Clause 14.1 (*Order of application*);
    - (C) Clause 14.2 (*Liabilities of the Senior Parent Debt Issuer*);
    - (D) Clause 14.3 (*Prospective liabilities*);
    - (E) Clause 14.4 (*Treatment of SFA Cash Cover and Senior Lender cash collateral*); and
    - (F) Clause 14.7 (*Permitted deductions*).
- (e) In exercising any discretion to exercise a right, power or authority under this Agreement where either:
- (i) it has not received any instructions from an Instructing Group as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,
- the Security Agent shall:
- (A) other than where paragraph (B) below applies, do so having regard to the interests of all the Secured Parties; or
  - (B) if (in its opinion) there is a Creditor Conflict in relation to the matter in respect of which the discretion is to be exercised, do so having regard only to the interests of all the Senior Secured Creditors.

#### 17.5 Security Agent's actions

Without prejudice to the provisions of Clause 12 (*Enforcement of Transaction Security*) and Clause 17.4 (*Instructions to Security Agent and exercise of discretion*), the Security Agent may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Secured Debt Documents as it considers in its discretion to be appropriate.

#### 17.6 Security Agent's discretions

The Security Agent may:

- (a) assume (unless it has received actual notice to the contrary from a Hedge Counterparty, an Operating Facility Lender or from one of the Agents in its capacity as Security Agent) that (i) no Default has occurred and no Debtor or Third Party Security Provider is in breach of or default under its obligations under any of the Debt Documents and (ii) any right, power, authority or discretion vested by any Debt Document in any person has not been exercised;
- (b) if it receives any instructions or directions under Clause 12 (*Enforcement of Transaction Security*) to take any action in relation to the Transaction Security, assume that all applicable conditions under the Debt Documents for taking that action have been satisfied;
- (c) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether obtained by the Security Agent or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable (without liability to any person);
- (d) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party, any Creditor, any Debtor or Third Party Security Provider, upon a certificate signed by or on behalf of that person (without liability to any person);
- (e) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Debt Documents) until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in so acting;
- (f) act under the Debt Documents through its personnel or agents; and
- (g) assume that:
  - (i) the Senior Lender Discharge Date has not occurred until notified by the Senior Facility Agent or the Parent to the contrary;
  - (ii) the Senior Notes Discharge Date has not occurred until notified by the Senior Notes Trustee or the Parent to the contrary;
  - (iii) the Permitted Senior Financing Discharge Date has not occurred until notified by the relevant Senior Creditor Representative or the Parent to the contrary;

- (iv) the Permitted Second Lien Financing Discharge Date has not occurred until notified by the relevant Second Lien Creditor Representative or the Parent to the contrary;
- (v) the Senior Parent Notes Discharge Date has not occurred until notified by the Senior Parent Notes Trustee or the Parent to the contrary;
- (vi) the Permitted Parent Financing Discharge Date has not occurred until notified by the relevant Senior Parent Creditor Representative or the Parent to the contrary; or
- (vii) the Operating Facility Discharge Date has not occurred until notified by each Operating Facility Lender or the Parent to the contrary.

#### **17.7 Security Agent's obligations**

The Security Agent:

- (a) may copy to each Agent, each Hedge Counterparty and each Operating Facility Lender the contents of any notice or document received by it from any Debtor or Third Party Security Provider under any Secured Debt Document;
- (b) shall promptly forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party provided that, except where a Debt Document expressly provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party;
- (c) shall promptly inform each Agent, each Hedge Counterparty and each Operating Facility Lender of the occurrence of any Default or any default by a Debtor or Third Party Security Provider in the due performance of or compliance with its obligations under any Secured Debt Document of which the Security Agent has received notice from any other party to this Agreement; and
- (d) shall promptly to the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, and upon a request by that Party, notify that Party of the relevant Security Agent's Spot Rate of Exchange.

#### **17.8 Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Debt Documents, the Security Agent shall not:

- (a) be bound to enquire as to (i) whether or not any Default has occurred or (ii) the performance, default or any breach by a Debtor or Third Party Security Provider of its obligations under any of the Debt Documents and, until it has received notice of any such Default, non-performance, default or breach, shall be entitled to assume that no such event has occurred;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty; or

(d) have or be deemed to have any relationship of trust or agency with, any Debtor, Third Party Security Provider or any Investor.

#### **17.9 Exclusion of liability**

None of the Security Agent, any Receiver nor any Delegate shall accept responsibility or be liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Debt Documents, the Security Property or otherwise, whether in accordance with an instruction from an Agent, an Instructing Group or otherwise unless directly caused by its negligence, wilful misconduct or wilful default;
- (d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Debt Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Debt Documents or the Security Property; or
- (e) any shortfall which arises on the enforcement or realisation of the Security Property.

#### **17.10 No proceedings**

No Party (other than the Security Agent, that Receiver or that Delegate) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause 17.10 subject to Clause 1.3 (*Third Party rights*) and the provisions of the Third Parties Rights Act.

#### **17.11 Own responsibility**

Without affecting the responsibility of any Debtor or Third Party Security Provider for information supplied by it or on its behalf in connection with any Debt Document, each Secured Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Debt 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 and enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or

executed in anticipation of, under or in connection with any Debt Document or the Security Property;

- (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 Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (d) the adequacy, accuracy and/or completeness of any information provided by the Security Agent or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt 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,

and each Secured Party warrants to the Security Agent that it has not relied on and will not at any time rely on the Security Agent in respect of any of these matters.

#### **17.12 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Debtor or Third Party Security Provider to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Debt Documents or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Debt Documents or of the Transaction Security;
- (d) take, or to require any of the Debtors or Third Party Security Providers to take, any steps to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under the laws of any jurisdiction; or
- (e) require any further assurances in relation to any of the Security Documents.

#### **17.13 Insurance by Security Agent**

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Debt Documents. The Security Agent shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party or loss payee, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless an Agent shall have requested it to do so in writing and the Security Agent shall have failed to do so within 14 days after receipt of that request.

**17.14 Custodians and nominees**

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust created under this Agreement as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

**17.15 Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any of the Debtors or Third Party Security Providers may have to any of the Charged Property and shall not be liable for or bound to require any Debtor or Third Party Security Provider to remedy any defect in its right or title.

**17.16 Refrain from illegality**

Notwithstanding anything to the contrary expressed or implied in the Debt Documents, the Security Agent may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction and the Security Agent may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

**17.17 Business with the Debtors and Third Party Security Providers**

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

**17.18 Winding up of trust**

If the Security Agent, with the approval of each of the Agents, each Hedge Counterparty and each Operating Facility Lender, determines that (i) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged and (ii) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor or Third Party Security Provider pursuant to the Debt Documents:

- (a) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (b) any Retiring Security Agent shall release, without recourse or warranty, all of its rights under each of the Security Documents.

**17.19 Powers supplemental**

The rights, powers and discretions conferred upon the Security Agent by this Agreement shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by general law or otherwise.

**17.20 Trustee division separate**

- (a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

**17.21 Disapplication**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

**17.22 Intra-Group Lenders, Third Party Security Providers and Debtors: Power of attorney**

Each Intra-Group Lender, Third Party Security Provider and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender, Third Party Security Provider or Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Security Agent may delegate that power on such terms as it sees fit).

**17.23 Security Agent's ongoing costs**

In the event of:

- (a) an Event of Default; or
- (b) the Security Agent being requested by a Debtor, Third Party Security Provider, the Instructing Group or any group of Lenders as permitted under this Agreement to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature and/or outside the scope of the normal duties of that Security Agent any Receiver or Delegate under the Debt Documents,
- the Parent shall (or shall procure that another Debtor shall) pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them.

**18. CHANGE OF SECURITY AGENT AND DELEGATION**

**18.1 Resignation of the Security Agent**

- (a) The Security Agent may, with the consent of the Parent (not to be unreasonably withheld or delayed), resign and appoint one of its Affiliates as successor by giving notice to the Parent, each Agent and the Hedge Counterparties provided that:

- (i) such Security Agent shall also resign as security agent under each Debt Financing Agreement; and
  - (ii) the Security Agent shall appoint one of its Affiliates acting through an office in the European Union being a reputable bank experienced in multi-jurisdictional transactions of this type as a successor and the same Affiliate shall be appointed under the applicable Debt Financing Agreements as Security Agent.
- (b) Alternatively the Security Agent may, after consultation with the Parent for not less than 30 days, resign by giving notice to the other Parties in which case an Instructing Group may appoint a successor Security Agent provided that:
- (i) such successor Security Agent is also appointed under each Debt Financing Agreement; and
  - (ii) if it succeeds the Security Agent, such successor Security Agent is acting through an office in the European Union being a reputable bank experienced in multi-jurisdictional transactions of this type.
- (c) If an Instructing Group has not appointed a successor Security Agent in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Parent and the Agents) may appoint a successor Security Agent acting through an office in the European Union being a reputable bank experienced in multi-jurisdictional transactions of this type.
- (d) The retiring Security Agent (the "**Retiring Security Agent**") shall, at its own cost (i) enter into and deliver such documents and effect such registrations as may be required to transfer or assign all of its rights, benefits and obligations under the Debt Documents to the successor Security Agent and (ii) make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents.
- (e) The Security Agent's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Security Property to that successor.
- (f) Upon the appointment of a successor, the Retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 17.18 (*Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of Clause 17 (*The Security Agent*), Clause 21.1 (*Debtors' indemnity*) and Clause 21.3 (*Primary Creditors' indemnity*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) An Instructing Group may, after consultation with the Parent, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.



## **18.2 Delegation**

- (a) Each of the Security Agent, any Receiver and any Delegate may (at any time and at the expense of the Primary Creditors, other than any Notes Trustee, in proportions determined in a manner consistent with paragraph (a) of Clause 21.3 (*Primary Creditors' indemnity*)) delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Debt Documents.
- (b) That delegation may be made upon any terms and conditions (including the power to sub delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for, any loss incurred by reason of any misconduct or default on the part of any such delegate or sub delegate.

## **18.3 Additional Security Agents**

- (a) The Security Agent may (at the expense of the Primary Creditors, other than any Notes Trustee, in proportions determined in a manner consistent with paragraph (a) of Clause 21.3 (*Primary Creditors' indemnity*)) at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it (i) if it considers that appointment to be in the interests of the Secured Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Parent and each of the Agents of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment. The Security Agent shall not be bound to supervise, or be in any way responsible for, any loss incurred by reason of any misconduct or default on the part of any such additional Security Agent.
- (c) No person shall be so appointed if they would fail to satisfy the requirements of Clause 18.4 (*Location of Security Agent*) if they were the Security Agent.

## **18.4 Location of Security Agent**

Unless otherwise agreed by the Parent, the Security Agent will not, for the purposes of the European Council Directive 2003/48/EC and in relation to payments made or received under any Debt Document by it in its capacity as Security Agent, be established in, change its place of establishment to, act through any office situated or established in, maintain any account used for making or receiving payments in relation to the Debt Documents in, or delegate any of its duties, trusts, powers, authorities and discretions vested in it under the Debt Documents to, any person established in or acting from Austria or Luxembourg.

## **19. CHANGES TO THE PARTIES**

### **19.1 Assignments and transfers**

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this Clause 19, provided that any

member of the Group may assign any of its rights and benefits or transfer any of its rights, benefits and obligations:

- (a) pursuant to any re-organisation or other transaction not prohibited by the terms of the Debt Documents (and, for the avoidance of doubt and ignoring any prohibition set out in this Clause 19, provided that such assignment or, as the case may be, transfer is not expressly prohibited by the terms of the relevant Debt Document); and/or
- (b) as otherwise contemplated or permitted by any Debt Document.

#### **19.2 Change of Investor**

(a) Subject to Clause 7.4 (*No acquisition of Investor Liabilities*) and Clause 19.14 (*Resignation of Hedge Counterparties, Operating Facility Lenders and Investors*), an Investor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Investor Liabilities owed to it if any assignee or transferee has (if not already party to this Agreement as an Investor) acceded to this Agreement, as an Investor, pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*).

(b) Any person in its discretion may accede to this Agreement as an Investor pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*) by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking.

#### **19.3 Change of Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor**

(a) A Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Secured Debt Documents or the Liabilities if:

- (i) in the case of a Senior Lender, that assignment or transfer is in accordance with the terms of the Senior Facilities Agreement;
- (ii) in the case of a Permitted Senior Financing Creditor, that assignment or transfer is in accordance with the terms of the Permitted Senior Financing Agreement to which it is a party;
- (iii) in the case of a Permitted Second Lien Financing Creditor, that assignment or transfer is in accordance with the terms of the Permitted Second Lien Financing Agreement to which it is a party; and
- (iv) in the case of a Permitted Parent Financing Creditor, that assignment or transfer is in accordance with the terms of the Permitted Parent Financing Agreement to which it is a party,

provided that, subject to paragraph (b) below, any assignee or transferee has (if not already party to this Agreement as a Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor, as the case may be) acceded to this Agreement, as a Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor or Permitted Parent Financing Creditor, as the case may be, pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*).

(b) The proviso to paragraph (a) above shall not apply in respect of:

- (i) any Liabilities Acquisition entered into by a member of the Group and effected in accordance with the terms of the relevant Debt Financing Agreement; or
- (ii) any Permitted Senior Financing Debt, Permitted Second Lien Financing Debt or Permitted Parent Financing Debt where the relevant Creditor Representative has become party to this Agreement on behalf of the relevant Permitted Senior Financing Creditors, Permitted Second Lien Financing Creditors or, as the case may be, Permitted Parent Financing Creditors.

**19.4 Change of Hedge Counterparty**

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights and benefits or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already party to this Agreement as a Hedge Counterparty) acceded to this Agreement as a Hedge Counterparty pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*).

**19.5 Change of Agent**

No person shall become a Senior Facility Agent, a Senior Creditor Representative, a Second Lien Creditor Representative or a Senior Parent Creditor Representative, as the case may be, under any of the Debt Documents unless at the same time, it accedes to this Agreement as a Senior Facility Agent, a Senior Creditor Representative, a Second Lien Creditor Representative or a Senior Parent Creditor Representative, as the case may be, pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*). In connection with the foregoing, the Security Agent is authorised to and shall make such changes to the terms of this Agreement relating to the rights and duties of any such Senior Creditor Representative, Second Lien Creditor Representative or Senior Parent Creditor Representative, as the case may be, and any other Party as are jointly required by such Senior Creditor Representative, Second Lien Creditor Representative or Senior Parent Creditor Representative and the Parent without the consent of any other Party, in each case provided that such changes would not be materially prejudicial to the interests of the other Parties.

**19.6 New Ancillary Lender / Operating Facility Lender**

(a) If any Affiliate of a Senior Lender or a Permitted Senior Financing Creditor becomes an Ancillary Lender in accordance with the terms of the Senior Facilities Agreement or, as the case may be, a Permitted Senior Financing Agreement, it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already party to this Agreement as a Senior Lender or, as the case may be, Permitted Senior Financing Creditor) acceded to this Agreement as a Senior Lender or, as the case may be, Permitted Senior Financing Creditor pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*).

(b) An Operating Facility Lender may (in accordance with the terms of the relevant Operating Facility Document and subject to any consent required under that Operating Facility Document) transfer any of its rights and benefits or obligations in respect of the Operating Facility Documents to which it is a party if any transferee has (if not already party to this Agreement as an Operating Facility Lender) acceded to this

Agreement as an Operating Facility Lender pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*).

- (c) If any person makes (or agrees to make) available to any member of the Group any facility or other financial accommodation (or any member of the Group has incurred or will incur other liabilities to any person that it is intended will become Operating Facility Liabilities), that person may, with the consent of the Parent, accede to this Agreement as an Operating Facility Lender pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*) by executing and delivering to the Security Agent a Creditor/Agent Accession Undertaking.

**19.7 Creditor/Agent Accession Undertaking**

With effect from the date of acceptance by the Security Agent and, in the case of an Affiliate of a Senior Lender or a Permitted Senior Financing Creditor that wishes to become an Ancillary Lender, the Senior Facility Agent or, as the case may be, the relevant Senior Creditor Representative of a Creditor/Agent Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor/Agent Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor, an Operating Facility Lender or an Agent shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and
- (b) as from that date, the replacement or new Creditor, Operating Facility Lender or Agent shall assume the same obligations and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity.

**19.8 Accession of Senior Notes Trustee**

The Parent shall ensure that, prior to any Senior Notes Issue Date, the relevant Senior Notes Trustee (and, if such entity ceases to act as trustee in relation to the Senior Notes for any reason, any successor or other person which is appointed or acts as trustee under the relevant Senior Notes Indenture) shall, unless already a Party in such capacity, complete, sign and deliver to the Security Agent a Creditor/Agent Accession Undertaking under which such Senior Notes Trustee agrees to be bound by this Agreement as a Senior Notes Trustee as if it had originally been a Party to this Agreement in such capacity. In connection with the foregoing, the Security Agent is authorised to and shall make such changes to the terms of this Agreement relating to the rights and duties of such Senior Notes Trustee and any other Party as are jointly required by such Senior Notes Trustee and the Parent without the consent of any other Party, in each case provided that such changes would not be materially prejudicial to the interests of the other Parties.

**19.9 Accession of Senior Parent Notes Trustee**

The Parent shall procure that prior to any Senior Parent Notes Issue Date, the relevant Senior Parent Notes Trustee (and, if such entity ceases to act as trustee in relation to the Senior Parent Notes for any reason, any successor or other person which is appointed or acts as trustee under the relevant Senior Parent Notes Indenture) shall unless already a Party in such capacity, complete, sign and deliver to the Security Agent a Creditor/Agent Accession Undertaking under which such Senior Parent Notes Trustee

agrees to be bound by this Agreement as a Senior Parent Notes Trustee as if it had originally been a Party to this Agreement in such capacity. In connection with the foregoing, the Security Agent is authorised to and shall make such changes to the terms of this Agreement relating to the rights and duties of such Senior Parent Notes Trustee and any other Party as are jointly required by such Senior Parent Notes Trustee and the Parent without the consent of any other Party, in each case provided that such changes would not be materially prejudicial to the interests of the other Parties.

**19.10 New Intra-Group Lender**

If any Debtor not already party to this Agreement as an Intra-Group Lender makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with, in each case, any other Debtor (but excluding any trade credit in the ordinary course of trading), and the aggregate amount of all such loans, credits and financial arrangements from such Debtor to that other Debtor and/or any other Debtor at any time equals or exceeds USD50,000,000 (or its equivalent in other currencies) and such loans, credits and financial arrangements have been outstanding for no less than 90 days, the Parent will procure that, subject to the Agreed Security Principles, the Debtor giving that loan, granting that credit or making that other financial arrangement accedes to this Agreement as an IntraGroup Lender pursuant to Clause 19.7 (*Creditor/Agent Accession Undertaking*) within 60 after such loan, credit or other financial arrangement having been outstanding for 90 days.

**19.11 New Debtor/new Third Party Security Provider**

(a) Subject to paragraph (c) below and the Agreed Security Principles, if any member of the Group which is not a Debtor or Third Party Security Provider:

(i) incurs any Senior Liabilities or Senior Parent Liabilities; or

(ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any of the Senior Liabilities or Senior Parent Liabilities,

the Debtors will procure that the member of the Group or Third Party Security Provider (as applicable) incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor or Third Party Security Provider (as applicable) and an Intra-Group Lender (if applicable), in accordance with paragraph (b) below, no later than contemporaneously with the incurrence of those Liabilities or the giving of that assurance (or on such later date as the Security Agent accepts the relevant Debtor/Third Party Security Provider Accession Deed), provided that this paragraph (a) shall not apply to any member of the Group which becomes a borrower or guarantor of an Ancillary Facility but is not otherwise an Obligor under and as defined in the Senior Facilities Agreement or, as the case may be, a borrower or guarantor under the relevant Permitted Senior Financing Agreement.

(b) With effect from the date of acceptance by the Security Agent of a Debtor/Third Party Security Provider Accession Deed duly executed and delivered to the Security Agent by the new Debtor or Third Party Security Provider (as applicable) or, if later, the date specified in the Debtor/Third Party Security Provider Accession Deed, the new Debtor or Third Party Security Provider (as applicable) shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as a Debtor or Third Party Security Provider (as applicable).

- (c) Notwithstanding anything to the contrary, a member of the Group or Third Party Security Provider shall only be required to accede to this Agreement to the extent that the relevant member of the Group becoming a Debtor or Third Party Security Provider (as applicable) would not breach any applicable law or present a material risk of liability for any member of the Group or Third Party Security Provider (as applicable) and/or its officers or directors, or give rise to a material risk of breach of fiduciary or statutory duties.

#### 19.12 Additional parties

- (a) Each of the Parties appoints the Security Agent to receive and execute on its behalf each Debtor/Third Party Security Provider Accession Deed and Creditor/Agent Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Financing Agreement.
- (b) In the case of a Creditor/Agent Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Senior Lender or a Permitted Senior Financing Creditor):
- (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor/Agent Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor/Agent Accession Undertaking to the Senior Facility Agent or, as the case may be, the relevant Senior Creditor Representative; and
  - (ii) the Senior Facility Agent or, as the case may be, Senior Creditor Representative shall, as soon as practicable after receipt by it, sign and accept that Creditor/Agent Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.
- (c) For the avoidance of doubt, any person shall be permitted to become party to this Agreement as:
- (i) a Permitted Senior Financing Creditor and/or a Senior Creditor Representative as contemplated by the definition of Permitted Senior Financing Debt;
  - (ii) a Permitted Second Lien Financing Creditor and/or a Second Lien Creditor Representative as contemplated by the definition of Permitted Second Lien Financing Debt; and
  - (iii) a Permitted Parent Financing Creditor and/or a Senior Parent Creditor Representative as contemplated by the definition of Permitted Parent Financing Debt.

#### 19.13 Resignation of a Debtor

- (a) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (b) The Security Agent shall promptly accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
- (i) to the extent that the Senior Lender Discharge Date has not occurred, the Senior Facility Agent notifies the Security Agent that the Debtor is not, or has ceased to be, a Senior Borrower or a

Senior Guarantor (or will cease to be a Senior Borrower or a Senior Guarantor on or prior to its resignation as a Debtor becoming effective);

- (ii) to the extent that the Senior Notes Discharge Date has not occurred, the Senior Notes Representative notifies the Security Agent that the Debtor is not, or has ceased to be, an issuer, borrower or guarantor under any applicable Senior Notes Finance Documents (or will cease to be such an issuer, borrower or guarantor on or prior to its resignation as a Debtor becoming effective) or that such resignation is not prohibited by the relevant Senior Notes Finance Document;
- (iii) to the extent that the Senior Parent Notes Discharge Date has not occurred, any Senior Parent Notes Representative notifies the Security Agent that the Debtor is not, or has ceased to be, an issuer, borrower or guarantor under any applicable Senior Parent Notes Finance Documents (or will cease to be such an issuer, borrower or guarantor on or prior to its resignation as a Debtor becoming effective) or that such resignation is not prohibited by the relevant Senior Parent Notes Finance Documents;
- (iv) to the extent that the Permitted Senior Financing Discharge Date has not occurred, any Senior Creditor Representative notifies the Security Agent that the Debtor is not, or has ceased to be, an issuer, borrower or guarantor under any applicable Permitted Senior Financing Documents (or will cease to be such an issuer, borrower or guarantor on or prior to its resignation as a Debtor becoming effective) or that such resignation is not prohibited by the relevant Permitted Senior Financing Documents;
- (v) to the extent that the Permitted Second Lien Financing Discharge Date has not occurred, any Second Lien Creditor Representative notifies the Security Agent that the Debtor is not, or has ceased to be, an issuer, borrower or guarantor under any applicable Permitted Second Lien Financing Documents (or will cease to be such an issuer, borrower or guarantor on or prior to its resignation as a Debtor becoming effective) or that such resignation is not prohibited by the relevant Permitted Second Lien Financing Documents; and
- (vi) to the extent that the Permitted Parent Financing Discharge Date has not occurred, any Senior Parent Creditor Representative notifies the Security Agent that the Debtor is not, or has ceased to be, an issuer, borrower or guarantor under any applicable Permitted Parent Financing Documents (or will cease to be such an issuer, borrower or guarantor on or prior to its resignation as a Debtor becoming effective) or that such resignation is not prohibited by the relevant Permitted Parent Financing Documents.

No Agent may unreasonably withhold or delay any such notification. If an Agent does not provide the required confirmation to the Security Agent (or notify the Security Agent that the required confirmation cannot be given due to the fact that the relevant conditions set out above are not satisfied) within three Business Days of request by the Parent, such notification shall be deemed given to the Security Agent.

- (c) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor (with such notification to be given within one Business Day of the date on which all required confirmations have been delivered, or deemed to be given, under paragraph (b) above), that member of the Group shall cease

to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor. For the avoidance of doubt, if a Debtor ceases to be a member of the Group pursuant to a transaction not prohibited by the Debt Financing Agreements, that Debtor shall automatically cease to be a Debtor for all purposes and shall have no further rights or obligations under this Agreement as a Debtor.

**19.14 Resignation of Hedge Counterparties, Operating Facility Lenders and Investors**

- (a) In the event that a person party to this Agreement as a Hedge Counterparty is no longer providing any hedging to any of the Debtors under a Hedging Agreement, that person may resign (and will resign if required by the Parent) as a Hedge Counterparty by giving notice to the Security Agent and the Parent. From the date of receipt by the Security Agent and the Parent of any such notice of resignation, that person shall cease to be party to this Agreement as a Hedge Counterparty and shall have no further rights or obligations under this Agreement as a Hedge Counterparty.
- (b) In the event that a person party to this Agreement as an Operating Facility Lender is no longer providing any facility or financial accommodation to any of the Debtors under an Operating Facility Document, that person may resign (and will resign if required by the Parent) as an Operating Facility Lender by giving notice to the Security Agent and the Parent. From the date of receipt by the Security Agent and the Parent of any such notice of resignation, that person shall cease to be party to this Agreement as an Operating Facility Lender and shall have no further rights or obligations under this Agreement as an Operating Facility Lender.
- (c) In the event that a person party to this Agreement as an Investor is no longer a creditor in respect of any Investor Liabilities, that person may resign (and will resign if required by the Parent) as an Investor by giving notice to the Security Agent and the Parent. From the date of receipt by the Security Agent and the Parent of any such notice of resignation, that person shall cease to be party to this Agreement as an Investor and shall have no further rights or obligations under this Agreement as an Investor.

**19.15 Cessation of a Third Party Security Provider**

Following the release of all Transaction Security granted by a Third Party Security Provider (in accordance with the terms of the Debt Documents and this Agreement), such Third Party Security Provider shall cease to be a Third Party Security Provider and shall have no further rights or obligations under this Agreement as a Third Party Security Provider.

**20. COSTS AND EXPENSES**

**20.1 Transaction expenses**

The Parent shall (or shall procure that another Debtor shall), within five Business Days of demand, pay the Security Agent the amount of all reasonable third party costs and expenses (including legal fees together with any applicable VAT) reasonably incurred by the Security Agent and any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Agreement and any other Secured Debt Documents referred to in this Agreement and the Transaction Security; and
- (b) any other Secured Debt Documents executed after the date of this Agreement,

A44420063



subject in each case to first drawdown under Facility B (as defined in the Senior Facilities Agreement) having occurred and on a basis and up to an amount between the Arrangers and the Parent from time to time.

#### **20.2 Stamp taxes**

The Parent shall (or shall procure that another Debtor shall) pay and, within 10 Business Days of demand, indemnify the Security Agent against any third party cost, loss or liability the Security Agent reasonably incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Secured Debt Document, other than:

- (a) any such Tax payable in connection with any certificate or other document relating to the assignment or transfer by any Secured Party of any of its rights and/or obligations under any Debt Document; and
- (b) any such Tax payable due to a registration, submission or filing by a Secured Party of any Debt Document where such registration submission or filing is or was not required to maintain or preserve the rights of that Secured Party under the applicable Debt Documents.

#### **20.3 Enforcement and preservation costs**

The Parent shall (or shall procure that another Debtor will), within 10 Business Days of demand, pay to the Security Agent the amount of all third party costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights under any Secured Debt Document and the Transaction Security (in each case in accordance with the terms of this Agreement and/or the relevant Secured Debt Document) and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights (excluding any costs and expenses arising as a result of the Security Agent's negligence, wilful misconduct or wilful default).

#### **20.4 Transfer costs and expenses**

Notwithstanding any other term of this Agreement, if a Secured Party assigns or transfers any of its rights, benefits or obligations under the Secured Debt Documents, no member of the Group or Third Party Security Provider shall be required to pay any fees, costs, expenses or other amounts relating to or arising in connection with that assignment or transfer (including, without limitation, any Taxes and any amounts relating to the perfection or amendment of the Transaction Security).

#### **20.5 Cost details**

Notwithstanding any other term of this Agreement, no member of the Group or Third Party Security Provider shall be required to pay any fees, costs, expenses or other amounts (other than principal and interest) unless:

- (a) it has first been provided with reasonable details of the circumstances giving rise to such payment and of the calculation of the relevant amount (including, where applicable, details of hours worked, rates and individuals involved); and

- (b) in the case of costs and expenses, it has received satisfactory evidence that such costs and expenses have been properly incurred (including that all security costs relate only to Security Documents entered into, or related actions taken, in accordance with the Secured Debt Documents and approved in advance by the Parent).

## **21. INDEMNITIES**

### **21.1 Debtors' indemnity**

Subject to any limitations applicable to any guarantee and indemnity obligations of any Debtor under the Secured Debt Documents, each Debtor shall within 10 Business Days of written demand (such demand to be accompanied by reasonable calculations and details of the amount so demanded) indemnify the Security Agent and every Receiver and Delegate against any third party cost, loss or liability (together with any applicable VAT) reasonably incurred by any of them (but excluding any cost, loss or liability (and any applicable VAT) arising as a result of the Security Agent's or such Receiver or Delegate's negligence, wilful misconduct or wilful default):

(a) in relation to or as a result of:

- (i) any failure by the Parent to comply with obligations under Clause 20 (*Costs and expenses*);
- (ii) the taking, holding, protection or enforcement of the Transaction Security in accordance with the terms of each of the Secured Debt Documents;
- (iii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent, each Receiver and each Delegate by the Secured Debt Documents or by law; or
- (iv) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Secured Debt Documents; or

(b) which otherwise relates to any of the Security Property or the performance of the terms of this Agreement (otherwise than as a result of its negligence, wilful misconduct or wilful default).

### **21.2 Priority of indemnity**

To the extent permitted by applicable law, the Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 21.1 (*Debtors' indemnity*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

### **21.3 Primary Creditors' indemnity**

(a) Each Primary Creditor (other than any Notes Trustee) and each Operating Facility Lender shall (in the proportion that the Liabilities due to it bears to the aggregate of the Liabilities due to all the Primary Creditors for the time being (or, if the Liabilities due to each of those Primary Creditors and/or, as the case may be, Operating Facility Lenders is zero, immediately prior to their Liabilities being reduced to zero)) indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any third party cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence, wilful misconduct or wilful default)

in acting as Security Agent, Receiver or Delegate under the Secured Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).

(b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:

- (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
- (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case, to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

## **22. INFORMATION**

### **22.1 Information and dealing**

- (a) The Creditors and the Operating Facility Lenders shall provide to the Security Agent from time to time (through their respective Agents where applicable) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee.
- (b) Subject to clause 36.5 (*Communication when Agent is Impaired Agent*) of the Senior Facilities Agreement and any similar or equivalent provision in any other Secured Debt Document, each Senior Lender, Permitted Senior Financing Creditor, Permitted Second Lien Financing Creditor and Permitted Parent Financing Creditor shall deal with the Security Agent exclusively through its Agent and the Hedge Counterparties and the Operating Facility Lenders shall deal directly with the Security Agent and shall not deal through any Agent.
- (c) No Agent shall be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty or Operating Facility Lender except as expressly provided for in, and for the purposes of, this Agreement.

### **22.2 Disclosure**

Subject to any confidentiality obligations set out in any of the Secured Debt Documents but notwithstanding any other agreement to the contrary, each of the Debtors and Third Party Security Providers consents, until the Final Discharge Date, to the disclosure by any of the Primary Creditors, the Agents, the Arrangers and the Security Agent to each other (whether or not through an Agent or the Security Agent) of such

information concerning the Debtors and Third Party Security Providers as any Primary Creditor, any Agent, any Arranger or the Security Agent shall see fit (acting reasonably), provided such disclosure is made on a confidential "need to know" basis and (i) does not breach any applicable law or regulation and (ii) prior to the taking of an Enforcement Action, would not result in a Senior Noteholder or Senior Parent Noteholder (or any other Primary Creditor which has notified the Agents, the Arrangers and the Security Agent that it does not wish to receive material non-public information) receiving any material non-public information.

#### 22.3 Notification of prescribed events

- (a) If a Senior Event of Default either occurs or ceases to be continuing, the relevant Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the other Agents, each Operating Facility Lender and each Hedge Counterparty.
- (b) If a Senior Payment Default either occurs or ceases to be continuing, the relevant Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the other Agents, each Operating Facility Lender and each Hedge Counterparty.
- (c) If a Second Lien Payment Default either occurs or ceases to be continuing, the relevant Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the other Agents, each Operating Facility Lender and each Hedge Counterparty.
- (d) If an Acceleration Event occurs, the relevant Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (e) If a Second Lien Standstill Period occurs, or ceases to be continuing, the Security Agent shall notify each Agent.
- (f) If a Senior Parent Standstill Period occurs, or ceases to be continuing, the Security Agent shall notify each Agent.
- (g) If the Security Agent receives a Senior Parent Enforcement Notice under paragraph (b) of Clause 6.9 (*Permitted Senior Parent enforcement*) it shall, upon receiving that notice, notify, and send a copy of that notice to, each other Agent, each Operating Facility Lender and each Hedge Counterparty.
- (h) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security, it shall notify each other Party of that action.
- (i) If any Primary Creditor or Operating Facility Lender exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security, it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (j) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Agent and each other Hedge Counterparty.

- (k) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 4.9 (*Permitted enforcement: Hedge Counterparties*), it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Agent, each Operating Facility Lender and each other Hedge Counterparty.
- (l) If a Debtor defaults on any Payment due under an Operating Facility Document, the Operating Facility Lender which is party to that Operating Facility Document shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Agent, each Hedge Counterparty and each other Operating Facility Lender.
- (m) If the Security Agent receives a notice under paragraph (a) of Clause 3.8 (*Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors*), it shall, upon receiving that notice, notify, and send a copy of that notice to, the Senior Facility Agent.
- (n) If the Security Agent receives a notice under paragraph (a) of Clause 3.9 (*Hedge Transfer: Senior Notes Creditors and Permitted Senior Financing Creditors*), it shall, upon receiving that notice, notify, and send a copy of that notice to, each Hedge Counterparty.
- (o) If the Security Agent receives a notice under paragraph (a) of Clause 5.12 (*Option to purchase: Permitted Second Lien Financing Creditors*), it shall, upon receiving that notice, notify, and send a copy of that notice to, each relevant Agent.
- (p) If the Security Agent receives a notice under paragraph (a) of Clause 5.13 (*Hedge Transfer: Permitted Second Lien Financing Creditors*), it shall, upon receiving that notice, notify, and send a copy of that notice to, each Hedge Counterparty.
- (q) If the Security Agent receives a notice under paragraph (a) of Clause 6.13 (*Option to purchase: Senior Parent Creditors*), it shall, upon receiving that notice, notify, and send a copy of that notice to, each relevant Agent.
- (r) If the Security Agent receives a notice under paragraph (a) of Clause 6.14 (*Hedge Transfer: Senior Parent Creditors*), it shall, upon receiving that notice, notify, and send a copy of that notice to, each Hedge Counterparty.

## 23. NOTICES

### 23.1 Communications in writing

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

### 23.2 Security Agent's communications with Primary Creditors

The Security Agent shall be entitled to carry out all dealings:

- (a) with the Secured Parties through their respective Agents and may give to the Agents, as applicable, any notice or other communication required to be given by the Security Agent to a Secured Party;
- (b) with each Hedge Counterparty directly with that Hedge Counterparty; and

(c) with each Operating Facility Lender directly with that Operating Facility Lender.

### 23.3 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 this Agreement is:

- (a) in the case of the Parent, each Original Debtor and the Original Investor, that identified with its name below;
- (b) in the case of the Senior Facility Agent, the Second Lien Creditor Representative and Security Agent, that identified with its name below; and
- (c) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,  
or any substitute address, fax number or department or officer which that Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

### 23.4 Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,  
and, if a particular department or officer is specified as part of its address details provided under Clause 23.3 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

### 23.5 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number, pursuant to Clause 23.3 (*Addresses*), or changing its own address or fax number, the Security Agent shall notify the other Parties.

### 23.6 Electronic communication

(a) Any communication to be made between the Security Agent and a Secured Party, Third Party Security Provider or a Debtor under or in connection with this Agreement may be made by electronic mail or other electronic means if the Security Agent and the relevant Secured Party, Third Party Security Provider or Debtor:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication (with such agreement to be deemed given by each person which is a Party at the date of this Agreement);
  - (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 Security Agent and a Secured Party, Third Party Security Provider or a Debtor will be effective only when actually received in readable form and in the case of any electronic communication made by a Secured Party or a Debtor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

#### **23.7 English language**

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
- (i) in English; or
  - (ii) if not in English, and if so reasonably required by the Security 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.

#### **24. PRESERVATION**

##### **24.1 Partial invalidity**

If, at any time, any provision of this Agreement 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 that provision under the law of any other jurisdiction will in any way be affected or impaired.

##### **24.2 No impairment**

If, at any time after its date, any provision of a Debt Document (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Debt Document, neither the binding nature nor the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

##### **24.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under this Agreement 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.

#### 24.4 Waiver of defences

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 24.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor 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 Debtor 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 any Debtor or other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- (g) any intermediate Payment of any of the Liabilities owing to the Primary Creditors or the Operating Facility Lenders in whole or in part; or
- (h) any insolvency or similar proceedings.

#### 24.5 Priorities not affected

Except as otherwise provided in this Agreement, the priorities referred to in Clause 2 (*Ranking and priority*) will:

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Primary Creditors or Operating Facility Lenders by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and
- (c) secure the Liabilities owing to the Primary Creditors and the Operating Facility Lenders in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.



## 25. CONSENTS, AMENDMENTS AND OVERRIDE

### 25.1 Required Consents

(a) Subject to paragraphs (b) to (f) below, Clause 25.2 (*Amendments and waivers: Security Documents*) and Clause 25.4 (*Exceptions*), this Agreement and/or a Security Document may be amended or waived only with the written consent of:

- (i) if the relevant amendment or waiver (the "**Proposed Amendment**") is prohibited by the Senior Facilities Agreement, the Senior Facility Agent (acting on the instructions of the requisite Senior Lenders in accordance with clause 40 (*Amendments and Waivers*) of the Senior Facilities Agreement);
- (ii) if any Senior Notes have been issued and the Proposed Amendment is prohibited by the terms of the relevant Senior Notes Indenture, the Senior Notes Trustee;
- (iii) if any Permitted Senior Financing Debt has been incurred and the Proposed Amendment is prohibited by the terms of the relevant Permitted Senior Financing Agreement, the Senior Creditor Representative in respect of that Permitted Senior Financing Debt (if applicable, acting on the instructions of the Majority Permitted Senior Financing Creditors);
- (iv) if any Permitted Second Lien Financing Debt has been incurred and the Proposed Amendment is prohibited by the terms of the relevant Permitted Second Lien Financing Agreement, the Second Lien Creditor Representative in respect of that Permitted Second Lien Financing Debt (if applicable, acting on the instructions of the Majority Permitted Second Lien Financing Creditors);
- (v) if any Senior Parent Notes have been issued and the Proposed Amendment is prohibited by the terms of the relevant Senior Parent Notes Indenture, the Senior Parent Notes Trustee;
- (vi) if any Permitted Parent Financing Debt has been incurred and the Proposed Amendment is prohibited by the terms of the relevant Permitted Parent Financing Agreement, the Senior Parent Creditor Representative in respect of that Permitted Parent Financing Debt (if applicable, acting on the instructions of the Majority Permitted Parent Financing Creditors);
- (vii) if a Hedge Counterparty is providing hedging to a Debtor under a Hedging Agreement, that Hedge Counterparty (in each case only to the extent that the relevant amendment or waiver adversely affects the continuing rights and/or obligations of that Hedge Counterparty and is an amendment or waiver which is expressed to require the consent of that Hedge Counterparty under the applicable Hedging Agreement, as notified by the Parent to the Security Agent at the time of the relevant amendment or waiver);
- (viii) if an Operating Facility Lender is providing one or more facility to a Debtor under an Operating Facility Document, that Operating Facility Lender (in each case only to the extent that the relevant amendment or waiver adversely affects the continuing rights and/or obligations of that Operating Facility Lender and is an amendment or waiver which is expressed to require the consent of that Operating Facility Lender under the applicable Operating Facility Document, as notified by the Parent to the Security Agent at the time of the relevant amendment or waiver);

- (ix) the Investors; and
  - (x) the Parent.
- (b) Notwithstanding anything to the contrary, any amendment or waiver of any Secured Debt Document made or effected in accordance with:
- (i) Clause 2.5 (*Additional and/or Refinancing debt*), Clause 13.1 (*Non-Distressed Disposals*), Clause 16 (*Additional debt*) or any other provision of this Agreement; or
  - (ii) any other provision of any Secured Debt Document (provided that such amendment or waiver is not expressly prohibited by the terms of any other Secured Debt Document),
- shall be binding on all Parties.
- (c) Any amendment, waiver or consent which relates only to the rights or obligations applicable to Creditors under a particular Debt Financing Agreement (and which does not materially and adversely affect the rights or interests of Creditors under other Debt Financing Agreements) may be approved with only the consent of the Agent in respect of that Debt Financing Agreement (if applicable, acting on the instructions of the requisite Creditors under that Debt Financing Agreement) and the Parent. For the avoidance of doubt, this paragraph (c) is without prejudice to the ability to effect, make or grant any amendment, waiver or consent pursuant to or in accordance with paragraph (a) above or any other provision of this Clause 25.
- (d) Notwithstanding anything to the contrary in the Secured Debt Documents, a Secured Party may unilaterally waive, relinquish or otherwise irrevocably give up all or any of its rights under any Secured Debt Document with the consent of the Parent.
- (e) Any term of this Agreement or a Security Document may be amended or waived by the Parent and the Security Agent without the consent of any other Party if that amendment or waiver is:
- (i) to cure defects or omissions, resolve ambiguities or inconsistencies or reflect changes of a minor, technical or administrative nature; or
  - (ii) otherwise for the benefit of all or any of the Secured Parties.
- (f) Notwithstanding anything to the contrary, if any amendment, waiver or consent requested by the Parent in relation to this Agreement and/or the Security Documents:
- (i) is not prohibited by the terms of any Debt Financing Agreement (provided that, for the avoidance of doubt, this paragraph (i) shall not override (A) any express requirement or restriction in a Debt Financing Agreement in relation to the matter, step or action the subject of the proposed amendment, waiver or consent or (B) any express requirement for consent under Clause 4.3 (*Permitted Payments: Hedging Liabilities*) or Clause 6.2 (*Permitted Senior Parent Payments*)); or
  - (ii) has been approved by the requisite Senior Secured Creditors or, as the case may be, Senior Parent Creditors under each Debt Financing Agreement that otherwise prohibits that amendment, waiver or consent,

that amendment, waiver or consent shall be automatically and immediately deemed to have been approved and given for all purposes under this Agreement (and, if applicable, the relevant Security Documents). If the terms of any Debt Financing Agreement:

- (A) require the relevant Agent or Creditors to provide approval (or deem approval to have been provided) for any particular amendment, waiver or consent (for the avoidance of doubt, excluding any such terms which expressly entitle the relevant Agent or Creditors to withhold their approval for that amendments, waiver or consent); or
- (B) do not seek to regulate the relevant matter, step or action the subject of the amendment, waiver or consent (which shall be the case if the amendment or waiver of any relevant document or agreement is not expressly regulated by that Debt Financing Agreement and such amendment or waiver does not relate to a matter, step or action which is the subject of an express requirement or restriction in that Debt Financing Agreement),

for the purpose of this Clause 25 that amendment, waiver or consent shall not be prohibited by the terms of that Debt Financing Agreement.

For the purpose of this paragraph (f) and paragraph (a) of Clause 16.2 (*Debt Refinancing terms*) only, the term Debt Financing Agreement shall include any Hedging Agreement pursuant to which the consent of a Hedge Counterparty is expressly required for the relevant amendment or waiver under and in accordance with sub-paragraph (a)(vii) above.

#### **25.2 Amendments and waivers: Security Documents**

- (a) Without prejudice to any amendment, waiver or consent approved in accordance with Clause 25.1 (*Required consents*) and subject to paragraph (c) below and to paragraph (b) of Clause 25.4 (*Exceptions*), the Security Agent may, if authorised by an Instructing Group, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Security Documents which shall be binding on each Party.
- (b) Without prejudice to any further assurance provision in any Debt Document, the Security Agent may, if the Parent consents, amend or release and retake any Security Document where such amendment or release and retake is required or desirable in order to ensure the validity, perfection or priority of the Transaction Security purported to be created under such Security Document, together with any related or consequential waiver (including by reason of a failure to register such Security Document with Companies House within the prescribed time limit set out in section 859 of the Companies Act 2006, in which case any payment or other obligation or default arising out of such failure to register shall also be automatically and irrevocably waived) and any such amendment, release, waiver and retake shall be binding on each Party.
- (c) Subject to paragraphs (b) and (c) of Clause 25.4 (*Exceptions*), in case of any amendment or waiver of, or consent under, any Security Document which would adversely affect the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed, that amendment, waiver or consent shall require approval in accordance with Clause 25.1 (*Required consents*).

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### 25.3 Effectiveness

Any amendment, waiver or consent given, made or effected in accordance with any of the provisions of this Clause 25, or in accordance with any other term of any Secured Debt Document, will be binding on all Parties and the Security Agent may effect, on behalf of any Agent, Arranger, Creditor or Operating Facility Lender, any amendment, waiver or consent permitted by this Clause 25 or any other term of any Secured Debt Document.

### 25.4 Exceptions

(a) Subject to paragraphs (b) and (c) below, an amendment, waiver or consent which adversely relates to the express rights or obligations of an Agent, an Arranger or the Security Agent (in each case in such capacity) may not be effected without the consent of that Agent, that Arranger or the Security Agent (as the case may be) at such time.

(b) Neither paragraph (a) above nor Clause 25.2 (*Amendments and waivers: Security Documents*) shall apply:

- (i) to any release of Transaction Security, claim or Liabilities; or
- (ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 13 (*Proceeds of disposals and adjustment of mandatory prepayments*).

(c) Paragraph (a) above shall apply to an Arranger only to the extent that Arranger Liabilities are then owed to that Arranger.

### 25.5 Calculation of credit participations

(a) For the purpose of ascertaining whether any relevant percentage of Senior Secured Credit Participations, Second Lien Secured Credit Participations or Senior Parent Credit Participations has been obtained under this Agreement, the relevant Agent or the Security Agent may notionally convert any Senior Secured Credit Participations, Second Lien Secured Credit Participations or, as the case may be, Senior Parent Credit Participations into their Common Currency Amounts.

(b) Each Agent will, upon request from the Security Agent, promptly provide the Security Agent with:

- (i) details of the Senior Secured Credit Participations of the Senior Secured Creditors whom it represents and (if applicable) details of the extent to which such Senior Secured Credit Participations have been voted for or against any request;
- (ii) details of the Second Lien Secured Credit Participations of the Permitted Second Lien Financing Creditors whom it represents and (if applicable) details of the extent to which such Second Lien Secured Credit Participations have been voted for or against any request; and
- (iii) details of the Senior Parent Credit Participations of the Senior Parent Creditors whom it represents and (if applicable) details of the extent to which such Senior Parent Credit Participations have been voted for or against any request.

(c) Each Hedge Counterparty will, upon request from the Security Agent or any other Agent, promptly provide the Security Agent with details of its Senior Secured Credit Participations (which shall be calculated as at

the same time stipulated by the Security Agent or the relevant Agent (as applicable) in such request) and (if applicable) details of the extent to which such Senior Secured Credit Participations have been voted for or against any request.

**25.6 Deemed consent**

- (a) If, at any time prior to the First/Second Lien Discharge Date, the Senior Secured Creditors (or the requisite Senior Secured Creditors) and the Parent give a Consent in respect of any Senior Debt Documents then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders will (or will be deemed to):
- (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
  - (ii) do anything (including executing any document) that the Security Agent and the Parent may reasonably require by written notice to give effect to this paragraph (a).
- (b) If, at any time on or after the First/Second Lien Discharge Date and before the Senior Parent Discharge Date, the Senior Parent Creditors (or the requisite Senior Parent Creditors) and the Parent give a Consent in respect of the Senior Parent Finance Documents then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders will (or will be deemed to):
- (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
  - (ii) do anything (including executing any document) that the Security Agent and the Parent may reasonably require by written notice to give effect to this paragraph (b).

**25.7 Excluded consents**

Clause 25.6 (*Deemed consent*) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities;
- (b) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or
- (c) changing the terms of this Agreement or of any Security Document.

**25.8 Senior Parent administrative consents**

If the Senior Secured Creditors (or the requisite Senior Secured Creditors) at any time give any Consent in relation to any of the Senior Debt Documents of a minor, technical or administrative nature which does not adversely affect the interests of the Senior Parent Creditors or change the commercial terms contained in the Senior Parent Finance Documents then, if that action was approved by the Parent and permitted by the terms of this Agreement, the Senior Parent Creditors will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Secured Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Security Agent and the Parent may reasonably require by written notice to give effect to this Clause 25.8.

**25.9 No liability**

None of the Senior Secured Creditors or the Agents will be liable to any other Creditor, Agent, Third Party Security Provider or Debtor for any Consent given or deemed to be given under this Clause 25.

**25.10 Agreement to override**

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary.

**26. NOTES TRUSTEE**

**26.1 Liability**

- (a) Each Notes Trustee enters into this Agreement not individually or personally but solely in its capacity as trustee in the exercise of the powers and authority conferred and vested in it under the relevant Notes Finance Documents for and on behalf of the Noteholders for which the Notes Trustee acts as trustee. Each Notes Trustee shall have no liability for acting for itself or in any capacity other than as trustee and nothing in this Agreement shall impose on it any obligation to pay any amount out of its personal assets. Notwithstanding any other provision of this Agreement, its obligations hereunder (if any) to make any payment of any amount or to hold any amount on trust shall be only to make payment of such amount to or hold any such amount on trust to the extent that (i) it has actual knowledge that such obligation has arisen and (ii) it has received and, on the date on which it acquires such actual knowledge, has not distributed to the Noteholders for which it acts as trustee in accordance with the relevant Notes Indenture any such amount.
- (b) In no case shall any Notes Trustee be (i) personally responsible, liable or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by that Notes Trustee in good faith in accordance with this Agreement or any of the Notes Finance Documents in a manner that such Notes Trustee believed to be within the scope of the authority conferred on it by this Agreement or any of the Notes Finance Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party; provided, however, that each Notes Trustee shall be personally liable under this Agreement for its own gross negligence or wilful misconduct. It is also acknowledged and agreed that no Notes Trustee shall have any responsibility or liability for the actions of any individual Creditor or Noteholder (save in respect of its own actions).
- (c) Notwithstanding anything in this Agreement to the contrary, each Notes Trustee shall only have an obligation to turn over or repay amounts received under this Agreement by it if (i) it had actual knowledge that the receipt or recovery is an amount received in breach of this Agreement and (ii) to the extent that, prior to receiving such knowledge, it had not distributed the amount of such receipt or recovery in accordance with the relevant Notes Indenture. No Notes Trustee shall be charged with knowledge (actual or otherwise) or existence of facts that would impose any obligation on it hereunder to make any payment or prohibit it from making any payment unless, not less than two Business Days prior to the date of such

payment, a Responsible Officer of the Notes Trustee receives written notice satisfactory to it that such payments are required or prohibited by this Agreement.

- (d) Notwithstanding anything contained herein, no provision of this Agreement shall alter or otherwise affect the rights and obligations of the Parent or any other Debtor to make payments in respect of Notes Trustee Amounts as and when the same are due and payable pursuant to the applicable Notes Finance Documents or the receipt and retention by any Notes Trustee of the same or the taking of any step or action by any Notes Trustee in respect of its rights under the applicable Notes Finance Documents to the same.
- (e) No Notes Trustee is responsible for the appointment or for monitoring the performance of the Security Agent.
- (f) The Security Agent agrees and acknowledges that it shall have no claim against any Notes Trustee in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.
- (g) No Notes Trustee shall be under any obligation to instruct or direct the Security Agent to take any Enforcement Action unless it has been instructed to do so by the relevant Noteholders and has been indemnified and/or secured and/or prefunded to its satisfaction.
- (h) The provisions of this Clause 26 shall survive the termination of this Agreement.

#### **26.2 No action**

- (a) Notwithstanding any other provision of this Agreement, no Notes Trustee shall have any obligation to take any action under this Agreement unless it is indemnified and/or secured and/or prefunded to its satisfaction in respect of all costs, expenses and liabilities which it would in its opinion thereby incur (including legal fees together with any associated VAT). No Notes Trustee shall have an obligation to indemnify any other person, whether or not a Party, in respect of any of the transactions contemplated by this Agreement. In no event shall the permissive rights of a Notes Trustee to take action under this Agreement be construed as an obligation to do so.
- (b) Prior to taking any action under this Agreement any Notes Trustee may request and rely upon an opinion of counsel or opinion of another qualified expert, at the expense of the Parent or another Debtor.
- (c) Notwithstanding any other provisions of this Agreement or any other Notes Finance Document to which a Notes Trustee is a party to, in no event shall a Notes Trustee be liable for special, indirect, punitive or consequential loss or damages of any kind whatsoever (including but not limited to loss of business, goodwill, opportunity or profits) whether or not foreseeable even if such Notes Trustee has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract or otherwise.

#### **26.3 Reliance on certificates**

Any Notes Trustee shall be entitled to and may rely on any notice, consent or certificate given or granted by any Party without being under any obligation to enquire or otherwise determine whether any such notice, consent or certificate has been given or granted by such Party properly acting in accordance with the provisions of this Agreement.

#### **26.4 No fiduciary duty**

No Notes Trustee shall be deemed to owe any fiduciary duty to any Creditor (save in respect of such persons for whom it acts as trustee) and shall not be personally liable to any Creditor if it shall in good faith mistakenly pay over or distribute to any Creditor or to any other person cash, property or securities to which the other Creditor shall be entitled by virtue of this Agreement or otherwise. With respect to the Creditors, each Notes Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the Notes Finance Documents pursuant to which it acts as trustee and this Agreement and no implied agreement, covenants or obligations with respect to the other Creditors shall be read into this Agreement against any Notes Trustee.

#### **26.5 Debt assumptions**

(a) Each Notes Trustee is entitled to assume that in respect of the Senior Liabilities and the Senior Parent Liabilities:

- (i) no Senior Payment Default has occurred;
- (ii) no Second Lien Payment Default has occurred;
- (iii) none of the Senior Creditor Liabilities, Second Lien Liabilities or Senior Parent Liabilities have been accelerated;
- (iv) no Default, Event of Default or termination event (however described) has occurred; and
- (v) neither the First/Second Lien Discharge Date nor the Senior Parent Discharge Date has occurred, unless a Responsible Officer of the relevant Notes Trustee has actual knowledge to the contrary.

(b) No Notes Trustee is obliged to monitor or enquire whether any Event of Default has occurred.

#### **26.6 Creditors**

In acting pursuant to this Agreement and the relevant Notes Indenture, no Notes Trustee is required to have any regard to the interests of the Senior Lenders, Permitted Senior Financing Creditors, Permitted Second Lien Financing Creditors, Permitted Parent Financing Creditors, Hedge Counterparties, Operating Facility Lenders (in the case of the Senior Parent Notes Trustee) the Senior Notes Creditors or (in the case of the Senior Notes Trustee) the Senior Parent Notes Creditors.

#### **26.7 Reliance and advice**

Each Notes Trustee may:

- (a) rely on any notice or document believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person;
- (b) rely on any statement made by any person regarding any matters which may be assumed to be within its powers to verify; and
- (c) engage, pay for and rely on professional advisers selected by it (including those representing a person other than such Notes Trustee).



**26.8 Other Parties not affected**

No provision of this Clause 26 shall alter or change the rights and obligations as between the other Parties in respect of each other. This Clause 26 is intended to afford protection to the Notes Trustees only.

**26.9 Instructions**

In acting under this Agreement, each Notes Trustee is entitled to seek instructions from the Noteholders for whom it is acting as trustee at any time and, where it acts on the instructions of the Noteholders, no Notes Trustee shall incur any liability to any person for so acting. No Notes Trustee is liable to any person for any loss suffered as a result of any delay caused as a result of its seeking instructions from such Noteholders.

**26.10 Responsibility of Notes Trustee**

(a) No Notes Trustee shall be responsible to any other Secured Party for the legality, validity, effectiveness, enforceability, adequacy, accuracy, completeness or performance of:

- (i) any Secured Debt Document or any other document;
- (ii) any statement or information (whether written or oral) made in or supplied in connection with any Secured Debt Document or any other document; or
- (iii) any observance by any Debtor of its obligations under any Secured Debt Document or any other document.

(b) Each Notes Trustee may rely and shall be fully protected in acting or refraining from acting upon any notice, certificate or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person.

**26.11 Confirmation**

Without affecting the responsibility of any Debtor, Third Party Security Provider or the Parent for information supplied by it or on its behalf in connection with any Debt Document, each Secured Party (other than the Notes Trustees (in their personal capacity) and the Security Agent) confirms that it:

- (a) has made, and will continue to make, its own independent appraisal of all risks arising under or in connection with the Secured Debt Documents (including the financial condition and affairs of each Debtor or their related entities and the nature and extent of any recourse against any Party or its assets); and
- (b) has not relied on any information provided to it by the Notes Trustee in connection with any Secured Debt Documents.

**26.12 Provision of information**

No Notes Trustee is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. No Notes Trustee is responsible for:

- (a) providing any Secured Party with any credit or other information concerning the risks arising under or in connection with the Debt Documents (including any information relating to the financial condition or affairs of any Debtor, the Parent or their related entities or the nature or extent of

recourse against any Party or its assets) whether coming into its possession before, on or after the date of this Agreement; or

(b) obtaining any certificate or other document from any Debtor or the Parent.

**26.13 Departmentalism**

In acting as a Notes Trustee, each Notes Trustee shall be treated as acting through its agency division, which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by a Notes Trustee which, in its opinion, is received or acquired by some other division or department or otherwise than in its capacity as a Notes Trustee may be treated as confidential by such Notes Trustee and will not be treated as information possessed by a Notes Trustee in its capacity as such.

**26.14 Disclosure of information**

Each Debtor irrevocably authorises any Notes Trustee to disclose to any Secured Party any information that is received by that Notes Trustee in its capacity as a Notes Trustee.

**26.15 Illegality**

Each Notes Trustee may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

**26.16 Resignation of Notes Trustee**

Each Notes Trustee may resign or be removed in accordance with the terms of the applicable Notes Indenture, provided that a replacement Notes Trustee agrees with the Parties to become the replacement trustee under this Agreement by the execution of a Creditor/Agent Accession Undertaking.

**26.17 Notes Trustee assumptions**

(a) Each Notes Trustee is entitled to assume that:

- (i) any payment or other distribution made pursuant to this Agreement in respect of the Senior Parent Liabilities, Second Lien Liabilities or Senior Notes Liabilities (as the case may be) has been made in accordance with the ranking in Clause 2 (*Ranking and priority*) and is not prohibited by any provisions of this Agreement and is made in accordance with these provisions;
- (ii) the proceeds of enforcement of any Security conferred by the Security Documents have been applied in the order set out in Clause 14 (*Application of proceeds*);
- (iii) any Security, collateral, guarantee or indemnity or other assurance granted to it has been so granted in compliance with Clause 3.3 (*Security and guarantees: Senior Secured Creditors*) or, as the case may be, Clause 6.1 (*Restriction on Payment and dealings: Senior Parent Liabilities*); and
- (iv) any Senior Notes or Senior Parent Notes issued comply with the provisions of this Agreement, unless a Responsible Officer of such Notes Trustee has actual knowledge to the contrary.

(b) No Notes Trustee shall have any obligation under Clause 9 (*Effect of Insolvency Event*) or Clause 11 (*Redistribution*) in respect of amounts received or recovered by it unless (i) a Responsible Officer has

actual knowledge that such Clauses apply to the receipt or recovery, and (ii) it has not distributed to the relevant Noteholders in accordance with the Notes Indenture any amount so received or recovered.

**26.18 Agents**

Each Notes Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care by it hereunder.

**26.19 No requirement for bond or surety**

No Notes Trustee shall be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

**27. GUARANTEE AND INDEMNITY**

**27.1 Guarantee and indemnity**

Each Debtor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Guarantee Party punctual performance by each other Debtor of all that Debtor's obligations under the Guarantee Agreements;
- (b) undertakes with each Guarantee Party that whenever another Debtor does not pay any amount when due (allowing for any applicable grace period) under or in connection with any Guarantee Agreement, that Debtor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Guarantee 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 Guarantee Party immediately on demand against any cost, loss or liability it incurs as a result of a Debtor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Guarantee Agreement on the date when it would have been due. The amount payable by a Debtor under this indemnity will not exceed the amount it would have had to pay under this Clause 27 if the amount claimed had been recoverable on the basis of a guarantee.

**27.2 Continuing guarantee**

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

**27.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Debtor or any security for those obligations or otherwise) is made by a Guarantee Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, judicial management, administration or otherwise, without limitation, then the liability of each Debtor under this Clause 27 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

#### **27.4 Waiver of defences**

The obligations of each Debtor under this Clause 27 will not be affected by an act, omission, matter or thing which, but for this Clause 27, would reduce, release or prejudice any of its obligations under this Clause 27 (without limitation and whether or not known to it or any Guarantee Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any other Debtor 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 Debtor 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 a Debtor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Guarantee Agreement 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 Guarantee Agreement or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Guarantee Agreement or any other document or security; or
- (g) any insolvency or similar proceedings.

#### **27.5 Debtor intent**

Without prejudice to the generality of Clause 27.4 (*Waiver of defences*), each Debtor 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 Guarantee Agreements and/or any facility or amount made available under any of the Guarantee Agreements 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.

#### **27.6 Immediate recourse**

Each Debtor waives any right it may have of first requiring any Guarantee 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 Debtor under this Clause 27. This waiver applies irrespective of any law or any provision of a Guarantee Agreement to the contrary.

#### 27.7 Appropriations

Until all amounts which may be or become payable by the Debtors under or in connection with the Guarantee Agreements have been irrevocably paid in full, each Guarantee 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 Guarantee 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 Debtor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Debtor or on account of any Debtor's liability under this Clause 27.

#### 27.8 Deferral of Debtors' rights

Until all amounts which may be or become payable by the Debtors under or in connection with the Guarantee Agreements have been irrevocably paid in full and unless any relevant Guarantee Party otherwise directs, no Debtor will exercise any rights which it may have by reason of performance by it of its obligations under the Guarantee Agreements or by reason of any amount being payable, or liability arising, under this Clause 27:

- (a) to be indemnified by a Debtor;
- (b) to claim any contribution from any other guarantor of any Debtor's obligations under the Guarantee Agreements;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Guarantee Parties under the Guarantee Agreements or of any other guarantee or security taken pursuant to, or in connection with, the Guarantee Agreements by any Guarantee Party;
- (d) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which any Debtor has given a guarantee, undertaking or indemnity under Clause 27.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Debtor; and/or
- (f) to claim or prove as a creditor of any Debtor in competition with any Guarantee Party.

If a Debtor 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 Guarantee Parties by the Debtors under or in connection with the Guarantee Agreements to be repaid in full on trust for the Guarantee Parties.

#### 27.9 Release of Debtors' right of contribution

If any Debtor (a "**Retiring Debtor**") ceases to be a Debtor in accordance with the terms of the Guarantee Agreements for the purpose of any sale or other disposal of that Retiring Debtor or any of its Holding Companies (other than the Parent) then on the date such Retiring Debtor ceases to be a Debtor:

- (a) that Retiring Debtor is released by each other Debtor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Debtor arising by reason of the performance by any other Debtor of its obligations under the Guarantee Agreements; and
- (b) each other Debtor waives any rights it may have by reason of the performance of its obligations under the Guarantee Agreements to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Guarantee Parties under any Guarantee Agreement or of any other security taken pursuant to, or in connection with, any Guarantee Agreement where such rights or security are granted by or in relation to the assets of the Retiring Debtor.

**27.10 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 Guarantee Party.

**27.11 Guarantee limitations**

This guarantee and the obligations and liabilities of each Debtor under and in connection with the Guarantee Agreements (including, without limitation, this Clause 27):

- (a) does not apply to any liability to the extent that it would result in this guarantee being illegal, in breach of law or regulation, or constituting unlawful financial assistance in any relevant jurisdiction (including, for the avoidance of doubt, within the meaning of section 678 or 679 of the Companies Act 2006 applicable to members of the Group incorporated in the United Kingdom and within the meaning of section 7 or 7A of the Isle of Man Companies Act 1992 applicable to members of the Group incorporated under the Isle of Man Companies Acts 1931 to 2004) concerning the financial assistance by that company for the acquisition of, or subscription for, shares or concerning the protection of shareholders' capital; and
- (b) is and shall be subject to Clauses 27.12 (*US guarantee limitations*) and 27.13 (*Limitations – Regulated Entities*) and any other limitations set out in this Agreement or in a Debtor/Third Party Security Provider Accession Deed applicable to such Debtor or the jurisdiction of incorporation of such Debtor,

and any guarantee, indemnity, obligations and liabilities of each Debtor shall be construed accordingly.

**27.12 US guarantee limitations**

- (a) In this Clause, "**fraudulent transfer law**" means any applicable United States bankruptcy and State fraudulent transfer and conveyance statute and any related case law; and terms used in this Clause are to be construed in accordance with the fraudulent transfer laws.
- (b) Each Guarantee Party acknowledges and agrees that each U.S. Debtor's liability under this Clause is limited so that no obligation of, or transfer by, any U.S. Debtor under any Guarantee Agreement is subject to avoidance and turnover under any fraudulent transfer law.
- (c) Notwithstanding any term of this Agreement or any Guarantee Agreement, no obligation of a U.S. Debtor under this Agreement or under any Guarantee Agreement may be, directly or indirectly: (i) guaranteed by

a member of the Group (including, for this purpose, any direct or indirect subsidiaries acquired hereafter by the Company) that is a "controlled foreign corporation" (as defined in Section 957(a) of the U.S. Internal Revenue Code) that has a "United States shareholder" (as defined in Section 951 of the U.S. Internal Revenue Code) that is a member of the Group (such an entity, a "**CFC**") or by an entity (a "**FSHCO**") substantially all the assets of which consist of equity interests (or equity interests and indebtedness) of one or more CFCs or other FSHCOs, or guaranteed by a Subsidiary of a CFC or FSHCO; (ii) secured by any assets of a CFC, FSHCO or a Subsidiary of a CFC or a FSHCO (including any CFC or FSHCO equity interests held directly or indirectly by a CFC or FSHCO); (iii) secured by a pledge or other security interest in excess of 65% of the voting equity interests (and 100% of the non-voting equity interests) of a CFC or FSHCO; or (iv) guaranteed by any Subsidiary or secured by a pledge of or security interest in any Subsidiary or other asset, if it would result in material adverse US tax consequences to any member of the Group that is organised or tax resident in the United States as reasonably determined by the Debtors and the Parent, and the relevant Guarantee Parties.

#### **27.13 Limitations – Regulated Entities**

- (a) Notwithstanding anything set out to the contrary in this Agreement or any other Guarantee Agreement, the obligations and liabilities of each Regulated Entity which is a Debtor under this Clause 27 or any other provision of this Agreement or any other Guarantee Agreement to which it is a party shall be limited:
- (i) to the material Unrestricted Assets of that Regulated Entity (subject to and in accordance with the Agreed Security Principles); and
  - (ii) such that the Guarantee Parties shall only have recourse against each Regulated Entity to the extent that such recourse does not affect the availability (immediately and without restriction) of Assets to cover, or have a result where the Regulated Entity does not satisfy, a Capital Requirement as at the date the relevant Guarantee Party takes enforcement action (however described) against such Regulated Entity under this Clause 27 or any other provision of this Agreement or any other Guarantee Agreement to which it is a party.
- (b) For the purposes of this Clause 27, "**Assets**" means the assets of each Regulated Entity accounted for as such in each Regulated Entity's financial statements.

#### **27.14 Excluded Swap Obligations; keepwell**

- (a) Notwithstanding anything to the contrary in this Agreement or any other Debt Document, the guarantee of each Debtor under this Clause 27 does not apply to any Excluded Swap Obligation of such Debtor (and no amount received from any Debtor under any Debt Document shall be applied to any Excluded Swap Obligation of such Debtor, whether under Clause 14 (*Application of proceeds*) or otherwise).
- (b) Each Qualified ECP Guarantor shall provide such funds or other support as may be needed from time to time by each other Debtor to honour all of its obligations under (a) the Debt Documents in respect of any hedging agreement and (b) Clause 27 in respect of each other Debtor's obligations under any hedging agreement (provided, however, that each Qualified ECP Guarantor shall only be liable under this Clause 27.14 for the maximum amount of such liability that can hereby be incurred without rendering its obligations under this Clause 27.14, or otherwise under Clause 27 or otherwise under the Debt Documents, voidable

under applicable law, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Clause 27.14 shall remain in full force and effect until each Debtor's obligations under any hedging agreement and under Clause 27 in respect of each other Debtor's obligations under any hedging agreement are fully discharged in accordance with the terms of the Debt Documents. Each Qualified ECP Guarantor intends that this Clause 27.14 constitutes, and this Clause 27.14 shall be deemed to constitute, a "keepwell, support or other agreement" for the benefit of each other Debtor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

## 28. COUNTERPARTS

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.

## 29. BAIL-IN

### 29.1 Contractual recognition of bail-in

Notwithstanding any other term of any Debt Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Debt Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

(a) any Bail-In Action in relation to any such liability, including (without limitation):

(i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;

(ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and

(iii) a cancellation of any such liability; and

(b) a variation of any term of any Debt Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

### 29.2 Bail-in definitions

In this Clause 29:

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

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

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

(a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;

(b) in relation to the United Kingdom, the UK Bail-In Legislation; and



(c) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

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

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

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

**"UK Bail-In Legislation"** means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

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

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

### 30. GOVERNING LAW

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

### 31. ENFORCEMENT

#### 31.1 Jurisdiction

- (a) 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) 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.

#### 31.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law each Debtor and Third Party Security Provider (unless incorporated in England and Wales):
- (i) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with the Debt Documents; and
  - (ii) agrees that failure by a process agent to notify the relevant Debtor or Third Party Security Provider of the process will not invalidate the proceedings concerned.
- (b) A Debtor or Third Party Security Provider may irrevocably appoint another person as its agent for service of process in relation to any proceedings before the English courts in connection with the Debt Documents, subject to notifying the Security Agent accordingly. In the case of any replacement of an existing agent for service of process, following the new process agent's appointment and notification to the Security Agent of such new appointment, the existing process agent may resign.

### 32. ACKNOWLEDGEMENT REGARDING ANY SUPPORTED QFCS

- (a) To the extent that the Debt Documents provide support, through a guarantee or otherwise, for Hedging Agreements or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the Parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Debt Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):
- (i) in the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported

QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States; and

- (ii) in the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, default rights under the Debt Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such default rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Debt Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender (as defined in the Senior Facilities Agreement) shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) as used in this Clause 32, the following terms have the following meanings:

**"BHC Act Affiliate"** of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

**"Covered Entity"** means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**"default right"** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

**"QFC"** has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Intra-Group Lenders, the Debtors, the Third Party Security Providers, the Parent, the Company, UK Finco, US Corp and Payment Processing and is intended to be and is delivered by them as a deed on the date specified above.

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## SCHEDULE 1

### Form of Debtor/Third Party Security Provider Accession Deed

THIS AGREEMENT is made on [●] and made between:

- (1) [Insert Full Name of Acceding Debtor/Third Party Security Provider] (the "**Acceding [Debtor]/[Third Party Security Provider]**"); and
- (2) [Insert Full Name of current Security Agent] (the "**Security Agent**"), for itself and each of the other parties to the intercreditor agreement referred to below.

This agreement is made on [date] by the Acceding [Debtor]/[Third Party Security Provider] in relation to an intercreditor agreement (the "**Intercreditor Agreement**") dated [●] between, amongst others, [●] as parent, [●] as security agent, [●] as senior facility agent, , the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

The Acceding [Debtor]/[Third Party Security Provider] intends to [incur Liabilities under the following documents]/[give Security and/or a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

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

the "**Relevant Documents**".

IT IS AGREED as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. Subject to the terms of the Intercreditor Agreement, the Acceding [Debtor]/[Third Party Security Provider] and the Security Agent agree that the Security Agent shall hold:
  - (a) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (b) all proceeds of that Security; and]
  - (c) all obligations expressed to be undertaken by the Acceding [Debtor]/[Third Party Security Provider] to pay amounts in respect of the Liabilities to the Security Agent as trustee or agent for the Secured Parties or creditor under any parallel debt structure (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 or agent for the Secured Parties or creditor under any parallel debt structure,  
  
on trust or as agent for the Secured Parties (to the extent legally possible and including as creditor under a parallel debt structure for the benefit of the Secured Parties) or administer as security agent for itself and the other Secured Parties, on the terms and conditions contained in the Intercreditor Agreement.
3. The Acceding [Debtor]/[Third Party Security Provider] confirms that it intends to be party to the Intercreditor Agreement as a [Debtor]/[Third Party Security Provider], undertakes to perform all the obligations

expressed to be assumed by a [Debtor]/[Third Party Security Provider] 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 (in each case subject always to any applicable limitations set out in Clause 26.11 (*Confirmation*) or the other terms of the Intercreditor Agreement).

4. [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].

5. [Include any additional limitations required by the Acceding [Debtor]/[Third Party Security Provider]].

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

THIS AGREEMENT has been signed on behalf of the Security Agent and executed as a deed by the Acceding [Debtor]/[Third Party Security Provider] and is delivered on the date stated above.

**The Acceding [Debtor]/[Third Party Security Provider]**

Executed as a deed by [Full Name of Acceding [Debtor]/[Third Party Security Provider]]

.....  
Director

.....  
[Director/Secretary]

**OR**

[Executed as a deed by [Full name of Acceding [Debtor]/[Third Party Security Provider]] acting by [name of Director] a Director in the presence of [name of witness]

[Signature of Director]

.....

[Signature of witness]

.....  
Name:

Occupation:

Address:

Address for notices:  
A44420063

Address:

Fax:

**The Security Agent**

*[Full Name of Current Security Agent]*

By:

Date:

A44420063

**SCHEDULE 2**  
Form of Creditor/Agent Accession Undertaking

To: *[Insert full name of current Security Agent]* for itself and each of the other parties to the Intercreditor Agreement referred to below.

*[To: [Insert full name of current Senior Agent] as Senior Facility Agent.]*

From: *[Acceding Creditor/Agent]*

THIS UNDERTAKING is made on [date] by [insert full name of new Senior Lender/ Operating Facility Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Permitted Second Lien Financing Creditor/Permitted Parent Financing Creditor/Senior Creditor Representative/Second Lien Creditor Representative/Senior Parent Creditor Representative/Investor/Senior Notes Trustee/Senior Parent Notes Trustee] (the "**Acceding [Senior Lender/ Operating Facility Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Permitted Second Lien Financing Creditor/Permitted Parent Financing Creditor/Senior Creditor Representative/Second Lien Creditor Representative/Senior Parent Creditor Representative/Investor/Senior Notes Trustee/Senior Parent Notes Trustee]**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated \_\_\_\_ June 2021 between, among others, Paysafe Group Holdings II Limited as parent, Lucid Trustee Services Limited as security agent, J.P. Morgan AG as senior facility agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [Senior Lender/ Operating Facility Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Permitted Second Lien Financing Creditor/Permitted Parent Financing Creditor/Senior Creditor Representative/Second Lien Creditor Representative/Senior Parent Creditor Representative/Investor/Senior Notes Trustee/Senior Parent Notes Trustee] being accepted as a [Senior Lender/ Operating Facility Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Permitted Second Lien Financing Creditor/Permitted Parent Financing Creditor/Senior Creditor Representative/Second Lien Creditor Representative/Senior Parent Creditor Representative/Investor/Senior Notes Trustee/Senior Parent Notes Trustee] for the purposes of the Intercreditor Agreement, the Acceding [Senior Lender/ Operating Facility Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Permitted Second Lien Financing Creditor/Permitted Parent Financing Creditor/Senior Creditor Representative/Second Lien Creditor Representative/Senior Parent Creditor Representative/Investor/Senior Notes Trustee/Senior Parent Notes Trustee] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Senior Lender/ Operating Facility Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted Senior Financing Creditor/Permitted Second Lien Financing Creditor/Permitted Parent Financing Creditor/Senior Creditor Representative/Second Lien Creditor Representative/Senior Parent Creditor Representative/Investor/Senior Notes Trustee/Senior Parent Notes Trustee] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Senior Lender/ Operating Facility Lender/Hedge Counterparty/Senior Agent/Intra-Group Lender/Permitted

A44420063



Senior Financing Creditor/Permitted Second Lien Financing Creditor/Permitted Parent Financing Creditor/Senior Creditor Representative/Second Lien Creditor Representative/Senior Parent Creditor Representative/Investor/Senior Notes Trustee/Senior Parent Notes Trustee] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[The Acceding Lender is an Affiliate of a [Senior Lender/Permitted Senior Financing Creditor] and has become a provider of an Ancillary Facility. In consideration of the Acceding Lender being accepted as an Ancillary Lender for the purposes of the [Senior Facilities Agreement/Permitted Senior Financing Agreement], the Acceding Lender confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [date], it intends to be party to the [Senior Facilities Agreement/Permitted Senior Financing Agreement] as an Ancillary Lender, and undertakes to perform all the obligations expressed in the [Senior Facilities Agreement/Permitted Senior Financing Agreement] to be assumed by a [Finance Party] (as defined in the Senior Facilities Agreement) and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the [Senior Facilities Agreement/Permitted Senior Financing Agreement] as an Ancillary Lender.]

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

THIS UNDERTAKING has been entered into on the date stated above [and is executed as a deed by the Acceding Creditor, if it is acceding as an [Intra-Group Lender]/[Investor] and is delivered on the date stated above].

Acceding [Creditor/Agent]

[EXECUTED as a DEED]  
[insert full name of Acceding Creditor/Agent]

By:

Address:

Fax:

Accepted by the Security Agent

[Accepted by the Senior Agent]

for and on behalf of

for and on behalf of

[Insert full name of current Security Agent]

[Insert full name of Senior Agent]

Date:

Date:]<sup>4</sup>

**SCHEDULE 3**  
Form of Debtor Resignation Request

To: [ ] as Security Agent  
From: [resigning Debtor] and [Parent]  
Dated:  
Dear Sirs

**[Parent] – [ ] Intercreditor Agreement  
dated [ ] (the "Intercreditor Agreement")**

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to Clause 19.13 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

[resigning Debtor]

By:

By:

A44420063

**SCHEDULE 4**  
Priority Revolving Facility

**1. Ranking**

- (a) No liabilities or obligations in respect of any Priority Revolving Facility may rank in right and priority of payment under this Agreement ahead of the Senior Lender Liabilities (other than as regards amounts of the type set out in paragraphs (a)(i) and (a)(ii) of Clause 14.1 (*Order of application*)).
- (b) Subject to paragraph (a) above and to the extent not otherwise prohibited by the Debt Financing Agreements, any Priority Revolving Facility shall rank in right and priority of payment as determined by the Parent.

**2. Enforcement**

The right of the lenders or other creditors in respect of a Priority Revolving Facility to:

- (a) instruct the Security Agent to enforce the Transaction Security;
  - (b) give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit; and/or
  - (c) otherwise provide instructions as, or as part of, an Instructing Group,
- shall be generally consistent with, or otherwise not materially less favourable to the other Secured Parties than, those customary for facilities of a similar nature to that Priority Revolving Facility (if any), in each case as at the date such Priority Revolving Facility is contractually committed by the relevant member(s) of the Group and as determined by the Parent (with any such determination to be conclusive).

**3. Option to Purchase**

- (a) The Senior Notes Creditors and the Permitted Senior Financing Creditors shall be provided with an "option to purchase" right in relation to any Liabilities in respect of a Priority Revolving Facility consistent in all material respects with the "option to purchase" right provided in relation to the Senior Lender Liabilities pursuant to Clause 3.8 (*Option to purchase: Senior Notes Creditors and Permitted Senior Financing Creditors*).
- (b) The Senior Parent Agent(s) shall be provided with an "option to purchase" right in relation to any Liabilities in respect of a Priority Revolving Facility consistent in all material respects with the "option to purchase" right provided in relation to the Senior Liabilities pursuant to Clause 6.13 (*Option to purchase: Senior Parent Creditors*).

## Signatures

### The Senior Facility Agent

Executed as a deed by **J.P. MORGAN AG**

/s/ Grant Keith

Authorised signatory

Name: Grant Keith

In the presence of:

.....

Name:

Occupation:

Address:

### Notice Details

Address: 25 Bank Street, Canary Wharf, London E14 5JP

Telephone: Switchboard+44 (0) 20 7742 1000

Fax: +44 (0)20 7777 2360 E-Fax 12016395145@tls.ldsprod.com

Email: emea.london.agency@jpmorgan.com

Attention: Loan Agency Group

*[Signature Page to the Intercreditor Agreement]*

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## The Senior Lenders

Executed as a deed by **BANK OF AMERICA, N.A.**

/s/ Matt Lynn

Authorised signatory

## Notice Details

Address: One Bryant Park, New York, NY 10036, United States of America

Fax: 972-728-6160

Email: bank\_of\_america\_as\_lender\_2@bofa.com

Attention: Perumalla Suman

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **BANK OF MONTREAL, LONDON BRANCH**

/s/ Richard Pittam

Authorised signatory

Name: Richard Pittam

Occupation: Managing Director

/s/ Scott Matthews

Authorised signatory

Name: Scott Matthews

Occupation: Managing Director

**Notice Details**

Address: 95 Queen Victoria Street, London EC4V 4HG

Fax: n/a

Email: Richard Pittam

Attention: Richard.pittam@bmo.com

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **CREDIT SUISSE AG, LONDON BRANCH**

/s/ Gintautas Janekauskas

Authorised signatory

/s/ Erkin Yildiz

Authorised signatory

**Notice Details**

Address: 1 Cabot Square, London E14 4QJ

Fax: n/a

Email: list.csfb-loans-grp@credit-suisse.com

Attention: Loan Operations

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **GOLDMAN SACHS BANK USA**

/s/ Thomas M. Manning  
Authorised signatory

**Notice Details**

Address: Goldman, Sachs & Co., 2001 Ross Ave, 29th Floor, Dallas, TX 75201

Fax: n/a

Email: [gsd.link@gs.com](mailto:gsd.link@gs.com)

Attention: Jamie Minieri

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **INTESA SANPAOLO S.P.A., LONDON BRANCH**

/s/ Roberto Ravaziol

Authorised signatory

Name: Roberto Ravaziol

/s/ Luigi Napolano

Authorised signatory

Name: Luigi Napolano

**Notice Details**

Address: 90 Queen Street London EC4N 1SA

Fax: n/a

Email: roberto.buonerba@intesasanpaolo.com / ISPUK-group\_loans@intesasanpaolo.com / MiddleOfficeLIQ@intesasanpaolo.com

Attention: Roberto Buonerba/ ISPUK-group\_loans / MiddleOfficeLIQ

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **JPMORGAN CHASE BANK, N.A.**

/s/ Juan A. Afan Rosa

Authorised signatory

Name: Juan A. Afan Rosa

Occupation: Executive Director

In the presence of:

/s/ Sofia Romero-Emberton

Name: Sofia Romero-Emberton

Occupation: Vice President

Address: 25 Bank Street, Canary Wharf, London E14 5JP

**Notice Details**

Address: JPMorgan Chase Bank, N.A., 500 Stanton Christiana Rd., NCC5 / 1st Floor, Newark, DE 19713

Fax: n/a

Email: stephanie.polukis@jpmchase.com

Attention: Loan & Agency Services Group

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **JPMORGAN CHASE BANK, N.A., LONDON BRANCH**

/s/ Juan A. Afan Rosa

Authorised signatory

Name: Juan A. Afan Rosa

Occupation: Executive Director

In the presence of:

/s/ Sofia Romero-Emberton

Name: Sofia Romero-Emberton

Occupation: Vice President

Address: 25 Bank Street, Canary Wharf, London E14 5JP

**Notice Details**

Address: 25 Bank Street, Canary Wharf, London E14 5JP

Fax: n/a

Email: n/a

Attention: n/a

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **KEYBANK NATIONAL ASSOCIATION**

/s/ Allyn A. Coskun  
Authorised signatory  
Name: Allyn

**Notice Details**

Address: 127 Public Square / Cleveland, OH 44114

Fax: n/a

Email: [allyn\\_coskun@keybank.com](mailto:allyn_coskun@keybank.com)

Attention: Ali Coskun

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **PNC BANK, NATIONAL ASSOCIATION**

/s/ Andrew Fraser

Authorised signatory

Name: Andrew Fraser

**Notice Details**

Address: 609 Main Street, Suite 2700, Houston, TX 77002

Fax: 877-733-1128

Email: patrick.greene@pnc.com

Attention: Patrick Greene

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **ROYAL BANK OF CANADA**

/s/ Kamran Khan

Authorised signatory

**Notice Details**

Address: 100 Bishopsgate - London, EC2N 4AA

Fax: 44-207-332-0036

Email: RBCLondonGLA@rbc.com / Kamran.Khan@rbccm.com / Megan.Montero@rbccm.com

Attention: Ahmed Awad, Maggie Weiyan Tang, Henrique Bruno, Suraj Nair, David Wiltshire, Sheryll Arguna

*[Signature Page to the Intercreditor Agreement]*

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**The Senior Arrangers**

Executed as a deed by **BOFA SECURITIES, INC.**

.....  
Authorised signatory

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **BMO CAPITAL MARKETS CORP.**

.....  
Authorised signatory

.....  
Authorised signatory

[Signature Page to the Intercreditor Agreement]

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Executed as a deed by **CREDIT SUISSE AG, LONDON BRANCH**

/s/ Gintautas Jankauskas

Authorised signatory

Name: Gintautas Jankauskas

Occupation: Director

/s/ Erkin Yildiz

Authorised signatory

Name: Erkin Yildiz

Occupation: Managing Director

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **CREDIT SUISSE LOAN FUNDING LLC**

/s/ Benjamin Gohman

Authorised signatory

Name: Benjamin Gohman

Occupation: Managing Director

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **GOLDMAN SACHS BANK USA**

/s/ Thomas M. Manning  
Authorised signatory

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **INTESA SANPAOLO S.P.A - LONDON BRANCH**

/s/ Roberto Ravaziol

Authorised signatory

Name: Roberto Ravaziol

/s/ Luigi Napolano

Authorised signatory

Name: Luigi Napolano

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **J.P. MORGAN SECURITIES PLC**

/s/ Robert S. Cascarino

Authorised signatory

Name: Robert S. Cascarino

Occupation: Managing Director

In the presence of:

/s/ Bridget Dalton

Name: Bridget Dalton

Occupation: Vice President

Address: 383 Madison Ave, FL6, New York, NY 10179

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **KEYBANK NATIONAL ASSOCIATION**

/s/ Allyn A. Coskun  
Authorised signatory

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **PNC BANK, NATIONAL ASSOCIATION**

/s/ Andrew Fraser

Authorised signatory

Name: Andrew Fraser

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **ROYAL BANK OF CANADA**

/s/ Kamran Khan

Authorised signatory

*[Signature Page to the Intercreditor Agreement]*

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## The Parent

Executed as a deed by **PAYSAFE GROUP HOLDINGS II LIMITED** in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

## Notice Details

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

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## The Company

Executed as a deed by **PAYSAFE GROUP HOLDINGS III LIMITED** in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

## Notice Details

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

## The Original Debtors

Executed as a deed by **PAYSAFE GROUP HOLDINGS II LIMITED** acting by

Elliott Wiseman

in the presence of:

/s/ Elliott Wiseman

Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

### Notice Details:

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

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Executed as a deed by **PAYSAFE GROUP HOLDINGS III LIMITED** acting by  
Elliott Wiseman  
in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

**Notice Details:**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE FINANCE PLC** acting by  
Harpal O'Shea  
in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O'Shea  
Name: Harpal O'Shea  
Occupation: Executive Legal Assistant  
Address: 25 Canada Square London E14

**Notice Details:**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ  
Fax: N/A  
Email: Elliott.Wiseman@paysafe.com  
Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE HOLDINGS UK LIMITED** acting by  
Elliott Wiseman  
in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

**Notice Details:**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE HOLDINGS US CORP.** acting by  
Philip Ragona  
in the presence of:

/s/ Philip Ragona  
Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE MERCHANT SERVICES CORP.** acting by  
Philip Ragona  
in the presence of:

/s/ Philip Ragona  
Authorised signatory

/s/ Harpal O'Shea  
Name: Harpal O'Shea  
Occupation: Executive Legal Assistant  
Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ  
Fax: N/A  
Email: Elliott.Wiseman@paysafe.com  
Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---



Executed as a deed by **PAYSAFE DIRECT, LLC** acting by  
Philip Ragona  
in the presence of:

/s/ Philip Ragona  
Authorised signatory

/s/ Harpal O'Shea  
Name: Harpal O'Shea  
Occupation: Executive Legal Assistant  
Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ  
Fax: N/A  
Email: Elliott.Wiseman@paysafe.com  
Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE PAYMENT PROCESSING LLC.** acting by  
Philip Ragona  
in the presence of:

/s/ Philip Ragona  
Authorised signatory

/s/ Harpal O'Shea  
Name: Harpal O'Shea  
Occupation: Executive Legal Assistant  
Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ  
Fax: N/A  
Email: Elliott.Wiseman@paysafe.com  
Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

## The Original Intra-Group Lenders

Executed as a deed by **PAYSAFE GROUP HOLDINGS II LIMITED** acting by  
Elliott Wiseman  
in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

## Notice Details

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE GROUP HOLDINGS III LIMITED** acting by

Elliott Wiseman

in the presence of:

/s/ Elliott Wiseman

Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE FINANCE PLC** acting by  
Elliott Wiseman  
in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE HOLDINGS UK LIMITED** acting by  
Elliott Wiseman  
in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O'Shea  
Name: Harpal O' Shea  
Occupation: Executive Legal Assistant  
Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ  
Fax: N/A  
Email: Elliott.Wiseman@paysafe.com  
Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE HOLDINGS US CORP.** acting by  
Philip Ragona  
in the presence of:

/s/ Philip Ragona  
Authorised signatory

/s/ Harpal O'Shea  
Name: Harpal O'Shea  
Occupation: Executive Legal Assistant  
Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ  
Fax: N/A  
Email: Elliott.Wiseman@paysafe.com  
Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE MERCHANT SERVICES CORP.** acting by  
Philip Ragona  
in the presence of:

/s/ Philip Ragona  
Authorised signatory

/s/ Harpal O'Shea  
Name: Harpal O'Shea  
Occupation: Executive Legal Assistant  
Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ  
Fax: N/A  
Email: Elliott.Wiseman@paysafe.com  
Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---



Executed as a deed by **PAYSAFE DIRECT, LLC** acting by  
Philip Ragona  
in the presence of:

/s/ Philip Ragona  
Authorised signatory

/s/ Harpal O'Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE PAYMENT PROCESSING, LLC** acting by  
Philip Ragona  
in the presence of:

/s/ Philip Ragona  
Authorised signatory

/s/ Harpal O'Shea  
Name: Harpal O' Shea  
Occupation: Executive Legal Assistant  
Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ  
Fax: N/A  
Email: Elliott.Wiseman@paysafe.com  
Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE GROUP LIMITED** (a company incorporated  
in the Isle of Man with registered number 016104V) acting by  
Elliott Wiseman

/s/ Elliott Wiseman

Director:

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

## The Original Third Party Security Providers

Executed as a deed by **PAYSAFE GROUP LIMITED** (a company incorporated in the Isle of Man with registered number 016104V) acting by

Elliott Wiseman

/s/ Elliott Wiseman

Director

## Notice Details

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

Executed as a deed by **PAYSAFE US HOLDCO LIMITED** acting by Elliott Wiseman

in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O' Shea

Name: Harpal O'Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

**Notice Details**

Address: Floor 27 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---

**The Security Agent**

LUCID TRUSTEE SERVICES LIMITED

By: /s/ Caroline Horvath-Franco

Name: Caroline Horvath-Franco

Title: Authorized Signatory

By:

Name:

Title

**Notice Details**

Address: 6<sup>th</sup> Floor, No 1 Building 1-5 London Wall Buildings, London Wall, London, United Kingdom, EC2M 5PG

Telephone: N/A

Fax: N/A

Email: deals@lucid-ats.com

Attention: Lucid Agency and Trustee Services Limited

*[Signature Page to the Intercreditor Agreement]*

---

## The Original Investor

Executed as a deed by PI JERSEY HOLDCO 1.5 LIMITED acting by Elliott Wiseman

in the presence of:

/s/ Elliott Wiseman  
Authorised signatory

/s/ Harpal O' Shea

Name: Harpal O' Shea

Occupation: Executive Legal Assistant

Address: 25 Canada Square London E14

### Address Details

Address: Floor 27 – 25 Canada Square, London, England, E14 5LQ

Fax: N/A

Email: Elliott.Wiseman@paysafe.com

Attention: Elliott Wiseman

*[Signature Page to the Intercreditor Agreement]*

---





**JUNE 24, 2021**

**PAYSAFE US HOLDCO LIMITED**

and

**PAYSAFE HOLDINGS (US) CORP.**

(and each other Grantor party hereto)

and

**LUCID TRUSTEE SERVICES LIMITED**

(as Security Agent)

**COLLATERAL AGREEMENT**

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS	1
Section 1.01	1
Section 1.02	1
Section 1.03	2
ARTICLE II. GRANT OF SECURITY	6
Section 2.01	6
Section 2.02	7
Section 2.03	8
Section 2.04	8
Section 2.05	9
Section 2.06	10
Section 2.07	10
ARTICLE III. REMEDIES	11
Section 3.01	11
Section 3.02	12
Section 3.03	12
ARTICLE IV. INDEMNITY	12
Section 4.01	12
ARTICLE V. MISCELLANEOUS	13
Section 5.01	13
Section 5.02	13
Section 5.03	13
Section 5.04	13
Section 5.05	13
Section 5.06	14
Section 5.07	14
Section 5.08	15
Section 5.09	15
Section 5.10	15
Section 5.11	15

Section 5.12	Counterparts	15
Section 5.13	Headings	15
Section 5.14	Jurisdiction; Consent to Service of Process	15
Section 5.15	Termination or Release	16
Section 5.16	Additional Subsidiaries	16
Section 5.17	Precedence	17
Section 5.18	Secured Party Acknowledgement	17
Section 5.19	Reasonable Care	17

## Schedules

Schedule I Pledged Securities

Schedule II Legal Name, Jurisdiction of Formation and Location of Chief Executive Office

## Exhibits

Exhibit A Form of Supplement to the Collateral Agreement

COLLATERAL AGREEMENT, dated as of June 24, 2021 (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, this “**Agreement**”), among each party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor as provided herein but excluding any other entity that has ceased to be a Grantor as provided herein or in accordance with the Secured Debt Documents, each a “Grantor” and, collectively, the “**Grantors**”), and LUCID TRUSTEE SERVICES LIMITED, as security agent for the Secured Parties (in such capacity, together with its successors and permitted assigns in such capacity, the “**Security Agent**”).

## RECITALS

- (1) Reference is made to that certain SENIOR FACILITIES AGREEMENT, dated June 24, 2021 (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the “**Senior Facilities Agreement**”), among, *inter alios*, PAYSAFE GROUP HOLDINGS II LIMITED, a company incorporated under the laws of England with registered office at Floor 27, 25 Canada Square, London, England, E14 5LQ and registered number 10880277 (“**Parent**”), PAYSAFE GROUP HOLDINGS III LIMITED, a company incorporated under the laws of England with registered office at Floor 27, 25 Canada Square, London, England, E14 5LQ and registered number 10869332 (“**Company**”), the other obligors party thereto from time to time, the lenders party thereto from time to time, J.P. MORGAN AG, as agent (the “**Senior Facility Agent**”), and the Security Agent.
- (2) Further reference is made to that certain INTERCREDITOR AGREEMENT, dated June 24, 2021 (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the “**Intercreditor Agreement**”), among, *inter alios*, Parent, Company, the other obligors party thereto from time to time, the Senior Lenders party thereto from time to time, the Senior Facility Agent and the Security Agent.
- (3) In consideration of the extensions of credit and other accommodations of the Secured Parties as set forth in the Secured Debt Documents, each Grantor has agreed to secure such Grantor’s obligations under the Secured Debt Documents, as set forth herein.

## AGREEMENT

Accordingly, the parties hereto agree as follows:

## ARTICLE I.

## DEFINITIONS

### Section 1.01 Intercreditor Agreement.

- (1) Unless otherwise defined herein, terms defined in the Intercreditor Agreement and used herein have the meanings assigned to them in the Intercreditor Agreement and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Account, Certificated Security, Chattel Paper, Deposit Account, Payment Intangibles, Proceeds and Securities Account.
- (2) The rules of construction specified in Clause 1.2 of the Intercreditor Agreement also apply, *mutatis mutandis*, to this Agreement.

Section 1.02 Other references. In this Agreement, unless a contrary intention appears, a reference to:

- (1) any Secured Party, Grantor or any other person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors in title, permitted assignees and transferees and in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Secured Debt Documents; and
- (2) any Secured Debt Document or other agreement or instrument is to be construed as a reference to that agreement or instrument as amended or novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced, including by way of any change to the purpose of, any extension of or increase of the facilities or other obligations or addition of new facilities or other obligations made available under them or accession or retirement of the parties to these agreements.

Section 1.03 Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

**“Acceleration Event”** has the meaning assigned to such term in the Intercreditor Agreement; provided that for the purposes of this Agreement, it shall not include a Senior Parent Notes Acceleration Event or a Permitted Financing Acceleration Event (except to the extent such Senior Parent Notes Acceleration Event or Permitted Parent Financing Acceleration Event arises in respect of Senior Parent Notes Liabilities or Permitted Parent Financing Liabilities (as applicable) secured by Shared Security or an Acceleration Event in respect of an Event of Default under clause 28.1 (*Financial covenant*) of the Senior Facilities Agreement in respect of which a Financial Covenant Cross-Default has not occurred and is not continuing).

**“Agreement”** has the meaning assigned to such term in the introductory paragraph hereto.

**“Captive Insurance Company”** means a wholly-owned Subsidiary of the Parent created solely for providing self-insurance for the Parent and its Subsidiaries and engaging in no other activities other than activities ancillary thereto and necessary for the maintenance of corporate existence.

**“CFC”** means a “controlled foreign corporation” (as defined in Section 957(a) of the United States Internal Revenue Code of 1986 (as amended)).

**“Collateral”** has the meaning assigned to such term in Section 2.01(9).

**“Control”** has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

**“Domestic Subsidiary”** means any Subsidiary of the Parent that is organized under the laws of the United States or any political subdivision thereof, and **“Domestic Subsidiaries”** means any two or more of them. Unless otherwise indicated in this Agreement, all references to Domestic Subsidiaries will mean Domestic Subsidiaries of the Parent.

**“Effective Time”** has the meaning given to it in the Pay-Off Letter.

**“Equity Interests”** means, with respect to any person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in, including any limited or general partnership interest and any limited liability company membership interest) such person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such person of any of the foregoing (including through convertible securities, but excluding debt securities).

“**Excluded Assets**” means all of the following, whether now owned or hereafter acquired:

- (1) all Excluded Equity Interests;
- (2) assets to the extent a security interest therein would result in materially adverse tax, accounting or regulatory consequences, in each case, as reasonably determined by the Parent in accordance with the Agreed Security Principles;
- (3) any assets owned directly or indirectly by a CFC or a FSHCO;
- (4) assets to the extent the granting of a security interest therein would be prohibited or restricted by any contractual obligation binding on such asset at the time of acquisition thereof (and not entered into in contemplation thereof) (after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law);
- (5) any Grantor’s right, title or interest in any contract or agreement to which such Grantor is a party to the extent, but only to the extent, that such a grant would, under the terms of such contract or agreement, result in a breach of (or violate) the terms of, or constitute a default under, or result in the abandonment, invalidation or unenforceability of or create a right of termination in favor of or require the consent of any other party thereto (other than Parent, Company or any of their respective Subsidiaries), such contract or agreement (after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law (including Title 11 of the United States Code)); provided, however, that the Collateral shall (in the absence of any other applicable limitation) include (and such security interest shall attach and the definition of “Excluded Assets” shall not then include) immediately at such time as the contractual or legal provisions referred to above shall no longer be applicable and to the extent severable, and shall attach immediately to any portion of such contract or agreement not subject to the provisions specified in this clause (5); provided further that the exclusions referred to in this clause shall not include any proceeds of such contract or agreement;
- (6) assets to the extent the granting of a security interest therein would be prohibited or restricted by applicable law, rule or regulation (including any requirement to obtain the consent, approval, license or authorization of any Governmental Authority which has not been obtained) (after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law);
- (7) any assets to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by Parent in accordance with the Agreed Security Principles; or
- (8) (a) any assets and proceeds thereof subject to (i) liens securing obligations in respect of leases (including any finance lease, operating lease and capitalised lease) permitted or not prohibited under the Senior Facilities Agreement and in respect of Indebtedness permitted the Senior Facilities Agreement provided that (A) such liens do not at any time encumber any property other than the property financed by such Indebtedness, replacements thereof and additions and accessions to such property and the proceeds and the products thereof and customary security deposits and (B) such liens do not at any time extend to or cover any assets (except for additions and accessions to such assets, the proceeds and products thereof and customary security deposits) other than the assets subject to, or acquired, constructed, repaired or improved with the proceeds of such Indebtedness; provided that, in the case of each of sub-clause (A) and (B), individual financings provided by one lender

may be cross collateralised to other financings provided by such lender or its Affiliates and (ii) liens on assets of Restricted Subsidiaries that are not Obligor or on assets that do not constitute Charged Property, in each case, securing Indebtedness of such Restricted Subsidiaries permitted under the Senior Facilities Agreement or (ii) any other similar liens, so long as the Indebtedness secured by such other liens do not permit the applicable assets and proceeds to be pledged to the Security Agent (after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law (including Title 11 of the United States Code) or principles of equity).

Excluded Assets shall not include any Proceeds, substitutions or replacements of any Excluded Assets referred to above (unless such Proceeds, substitutions or replacements would themselves constitute Excluded Assets referred to above).

**“Excluded Equity Interests”** means any and all of the following Equity Interests, whether now owned or hereafter acquired:

- (1) interests in non-wholly owned partnerships, non-wholly owned joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of one or more unaffiliated third parties or not permitted by the terms of such person’s organizational or joint venture documents (so long as such prohibition did not arise as part of the acquisition or formation thereof or in anticipation of a Secured Debt Document) (after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law);
- (2) interests in Subsidiaries that are not Material Subsidiaries (as defined in the Senior Facilities Agreement, the Original Senior Secured Notes Indenture (as defined in the Senior Facilities Agreement) or other Secured Debt Document, as applicable) (except to the extent the security interest therein can be perfected by the filing of a Form UCC-1 financing statement), captive insurance subsidiaries (including any Captive Insurance Company), not-for-profit subsidiaries, special purpose entities used for securitization facilities including any factoring arrangement, in each case, permitted under the Intercreditor Agreement or the other Secured Debt Documents and Unrestricted Subsidiaries (as defined in the Senior Facilities Agreement, the Original Senior Secured Notes Indenture (as defined in the Senior Facilities Agreement) or other Secured Debt Document, as applicable);
- (3) margin stock;
- (4) voting Equity Interests of any Foreign Subsidiary that is a CFC or any FSHCO in excess of 65% of the issued and outstanding voting Equity Interests of such Foreign Subsidiary or FSHCO;
- (5) to the extent applicable law requires that a Subsidiary of such Grantor or such Grantors issue directors’ qualifying shares, nominee shares or similar shares which are required by applicable law to be held by persons other than the Grantors, such qualifying shares, nominee shares or similar shares held by persons other than Grantors;
- (6) any Equity Interests if, to the extent and for so long as the pledge of such Equity Interests hereunder is prohibited or restricted by any applicable law, rule or regulation including any requirement to obtain consent, approval, license or authorization of any Governmental Authority which has not been obtained (after giving effect to the applicable anti-assignment provisions of the UCC or any other applicable law); provided that such Equity Interests

shall cease to be Excluded Equity Interests at such time as such prohibition ceases to be in effect;

- (7) Equity Interests to the extent the same would result in materially adverse tax, accounting or regulatory consequences, in each case, as reasonably determined by Company, as reasonably determined by the Parent in accordance with the Agreed Security Principles; or
- (8) Equity Interests in Subsidiaries that are not Debtors.

**“Federal Securities Laws”** has the meaning assigned to such term in Section 3.03.

**“Foreign Subsidiary”** means any Subsidiary that is not a Domestic Subsidiary.

**“FSHCO”** means an entity substantially all the assets of which consist of equity interests (or equity interests and indebtedness) of one or more CFCs or other FSHCOs.

**“Governmental Authority”** means the government of any nation, or of any political subdivision thereof, whether state, regional or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**“Grantor”** and **“Grantors”** have the meanings assigned to such terms in the introductory paragraph to this Agreement.

**“Parent Entity”** means any Holding Company of the Parent that directly or indirectly owns 100% of the equity of the Parent.

**“Pay-Off Letter”** means the pay-off letter, dated on or around the date hereof, between Credit Suisse AG, London Branch as agent and the Parent.

**“Pledged Receivables”** has the meaning assigned to such term in Section 2.01.

**“Pledged Securities”** means any promissory notes, stock certificates, limited liability membership interest certificates or other certificated securities now or hereafter included in the Collateral, including all certificates, instruments or other documents representing or evidencing any Collateral.

**“Pledged Stock”** has the meaning assigned to such term in Section 2.01

**“Pledged US Borrower Stock”** has the meaning assigned to such term in Section 2.01.

**“Security Agent”** has the meaning assigned to such term in the introductory paragraph to this Agreement.

**“Senior Facilities Agreement”** has the meaning assigned to such term in the recitals to this Agreement.

**“UK Grantor”** means Paysafe US Holdco Limited, a company incorporated under the laws of England with registered office at Floor 27, 25 Canada Square, London, England, E14 5LQ and registered number 11114225.

**“US Borrower”** means Paysafe Holdco (US) Corp., a Delaware corporation.



“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “**Uniform Commercial Code**” or “**UCC**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

## ARTICLE II.

### GRANT OF SECURITY

Section 2.01 Pledge and Grant of Security Interest. As security for the payment or performance, as the case may be, in full of the Secured Obligations, each Grantor (other than UK Grantor) hereby pledges to the Security Agent, for the benefit of the Secured Parties, and hereby grants to the Security Agent, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title and interest in, to and under:

- (1) the (a) Equity Interests directly owned by such Grantor as of the Effective Time and (b) Equity Interests obtained by such Grantor after the Effective Time and, in each case, the certificates representing all such Equity Interests, in each case, except to the extent such Equity Interests constitute an Excluded Asset (the Equity Interests described in the foregoing clauses (a) and (b), collectively, the “**Pledged Stock**”);
- (2) any Accounts, Chattel Paper, Payment Intangibles, promissory notes, instruments and debt securities evidencing intercompany receivables (a) owing to such Grantor as of the Effective Time and (b) issued to such Grantor after the Effective Time, but in each case, excluding any Excluded Assets (collectively, the “**Pledged Receivables**”);

in each case, including all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all Pledged Receivables (except to the extent constituting an Excluded Asset), but excluding intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Parent and its Subsidiaries;

- (3) subject to Section 2.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the Pledged Stock and Pledged Receivables referred to in the foregoing clauses (1) and (2);
- (4) subject to Section 2.05 hereof, all rights and privileges of such Grantor with respect to the securities, instruments and other property referred to in the foregoing clauses (1), (2) and (3) above; and
- (5) all proceeds of any of the foregoing items referred to in clauses (1) through (4) above;

as security for the payment or performance, as the case may be, in full of the Secured Obligations, UK Grantor hereby pledges to the Security Agent, for the benefit of the Secured Parties, and hereby grants to the Security Agent, for the benefit of the Secured Parties, a security interest in all of UK Grantor’s right, title and interest in, to and under:

- (6) the (a) Equity Interests directly owned by UK Grantor in US Borrower as of the Effective Time and (b) Equity Interests obtained by UK Grantor in US Borrower after the Effective Time and, in each case, the certificates representing all such Equity Interests, in each case, except to the extent such Equity Interests constitute an Excluded Asset (the Equity Interests described in the foregoing clauses (a) and (b), collectively, the “**Pledged US Borrower Stock**”);
- (7) subject to Section 2.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the Pledged US Borrower Stock;
- (8) subject to Section 2.05 hereof, all rights and privileges of UK Grantor with respect to the securities, instruments and other property referred to in the foregoing clauses (6) and (7) above; and
- (9) all proceeds of any of the foregoing items referred to in clauses (6) through (8) above (the items referred to in clauses (1) through (9) of this Section 2.01 (except to the extent constituting Excluded Assets), collectively, the “**Collateral**”).

Notwithstanding anything to the contrary in this Agreement or any other Secured Debt Document, none of the Pledged Stock, Pledged Receivables, Pledged US Borrower Stock, or Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset.

Each Grantor hereby irrevocably authorizes the Security Agent (or its designee) at any time and from time to time to file in any relevant jurisdiction any financing statements with respect to the Collateral or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including: (a) whether such Grantor is an organization and the type of organization; and (b) a description of collateral that describes such property in any other manner as the Security Agent may reasonably determine is necessary to ensure the perfection of the security interest in the Collateral granted under this Agreement.

#### Section 2.02 Delivery of Pledged Securities.

- (1) Each Grantor agrees promptly to deliver or cause to be delivered to the Security Agent any and all certificates evidencing the Pledged Stock or Pledged US Borrower Stock, as applicable, (x) within 20 Business Days of the Effective Time (as such period may be extended by the Security Agent in its reasonable discretion), in the case of any such Pledged Stock or Pledged US Borrower Stock, as applicable, owned by such Grantor as of the Effective Time, and (y) within 20 Business Days from the date such Pledged Stock or Pledged US Borrower Stock, as applicable, is acquired by such Grantor (as such period may be extended by the Security Agent in its reasonable discretion), in the case of any such Pledged Stock or Pledged US Borrower Stock, as applicable, acquired by such Grantor after the Effective Time.
- (2) Each Grantor (other than UK Grantor) agrees to deliver or cause to be delivered to the Security Agent any and all promissory notes or instruments evidencing Pledged Receivables within 20 Business Days of the Effective Time (as such period may be extended by the Security Agent in its reasonable discretion), in the case of Pledged Receivables incurred after the Effective Time, pursuant to the terms hereof; provided that the foregoing requirement will not apply to (a) intercompany current liabilities incurred in

the ordinary course of business in connection with the cash management operations of Parent and its Subsidiaries, (b) to the extent that a pledge of such promissory note or instrument would violate applicable law after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law or (c) Pledged Receivables with a principal amount of less than or equal to \$15.0 million (or its equivalent in any other currency), individually.

- (3) Upon delivery to the Security Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 2.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer reasonably satisfactory to the Security Agent and by such other instruments and documents as the Security Agent may reasonably request and (b) all other property composing part of the Collateral delivered pursuant to the terms of this Agreement shall be accompanied, to the extent necessary to perfect the security interest in or allow realization on the Collateral, by proper instruments of assignment duly executed by the applicable Grantor and such other instruments or documents as the Security Agent may reasonably request.
- (4) Notwithstanding anything to the contrary in this Agreement, no Grantor will be required hereunder to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the security interest in any Collateral of such Grantor.
- (5) Notwithstanding anything to the contrary in any Secured Debt Document, no Grantor will be required pursuant to the terms of this Agreement:
  - (a) to take, or cause to be taken, any actions to perfect the security interest in the Collateral by any means other than (to the extent reasonably applicable):
    - (i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of each Grantor;
    - (ii) with respect to UK Grantor only, filings pursuant to the Uniform Commercial Code in the Office of the Recorder of Deeds in the District of Columbia;
    - (iii) delivery of Collateral consisting of Pledged Receivables pursuant to and accordance with Section 2.02; and
    - (iv) delivery of the Pledged Stock and the Pledged US Borrower Stock pursuant to and in accordance with Section 2.02; or
  - (b) to enter, or cause to be entered, any control agreements or similar arrangements with respect to any Deposit Accounts, Securities Accounts, commodities accounts or, except as set forth herein, other Collateral that requires perfection by Control.

Section 2.03 Representations, Warranties and Covenants. Each Grantor represents and warrants to the Security Agent that:

- (1) Schedule I correctly sets forth, as of the date hereof, (a) the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by

such Pledged Stock or Pledged US Borrower Stock, as applicable, and (b) all Pledged Receivables required to be pledged and delivered pursuant to Section 2.02;

- (2) none of the Equity Interests in limited liability companies or partnerships that are pledged by the Grantors hereunder constitute a security under Section 8-103 of the UCC or the corresponding code or statute of any other applicable jurisdiction other than any Equity Interest represented by security certificates that have been delivered, or will be delivered pursuant to this Agreement, to the Security Agent; and
- (3) as of the date hereof, each Grantor's true and correct legal name, its jurisdiction of formation or organization and the location of its chief executive office are set forth on Schedule II hereto.

Section 2.04 Registration in Nominee Name; Denominations. If an Acceleration Event has occurred which is continuing, (a) the Security Agent, on behalf of the Secured Parties, will have the right to hold the Pledged Securities in its own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Security Agent and each Grantor will promptly give to the Security Agent copies of any written notices or other written communications received by it with respect to the Pledged Stock and the Pledged US Borrower Stock registered in the name of such Grantor and (b) the Security Agent shall have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement, to the extent not prohibited by the documentation governing such Pledged Securities and applicable laws.

Section 2.05 Voting Rights; Dividends and Interest, Etc.

- (1) Unless and until the Grantors are notified by the Security Agent following an Acceleration Event:
  - (a) each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Collateral or any part thereof for any purpose not prohibited by the terms of this Agreement, the Intercreditor Agreement and the other Secured Debt Documents and each Grantor agrees that it shall exercise such rights for purposes consistent with the terms of this Agreement, the Intercreditor Agreement and the other Secured Debt Documents;
  - (b) the Security Agent will promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and
  - (c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Intercreditor Agreement, the other Secured Debt Documents and applicable laws; provided that, any noncash dividends, interest, principal or other distributions that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any

merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise will be and become part of the Collateral.

- (2) Upon the occurrence and during the continuance of an Acceleration Event,
- (a) in order to permit the Security Agent to exercise the voting and other consensual rights that it may be entitled to exercise pursuant hereto and to receive all dividends that it may be entitled to receive hereunder: (1) each Grantor will promptly execute and deliver (or cause to be executed and delivered) to the Security Agent all proxies, dividend payment orders and other instruments as the Security Agent may from time to time reasonably request and (2) each Grantor acknowledges that the Security Agent may utilize the power of attorney set forth in Section 5.07; and
  - (b) all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (1)(c) of this Section 2.05 will cease, and all such rights will thereupon become vested, for the benefit of the Secured Parties, in the Security Agent, which will have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions.
- (3) Upon the occurrence and during the continuance of an Acceleration Event, all dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 2.05 will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Security Agent, for the benefit of the Secured Parties, and will be promptly delivered to the Security Agent, in the same form as so received (endorsed in a manner reasonably satisfactory to the Security Agent). Any and all money and other property paid over to or received by the Security Agent pursuant to the provisions of this paragraph (3) will be retained by the Security Agent in an account to be established by the Security Agent upon receipt of such money or other property and will be applied in accordance with the provisions of Section 3.02 hereof. After all such Acceleration Events are revoked or otherwise cease to be continuing, the Security Agent will promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (1)(c) of this Section 2.05 and that remain in such account.
- (4) Upon the occurrence and during the continuance of an Acceleration Event, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 2.05, and the obligations of the Security Agent under paragraph (1)(b) of this Section 2.05, will cease, and all such rights will thereupon become vested in the Security Agent, for the benefit of the Secured Parties, which will have the sole and exclusive right and authority to exercise such voting and consensual rights and powers; provided that the Security Agent will have the right from time to time following and during the continuance of an Acceleration Event to permit the Grantors to exercise such rights. After all such Acceleration Events are revoked or otherwise cease to be continuing, each Grantor will have the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above.

Section 2.06 Negative Pledge. Unless otherwise permitted or not prohibited by the Secured Debt Documents, no Grantor shall sell, lease, transfer or otherwise dispose of all or any part of the Collateral

consisting of Pledged Securities except as (i) permitted by Section 2.05 of this Agreement or (ii) previously approved in writing by the Security Agent.

Section 2.07 Intercreditor Agreement. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIENS AND SECURITY INTERESTS GRANTED TO THE SECURITY AGENT, FOR THE BENEFIT OF THE SECURED PARTIES, PURSUANT TO THIS AGREEMENT AND THE EXERCISE OF ANY RIGHT OR REMEDY BY THE SECURITY AGENT AND THE OTHER SECURED PARTIES WITH RESPECT TO ANY COLLATERAL HEREUNDER ARE SUBJECT TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT. IN THE EVENT OF ANY CONFLICT BETWEEN THE PROVISIONS OF THE INTERCREDITOR AGREEMENT AND THIS AGREEMENT, THE PROVISIONS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN AND CONTROL.

Notwithstanding anything to the contrary set forth in this Agreement, (a) the representations, warranties and covenants set forth in this Agreement (including those set forth in Section 2.03) shall not apply to (or cover) any assets or property of the Grantors (i) not located in the United States, (ii) constituting Equity Interests in any entity not organized in the United States and/or (iii) that does not constitute Collateral and (b) the security interest in the Collateral granted hereunder shall be granted from, including and after the Effective Time, but not before.

### ARTICLE III.

#### REMEDIES

Section 3.01 Remedies Upon Acceleration Event. Upon the occurrence and during the continuance of an Acceleration Event, the Security Agent in addition to all rights and remedies hereunder may exercise all rights and remedies of a secured party under the UCC and other applicable law. Upon the occurrence and during the continuance of an Acceleration Event, each Grantor agrees to deliver each item of Collateral to the Security Agent on demand, and it is agreed that the Security Agent shall have the right to exercise any and all rights afforded to a secured party pursuant to the Intercreditor Agreement as well as under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights and remedies, each Grantor agrees that the Security Agent shall have the right, subject to the mandatory requirements of applicable law (including the Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Security Agent shall deem appropriate. The Security Agent shall be authorized in connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to persons who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof. Upon consummation of any such sale of Collateral pursuant to this Section 3.01, the Security Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

Except for collateral of the type specified in Section 9-611(d) of the UCC, the Security Agent shall give the applicable Grantors ten Business Days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Security Agent's intention to make any sale of Collateral pursuant to this Section 3.01. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on

which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Security Agent may fix and state in the notice (if any) of such sale. The Security Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Security Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In the case of any sale of all or any part of the Collateral made on credit or for future delivery, the Collateral so sold may be retained by the Security Agent until the sale price is paid by the purchaser or purchasers thereof, but the Security Agent shall not incur any liability in the event that any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may be sold again upon notice given in accordance with provisions above. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 3.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all such rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property in accordance with Section 3.02 hereof without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Security Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Security Agent shall have entered into such an agreement all Acceleration Events shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Security Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 3.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

#### Section 3.02 Application of Proceeds.

- (1) The Security Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral in and towards payment and discharge of the Secured Obligations in accordance with the terms of the Intercreditor Agreement.
- (2) Notwithstanding anything in this Agreement or any other Secured Debt Document to the contrary, the Security Agent will not be required to marshal the Collateral or to resort to the Collateral in any particular order.

Section 3.03 Securities Act, Etc. In view of the position of the Grantors in relation to the Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “**Federal Securities Laws**”) with respect to any disposition of the Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Security Agent if the Security Agent were to attempt to dispose of all or any part of the Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Security Agent in any attempt to dispose of all or part of the Collateral under applicable Blue Sky or other

state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Security Agent, in its sole and absolute discretion, may (1) proceed to make such a sale whether or not a registration statement for the purpose of registering such Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Security Agent will incur no responsibility or liability for selling all or any part of the Collateral at a price that the Security Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 3.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Security Agent sells.

#### ARTICLE IV.

#### INDEMNITY

Section 4.01 Indemnity. The terms and provisions of Clause 21 of the Intercreditor Agreement are hereby incorporated by reference herein as if fully set forth herein, and each Grantor party hereto agrees that the terms of Clause 21 of the Intercreditor Agreement shall apply to such Grantor, *mutatis mutandis*.

#### ARTICLE V.

#### MISCELLANEOUS

Section 5.01 Notices. All communications and notices hereunder shall be in writing and given as provided in Clause 23 of the Intercreditor Agreement.

Section 5.02 Security Interest Absolute. All rights of the Security Agent hereunder, the security interest in the Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:

- (1) any lack of validity or enforceability of the Intercreditor Agreement, the Senior Facilities Agreement, any other Secured Debt Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;
- (2) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Intercreditor Agreement, the Senior Facilities Agreement, any other Secured Debt Document or any other agreement or instrument;
- (3) any exchange, release or non-perfection of any lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or
- (4) subject only to termination or release of a Grantor's obligations hereunder in accordance with the terms of Section 5.15 hereof, any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).



Section 5.03 Limitation By Law. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 5.04 Binding Effect; Several Agreement. This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Security Agent and a counterpart hereof is executed on behalf of the Security Agent, and thereafter will be binding upon such party and the Security Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Security Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement, the Intercreditor Agreement and the Secured Debt Documents. This Agreement will be construed as a separate agreement with respect to each Grantor and may be amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

Section 5.05 Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference will be deemed to include the permitted successors and assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor or the Security Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Security Agent or as otherwise permitted under the Intercreditor Agreement (and any attempted assignment or transfer by any Grantor without such consent shall be null and void). The Security Agent hereunder will at all times be the same person that is the Security Agent under the Intercreditor Agreement. Written notice of resignation by the Security Agent pursuant to the Intercreditor Agreement will also constitute notice of resignation as the Security Agent under this Agreement. Upon the acceptance of any appointment as the Security Agent under the Intercreditor Agreement by a successor Security Agent, that successor Security Agent will thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Security Agent pursuant hereto. For the avoidance of doubt, in the event of any conflict between the provisions of the Intercreditor Agreement and this Section 5.05, the provisions of the Intercreditor Agreement shall govern and control.

Section 5.06 Security Agent's Fees and Expenses; Indemnification. The parties hereto agree that the Security Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Clause 20 of the Intercreditor Agreement and the provisions of Clause 20 shall be incorporated by reference herein and apply to each Grantor *mutatis mutandis*.

Section 5.07 Security Agent Appointed Attorney-in-Fact. Following the occurrence of an Acceleration Event which is continuing, each Grantor hereby appoints the Security Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Security Agent may deem necessary to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. The Security Agent will have the right, following the occurrence of an Acceleration Event which is continuing, with full power of substitution either in the Security Agent's name or in the name of such Grantor, to:

- (1) receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;

- (2) demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;
- (3) ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;
- (4) commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;
- (5) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral; and
- (6) use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Security Agent were the absolute owner of the Collateral for all purposes;

provided that nothing herein contained will be construed as requiring or obligating the Security Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Security Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Security Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence, bad faith or willful misconduct or that of any of their Affiliates, directors, officers, employees, counsel, agents or attorneys-in-fact.

Section 5.08 Applicable Law. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

Section 5.09 Waivers; Amendment.

- (1) No failure or delay by the Security Agent or any Secured Party in exercising any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Security Agent and the Secured Parties hereunder are cumulative and are not exclusive of any rights, powers or remedies provided by law. No waiver of any provision of this Agreement or consent to any departure by any Grantor therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 5.09, and then such waiver or consent will be effective only in the specific instance and for the purpose for which given. No notice or demand on any other Grantor in any case shall entitle such person to any other or further notice or demand in similar or other circumstances.
- (2) Except as otherwise provided in the Intercreditor Agreement, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Security Agent and the Grantor or Grantors

with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Clause 25 of the Intercreditor Agreement.

Section 5.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (1) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (2) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.10.

Section 5.11 Severability. In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein will not in any way be affected or impaired thereby.

Section 5.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together will constitute but one contract, and will become effective as provided in Section 5.04 hereof. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “.pdf”, “.tif” or “.jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 5.13 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 5.14 Jurisdiction; Consent to Service of Process.

- (1) Each party to this Agreement hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York County, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement will affect any right that the Security Agent or any Secured Party may otherwise have to bring any action or proceeding relating to this Agreement against any Grantor, or its properties, in the courts of any jurisdiction; except that each of the Grantors agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Secured Parties who would be affected by any such action or proceeding have contacts with the State of

New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Grantor in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Grantor from asserting or seeking the same in the New York Courts.

- (2) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

#### Section 5.15 Termination or Release.

- (1) Subject to Section 5.15(2) below, on the Final Discharge Date, at the cost of the Grantors, by the express release thereof granted by the Security Agent (i) acting on its own initiative or (ii) at the request of the relevant Grantor: (a) this Agreement, the pledges made herein and the security interests granted hereby shall be discharged and (b) the Security Agent and each Secured Party shall promptly take all other actions and steps contemplated by the Intercreditor Agreement in relation to the release of any security interests granted hereby, or any other steps, confirmations or actions in relation to this Agreement, in each case.
- (2) Notwithstanding anything to the contrary in this Agreement, to the extent contemplated by the Intercreditor Agreement or any other Secured Debt Document or as otherwise agreed by the Security Agent (acting reasonably), the Security Agent and each Secured Party will, at such Grantor's expense, release or terminate the security interests granted hereby, or take any other steps, confirmations or actions in relation to this Agreement and will take any and all action, including executing and delivering all documents, that such Grantor reasonably requests to evidence such termination or release (including UCC termination statements) and will duly assign and transfer to such Grantor such of the Collateral that may be in the possession of the Security Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement.

Section 5.16 Additional Subsidiaries. Upon execution and delivery by the Security Agent and any Subsidiary that becomes a party hereto in accordance with the Secured Debt Documents of a supplement in the form of Exhibit A hereto, such Subsidiary or Parent Entity will become a Grantor hereunder. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.

Section 5.17 Precedence. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and the terms and conditions of the Intercreditor Agreement, the terms and conditions of the Intercreditor Agreement shall prevail.

Section 5.18 Secured Party Acknowledgement. BY ACCEPTING THE BENEFITS OF THIS AGREEMENT AND THE SECURITY INTERESTS CREATED HEREBY, EACH SECURED PARTY ACKNOWLEDGES THE PROVISIONS OF CLAUSE 21 OF THE INTERCREDITOR AGREEMENT, AND ANY OTHER SIMILAR OR EQUIVALENT PROVISION OF ANY OF THE SECURED DEBT DOCUMENTS AND AGREES TO BE BOUND BY SUCH PROVISIONS AS FULLY AS IF THEY WERE SET FORTH HEREIN.

Section 5.19 Reasonable Care. The Security Agent is required to use reasonable care in the custody and preservation of any of the Collateral in its possession; provided, that the Security Agent shall be deemed to have used reasonable care in the custody and preservation of any of the Collateral, if such Collateral is accorded treatment substantially similar to that which the Security Agent accords its own property.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

PAYSAFE US HOLDCO LIMITED,  
as a Grantor

By /s/ Elliott Wiseman  
Name: Elliott Wiseman  
Title: General Counsel & Chief Compliance Officer

PAYSAFE HOLDINGS (US) CORP.,  
as a Grantor

By /s/ Philip Ragona  
Name: Philip Ragona  
Title: Senior Vice President and Secretary

PAYSAFE PAYMENT PROCESSING SOLUTIONS LLC,  
as a Grantor

By /s/ Philip Ragona  
Name: Philip Ragona  
Title: Senior Vice President and Secretary

PAYSAFE DIRECT, LLC,  
as a Grantor

By /s/ Philip Ragona  
Name: Philip Ragona  
Title: Senior Vice President and Secretary

PAYSAFE MERCHANT SERVICES CORP.,  
as a Grantor

By /s/ Philip Ragona  
Name: Philip Ragona  
Title: Senior Vice President and Secretary

*[Signature Page to Collateral Agreement]*

LUCID TRUSTEE SERVICES LIMITED,  
as Security Agent

By /s/ Caroline Horvath-Franco  
Name: Caroline Horvath-Franco  
Title: Authorized Signatory

*[Signature Page to Collateral Agreement]*

**SCHEDULE I****PLEDGED SECURITIES**

<b><u>Grantor</u></b>	<b><u>Issuer</u></b>	<b><u>Class of Equity Interest</u></b>	<b><u>Certificate Number</u></b>	<b><u>Percentage Pledged</u></b>
Paysafe US Holdco Limited	Paysafe Holdings (US) Corp.	Common Stock	4	100%
Paysafe Holdings (US) Corp.	Paysafe Merchant Services Corp.	Common Stock	3	100%
Paysafe Holdings (US) Corp.	Foley Trasimene Acquisition Corp. II	N/A	N/A	100%
Paysafe Holdings (US) Corp.	Global Merchant Advisors LLC	N/A	N/A	100%
Paysafe Holdings (US) Corp.	Paysafe Direct LLC	N/A	N/A	100%
Paysafe Payment Processing Solutions LLC	Leaders Merchant Services LLC	N/A	N/A	100%
Paysafe Payment Processing Solutions LLC	Paysafe Capital, LLC	N/A	N/A	100%
Paysafe Payment Processing Solutions LLC	Flagship Merchant Services LLC	N/A	N/A	100%



**SCHEDULE II**

**LEGAL NAME, JURISDICTION OF FORMATION AND LOCATION OF CHIEF EXECUTIVE OFFICE**

<b><u>Grantor</u></b>	<b><u>Jurisdiction of Formation</u></b>	<b><u>Chief Executive Office Address</u></b>
Paysafe US Holdco Limited	England	Floor 27, 25 Canada Square, London, England, E14 5LQ
Paysafe Holdings (US) Corp.	Delaware	128 Vision Park Blvd, Suite 140, Shenandoah, TX 77384 USA
Paysafe Merchant Services Corp.	Delaware	3500 de Maisonneuve Blvd. West, 2 Place Alexis-Nihon, Suite 700, Montreal, Québec H3Z 3C1 Canada
Paysafe Direct, LLC	Delaware	2600 Michelson, Suite 1600, Irvine, CA 92612 USA
Paysafe Payment Processing Solutions LLC	Delaware	128 Vision Park Blvd, Suite 140, Shenandoah, TX 77384 USA

SUPPLEMENT NO. \_\_\_\_ dated as of \_\_\_\_\_ (this “**Supplement**”), to the Collateral Agreement dated as of June 24, 2021 (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the “**Collateral Agreement**”), among the Grantors party thereto and LUCID TRUSTEE SERVICES LIMITED, as security agent for the Secured Parties (in such capacity, together with its successors and assigns in such capacity, the “**Security Agent**”).

- 1) Reference is made to that certain SENIOR FACILITIES AGREEMENT, dated June 24, 2021 (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the “**Senior Facilities Agreement**”), among, *inter alios*, PAYSAFE GROUP HOLDINGS II LIMITED, a company incorporated under the laws of England with registered office at Floor 27, 25 Canada Square, London, England, E14 5LQ and registered number 10880277 (“**Parent**”), PAYSAFE GROUP HOLDINGS III LIMITED, a company incorporated under the laws of England with registered office at Floor 27, 25 Canada Square, London, England, E14 5LQ and registered number 10869332 (“**Company**”), the other obligors party thereto from time to time, the lenders party thereto from time to time, J.P. MORGAN AG, as agent (the “**Senior Facility Agent**”), and the Security Agent.
- 2) Further reference is made to that certain INTERCREDITOR AGREEMENT, dated June 24, 2021 (as amended, amended and restated, restated, supplemented or otherwise modified from time to time, the “**Intercreditor Agreement**”), among, *inter alios*, Parent, Company, the other obligors party thereto from time to time, the Senior Lenders party thereto from time to time, the Senior Facility Agent and the Security Agent.
- 3) Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Collateral Agreement.
- 4) The Grantors have entered into the Collateral Agreement in order to induce the Secured Parties to make extensions of credit under the terms of the Secured Debt Documents and each Agent and the Secured Parties and their respective Affiliates to extend financial accommodations pursuant to the Secured Debt Documents. Section 5.16 of the Collateral Agreement provides that additional Subsidiaries may become Grantors under the Collateral Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “**New Subsidiary**”) is executing this Supplement in accordance with the requirements of the Secured Debt Documents to become a Grantor under the Collateral Agreement in order to induce the Secured Parties to make extensions of credit and each Agent and the Secured Parties and their respective Affiliates to extend financial accommodations pursuant to the Secured Debt Documents, and as consideration for any such financial accommodations or extensions of credit previously made or issued under the Secured Debt Documents.

Accordingly, the Security Agent and the New Subsidiary agree as follows:

SECTION 1. In accordance with Section 5.16 of the Collateral Agreement, the New Subsidiary by its signature below becomes a Grantor under the Collateral Agreement, and the New Subsidiary hereby (1) agrees to all the terms and provisions of the Collateral Agreement applicable to it as a Grantor thereunder and (2) represents and warrants that the representations and warranties made by it as a Grantor in Section 2.03 thereof are true and correct, in all material respects, on and as of the date hereof. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Secured Obligations (as defined in the Collateral Agreement), does hereby create and grant to the Security Agent, for the benefit of the Secured Parties, a security interest in and lien on all the New Subsidiary’s right, title

and interest in and to the Collateral (as defined in and to the extent required by the Collateral Agreement) of the New Subsidiary. Each reference to a “Grantor” in the Collateral Agreement shall be deemed to include the New Subsidiary. The Collateral Agreement is hereby incorporated herein by reference.

SECTION 2. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together constitutes but one contract. This Supplement will become effective when the Security Agent receives a counterpart (whether by electronic transmission or otherwise) of this Supplement that bears the signature of the New Subsidiary.

SECTION 3. The New Subsidiary hereby represents and warrants as of the date hereof that:

- 1) set forth on Schedule I attached hereto is a true and correct schedule of all the Pledged Securities of the New Subsidiary as of the date hereof; and
- 2) set forth on Schedule II attached hereto is the true and correct legal name of the New Subsidiary, its jurisdiction of formation and the location of its chief executive office.

SECTION 4. Except as expressly supplemented hereby, the Collateral Agreement shall remain in full force and effect.

**SECTION 5. THIS SUPPLEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.**

SECTION 6. In the event any one or more of the provisions contained in this Supplement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, in the Collateral Agreement will not in any way be affected or impaired thereby. The parties will endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7. All communications and notices hereunder will be in writing and given as provided in Section 5.01 of the Collateral Agreement.

SECTION 8. In accordance with and subject to the terms of the Intercreditor Agreement, the New Subsidiary agrees to reimburse the Security Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, disbursements and other charges of counsel for the Security Agent.

IN WITNESS WHEREOF, the New Subsidiary and the Security Agent have duly executed this Supplement to the Collateral Agreement as of the day and year first above written.

[NEW SUBSIDIARY]  
as a Grantor

By \_  
Name:  
Title:

LUCID TRUSTEE SERVICES LIMITED,  
as Security Agent

By \_  
Name:  
Title:



**PLEDGED SECURITIES OF THE NEW SUBSIDIARY**

<b><u>Grantor</u></b>	<b><u>Issuer</u></b>	<b><u>Class of Equity Interest</u></b>	<b><u>Certificate Number</u></b>	<b><u>Percentage Pledged</u></b>
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**LEGAL NAME, JURISDICTION OF FORMATION  
AND LOCATION OF CHIEF EXECUTIVE OFFICE**

**Grantor**

**Jurisdiction of Formation**

**Chief Executive Office Address**

[EU-DOCS\33068515.6|]

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24 June 2021

**PAYSAFE GROUP HOLDINGS II LIMITED**  
(as the Parent)

**Each of the entities listed in Schedule 1**  
(as the Original Chargors)

and

**LUCID TRUSTEE SERVICES LIMITED**  
(as Security Agent)

---

**DEBENTURE**

---

**LATHAM & WATKINS**

99 Bishopsgate  
London EC2M 3XF  
United Kingdom  
Tel: +44.20.7710.1000  
[www.lw.com](http://www.lw.com)



## TABLE OF CONTENTS

### Clause Page No.

1.	INTERPRETATION	3
2.	COVENANT TO PAY	12
3.	CHARGING PROVISIONS	12
4.	FURTHER ASSURANCE	14
5.	NEGATIVE PLEDGE	14
6.	REPRESENTATIONS AND WARRANTIES	15
7.	PROTECTION OF SECURITY	15
8.	UNDERTAKINGS	18
9.	SECURITY AGENT'S POWER TO REMEDY	18
10.	CONTINUING SECURITY	19
11.	ENFORCEMENT OF SECURITY	19
12.	ADMINISTRATOR	21
13.	RECEIVERS	21
14.	APPLICATION OF PROCEEDS	24
15.	PROTECTION OF SECURITY AGENT AND RECEIVER	24
16.	POWER OF ATTORNEY	25
17.	PROTECTION FOR THIRD PARTIES	26
18.	REINSTATEMENT AND RELEASE	26
19.	CURRENCY CLAUSES	29
20.	SET-OFF	29
21.	REDEMPTION OF PRIOR SECURITY	29
22.	NOTICES	30
23.	CHANGES TO PARTIES	30
24.	MISCELLANEOUS	30

<b>25. GOVERNING LAW AND JURISDICTION</b>	<b>31</b>
<b>SCHEDULE 1 ORIGINAL CHARGORS</b>	<b>32</b>
<b>SCHEDULE 2 SHARES AND INVESTMENTS</b>	<b>33</b>
<b>SCHEDULE 3 ACCOUNTS</b>	<b>34</b>
<b>SCHEDULE 4 INSURANCE POLICIES</b>	<b>35</b>
<b>SCHEDULE 5 FORMS OF NOTICES</b>	<b>36</b>
<b>PART 1 FORM OF COUNTERPARTY NOTICE</b>	<b>36</b>
<b>PART 2 FORM OF INSURANCE NOTICE</b>	<b>38</b>
<b>PART 3 FORM OF ACCOUNT NOTICE</b>	<b>40</b>
<b>SCHEDULE 6 FORM OF SECURITY ACCESSION DEED</b>	<b>43</b>

**THIS DEBENTURE** (this “**Debenture**”) is made on 24 June 2021  
**BETWEEN:**

- (1) **PAYSAFE GROUP HOLDINGS II LIMITED**, a company incorporated under the laws of England with registered office at Floor 27, 25 Canada Square, London, England, E14 5LQ and registered number 10880277 (the “**Parent**”);
- (2) **Each of the entities listed in Schedule 1** (together with the Parent, the “**Original Chargors**”); and
- (3) **LUCID TRUSTEE SERVICES LIMITED** as security agent for itself and the other Secured Parties (the “**Security Agent**”).

**IT IS AGREED AS FOLLOWS:**

## **1. INTERPRETATION**

### **1.1 Definitions**

In this Debenture:

“**Acceleration Event**” has the meaning given to that term in the Intercreditor Agreement (other than a Senior Parent Notes Acceleration Event and/or a Permitted Parent Financing Acceleration Event (except to the extent such Senior Parent Notes Acceleration Event arises in respect of Senior Parent Notes Liabilities secured by Shared Security (as defined in the Intercreditor Agreement)) or an Acceleration Event in respect of an Event of Default under clause [28.1] (*Financial covenant*) of the Senior Facilities Agreement in respect of which a Financial Covenant Cross-Default has not occurred and is not continuing).

“**Account Notice**” means a notice substantially in the form set out in Part 3 of Schedule 5 (*Forms of Notices*) or such other form as the Parent and the Security Agent may reasonably agree.

**“Accounts”** means, in relation to a Chargor, all its right, title and interest from time to time in and to the bank accounts (excluding (i) any tax accounts, payroll accounts, employee share scheme accounts and trust accounts, in each case to the extent monies held in them are held on trust for beneficiaries which are not Group Companies; and (ii) any accounts to the extent monies held in them constitute SFA Cash Cover provided pursuant to an Operating Facility Document in relation to which Security is required to be provided by the terms of that Operating Facility Document) opened or maintained by any Chargor in England and Wales from time to time, including without limitation the bank accounts set out in Schedule 3 (*Accounts*) and as specified in any relevant Security Accession Deed (or such accounts as may be agreed by the relevant Chargor and the Security Agent from time to time) including the debt or debts represented thereby, but excluding (for the avoidance of doubt) any account or debt represented thereby that constitutes an Excluded Asset.

**“Agreed Security Principles”** has the meaning given to that term in the Intercreditor Agreement.

**“Assigned Agreements”** means any document evidencing any intercompany loan receivable, liability or obligation at any time owing to any Chargor by any Group Company and all its right, title and interest from time to time in and to any such document, and any other agreement designated as an Assigned Agreement by the Parent and the Security Agent, but excluding (for the avoidance of doubt) any agreement that constitutes an Excluded Asset.

**“Capital Requirement”** means the minimum amount of regulatory capital (however described) each Regulated Entity is required to maintain pursuant to any applicable law, licensing condition or regulation (including, without limitation, pursuant to or in connection with the Isle of Man Financial Services Rule Book 2016, the Payment Services Regulations 2009, the Payment Services Regulations 2017, the Swiss Financial Market Infrastructure Act and/or the Mauritius Financial Services Act 2007), as amended and/or replaced from time to time, or the views, guidance or interpretation of any Relevant Regulator.

**“CFC”** means a “controlled foreign corporation” (as defined in Section 957(a) of the United States Internal Revenue Code of 1986 (as amended)).

**“Charged Property”** means the assets and undertakings mortgaged, charged, assigned or otherwise secured or expressed to be mortgaged, charged, assigned or otherwise secured in favour of the Security Agent by or pursuant to this Debenture or any Security Accession Deed.

**“Chargor”** means each of the Original Chargors and each company which grants security over its assets in favour of the Security Agent by executing a Security Accession Deed.

**“Counterparty Notice”** means a notice substantially in the form set out in Part 1 of Schedule 5 (*Forms of Notices*) or such other form as the Parent and the Security Agent may reasonably agree.

**“Effective Time”** has the meaning given to it in the Pay-Off Letter.

**“English Shares”** means Shares owned by a Chargor in a Subsidiary incorporated in England and Wales.

**“Equipment”** means all rights, title and interest from time to time in and to all plant, machinery, vehicles, office equipment, computers and other chattels (excluding any forming part of its stock in trade or work in progress) but excluding (for the avoidance of doubt) any plant, machinery, vehicles, office equipment, computers or other chattels that constitute an Excluded Asset.

“**Excluded Asset**” means, in relation to any Chargor:

- (a) any Restricted Assets and any Settlement Assets;
- (b) any SFA Cash Cover provided pursuant to an Operating Facility Document in relation to which Security is required to be provided by the terms of that Operating Facility Document;
- (c) any assets in respect of which the granting of security under the Debenture, in the good faith judgment of the directors of the Parent, could materially increase a Capital Requirement, or materially adversely affect the solvency capital requirements, of the Group (or any Group Company) pursuant to any applicable law or regulation applicable to such Group Company;
- (d) any assets located in any jurisdiction that is not a Security Jurisdiction;
- (e) any freehold and any leasehold property;
- (f) any interest in any third party minority interest, partnership or joint venture;
- (g) any equity interests of a CFC, FSHCO, or any subsidiary of a CFC or FSHCO (including any CFC or FSHCO equity interests held directly or indirectly by a CFC or FSHCO) in excess of 65% of the total voting equity interests and 100% of the total non-voting equity interests of such CFC or FSHCO that, in each case, are directly or indirectly owned by such Chargor;
- (h) any assets of a CFC, FSHCO or a subsidiary of a CFC or FSHCO that, in each case, are directly or indirectly owned by such Chargor;
- (i) any interest in any subsidiary or any other asset if the granting of security under this Debenture would result in material adverse US tax consequences to any Group Company that is organised or tax resident in the United States, as reasonably determined by the Parent in accordance with the Agreed Security Principles;
- (j) any asset, business or entity acquired by Parent or any Restricted Subsidiary in respect of which there are third party arrangements in place (where those third party arrangements were not entered into in contemplation of that acquisition) as a result of which the consent of a third party is required for that acquired entity to provide a guarantee or to secure any acquired asset, such guarantee and/or security will not be required to be granted;
- (k) any receivables, monetary claims and related assets (i) sold to any Receivables Subsidiary or (ii) otherwise subject to Security in connection with any factoring facility;
- (l) any Trading Receivable at any time which, when aggregated with any other Trading Receivables of the relevant Chargor, has an aggregate value of USD 15,000,000 (or its equivalent in any other currency) or less;
- (m) any Other Debt at any time which, when aggregated with any Other Debt of the relevant Chargor, has an aggregate value of USD 15,000,000 (or its equivalent in any other currency) or less;
- (n) any obligation, debt or receivable arising under or in connection with any Hedging Agreement, which the terms of such Hedging Agreement prohibit from constituting Charged Property;

- (o) any assets subject to third party arrangements which are permitted by the Senior Facilities Agreement and which prevent those assets from being charged, and any cash constituting regulatory capital or customer cash;
- (p) any other asset in respect of which the granting of security under this Debenture would (i) conflict with the fiduciary duties of any Officer of any Group Company, (ii) contravene any legal, contractual or regulatory prohibition (*provided* that in respect of any contractual prohibition (x) if at least 15 Business Days prior to the date of this Debenture or as the case may be, the date of such Chargor's execution of a Security Accession Deed (as applicable) the Security Agent (acting reasonably) determines that such asset is material in the context of the business of the Group and notifies the relevant Chargor in writing that such consent should be sought, and (y) the relevant Chargor is satisfied that such endeavours would not reasonably be expected to adversely impact relationships with third parties, the Parent shall use commercially reasonable endeavours to procure the relevant consents (not involving the payment of money or incurrence of any external expenses)) or (iii) result in a risk of personal or criminal liability on the part of any Officer; and
- (q) any other assets where the cost of obtaining a security interest in, or perfection of a security interest in, such assets exceeds the practical benefit to the Secured Parties afforded thereby (as reasonably determined by the Parent and notified to the Security Agent).

**"Final Discharge Date"** has the meaning given to that term in the Intercreditor Agreement.

**"FSHCO"** means an entity substantially all the assets of which consist of equity interests (or equity interests and indebtedness) of one or more CFCs or other FSHCOs.

**"Insurance Notice"** means a notice substantially in the form set out in Part 2 of Schedule 5 (*Forms of Notices*) or such other form as the Parent and the Security Agent may reasonably agree.

**"Insurance Policies"** means, in relation to a Chargor, all its right, title and interest in and to all policies of insurance and all proceeds of them either now or in the future held by, or written in favour of, a Chargor or in which it is otherwise interested, including but not limited to the policies of insurance, if any, specified in Schedule 4 (*Insurance Policies*) (or as specified in any relevant Security Accession Deed), but excluding any third party liability or public liability insurance, business interruption insurance and any policy of insurance maintained for the benefit of employees, directors and/or officers and (for the avoidance of doubt) any policy of insurance, the proceeds of any policy of insurance or any right under any policy of insurance which constitutes an Excluded Asset.

**"Intellectual Property"** means all rights, title and interest in and to patents, trademarks, service marks, designs, business names, copyrights, database rights, design rights, inventions, domain names and other equivalent intellectual property rights and interests (which may now or in the future subsist), in each case whether registered or unregistered and including all applications for any of the foregoing, in each case which are owned by a Chargor and which are necessary or material for the operation of the business of the Chargors, but excluding (for the avoidance of doubt) any right or interest that constitutes an Excluded Asset.

**"Intercreditor Agreement"** means the intercreditor agreement dated on or about the date of this Debenture and made between, among others, Paysafe Group Holdings II Limited as the Parent, Paysafe Group Holdings III Limited (formerly PI UK Holdco III Limited) as the Company and the Security Agent (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time).

**“Investment”** means all rights, title and interest from time to time in and to any stock, share, debenture, loan stock, securities, bonds, options, units, commercial paper, certificates of deposit, depositary interests, warrants, interest in any investment fund and any other comparable investment (whether or not marketable) (including rights to subscribe for, convert into or otherwise acquire the same) whether owned directly by or to the order of a Chargor or by any trustee, nominee, fiduciary or settlement or clearance system on its behalf (including, unless the context otherwise requires, the Shares) and including but not limited to the investments, if any, specified in Schedule 2 (*Shares and Investments*) and as specified in any relevant Security Accession Deed, but excluding (for the avoidance of doubt) any stock, share, debenture, loan stock, securities, bond, option, warrant, interest in any investment fund or any comparable investment that constitutes an Excluded Asset.

**“Non-Cash Consideration”** means consideration in a form other than cash.

**“Other Debts”** means all book debts and other debts and monetary claims (other than Trading Receivables) owing to a Chargor and any Related Rights, but excluding (for the avoidance of doubt) any debt or monetary claim that constitutes an Excluded Asset.

**“Parties”** means each of the parties to this Debenture from time to time.

**“Pay-Off Letter”** means the pay-off letter dated on or around the date of this Debenture between Credit Suisse AG, London Branch as agent and PI UK Holdco II Limited as the Parent.

**“Quasi-Security”** means a transaction in which a Chargor:

- (a) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by a Chargor or any other Group Company;
- (b) sells, transfers or otherwise disposes of any of its receivables on recourse terms;
- (c) enters 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) enters 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 Indebtedness or of financing the acquisition of an asset.

**“Receivables Subsidiary”** has the meaning given to that term in the Senior Facilities Agreement or any other similar or equivalent provision of any of the Secured Debt Documents.

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

**“Regulated Entity”** means each Group Company whose business activities are subject to licence, supervised or regulated by a Relevant Regulator.

**“Related Rights”** means, in relation to any asset:

- (a) all rights under any licence, sub-licence, transfer, agreement for sale or agreement for lease or other use in respect of all or any part of that asset;
- (b) all rights, easements, powers, benefits, claims, contracts, warranties, remedies, covenants for title, security, guarantees or indemnities in respect of or appurtenant to all or any part of that asset;



- (c) all other assets and rights at any time receivable or distributable in respect of, or in exchange for, that asset;
- (d) the proceeds of sale, transfer, lease licence, sub-licence or other disposal or agreement for sale, transfer, lease licence, sub-licence or other disposal paid or payable for all or any part of that asset;
- (e) any awards or judgments in favour of a Chargor;
- (f) in the case of any contract, agreement or instrument, any interest in any of the foregoing whether or not a Chargor is party to that contract, agreement or instrument;
- (g) any other moneys paid or payable in respect of that asset; and
- (h) any other assets deriving from that asset.

**“Relevant Regulator”** means the Central Bank of Ireland, the Isle of Man Financial Services Authority, the Swiss Financial Market Supervisory Authority (FINMA), the UK Financial Conduct Authority, the UK Payment Systems Regulator, the UK Competition and Markets Authority, the Financial Services Commission of Mauritius or any other entity, agency, governmental authority or person that has regulatory authority over the business or operations of any Group Company.

**“Required Creditor Consent”** means the Required Senior Consent (as defined in the Intercreditor Agreement).

**“Restricted Asset”** has the meaning given to that term in the Senior Facilities Agreement or any other similar or equivalent provision of any of the Secured Debt Documents.

**“Secured Obligations”** has the meaning given to that term in the Intercreditor Agreement

**“Security Accession Deed”** means a deed executed by any other Group Company substantially in the form set out in Schedule 6 (*Form of Security Accession Deed*), or such other form as the Parent and the Security Agent may reasonably agree.

**“Security Jurisdiction”** means each of the United Kingdom, the United States and the jurisdiction of incorporation of any Debtor.

**“Senior Facilities Agreement”** means the senior facilities agreement dated on or about the date of this Debenture between, among others, Paysafe Group Holdings II Limited as the Company, the Original Lenders (as defined therein) and the Security Agent.

**“Settlement Assets”** has the meaning given to that term in the Senior Facilities Agreement or any other similar or equivalent provision of any of the Secured Debt Documents.

**“Shares”** means, in relation to a Chargor, all its right, title and interest from time to time in and to all shares owned by a Chargor in its Subsidiaries, including but not limited to the shares, if any, specified in Schedule 2 (*Shares and Investments*) and as specified in any relevant Security Accession Deed, warrants, options and other rights to subscribe for, purchase or otherwise acquire any shares and any other securities or investments deriving from any such shares or any rights attaching or relating to any such shares, but excluding (for the avoidance of doubt) any stock, share, debenture, loan stock, security, bond, option, warrant, interest in any investment fund or any comparable investment that constitutes an Excluded Asset or is subject to Security granted in favour of the Security Agent otherwise than pursuant to this Debenture.

**“Trading Receivables”** means all book and other monetary claims (other than Other Debts) arising in the ordinary course of trading, but excluding (for the avoidance of doubt) any debt that constitutes an Excluded Asset.

**“Voting Event”** means, in relation to a particular Investment of any Chargor, the service of a notice by the Security Agent (either specifying that Investment or generally in relation to all or a designated class of Investments) on any Chargor upon or after the occurrence of an Acceleration Event which is continuing, specifying that control over the voting rights attaching to the Investment or Investments specified in that notice are to pass to the Security Agent.

## 1.2 Construction

- (a) Unless a contrary indication appears in this Debenture, the provisions of clause 1.2 (*Construction*) of the Intercreditor Agreement shall apply to this Debenture as if set out in full in this Debenture with references to “this Agreement” being treated as references to this Debenture and:
- (i) an **“amount”** includes an amount of cash and an amount of Non-Cash Consideration;
  - (ii) **“authorisation”** or **“consent”** shall be construed as including any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;
  - (iii) a **“company”** includes any company, corporation or other body corporate, wherever and however incorporated or established;
  - (iv) an Acceleration Event is **“continuing”** if it has not been revoked or has not otherwise ceased to be continuing in accordance with the terms of the relevant Secured Debt Document;
  - (v) a **“distribution”** of or out of the assets of any Group Company, includes a distribution of cash and a distribution of Non-Cash Consideration;
  - (vi) **“including”** means including without limitation and **“includes”** and **“included”** shall be construed accordingly;
  - (vii) **“law”** includes any present or future common law, principles of equity and any constitution, decree, judgment, decision, legislation, statute, order, ordinance, regulation, by-law or other legislative measure in any jurisdiction or any present or future official directive, regulation, guideline, request, rule, code of practice, treaty or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is customary in accordance with the general practice of a person to whom the directive, regulation, guideline, request, rule, code of practice, treaty or requirement is intended to apply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (viii) **“losses”** includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including fees) and liabilities and **“loss”** shall be construed accordingly;

- (ix) “**permitted**” shall be construed as including any circumstance, event, matter or thing which is not expressly prohibited;
  - (x) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, consortium or partnership, joint venture or other entity (whether or not having separate legal personality) or any two or more of the foregoing;
  - (xi) “**proceeds**” of a disposal includes proceeds in cash and in Non-Cash Consideration;
  - (xii) “**rights**” includes all rights, title, benefits, powers, privileges, interests, claims, authorities, discretions, remedies, liberties, easements, quasi easements and appurtenances (in each case, of every kind, present, future and contingent); and
  - (xiii) “**security**” includes any mortgage, charge, pledge, lien, security assignment, hypothecation or trust arrangement for the purpose of providing security and any other encumbrance or security interest of any kind having the effect of securing any obligation of any person (including the deposit of moneys or property with a person with the intention of affording such person a right of lien, set-off, combination or counter-claim) and any other agreement or any other type of arrangement having a similar effect (including any flawed-asset or hold back arrangement) and “**security interest**” shall be construed accordingly.
- (b) A reference in this Debenture to any stock, share, debenture, loan stock, option, securities, bond, warrant, coupon, interest in any investment fund or any other investment includes:
- (i) all dividends, interest, coupons and other distributions paid or payable;
  - (ii) all stocks, shares, securities, rights, moneys, allotments, benefits and other assets accruing or offered at any time by way of redemption, substitution, conversion, exchange, bonus or preference, under option rights or otherwise;
  - (iii) any rights against any settlement or clearance system; and
  - (iv) any rights under any custodian or other agreement,
- in each case, in respect of such stock, share, debenture, loan stock, securities, bond, warrant, coupon, interest in an investment fund or other investment.
- (c) The fact that the details of any assets in the Schedules are incorrect or incomplete shall not affect the validity or enforceability of this Debenture in respect of the assets of any Chargor.
- (d) Unless the context otherwise requires, a reference to Charged Property includes:
- (i) any part of the Charged Property;
  - (ii) any proceeds of that Charged Property; and
  - (iii) any present and future assets of that type.
- (e) Where this Debenture refers to any provision of any Secured Debt Document and that Secured Debt Document is amended in any manner that would result in that reference being

incorrect, this Debenture shall be construed so as to refer to that provision as renumbered in the amended Secured Debt Document, unless the context requires otherwise.

### **1.3 Other references**

- (a) In this Debenture, unless a contrary intention appears, a reference to:
- (i) any Secured Party, Chargor or any other person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors in title, permitted assignees and transferees and in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Secured Debt Documents;
  - (ii) any Secured Debt Document or other agreement or instrument is to be construed as a reference to that agreement or instrument as amended or novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced, including by way of any change to the purpose of, any extension of or increase of the facilities or other obligations or addition of new facilities or other obligations made available under them or accession or retirement of the parties to these agreements;
  - (iii) any clause or schedule is a reference to, respectively, a clause of and schedule to this Debenture and any reference to this Debenture includes its schedules; and
  - (iv) a provision of law is a reference to that provision as amended or re-enacted.
- (b) The index to and the headings in this Debenture are inserted for convenience only and are to be ignored in construing this Debenture.
- (c) Words importing the plural shall include the singular and vice versa.

### **1.4 Incorporation by reference**

Unless the context otherwise requires or unless otherwise defined in this Debenture, words and expressions defined in the Intercreditor Agreement have the same meanings when used in this Debenture. In the event of any inconsistency or conflict between this Debenture on the one hand and the Senior Facilities Agreement or the Intercreditor Agreement on the other, (to the fullest extent permitted by law), the provisions of the Senior Facilities Agreement or the Intercreditor Agreement (as applicable) shall prevail.

### **1.5 Miscellaneous**

- (a) Notwithstanding any other provision of this Debenture, the obtaining of a moratorium under section 1A of the Insolvency Act 1986, or anything done with a view to obtaining such a moratorium (including any preliminary decision or investigation), shall not be an event causing any floating charge created by this Debenture to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by any Chargor or a ground for the appointment of a Receiver.
- (b) Notwithstanding anything to the contrary in this Debenture (and without prejudice to the terms of the Intercreditor Agreement or any other Secured Debt Document in relation to the requirement for the Security Agent to enter into documentation in relation to this

Debenture (including releases)), nothing in this Debenture shall (or shall be construed to) prohibit, restrict or obstruct any transaction, matter or other step (or any Chargor taking or entering into the same) or dealing in any manner whatsoever in relation to any asset (including all rights, claims, benefits, proceeds and documentation, and contractual counterparties in relation thereto) the subject of (or expressed to be the subject of) this Debenture and the Security arising thereunder in each case if not prohibited by the Secured Debt Documents or where Required Creditor Consent has been obtained. The Security Agent shall promptly enter into such documentation and/or take such other action as is required by a Chargor (acting reasonably) in order to facilitate any such transaction, matter or other step, including by way of executing any confirmation, consent to dealing, release or other similar or equivalent document, provided that any costs and expenses incurred by the Security Agent entering into such documentation and/or taking such other action at the request of such Chargor pursuant to this paragraph (b) shall be for the account of such Chargor, in accordance with clause 20 (Costs and Expenses) of the Intercreditor Agreement.

- (c) Except as otherwise expressly provided in Clause 17 (*Protection for Third Parties*) or elsewhere in this Debenture, the terms of this Debenture may be enforced only by a Party and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- (d) Notwithstanding any term of this Debenture and subject to clause [25] (*Consents, amendments and override*) of the Intercreditor Agreement, no consent of a third party is required for any termination or amendment of this Debenture.
- (e) The Parties intend that this document shall take effect as a deed, notwithstanding that any party may only execute this document under hand.
- (f) All Security created pursuant to this Debenture is created over the present and future assets of each Chargor.
- (g) The Security Agent holds the benefit of this Debenture on trust for itself and each of the other Secured Parties from time to time on the terms of the Secured Debt Documents.
- (h) The Security created pursuant to this Debenture by each Chargor is made with full title guarantee under the Law of Property (Miscellaneous Provisions) Act 1994.
- (i) Notwithstanding any other provision of this Debenture, the Security constituted in relation to the trusts created by this Debenture and the exercise of any right or remedy by the Security Agent hereunder shall be subject to the Intercreditor Agreement.

#### **1.6 Distinct Security**

All Security created pursuant to this Debenture shall be construed as creating a separate and distinct Security over each relevant asset within any particular class of assets defined or referred to in this Debenture. The failure to create an effective Security, whether arising out of any provision of this Debenture or any act or omission by any person, over any one such asset shall not affect the nature or validity of the Security imposed on any other such asset, whether within that same class of assets or otherwise.

## 2. COVENANT TO PAY

Subject to any limits on its liability specified in the Secured Debt Documents, each Chargor as primary obligor and not merely as surety covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it will on demand pay or discharge the Secured Obligations when they fall due in the manner provided for in the relevant Secured Debt Document.

## 3. CHARGING PROVISIONS

### 3.1 Effective Time

Notwithstanding anything to the contrary in this Debenture, the Security constituted hereunder shall be granted pursuant to the provisions of this Debenture from and including the Effective Time, but not before.

### 3.2 Specific Security

Subject to Clause 3.6 (*Property restricting charging*), each Chargor, as continuing security for the payment of the Secured Obligations, charges in favour of the Security Agent with full title guarantee the following assets from time to time owned by it or in which it has an interest by way of first fixed charge:

- (a) all of its right, title and interest in its Intellectual Property;
- (b) all of its right, title and interest in the Equipment and all corresponding Related Rights;
- (c) all the Investments, Shares and all corresponding Related Rights;
- (d) all Trading Receivables and all rights and claims against third parties and against any security in respect of those Trading Receivables;
- (e) all Other Debts and all rights and claims against third parties against any security in respect of those Other Debts;
- (f) all monies standing to the credit of the Accounts and all corresponding Related Rights;
- (g) the benefit of all licences, consents and agreements held by it in connection with the use of any of its assets;
- (h) all rights, title and interests from time to time in and to its goodwill and uncalled capital; and
- (i) if not effectively assigned by Clause 3.4 (*Security assignment*), all its rights, title and interest in (and claims under) the Insurance Policies and the Assigned Agreements.

### 3.3 Floating charge

- (a) As further continuing security for the payment of the Secured Obligations, each Chargor charges with full title guarantee in favour of the Security Agent by way of first floating charge all its present and future assets, undertakings and rights together with all corresponding Related Rights including to the extent not effectively charged by way of fixed charge under Clause 3.1 (*Specific Security*) or assigned under Clause 3.4 (*Security assignment*).

- (b) The floating charge created by each Chargor pursuant to paragraph (a) of this Clause 3.3 shall be deferred in point of priority to all fixed Security constituted by this Debenture.
- (c) The floating charge created by each Chargor pursuant to paragraph (a) of this Clause 3.3 is a “qualifying floating charge” for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

### 3.4 Security assignment

Subject to Clause 3.6 (*Property restricting charging*):

- (a) as further continuing security for the payment of the Secured Obligations, each Chargor assigns by way of security absolutely with full title guarantee to the Security Agent all its rights, title and interest in:
  - (i) the Insurance Policies; and
  - (ii) the Assigned Agreements to which it is a party,
    - subject in each case to reassignment by the Security Agent to the relevant Chargor of all such rights, title and interest on the Final Discharge Date; and
- (b) until an Acceleration Event has occurred which is continuing, but subject to Clause 7.3 (*Insurance Policies, Assigned Agreements*) and the Secured Debt Documents, the relevant Chargor may continue to deal with the counterparties to the relevant Assigned Agreements and, for the avoidance of doubt, shall be entitled to receive the proceeds of any claim under the Insurance Policies and Assigned Agreements.

### 3.5 Conversion of floating charge

- (a) The Security Agent may, by notice in writing to any Chargor, convert the floating charge created under this Debenture into one or more fixed charges with immediate effect as regards those assets specified in the notice:
  - (i) upon or after the occurrence of an Acceleration Event which is continuing; or
  - (ii) if the Security Agent reasonably considers that it is required to protect the priority of the Security created under this Debenture.
- (b) The floating charge created under this Debenture will automatically (without notice) and immediately be converted into a fixed charge over all the assets of a Chargor which are subject to the floating charge created under this Debenture, if:
  - (i) that Chargor takes any step to create Security or Quasi-Security (except as permitted or not prohibited by the Secured Debt Documents or where Required Creditor Consent has been obtained or with the prior consent of the Security Agent) on or over any asset which is subject to the floating charge created under this Debenture; or
  - (ii) any person (entitled to do so) takes any step to effect any expropriation, attachment, sequestration, distress or execution against any such asset.

- (c) Upon the conversion of any floating charge pursuant to this Clause 3.5, each relevant Chargor shall, at its own expense, following written request by the Security Agent execute a fixed charge or legal assignment consistent with the Agreed Security Principles on terms no more onerous to that Chargor than the terms set out in this Debenture (and otherwise in such form as the Security Agent may reasonably request in writing).
- (d) Any floating charge which has crystallised under this Clause 3.5 may, by notice in writing given at any time by the Security Agent (acting on the unanimous instructions of the Secured Parties) to the relevant Chargor, be reconverted into a floating charge under paragraph (a) of Clause 3.3 (*Floating charge*) in relation to the assets, rights and property specified in that notice. The conversion to a fixed charge and reconversion to a floating charge (or the converse) may occur any number of times.

### **3.6 Property restricting charging**

For the avoidance of doubt, all and any Excluded Assets owned by any Chargor or in which any Chargor has any interest shall be excluded from the charge created by Clause 3.1 (*Specific Security*), Clause 3.4 (*Security assignment*) and from the operation of Clause 4 (*Further Assurance*).

## **4. FURTHER ASSURANCE**

Paragraphs (b), (c) and (d) of clause 27.2 (*Covenant to guarantee obligations and give security and further assurances*) of the Senior Facilities Agreement are incorporated *mutatis mutandis* into this Debenture (including all capitalised terms as defined therein) but as if each reference therein to:

- (a) an “Obligor” and a “member of the Group” is a reference to a Chargor;
- (b) the “Security” is a reference to the Security as defined in the Intercreditor Agreement;
- (c) the “Transaction Security Documents” and the “Finance Documents” is a reference to this Debenture;
- (d) the “Transaction Security” is a reference to the Charged Property; and
- (e) the “Finance Parties” is a reference to the Secured Parties.

## **5. NEGATIVE PLEDGE**

- (a) No Chargor shall create or permit to subsist any Security or Quasi-Security over all or any part of the Charged Property except as permitted or not prohibited by the Secured Debt Documents or with the prior written consent of the Security Agent or to the extent Required Creditor Consent has been obtained.
- (b) No Chargor shall sell, transfer, lease out, or otherwise dispose of all or any part of the Charged Property (other than in respect of assets charged under Clause 3.3 (*Floating charge*) on arm’s length in the ordinary course of trading) except as permitted or not prohibited by the Secured Debt Documents or with the prior written consent of the Security Agent or to the extent Required Creditor Consent has been obtained.
- (c) No Chargor shall dispose of the equity of redemption in respect of all or any part of the Charged Property except as permitted or not prohibited by the Secured Debt Documents or with the prior written consent of the Security Agent or to the extent Required Creditor Consent has been obtained.



## **6. REPRESENTATIONS AND WARRANTIES**

### **6.1 General**

Each Chargor represents and warrants, as to itself, to the Security Agent as set out in this Clause 6 on the date of this Debenture.

### **6.2 Shares**

It is the legal and beneficial owner of the Shares identified against its name in Schedule 2 (*Shares and Investments*) and all of those Shares are fully paid.

### **6.3 Ownership**

It is the sole legal and beneficial owner of the assets over which it purports to grant Security under or pursuant to this Debenture.

## **7. PROTECTION OF SECURITY**

### **7.1 Title documents**

- (a) Each Chargor will deposit with the Security Agent (or as it shall direct):
  - (i) within 20 Business Days of the Effective Time (or, if the relevant English Shares or Investments are acquired after the Effective Time, within 20 Business Days of the date of such acquisition) (or, in each case, such later date as the Security Agent may agree in its reasonable discretion) all stocks and share certificates and other documents of title relating to the English Shares or Investments, subject in each case to the Agreed Security Principles, together with stock transfer forms executed in blank and left undated on the basis that the Security Agent shall be able to hold such documents of title and stock transfer forms until the Final Discharge Date and shall be entitled to complete, at any time upon or after the occurrence of an Acceleration Event which is continuing, under its power of attorney given in this Debenture, the stock transfer forms on behalf of the relevant Chargor in favour of itself or such other person as it shall select; and
  - (ii) promptly, at any time upon or after the occurrence of an Acceleration Event which is continuing, all other documents relating to its English Shares and/or Investments which the Security Agent reasonably requests in writing in accordance with the Agreed Security Principles.
- (b) The Security Agent may retain any document delivered to it under this Clause 7.1 or otherwise until the Security created under this Debenture is released.
- (c) Any document required to be delivered to the Security Agent under paragraph (a) above which is for any reason not so delivered or which is released by the Security Agent to a Chargor shall be held on trust by the relevant Chargor for the Security Agent.
- (d) If required or desirable to effect any transaction permitted or not prohibited under any Secured Debt Document (or in respect of which Required Creditor Consent has been obtained), the Security Agent shall, promptly upon written request by any Chargor, return any document previously delivered to it under paragraph (a) above to the relevant Chargor,

*provided* that any such document delivered to a Chargor shall be held on trust by the relevant Chargor for the Security Agent.

- (e) For the avoidance of doubt, nothing in paragraph (a) above shall require any Chargor to deposit stocks and share certificates or other documents of title relating to any Shares or Investments where such Shares or Investments are in dematerialised or uncertificated form.

## **7.2 Bank Accounts**

- (a) Upon or after the occurrence of an Acceleration Event which is continuing, where an Account is not maintained with the Security Agent, serve an Account Notice on the bank with whom the Account is maintained on or before 20 Business Days after the date of the date of such an Acceleration Event (or such later date as the Security Agent may agree in its reasonable discretion). Each relevant Chargor shall use commercially reasonable endeavours (not involving the payment of money or incurrence of any external expenses) to procure that such bank signs and delivers to the Security Agent an acknowledgement substantially in the form of the schedule to the Account Notice (or such other form as the Security Agent may agree in its reasonable discretion) within 20 Business Days from the date of dispatch of the Account Notice (or such later date as the Security Agent may agree in its reasonable discretion), provided that if the relevant Chargor has been unable to procure such acknowledgment within the relevant time period, its obligation to use commercially reasonable endeavours to procure such acknowledgment shall cease at the end of such period. Entry into this Debenture shall constitute a notice to the Security Agent in the form of an Account Notice in respect of any Account opened or maintained with the Security Agent.
- (b) Notwithstanding anything in this Debenture to the contrary, until an Acceleration Event has occurred which is continuing each Chargor shall be free to receive, use and make withdrawals from any Account, transfer any credit balance from time to time or close any Account that is no longer required by that Chargor, in any manner permitted or not prohibited by the Secured Debt Documents (including where Required Creditor Consent has been obtained).
- (c) Upon or after the occurrence of an Acceleration Event which is continuing, the Security Agent shall be entitled with notice to any Chargor to withdraw, apply, transfer or set-off any or all of the credit balances from time to time on any Account in or towards payment or other satisfaction of all or part of the Secured Obligations in accordance with Clause 14 (*Application of proceeds*).

## **7.3 Assigned Agreements**

- (a) Upon or after the occurrence of an Acceleration Event which is continuing, following a written request by the Security Agent, each Chargor will, within 10 Business Days of the date of such request, give notice to the other party to each Insurance Policy and Assigned Agreement that it has assigned or charged its right under the relevant policy or agreement to the Security Agent under this Debenture. Such notice will be a Counterparty Notice, except in the case of the Insurance Policies where it will be an Insurance Notice. Each relevant Chargor will use commercially reasonable endeavours (not involving the payment of money or incurrence of any external expenses) to procure that the relevant counterparty or insurer signs and delivers to the Security Agent an acknowledgement substantially in the form of that set out in the schedule to the relevant notice (or such other form as the Security Agent may agree in its reasonable discretion) within 20 Business Days of service of such

notice to the relevant counterparty or insurer (or such later date as the Security Agent may agree in its reasonable discretion) *provided* that, if the relevant Chargor has been unable to procure such acknowledgment within the relevant time period, its obligation to use commercially reasonable endeavours to procure such acknowledgment shall cease at the end of such period.

- (b) Notwithstanding anything in this Debenture to the contrary, until an Acceleration Event has occurred which is continuing, each Chargor shall be entitled to continue to operate and transact business in relation to the Insurance Policies (including exercising or waiving any of its rights under such policies and agreements or permitting any Insurance Policy to lapse) and the Assigned Agreements to the extent not expressly prohibited by the Secured Debt Documents.
- (c) No Chargor shall be required to procure that any Secured Party is entered as a loss payee on any Insurance Policy.
- (d) Upon or after the occurrence of an Acceleration Event which is continuing:
  - (i) the Security Agent may exercise (without any further consent or authority on the part of any Chargor and irrespective of any direction given by any Chargor) any Chargor's rights (including direction of any payments to the Security Agent) under any of its Insurance Policies or under or in respect of any Assigned Agreement to which that Chargor is a party; and
  - (ii) each Chargor shall hold any payment that it receives in respect of its Insurance Policies or any Assigned Agreement to which it is a party on trust for the Security Agent, pending payment to the Security Agent for application in accordance with Clause 14 (*Application of proceeds*).

#### **7.4 Rights of Chargors**

Notwithstanding anything in this Debenture to the contrary, until an Acceleration Event has occurred which is continuing (or such later date as provided by this Debenture), each Chargor shall continue to have the sole right to:

- (a) deal with any Charged Property (including making any disposal of or in relation thereto) and all contractual counterparties in respect thereof;
- (b) sell, assign, license, sub-license, transfer, allow to lapse, decide not to register, cease to pursue any application in respect of, or otherwise deal in the Intellectual Property in the ordinary course of its business; and
- (c) amend, waive or terminate (or allow to lapse) any rights, benefits and/or obligations in respect of Charged Property (including agreeing to surrender or terminate any lease), in each case without reference to any Secured Party,

except as expressly prohibited by the Secured Debt Documents (save where Required Creditor Consent has been obtained).

### **8. UNDERTAKINGS**

#### **8.1 General**

Each Chargor undertakes to the Security Agent in the terms of this Clause 8 from the date of this Debenture and until the Final Discharge Date.

## 8.2 Voting and distribution rights

(a) Prior to the occurrence of an Acceleration Event:

- (i) each Chargor shall be entitled to receive, and retain all dividends, distributions and other monies paid on or derived from its Shares (whether held in certificated or uncertificated form); and
- (ii) each Chargor shall be entitled to exercise or direct the exercise of all voting and other rights and powers attaching to its Shares in its sole and absolute discretion, *provided* that it shall not exercise any such voting rights or powers in a manner which would cause an Event of Default to occur.

(b) On or at any time after the occurrence of a Voting Event:

- (i) the Security Agent (or its nominee) may exercise (or refrain from exercising) any voting rights, powers and other rights in respect of any Investments of any Chargor as it sees fit; and

(ii) each Chargor:

(A) shall comply or procure the compliance with any directions of the Security Agent (or its nominee) in respect of the exercise of those rights; and

(B) irrevocably appoints the Security Agent (or its nominee) as its proxy to exercise all voting rights in respect of its Investments with effect from the occurrence of that Voting Event to the extent that those Investments remain registered in its name.

(c) If, at any time, any Shares or Investments are registered in the name of the Security Agent or its nominee, the Security Agent will not be under any duty to ensure that any dividends, distributions or other monies payable in respect of those Shares or Investments are duly and promptly paid or received by it or its nominee, or to verify that the correct amounts are paid or received, or to take any action in connection with the taking up of any (or any offer of any) stocks, shares, rights, moneys or other property paid, distributed, accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise on or in respect of or in substitution for, any of those Shares or Investments.

## 9. SECURITY AGENT'S POWER TO REMEDY

If any Chargor fails to comply with any obligation set out in Clause 7 (*Protection of Security*) or Clause 8 (*Undertakings*) and that failure is not remedied to the satisfaction of the Security Agent within 20 Business Days (or such later date as the Security Agent may agree in its reasonable discretion) of the Security Agent giving written notice to the relevant Chargor or the relevant Chargor becoming aware of the failure to comply, it will allow (and irrevocably authorises) the Security Agent or any person which the Security Agent nominates to take any action on behalf of that Chargor which is necessary to ensure that those obligations are complied with.

## **10. CONTINUING SECURITY**

### **10.1 Continuing Security**

All Security constituted by this Debenture is a continuing security for the payment, discharge and performance of all of the Secured Obligations, shall extend to the ultimate balance of all sums payable under the Secured Debt Documents and shall remain in full force and effect until the Final Discharge Date. No part of the Security will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### **10.2 Other Security**

The Security constituted by this Debenture is to be in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other Security or other right which the Security Agent and/or any other Secured Party may now or after the date of this Debenture hold for any of the Secured Obligations, and this Security may be enforced against each Chargor without first having recourse to any other rights of the Security Agent or any other Secured Party.

## **11. ENFORCEMENT OF SECURITY**

### **11.1 Timing and manner of enforcement**

- (a) Subject to the terms of the Intercreditor Agreement, the Security constituted by this Debenture shall become enforceable and the powers referred to in Clause 11.2 (*Enforcement powers*) shall become exercisable immediately upon or after the occurrence of an Acceleration Event which is continuing.
- (b) Without prejudice to any other provision of this Debenture, any time after the Security created pursuant to this Debenture has become enforceable, the Security Agent may without notice to any Chargor enforce all or any part of that Security and exercise all or any of the powers, authorities and discretions conferred by the Secured Debt Documents including this Debenture or otherwise by law on mortgagees, chargees and Receivers (whether or not it has appointed a Receiver), in each case at the times, in the manner and on the terms it thinks fit or as otherwise directed in accordance with the terms of the Secured Debt Documents.
- (c) No Secured Party shall be liable to any Chargor for any loss arising from the manner in which the Security Agent or any other Secured Party enforces or refrains from enforcing the Security constituted by this Debenture.

### **11.2 Enforcement powers**

- (a) The Secured Obligations shall be deemed to have become due and payable on the date of this Debenture in respect of the Original Chargors, and on the date of execution of the applicable Security Accession Deed in respect of any other Chargor, for the purposes of section 101 of the Law of Property Act 1925.
- (b) The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (as varied and extended by this Debenture) and all other powers conferred on a mortgagee by law shall be deemed to arise immediately upon an Acceleration Event which is continuing.

- (c) For the purposes of sections 99 and 100 of the Law of Property Act 1925, the expression “**mortgagor**” shall include any encumbrancer deriving title under the original mortgagor and section 99(18) of the Law of Property Act 1925 and section 100(12) of the Law of Property Act 1925 shall not apply.

### 11.3 Statutory powers

The powers conferred on mortgagees, receivers or administrative receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (as the case may be) shall apply to the Security created under this Debenture, unless they are expressly or impliedly excluded. If there is ambiguity or conflict between the powers contained in those Acts and those contained in this Debenture, those contained in this Debenture shall prevail.

### 11.4 Exercise of powers

All or any of the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this Debenture, and all or any of the rights and powers conferred by this Debenture on a Receiver (whether expressly or impliedly), may be exercised by the Security Agent without further notice to any Chargor at any time upon or after the occurrence of an Acceleration Event which is continuing, irrespective of whether the Security Agent has taken possession or appointed a Receiver of the Charged Property.

### 11.5 Disapplication of statutory restrictions

The restriction on the consolidation of mortgages and on power of sale imposed by sections 93 and 103 respectively of the Law of Property Act 1925 shall not apply to the Security constituted by this Debenture.

### 11.6 Appropriation under the Financial Collateral Regulations

To the extent that any of the Charged Property constitute “financial collateral” and this Debenture and the obligations of a Chargor under it constitute a “security financial collateral arrangement” (in each case, as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the “**FCR Regulations**”)), upon and after the Security created pursuant to this Debenture has become enforceable, the Security Agent or any Receiver shall have the benefit of all the rights of a collateral taker conferred upon it by the FCR Regulations, including the right to appropriate without notice to any Chargor (either on a single occasion or on multiple occasions) all or any part of that financial collateral in or towards discharge of the Secured Obligations and, for this purpose, the value of the financial collateral so appropriated shall be:

- (a) in the case of cash, the face value at the time of appropriation (including the amount standing to the credit of each Account, together with any accrued but unposted interest at the time the right of appropriation is exercised); and
- (b) in the case of any Investments (or any other financial collateral), the market price at the time of appropriation of those Investments determined by the Security Agent or any Receiver (as applicable) in a commercially reasonable manner (including by reference to a public index or independent valuation),

as converted, where necessary, into the currency in which the liabilities under the Secured Debt Documents are denominated at a market rate of exchange prevailing at the time of appropriation selected by the Security Agent or any Receiver. The Parties agree that the methods of valuation set

out in paragraphs (a) and (b) above are commercially reasonable methods of valuation for the purposes of the FCR Regulations.

## 12. ADMINISTRATOR

- (a) Subject to the Insolvency Act 1986, the Security Agent may appoint one or more qualified persons to be an administrator of any Chargor (to act together with or independently of any others so appointed):
  - (i) if so requested by the relevant Chargor; or
  - (ii) at any time upon or after the occurrence of an Acceleration Event which is continuing.
- (b) Any such appointment may be made pursuant to an application to court under paragraph 12 of Schedule B1 to the Insolvency Act 1986 or by filing the specified documents with the court under paragraphs 14 to 21 of Schedule B1 to the Insolvency Act 1986.
- (c) In this Clause 12, “**qualified person**” means a person who, under the Insolvency Act 1986, is qualified to act as an administrator of any company with respect to which he is appointed.

## 13. RECEIVERS

### 13.1 Appointment of Receiver

- (a) At any time upon or after the occurrence of an Acceleration Event which is continuing, or if so requested by the relevant Chargor, the Security Agent may, by writing under hand signed by an officer or manager of the Security Agent, appoint any person (or persons) to be a Receiver of all or any part of the Charged Property (save to the extent prohibited by section 72A of the Insolvency Act 1986).
- (b) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to the floating charge created by this Debenture.
- (c) Section 109(1) of the Law of Property Act 1925 shall not apply to this Debenture.
- (d) If the Security Agent appoints more than one person as Receiver, the Security Agent may give those persons power to act either jointly or severally.
- (e) Any Receiver may be appointed Receiver of all of the Charged Property or Receiver of a part of the Charged Property specified in the appointment. In the case of an appointment in respect of a part of the Charged Property, the rights conferred on a Receiver as set out in Clause 13.2 (*Powers of Receiver*) shall have effect as though every reference in Clause 13.2 (*Powers of Receiver*) to the Charged Property were a reference to the part of the Charged Property so specified or any part of that Charged Property.

### 13.2 Powers of Receiver

Each Receiver appointed under this Debenture shall have (subject to any limitations or restrictions which the Security Agent may incorporate in the deed or instrument appointing it) all the powers conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this Debenture), so that the powers set out in Schedule 1 to the Insolvency Act 1986 shall extend to every Receiver, whether or not an

administrative receiver. In addition, notwithstanding any liquidation of the relevant Chargor, each Receiver shall have the following rights, powers and discretions:

- (a) all the rights conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on any receiver appointed under the Law of Property Act 1925;
- (b) all the rights expressed to be conferred upon the Security Agent in this Debenture and all the rights to release the Charged Property from the Security conferred upon the Security Agent in the Secured Debt Documents;
- (c) to take immediate possession of, get in and collect any Charged Property and to require payment to it or to the Security Agent of any monetary claims or credit balance on any Account;
- (d) to manage or carry on any part of the business of the relevant Chargor;
- (e) to enter into, vary or cancel any contracts on any terms or conditions;
- (f) to incur any liability on any terms, whether secured or unsecured, and whether to rank for payment in priority to this security or not;
- (g) to sell, transfer, assign, exchange, hire out, lend, licence, convert into money and realise any Charged Property by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable in a lump sum or by instalments spread over any period or deferred);
- (h) to bring, prosecute, enforce, defend and abandon any action, suit and proceedings in relation to any Charged Property or any business of that Chargor;
- (i) to give a valid receipt for any moneys and execute any assurance or thing which may be necessary or desirable for realising any Charged Property;
- (j) to establish subsidiaries to acquire interests in any of the Charged Property and/or arrange for those subsidiaries to trade or cease to trade and acquire any of the Charged Property on any terms and conditions;
- (k) to make and effect all repairs, renewals and improvements to any of the Charged Property and maintain, renew, take out or increase insurances;
- (l) to exercise all voting and other rights attaching to the Shares or Investments and stocks, shares and other securities owned by the relevant Chargor and comprised in the Charged Property, but only following a written notification from either the Receiver or the Security Agent to the relevant Chargor stating that the Security Agent shall exercise all voting rights in respect of the Shares or Investments and stocks, shares and other securities owned by the relevant Chargor and comprised in the Charged Property;
- (m) to redeem any prior Security on or relating to the Charged Property and settle and pass the accounts of the person entitled to that prior Security, so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the relevant Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver;



- (n) to appoint, hire, employ and discharge officers, employees, contractors, agents, advisors and others for any of the purposes of this Debenture and/or to guard or protect the Charged Property upon terms as to remuneration or otherwise as they may think fit;
  - (o) to settle any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the relevant Chargor or relating to any of the Charged Property;
  - (p) to effect any insurance and do any other act which a Chargor might do in the ordinary conduct of its business to protect or improve any Charged Property in each case as he considers fit; to exercise in relation to any Charged Property all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Charged Property; and
  - (q) to do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental or conducive to any of the matters or powers in this Clause 13.2, or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property, and use the name of the relevant Chargor for all such purposes,
- and in each case may use the name of any Chargor and exercise the relevant power in any manner which they may think fit.

### **13.3 Receiver as Agent**

- (a) Any Receiver shall be the agent of each Chargor for all purposes and accordingly shall be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Law of Property Act 1925.
- (b) Each Chargor is solely responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.

### **13.4 Removal of Receiver**

The Security Agent may by notice remove from time to time any Receiver appointed by it (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receivership) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated, for whatever reason.

### **13.5 Remuneration of Receiver**

The Security Agent may (subject to section 36 of the Insolvency Act 1986) reasonably determine the remuneration of any Receiver appointed by it and any maximum rate imposed by any law (including under section 109(6) of the Law of Property Act 1925) shall not apply to this Debenture and may direct payment of such remuneration out of moneys accruing to him as Receiver, but the Chargors alone shall be liable for the payment of such remuneration and for all other reasonable costs, charges, losses, liabilities and expenses of the Receiver.

### **13.6 Several Receivers**

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this Debenture (unless the deed or instrument appointing such Receiver states otherwise).

## **14. APPLICATION OF PROCEEDS**

### **14.1 Order of application**

All moneys and other proceeds or assets received or recovered by the Security Agent or any Receiver pursuant to this Debenture or the powers conferred by it shall be applied in the order and manner specified in the Intercreditor Agreement.

### **14.2 Section 109 Law of Property Act 1925**

Sections 109(6) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Debenture.

### **14.3 Application against Secured Obligations**

Subject to Clause 14.1 (*Order of application*) above, any moneys or other value received or realised by the Security Agent from a Chargor or a Receiver under this Debenture may be applied by the Security Agent to any item of account or liability or transaction forming part of the Secured Obligations to which they may be applicable in any order or manner which the Security Agent may determine.

### **14.4 Suspense account**

At any time upon or after the occurrence of an Acceleration Event which is continuing, until the Final Discharge Date, the Security Agent may place and keep (for such time as it shall determine) any money received, recovered or realised pursuant to this Debenture or on account of any Chargor's liability in respect of the Secured Obligations in an interest bearing separate suspense account (to the credit of either the relevant Chargor or the Security Agent as the Security Agent shall think fit) and the Receiver may retain the same for the period which he and the Security Agent consider expedient without having any obligation to apply all or any part of that money in or towards discharge of such Secured Obligations.

## **15. PROTECTION OF SECURITY AGENT AND RECEIVER**

### **15.1 Possession of Charged Property**

If the Security Agent or the Receiver enters into possession of the Charged Property, it will not be liable to account as mortgagee in possession by reason of viewing or repairing any of the present or future assets of any Chargor and may at any time at its discretion go out of such possession.

### **15.2 Primary liability of Chargor**

Each Chargor shall be deemed to be a principal debtor and the sole, original and independent obligor for the Secured Obligations and the Charged Property shall be deemed to be a principal security for the Secured Obligations. The liability of each Chargor under this Debenture and the charges contained in this Debenture shall not be impaired by any forbearance, neglect, indulgence, abandonment, extension of time, release, surrender or loss of securities, dealing, variation or

arrangement by the Security Agent or any other Secured Party, or by any other act, event or matter whatsoever whereby the liability of the relevant Chargor (as a surety only) or the charges contained in this Debenture (as secondary or collateral charges only) would, but for this provision, have been discharged.

### 15.3 Waiver of defences

Clause 24.4 (*Waiver of defences*) of the Intercreditor Agreement is incorporated *mutatis mutandis* into this Debenture (including all capitalised terms as defined therein) but as if each reference therein to:

- (a) a “Debtor” is a reference to a Chargor; and
- (b) a “Debt Document” is a reference to a Secured Debt Document.

### 15.4 Security Agent

The provisions set out in clause 17 (*The Security Agent*) of the Intercreditor Agreement shall govern the rights, duties and obligations of the Security Agent under this Debenture.

### 15.5 Cumulative powers

The powers which this Debenture confers on the Security Agent, the other Secured Parties and any Receiver appointed under this Debenture are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate. The Security Agent, the other Secured Parties or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever. The respective powers of the Security Agent, the other Secured Parties and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

## 16. POWER OF ATTORNEY

- (a) Each Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any person nominated for the purpose by the Security Agent or any Receiver (in writing and signed by an officer of the Security Agent or Receiver) as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed at any time upon or after the occurrence of an Acceleration Event which is continuing and in such manner as the attorney considers fit:
  - (i) to do anything which that Chargor is obliged to do under this Debenture (including to do all such acts or execute all such documents, assignments, transfers, mortgages, charges, notices, instructions, filings and registrations 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))); and
  - (ii) to exercise any of the rights conferred on the Security Agent, any Receiver or any delegate in relation to (i) the Security granted pursuant to this Agreement, (ii) any Finance Document or (iii) under any law.
- (b) The power of attorney conferred on the Security Agent and each Receiver pursuant to paragraph (a) above shall continue notwithstanding the exercise by the Security Agent or

any Receiver of any right of appropriation pursuant to Clause 11.6 (*Appropriation under the Financial Collateral Regulations*).

- (c) Each Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the proper exercise of the power of attorney granted by it in this Clause 16.

## **17. PROTECTION FOR THIRD PARTIES**

### **17.1 No obligation to enquire**

No purchaser from, or other person dealing with, the Security Agent or any Receiver (or their agents) shall be obliged or concerned to enquire:

- (a) whether the right of the Security Agent or any Receiver to exercise any of the powers conferred by this Debenture has arisen or become exercisable or as to the propriety or validity of the proper exercise of any such power;
  - (b) whether any consents, regulations, restrictions or directions relating to such powers have been obtained or complied with;
  - (c) whether the Security Agent, any Receiver or its agents is acting within such powers;
  - (d) as to the propriety or validity of acts purporting or intended to be in exercise of any such powers;
  - (e) whether any of the Secured Obligations remain outstanding and/or are due and payable or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters; or
  - (f) as to the application of any money paid to the Security Agent, any Receiver or its agents,
- and any such person who is not a party to this Debenture may rely on this Clause 17.1 and enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

### **17.2 Receipt conclusive**

The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve him of any obligation to see to the application of any moneys paid to or by the direction of the Security Agent or any Receiver.

## **18. REINSTATEMENT AND RELEASE**

### **18.1 Amounts avoided**

- (a) If any payment by a Chargor or any discharge, arrangement or release given by a Secured Party (whether in respect of the obligations of any Debtor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
  - (i) the liability of that Chargor and the relevant security shall continue as if the payment, discharge, release, avoidance or reduction had not occurred; and

(ii) the relevant Secured Party shall be entitled to recover the value or amount of that security or payment from that Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

(b) The Security Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

#### **18.2 Discharge conditional**

Any settlement or discharge between a Chargor and any Secured Party shall be conditional upon no security or payment to that Secured Party by that Chargor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency and accordingly (but without limiting the other rights of that Secured Party under this Debenture) that Secured Party shall be entitled to recover from that Chargor the value which that Secured Party has placed on that security or the amount of any such payment as if that settlement or discharge had not occurred.

#### **18.3 Covenant to release**

(a) Subject to paragraph (b) below, on the Final Discharge Date, the Security Agent and each Secured Party shall, at the request and cost of each Chargor:

(i) promptly take any and all action which the relevant Chargor reasonably requests and/or which may be necessary to release, reassign or discharge (as appropriate) the Charged Property from the Security constituted by this Debenture; and

(ii) promptly take all other actions and steps contemplated by the Intercreditor Agreement in relation to the release of any Security contemplated by this Debenture, or any other steps, confirmations or actions in relation to this Debenture.

(b) Notwithstanding anything to the contrary in this Debenture, to the extent contemplated by the Intercreditor Agreement or any other Secured Debt Document (or to the extent agreed between the Security Agent and the relevant Chargors), the Security Agent and each Secured Party shall, at the request and cost of the relevant Chargor, take any and all action which is necessary to release such assets from the Security constituted by this Debenture in accordance with the terms of the Intercreditor Agreement.

#### **18.4 Immediate recourse**

(a) Each Chargor waives any right it may have of first requiring any Secured 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 or enforcing against any Chargor under this Debenture.

(b) The waiver in this Clause 18.4 applies irrespective of any law or any provision of a Secured Debt Document to the contrary.

#### **18.5 Appropriations**

Upon or after the occurrence of an Acceleration Event which is continuing and until the Final Discharge Date, each Secured 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 Secured 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 considers fit (whether against those amounts or otherwise) and no Chargor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Chargor or on account of any Chargor's liability under this Debenture.

#### **18.6 Deferral of Chargors' rights**

- (a) Until the Final Discharge Date and unless the Security Agent otherwise directs, no Chargor shall exercise any rights which it may have to:
  - (i) be indemnified by any other Chargor or Obligor or surety or Group Company of any Debtor's or Chargor's obligations under the Secured Debt Documents;
  - (ii) claim any contribution from any other Obligor in respect of any Debtor's obligations under the Secured Debt Documents;
  - (iii) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Secured Debt Documents or of any other guarantee or security taken pursuant to, or in connection with, the Secured Debt Documents by any Secured Party;
  - (iv) bring legal or other proceedings for an order requiring any Obligor or any Chargor to make any payment, or perform any obligation, in respect of which the Obligor or the Chargor had given a guarantee, undertaking or indemnity;
  - (v) exercise any right of set-off against a Debtor; and/or
  - (vi) claim or prove as a creditor of any Debtor in competition with any Secured Party.
- (b) If a Chargor 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 Secured Parties by the Chargors and Debtors under or in connection with the Secured Debt Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with the Intercreditor Agreement.

#### **18.7 Security held by Chargors**

- (a) No Chargor shall, without the prior written consent of the Security Agent, hold or otherwise take the benefit of any Security from any other Debtor in respect of that Chargor's liability under this Debenture.
- (b) Each Chargor shall hold any Security and the proceeds thereof held by it in breach of this Clause 18.7 on trust for the Security Agent and shall promptly pay or transfer those proceeds to the Security Agent or as the Security Agent may direct.

#### **18.8 Additional security/non-merger**

The Security created pursuant to this Debenture is in addition to, independent of and not in substitution for or derogation of, and shall not be merged into or in any way be excluded or prejudiced by, any other guarantees or Security at any time held by any Secured Party in respect of or in connection with any or all of the Secured Obligations or any other amount due by any Chargor to any Secured Party.

#### **18.9 New accounts and ruling off**

- (a) Any Secured Party may open a new account in the name of any Chargor at any time after that Secured Party has received or is deemed to have received notice of any subsequent Security affecting any Charged Property (except as permitted by the Secured Debt Documents or where Required Creditor Consent has been obtained).
- (b) If a Secured Party does not open a new account in the circumstances referred to in paragraph (a) above it shall nevertheless be deemed to have done so upon the occurrence of such circumstances, and all payments made by or on behalf of that Chargor to that Secured Party shall be credited or be treated as having been credited to the relevant new account.
- (c) No moneys paid into any account (whether new or continuing) after the occurrence of the circumstances referred to in paragraph (a) above shall reduce or discharge the Secured Obligations.

### **19. CURRENCY CLAUSES**

#### **19.1 Conversion**

All monies received or held by the Security Agent, or any Receiver, under this Debenture may be converted into any other currency which the Security Agent considers necessary to cover the obligations and liabilities comprised in the Secured Obligations in that other currency, at the Security Agent's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.

#### **19.2 No discharge**

No payment to the Security Agent (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the relevant Chargor in respect of which it was made unless and until the Security Agent has received payment in full in the currency in which the obligation or liability is payable or, if the currency of payment is not specified, was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Security Agent shall have a further separate cause of action against the relevant Chargor and shall be entitled to enforce the Security constituted by this Debenture to recover the amount of the shortfall.

### **20. SET-OFF**

#### **20.1 Set-off rights**

Upon or after the occurrence of an Acceleration Event which is continuing, the Security Agent may set off any matured obligation due from a Chargor under the Secured Debt Documents (to the extent beneficially owned by the Security Agent) against any matured obligation owed by the Security Agent to that Chargor, regardless of the place of payment, booking branch or currency of either

obligation. If the obligations are in different currencies, the Security Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **20.2 Unliquidated claims**

If, at any time upon or after the occurrence of an Acceleration Event which is continuing, the relevant obligation or liability is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

## **21. REDEMPTION OF PRIOR SECURITY**

The Security Agent or any Receiver may, at any time upon or after the occurrence of an Acceleration Event which is continuing, redeem any prior Security on or relating to any of the Charged Property or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on each Chargor. Each Chargor will on demand pay to the Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

## **22. NOTICES**

Any communication to be made under or in connection with this Debenture shall be made in accordance with clause 23 (*Notices*) of the Intercreditor Agreement.

## **23. CHANGES TO PARTIES**

### **23.1 Assignment by the Security Agent**

The Security Agent may at any time assign or otherwise transfer all or any part of its rights under this Debenture in accordance with the Secured Debt Documents.

### **23.2 Assignment by the Chargors**

No Chargor may assign or transfer, or attempt to assign or transfer, any of its rights or obligations under this Debenture.

### **23.3 Changes to Parties**

Each Chargor:

- (a) authorises and agrees to changes to parties under clause 19 (*Changes to the Parties*) of the Intercreditor Agreement, and authorises the Security Agent to execute on its behalf any document required to effect the necessary transfer of rights or obligations contemplated by those provisions; and
- (b) irrevocably appoints the Parent as its agent for the purpose of executing any Security Accession Deed on its behalf.

## **24. MISCELLANEOUS**

### **24.1 Certificates conclusive**



A certificate or determination of the Security Agent or any Receiver under this Debenture will be conclusive evidence of the matters to which it relates and binding on each Chargor, except in the case of manifest error.

#### **24.2 Counterparts**

This Debenture 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 Debenture. Delivery of a counterpart of this Debenture by e-mail attachment or telecopy shall be an effective mode of delivery.

#### **24.3 Invalidity of any provision**

If any provision of this Debenture is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

#### **24.4 Failure to execute**

Failure by one or more Parties (“**Non-Signatories**”) to execute this Debenture on the date hereof will not invalidate the provisions of this Debenture as between the other Parties who do execute this Debenture. Such Non-Signatories may execute this Debenture on a subsequent date and will thereupon become bound by its provisions.

#### **24.5 Amendments**

Subject to the terms of the Intercreditor Agreement, any provision of this Debenture may be amended in writing by the Security Agent and the Chargors, and each Chargor irrevocably appoints the Parent as its agent for the purpose of agreeing and executing any amendment on its behalf.

#### **24.6 Notice of charge or assignment**

This Debenture constitutes notice in writing to each Chargor of any charge or assignment of a debt owed by that Chargor to any other Group Company and contained in any other Secured Debt Document.

### **25. GOVERNING LAW AND JURISDICTION**

- (a) This Debenture and any non-contractual claims arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) Subject to paragraph (c) below, the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture, whether contractual or non-contractual (including a dispute regarding the existence, validity or termination of this Debenture) (a “**Dispute**”). 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) Each Chargor agrees that a judgment or order of any court referred to in this Clause 25 is conclusive and binding and may be enforced against it in the courts of any other jurisdiction.

**IN WITNESS** whereof this Debenture has been duly executed as a deed on the date first above written.



**SCHEDULE 1**  
**ORIGINAL CHARGORS**

<b>Chargor</b>	<b>Company number</b>	<b>Jurisdiction of incorporation</b>
Paysafe Group Holdings II Limited	10880277	England and Wales
Paysafe Group Holdings III Limited	10869332	England and Wales
Paysafe Holdings UK Limited	03202517	England and Wales

## SCHEDULE 2

### SHARES AND INVESTMENTS

Name of Chargor which holds the shares	Name of company issuing shares	Number and class of shares
Paysafe Group Holdings II Limited	Paysafe Group Holdings III Limited	12,236 ordinary shares of USD 0.001
Paysafe Group Holdings III Limited	PI UK Bidco Limited	11,346 ordinary US\$0.0001 shares
Paysafe Holdings UK Limited	Paysafe US Holdco Limited	94,292,736 ordinary £1.00 shares
Paysafe Holdings UK Limited	Paysafe Processing Limited	54,560,663 ordinary shares of £0.01 and 117,000,000 ordinary \$1.00 shares
Paysafe Holdings UK Limited	Skrill Holdings Limited	850,001.01 ordinary shares of €0.01

### SCHEDULE 3

#### ACCOUNTS

Name of Chargor	Name and address of institution at which account is held	Currency of account	Account number	BIC
-----------------	--	---------------------	----------------	-----

None as at the date of this Debenture.

**SCHEDULE 4**

**INSURANCE POLICIES**

<b>Name of Chargor</b>	<b>Insurer</b>	<b>Policy Number</b>	<b>Type of Risk Insured</b>
------------------------	----------------	----------------------	-----------------------------

None as at the date of this Debenture.

## SCHEDULE 5

### FORMS OF NOTICES

#### Part 1

#### Form of Counterparty Notice

To: [insert name and address of counterparty]

Dated: [●]

Dear Sirs, Madams,

**Re: [here identify the relevant Assigned Agreement] (the “Agreement”)**

We notify you that, [insert name of Chargor] (the “**Chargor**”) has [charged in favour of]/[assigned to] [insert name of Security Agent] (the “**Security Agent**”) for the benefit of itself and certain other banks and financial institutions (the “**Secured Parties**”) all its right, title and interest in the Agreement as security for certain obligations owed by the Chargor to the Secured Parties by way of a debenture dated [●].

We further notify you that:

1. you may continue to deal with the Chargor in relation to the Agreement until you receive written notice to the contrary from the Security Agent.  
Thereafter the Chargor will cease to have any right to deal with you in relation to the Agreement and therefore from that time you should deal only with the Security Agent;
2. following the receipt of written notice in accordance with paragraph 1 above:
  - (a) the Chargor may not agree to amend or terminate the Agreement without the prior written consent of the Security Agent;
  - (b) you are authorised to disclose information in relation to the Agreement to the Security Agent on written request; and
  - (c) you must pay all monies to which the Chargor is entitled under the Agreement direct to the Security Agent (and not to the Chargor) unless the Security Agent otherwise agrees in writing; and
3. the provisions of this notice may only be revoked with the written consent of the Security Agent.

Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to the Chargor) by way of confirmation that:

- (a) you agree to the terms set out in this notice and to act in accordance with its provisions; and
- (b) you have not received notice that the Chargor has assigned its rights under the agreement to a third party or created any other interest (whether by way of security or otherwise) in the agreement in favour of a third party.

The provisions of this notice and any non-contractual claims arising out of or in connection with it are governed by English law.

Yours faithfully

.....

for and on behalf of

*[insert name of Chargor]*

*[On acknowledgement copy]*

To: *[insert name and address of Security Agent]*

Copy to: *[insert name and address of Chargor]*

We acknowledge receipt of the above notice and confirm the matters set out above.

.....

for and on behalf of

*[insert name of Counterparty]*

Dated:



**Part 2**  
**Form of Insurance Notice**

To: *[insert name and address of insurance company]*

Dated: [●]

Dear Sirs

**Re: *[here identify the relevant insurance policy(ies)]* (the “Policies”)**

We notify you that, *[insert name of Chargor]* (the “**Chargor**”) has assigned to *[insert name of Security Agent]* (the “**Security Agent**”) for the benefit of itself and certain other banks and financial institutions (the “**Secured Parties**”) all its right, title and interest in the Policies as security for certain obligations owed by the Chargor to the Secured Parties by way of a debenture dated [●].

We further notify you that:

1. you may continue to deal with the Chargor in relation to the Policies until you receive written notice to the contrary from the Security Agent. Thereafter the Chargor will cease to have any right to deal with you in relation to the Policies and therefore from that time you should deal only with the Security Agent;
2. following the receipt of written notice in accordance with paragraph 1 above:
  - (a) the Chargor may not agree to amend or terminate the Policies without the prior written consent of the Security Agent;
  - (b) you are authorised to disclose information in relation to the Policies to the Security Agent on written request; and
  - (c) you must pay all monies to which the Chargor is entitled under the Policies direct to the Security Agent (and not to the Chargor) unless the Security Agent otherwise agrees in writing; and
3. the provisions of this notice may only be revoked with the written consent of the Security Agent.

Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to the Chargor) by way of confirmation that:

- (a) you agree to act in accordance with the provisions of this notice; and
- (b) you have not received notice that the Chargor has assigned its rights under the Policies to a third party or created any other interest (whether by way of security or otherwise) in the Policies in favour of a third party.

The provisions of this notice and any non-contractual obligations arising under or in connection with it are governed by English law.

Yours faithfully

.....

for and on behalf of  
[*insert name of Chargor*]

[*On acknowledgement copy*]

To: [*insert name and address of Security Agent*]

Copy to: [*insert name and address of Chargor*]

We acknowledge receipt of the above notice and confirm the matters set out above.

.....

for and on behalf of  
[*insert name of insurance company*]

Dated: [●]

**Part 3**  
**Form of Account Notice**

To: *[insert name and address of Account Bank]* (the “**Account Bank**”)

Dated: [●]

Dear Sirs

**Re: The [●] Group of Companies - Security over Accounts**

We notify you that *[insert name of Chargor]* (the “**Chargor**”) and certain other companies identified in the schedule to this notice (together the “**Customers**”) charged to *[insert name of Security Agent]* (the “**Security Agent**”) for the benefit of itself and certain other banks and financial institutions all their right, title and interest in and to the monies from time to time standing to the credit of the accounts identified in the schedule to this notice and to any other accounts from time to time maintained with you by the Customers (the “**Charged Accounts**”) and to all interest (if any) accruing on the Charged Accounts by way of a debenture dated [●].

1. We further notify you that, subject to paragraph 2 below, you may continue to deal with the Chargor in relation to the Charged Accounts until you receive written notice to the contrary from the Security Agent. Thereafter the Chargor will cease to have any right to deal with you in relation to the Charged Accounts and from that time you should deal only with the Security Agent.
2. Following receipt of written notice in accordance with paragraph 1 above, we irrevocably authorise and instruct you:
  - (a) to hold all monies from time to time standing to the credit of the Charged Accounts to the order of the Security Agent and to pay all or any part of those monies to the Security Agent (or as it may direct) promptly following receipt of written instructions from the Security Agent to that effect; and
  - (b) to disclose to the Security Agent any information relating to the Customers and the Charged Accounts which the Security Agent may, from time to time in writing, request you to provide.
3. The provisions of this notice may only be revoked or varied with the prior written consent of the Security Agent.
4. Please sign and return the enclosed copy of this notice to the Security Agent (with a copy to the Chargor) by way of your confirmation that:
  - (a) you agree to act in accordance with the provisions of this notice; and
  - (b) you have not received notice that any Customer has assigned its rights to the monies standing to the credit of the Charged Accounts or otherwise granted any security or other interest over those monies in favour of any third party.

The provisions of this notice and any non-contractual obligations arising under or in connection with it are governed by English law.

**Schedule**

**Customer**

**Account Number**

**Sort Code**

[•]

[•]

[•]

Yours faithfully,

.....  
for and on behalf of  
[Insert name of Chargor]  
as agent for and on behalf of  
all of the Customers

Counter-signed by

.....  
for and on behalf of  
[Insert name of Security Agent]

[On acknowledgement copy]

To: [Insert name and address of Security Agent]

Copy to: [Insert name of Chargor] (on behalf of all the Customers)

We acknowledge receipt of the above notice and confirm the matters set out above.

.....  
for and on behalf of  
[Insert name of Account Bank]

Dated: [●]

## SCHEDULE 6

### FORM OF SECURITY ACCESSION DEED

**THIS SECURITY ACCESSION DEED** is made on [●]

**BETWEEN:**

- (1) [●] Limited, a company incorporated in England and Wales with registered number [●] (the “**New Chargor**”); and
- (2) [●] as Security Agent for itself and the other Secured Parties (the “**Security Agent**”).

**RECITAL:**

This deed is supplemental to a debenture dated [●] between, amongst others, the Chargors named therein and the Security Agent, as previously supplemented and amended by earlier Security Accession Deeds (if any) (the “**Debenture**”).

**NOW THIS DEED WITNESSES** as follows:

#### 1. INTERPRETATION

##### 1.1 Definitions

Terms defined in the Debenture shall have the same meaning when used in this deed.

##### 1.2 Construction

Clauses 1.2 (*Construction*) to 1.5 (*Miscellaneous*) of the Debenture will be deemed to be set out in full in this deed, but as if references in those clauses to the Debenture were references to this deed.

#### 2. ACCESSION OF NEW CHARGOR

##### 2.1 Accession

The New Chargor agrees to be a Chargor for the purposes of the Debenture with immediate effect and agrees to be bound by all of the terms of the Debenture as if it had originally been a party to it as a Chargor.

##### 2.2 Covenant to pay

Subject to any limits on its liability specified in the Secured Debt Documents, the New Chargor as primary obligor and not merely as surety covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it will on demand pay or discharge the Secured Obligations when they fall due in the manner provided for in the relevant Secured Debt Document.

##### 2.3 Specific Security

Subject to Clause 2.6 (*Property restricting charging*), the New Chargor, as continuing security for the payment of the Secured Obligations, charges in favour of the Security Agent with full title guarantee the following assets from time to time owned by it or in which it has an interest by way of first fixed charge:

- (a) all of its right, title and interest in its Intellectual Property;
- (b) all of its right, title and interest in the Equipment and all corresponding Related Rights;
- (c) all the Investments, Shares and all corresponding Related Rights;
- (d) all Trading Receivables and all rights and claims against third parties and against any security in respect of those Trading Receivables;
- (e) all Other Debts and all rights and claims against third parties against any security in respect of those Other Debts;
- (f) all monies standing to the credit of the Accounts and all corresponding Related Rights;
- (g) the benefit of all licences, consents and agreements held by it in connection with the use of any of its assets;
- (h) all rights, title and interests from time to time in and to its goodwill and uncalled capital; and
- (i) if not effectively assigned by Clause 2.5 (*Security assignment*), all its rights, title and interest in (and claims under) the Insurance Policies and the Assigned Agreements.

#### **2.4 Floating charge**

- (a) As further continuing security for the payment of the Secured Obligations, the New Chargor charges with full title guarantee in favour of the Security Agent by way of first floating charge all its present and future assets and rights together with all corresponding Related Rights including to the extent not effectively charged by way of fixed charge under Clause 2.3 (*Specific Security*) or assigned under Clause 2.5 (*Security assignment*).
- (b) The floating charge created by the New Chargor pursuant to paragraph (a) of this Clause 2.4 shall be deferred in point of priority to all fixed Security constituted by this Debenture.
- (c) The floating charge created by the New Chargor pursuant to paragraph (a) of this Clause 2.4 is a “qualifying floating charge” for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

#### **2.5 Security assignment**

Subject to Clause 2.6 (*Property restricting charging*):

- (a) as further continuing security for the payment of the Secured Obligations, the New Chargor assigns by way of security absolutely with full title guarantee to the Security Agent all its rights, title and interest in the Assigned Agreements to which it is a party, subject in each case to reassignment by the Security Agent to the New Chargor of all such rights, title and interest on the Final Discharge Date; and
- (b) until an Acceleration Event has occurred which is continuing, but subject to Clause 7.3 (*Assigned Agreements*) of the Debenture and the Secured Debt Documents, the New Chargor may continue to deal with the counterparties to the relevant Assigned Agreements and, for the avoidance of doubt, shall be entitled to receive the proceeds of any claim under the Insurance Policies and the Assigned Agreements.

## **2.6 Property restricting charging**

For the avoidance of doubt, all and any Excluded Assets owned by the New Chargor or in which the New Chargor has any interest shall be excluded from the charge created by Clause 2.3 (*Specific Security*), Clause 2.5 (*Security assignment*) and from the operation of Clause 4 (*Further Assurance*) of the Debenture.

## **2.7 Consent of existing Chargors**

The existing Chargors agree to the terms of this deed and agree that its execution will in no way prejudice or affect the security granted by each of them under (and covenants given by each of them in) the Debenture.

## **2.8 Construction of Debenture**

The Debenture and this deed shall be read together as one instrument on the basis that references in the Debenture to “this deed” or “this Debenture” will be deemed to include this deed.

## **3. GOVERNING LAW**

This deed (and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this deed or its formation) and obligations of the Parties hereto and any matter, claim or dispute arising out of or in connection with this deed (including any non-contractual claims arising out of or in association with it) shall be governed by and construed in accordance with English law.

**IN WITNESS** whereof this deed has been duly executed on the date first above written.



**SIGNATORIES TO DEED OF ACCESSION**

**THE NEW CHARGOR**

**EXECUTED as a DEED** by

*[Name of New Chargor]* acting by:

\_\_\_\_\_ as Director: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

**THE SECURITY AGENT**

**EXECUTED as a DEED** by

*[Name of Security Agent]* acting by:

\_\_\_\_\_ as Authorised Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

**SCHEDULE TO DEED OF ACCESSION**  
**SHARES AND INVESTMENTS**

## SIGNATORIES TO DEBENTURE

### THE ORIGINAL CHARGORS

**EXECUTED as a DEED** by  
**PAYSAFE GROUP HOLDINGS II LIMITED** acting by:

Elliott Wiseman as Director: /s/ Elliott Wiseman

Witness: /s/ Gemma Wiseman

Name: Gemma Wiseman

Address: 45 Redbourne Avenue, London N3 2BP

Occupation: Marketing Manager

*[Signature Page to Paysafe Debenture]*

---

**EXECUTED as a DEED** by  
**PAYSAFE GROUP HOLDINGS III LIMITED** acting by:

Elliott Wiseman as Director: /s/ Elliott Wiseman

Witness: /s/ Gemma Wiseman

Name: Gemma Wiseman

Address: 45 Redbourne Avenue, London N3 2BP

Occupation: Marketing Manager

*[Signature Page to Paysafe Debenture]*

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**EXECUTED as a DEED** by  
**PAYSAFE HOLDINGS UK LIMITED** acting by:

Elliott Wiseman as Director: /s/ Elliott Wiseman

Witness: /s/ Gemma Wiseman

Name: Gemma Wiseman

Address: 45 Redbourne Avenue, London N3 2BP

Occupation: Marketing Manager

*[Signature Page to Paysafe Debenture]*

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**THE SECURITY AGENT**

**EXECUTED as a DEED** by  
**LUCID TRUSTEE SERVICES LIMITED** acting by:

Caroline Horvath-Franco as Authorised Signatory: /s/ Caroline Horvath-Franco

Witness: /s/ Sean Rutter

Name: Sean Rutter

Address: 42 Florence Close, Essex, CM13 3FQ

Occupation: Underwriter

[Signature Page to Paysafe Debenture]

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## SECURITY ACCESSION DEED

**THIS SECURITY ACCESSION DEED** is made on 25 June 2021

**BETWEEN:**

(1)**PAYSAFE FINANCE PLC**, a public limited company incorporated in England and Wales with registered number 13437058 (the “**New Chargor**”); and

(2)**LUCID TRUSTEE SERVICES LIMITED** as Security Agent for itself and the other Secured Parties (the “**Security Agent**”).

**RECITAL:**

This deed is supplemental to a debenture dated 24 June 2021 between, amongst others, the Chargors named therein and the Security Agent, as previously supplemented and amended by earlier Security Accession Deeds (if any) (the “**Debenture**”).

**NOW THIS DEED WITNESSES** as follows:

**A.INTERPRETATION**

**i.Definitions**

Terms defined in the Debenture shall have the same meaning when used in this deed.

**ii.Construction**

Clauses 1.2 (*Construction*) to 1.5 (*Miscellaneous*) of the Debenture will be deemed to be set out in full in this deed, but as if references in those clauses to the Debenture were references to this deed.

**B.ACCESSION OF NEW CHARGOR**

**i.Accession**

The New Chargor agrees to be a Chargor for the purposes of the Debenture with immediate effect and agrees to be bound by all of the terms of the Debenture as if it had originally been a party to it as a Chargor.

**ii.Covenant to pay**

Subject to any limits on its liability specified in the Secured Debt Documents, the New Chargor as primary obligor and not merely as surety covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it will on demand pay or discharge the Secured Obligations when they fall due in the manner provided for in the relevant Secured Debt Document.

**iii.Specific Security**

Subject to Clause 2.6 (*Property restricting charging*), the New Chargor, as continuing security for the payment of the Secured Obligations, charges in favour of the Security Agent with full title guarantee the following assets from time to time owned by it or in which it has an interest by way of first fixed charge:

---



- 1.all of its right, title and interest in its Intellectual Property;
- 2.all of its right, title and interest in the Equipment and all corresponding Related Rights;
- 3.all the Investments, Shares and all corresponding Related Rights;
- 4.all Trading Receivables and all rights and claims against third parties and against any security in respect of those Trading Receivables;
- 5.all Other Debts and all rights and claims against third parties against any security in respect of those Other Debts;
- 6.all monies standing to the credit of the Accounts and all corresponding Related Rights;
- 7.the benefit of all licences, consents and agreements held by it in connection with the use of any of its assets;
- 8.all rights, title and interests from time to time in and to its goodwill and uncalled capital; and
- 9.if not effectively assigned by Clause 2.5 (*Security assignment*), all its rights, title and interest in (and claims under) the Insurance Policies and the Assigned Agreements.

#### **iv.Floating charge**

- 1.As further continuing security for the payment of the Secured Obligations, the New Chargor charges with full title guarantee in favour of the Security Agent by way of first floating charge all its present and future assets and rights together with all corresponding Related Rights including to the extent not effectively charged by way of fixed charge under Clause 2.3 (*Specific Security*) or assigned under Clause 2.5 (*Security assignment*).
- 2.The floating charge created by the New Chargor pursuant to paragraph (a) of this Clause 2.4 shall be deferred in point of priority to all fixed Security constituted by this Debenture.
- 3.The floating charge created by the New Chargor pursuant to paragraph (a) of this Clause 2.4 is a “qualifying floating charge” for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

#### **v.Security assignment**

Subject to Clause 2.6 (*Property restricting charging*):

- 1.as further continuing security for the payment of the Secured Obligations, the New Chargor assigns by way of security absolutely with full title guarantee to the Security Agent all its rights, title and interest in the Assigned Agreements to which it is a party, subject in each case to reassignment by the Security Agent to the New Chargor of all such rights, title and interest on the Final Discharge Date; and
  - 2.until an Acceleration Event has occurred which is continuing, but subject to Clause 7.3 (*Assigned Agreements*) of the Debenture and the Secured Debt Documents, the New Chargor may continue to deal with the counterparties to the relevant Assigned Agreements and, for the avoidance of doubt, shall be entitled to receive the proceeds of any claim under the Insurance Policies and the Assigned Agreements.
-

#### **vi. Property restricting charging**

For the avoidance of doubt, all and any Excluded Assets owned by the New Chargor or in which the New Chargor has any interest shall be excluded from the charge created by Clause 2.3 (*Specific Security*), Clause 2.5 (*Security assignment*) and from the operation of Clause 4 (*Further Assurance*) of the Debenture.

#### **vii. Consent of existing Chargors**

The existing Chargors agree to the terms of this deed and agree that its execution will in no way prejudice or affect the security granted by each of them under (and covenants given by each of them in) the Debenture.

#### **viii. Construction of Debenture**

The Debenture and this deed shall be read together as one instrument on the basis that references in the Debenture to “this deed” or “this Debenture” will be deemed to include this deed.

### **C. GOVERNING LAW AND JURISDICTION**

(a) This deed (and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this deed or its formation) and obligations of the Parties hereto and any matter, claim or dispute arising out of or in connection with this deed (including any non-contractual claims arising out of or in association with it) shall be governed by and construed in accordance with English law.

(b) Subject to paragraph (c) below, the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed, whether contractual or non-contractual (including a dispute regarding the existence, validity or termination of this deed) (a “**Dispute**”). 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) The New Chargor agrees that a judgment or order of any court referred to in this Clause 3 is conclusive and binding and may be enforced against it in the courts of any other jurisdiction.

**IN WITNESS** whereof this deed has been duly executed on the date first above written.

---

1.

**SHARES AND INVESTMENTS**

2.

**Name of Chargor which holds the shares**

**Name of company issuing shares**

**Number and class of shares**

None as at the date of this deed.

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2.

**ACCOUNTS**

<b>Name of Chargor</b>	<b>Name and address of institution at which account is held</b>	<b>Currency of account</b>	<b>Account number</b>	<b>BIC</b>
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None as at the date of this deed.

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3.

**INSURANCE POLICIES**

**Name of Chargor**

**Insurer**

**Policy Number**

**Type of Risk Insured**

None as at the date of this deed.

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**SIGNATORIES TO DEED OF ACCESSION**

**THE NEW CHARGOR**

**EXECUTED as a DEED** by  
**PAYSAFE FINANCE PLC** acting by:  
Elliott Wiseman as Director: /s/ Elliott Wiseman

Witness: /s/ Harpal O'Shea  
Name: Harpal O'Shea  
Address: 25 Canada Square London E14  
Occupation: Executive Legal Assistant

*[Paysafe – Signature page to Accession Deed]*[[[

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]]

**THE SECURITY AGENT**

**EXECUTED as a DEED** by

**LUCID TRUSTEE SERVICES LIMITED** acting by:

Caroline Horvath-Franco as Authorised Signatory: /s/ Caroline Horvath-Franco

Witness: /s/ Sean Rutter

Name: Sean Rutter

Address: 42 Florence Close, Essex, CM13 3FQ

Occupation: Underwriter

*[Paysafe – Signature page to Accession Deed]*[[[

---

]]





**24 June 2021**

**PAYSAFE GROUP LIMITED**

(as the Chargor)

and

**LUCID TRUSTEE SERVICES LIMITED**  
(as Security Agent)

---

**SECURITY AGREEMENT**

---

**LATHAM & WATKINS**

99 Bishopsgate  
London EC2M 3XF  
United Kingdom  
Tel: +44.20.7710.1000  
[www.lw.com](http://www.lw.com)

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## CONTENTS

### Clause Page

1.	INTERPRETATION	1
2.	LIMITED RECOURSE	8
3.	CHARGING PROVISIONS	8
4.	FURTHER ASSURANCE	8
5.	NEGATIVE PLEDGE	9
6.	REPRESENTATIONS AND WARRANTIES	9
7.	PROTECTION OF SECURITY	10
8.	RIGHTS OF THE CHARGOR	11
9.	UNDERTAKINGS	11
10.	CONTINUING SECURITY	12
11.	ENFORCEMENT OF SECURITY	12
12.	RECEIVERS	14
13.	APPLICATION OF PROCEEDS	16
14.	PROTECTION OF SECURITY AGENT AND RECEIVER	17
15.	POWER OF ATTORNEY	17
16.	PROTECTION FOR THIRD PARTIES	18
17.	REINSTATEMENT AND RELEASE	18
18.	CURRENCY CLAUSES	21
19.	SET-OFF	22
20.	REDEMPTION OF PRIOR SECURITY	22
21.	NOTICES	22
22.	CHANGES TO PARTIES	22
23.	MISCELLANEOUS	23
24.	GOVERNING LAW AND JURISDICTION	23

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**THIS SECURITY AGREEMENT** (this “**Security Agreement**”) is made on 24 June 2021  
**BETWEEN:**

- (1) **PAYSAFE GROUP LIMITED**, a company incorporated in the Isle of Man with registration number 016104V and having its registered office at 3rd Floor, Queen Victoria House, 41-43 Victoria Street, Douglas, IM1 2LF, Isle of Man (the “**Chargor**”); and
- (2) **LUCID TRUSTEE SERVICES LIMITED** as security agent for itself and the other Secured Parties (the “**Security Agent**”).

**IT IS AGREED AS FOLLOWS:**

## **1. INTERPRETATION**

### **1.1 Definitions**

In this Security Agreement:

“**Acceleration Event**” has the meaning given to that term in the Intercreditor Agreement, other than a Senior Parent Notes Acceleration Event and/or a Permitted Parent Financing Acceleration Event (except to the extent such Senior Parent Notes Acceleration Event arises in respect of Senior Parent Notes Liabilities secured by Shared Security (as defined in the Intercreditor Agreement)) or an Acceleration Event in respect of an Event of Default under clause 28.1 (*Financial covenant*) of the Senior Facilities Agreement in respect of which a Financial Covenant Cross-Default has not occurred and is not continuing).

“**Agreed Security Principles**” has the meaning given to that term in the Intercreditor Agreement.

“**Capital Requirement**” means the minimum amount of regulatory capital (however described) each Regulated Entity is required to maintain pursuant to any applicable law, licensing condition or regulation (including, without limitation, pursuant to or in connection with the Isle of Man Financial Services Rule Book 2016, the Payment Services Regulations 2009, the Payment Services Regulations 2017, the Swiss Financial Market Infrastructure Act and/or the Mauritius Financial Services Act 2007), as amended and/or replaced from time to time, or the views, guidance or interpretation of any Relevant Regulator.

“**CFC**” means a “controlled foreign corporation” (as defined in Section 957(a) of the United States Internal Revenue Code of 1986 (as amended)).

“**Charged Property**” means the assets and undertakings, charged or otherwise secured or expressed to be charged or otherwise secured in favour of the Security Agent by this Security Agreement.

“**Company**” means Paysafe Holdings UK Limited, a company incorporated in England and Wales with registration number 03202517 and having its registered office at Floor 27, 25 Canada Square, London, England, E14 5LQ.

“**Effective Time**” has the meaning given to it in the Pay-Off Letter.

“**Excluded Asset**” means, in relation to the Chargor:

- (a) any Restricted Assets and any Settlement Assets;
- (b) any assets in respect of which the granting of security under the Security Agreement, in the good faith judgment of the directors of the Parent, could materially increase a Capital Requirement, or materially adversely affect the solvency capital requirements, of the Group (or any Group Company) pursuant to any applicable law or regulation applicable to such Group Company;
- (c) any assets located in any jurisdiction that is not a Security Jurisdiction;
- (d) any interest in any third party minority interest, partnership or joint venture;
- (e) any equity interests of a CFC, FSHCO, or any subsidiary of a CFC or FSHCO (including any CFC or FSHCO equity interests held directly or indirectly by a CFC or FSHCO) in excess of 65% of the total voting equity interests and 100% of the total non-voting equity interests of such CFC or FSHCO that, in each case, are directly or indirectly owned by the Chargor;
- (f) any assets of a CFC, FSHCO or a subsidiary of a CFC or FSHCO that, in each case, are directly or indirectly owned by the Chargor;
- (g) any interest in any subsidiary or any other asset if the granting of security under this Security Agreement would result in material adverse US tax consequences to any Group Company that is organised or tax resident in the United States, as reasonably determined by the Parent in accordance with the Agreed Security Principles;
- (h) any asset, business or entity acquired by Parent or any Restricted Subsidiary in respect of which there are third party arrangements in place (where those third party arrangements were not entered into in contemplation of that acquisition) as a result of which the consent of a third party is required for that acquired entity to provide a guarantee or to secure any acquired asset, such guarantee and/or security will not be required to be granted;
- (i) any assets subject to third party arrangements which are permitted by the Senior Facilities Agreement and which prevent those assets from being charged, and any cash constituting regulatory capital or customer cash;
- (j) any other asset in respect of which the granting of security under this Security Agreement would (i) conflict with the fiduciary duties of any Officer of any Group Company, (ii) contravene any legal, contractual or regulatory prohibition (*provided* that in respect of any contractual prohibition (x) if at least 15 Business Days prior to the date of this Security Agreement, the Security Agent (acting reasonably) determines that such asset is material in the context of the business of the Group and notifies the Chargor in writing that such consent should be sought, and (y) the Chargor is satisfied that such endeavours would not reasonably be expected to adversely impact relationships with third parties, the Parent shall use commercially reasonable endeavours to procure the relevant consents (not involving the payment of money or incurrence of any external expenses)) or (iii) result in a risk of personal or criminal liability on the part of any Officer; and
- (k) any other assets where the cost of obtaining a security interest in, or perfection of a security interest in, such assets exceeds the practical benefit to the Secured Parties afforded thereby (as reasonably determined by the Parent and notified to the Security Agent).

**“Final Discharge Date”** has the meaning given to that term in the Intercreditor Agreement.

**“FSHCO”** means an entity substantially all the assets of which consist of equity interests (or equity interests and indebtedness) of one or more CFCs or other FSHCOs.

**“Intercreditor Agreement”** means the intercreditor agreement dated on or about the date of this Security Agreement and made between, among others, Paysafe Group Holdings II Limited as the Parent, Paysafe Group Holdings III Limited (formerly PI UK Holdco III Limited) as the Company and the Security Agent (as the same may be amended, amended and restated, supplemented or otherwise modified from time to time).

**“Non-Cash Consideration”** means consideration in a form other than cash.

**“Parties”** means each of the parties to this Security Agreement from time to time.

**“Pay-Off Letter”** means the pay-off letter dated on or around the date of this Security Agreement between Credit Suisse AG, London Branch as agent and PI UK Holdco II Limited as the parent.

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

**“Regulated Entity”** means each Group Company whose business activities are subject to licence, supervised or regulated by a Relevant Regulator.

**“Related Rights”** means, in relation to any Charged Property:

- (a) all rights, powers, benefits, claims, contracts, warranties, remedies, covenants for title, security, guarantees or indemnities in respect of or appurtenant to all or any part of that Charged Property;
- (b) all other assets and rights at any time receivable or distributable in respect of, or in exchange for, that Charged Property;
- (c) any awards or judgments in favour of the Chargor;
- (d) in the case of any contract, agreement or instrument, any interest in any of the foregoing whether or not the Chargor is party to that contract, agreement or instrument; and
- (e) any other moneys paid or payable in respect of that Charged Property.

**“Relevant Regulator”** means the Central Bank of Ireland, the Isle of Man Financial Services Authority, the Swiss Financial Market Supervisory Authority (FINMA), the UK Financial Conduct Authority, the UK Payment Systems Regulator, the UK Competition and Markets Authority, the Financial Services Commission of Mauritius or any other entity, agency, governmental authority or person that has regulatory authority over the business or operations of any Group Company.

**“Required Creditor Consent”** means the Required Senior Consent (as defined in the Intercreditor Agreement).

**“Restricted Asset”** has the meaning given to that term in the Senior Facilities Agreement or any other similar or equivalent provision of any of the Secured Debt Documents.

**“Secured Obligations”** has the meaning given to that term in the Intercreditor Agreement.

“**Security Jurisdiction**” means each of the United Kingdom, the United States and the jurisdiction of incorporation of any Debtor.

“**Senior Facilities Agreement**” means the senior facilities agreement dated on or about the date of this Security Agreement between, among others, Paysafe Group Holdings II Limited as the Company, the Original Lenders (as defined therein) and the Security Agent.

“**Settlement Assets**” has the meaning given to that term in the Senior Facilities Agreement or any other similar or equivalent provision of any of the Secured Debt Documents.

“**Shares**” means all of the Chargor’s right, title and interest from time to time in and to all shares owned by it in the Company, including but not limited to the shares, if any, specified in Schedule 1 (*Shares*), warrants, options and other rights to subscribe for, purchase or otherwise acquire any shares and any other securities or investments deriving from any such shares or any rights attaching or relating to any such shares, but excluding (for the avoidance of doubt) any stock, share, debenture, loan stock, security, bond, option, warrant, interest in any investment fund or any comparable investment that constitutes an Excluded Asset or is subject to Security granted in favour of the Security Agent otherwise than pursuant to this Security Agreement.

“**Tax Structure Memorandum**” has the meaning given to that term in the Senior Facilities Agreement.

“**Voting Event**” means, in relation to the Shares, the service of a notice by the Security Agent (either specifying that Share or generally in relation to all or a designated class of Shares) on the Chargor upon or after the occurrence of an Acceleration Event which is continuing, specifying that control over the voting rights attaching to the Share or Shares specified in that notice are to pass to the Security Agent.

## 1.2 Construction

- (a) Unless a contrary indication appears in this Security Agreement, the provisions of clause 1.2 (*Construction*) of the Intercreditor Agreement shall apply to this Security Agreement as if set out in full in this Security Agreement with references to “this Agreement” being treated as references to this Security Agreement and:
  - (i) an “**amount**” includes an amount of cash and an amount of Non-Cash Consideration;
  - (ii) “**authorisation**” or “**consent**” shall be construed as including any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;
  - (iii) a “**company**” includes any company, corporation or other body corporate, wherever and however incorporated or established;
  - (iv) an Acceleration Event is “**continuing**” if it has not been revoked or has not otherwise ceased to be continuing in accordance with the terms of the relevant Secured Debt Document;
  - (v) a “**distribution**” of or out of the assets of any Group Company, includes a distribution of cash and a distribution of Non-Cash Consideration;

- (vi) **“including”** means including without limitation and **“includes”** and **“included”** shall be construed accordingly;
  - (vii) **“law”** includes any present or future common law, principles of equity and any constitution, decree, judgment, decision, legislation, statute, order, ordinance, regulation, by-law or other legislative measure in any jurisdiction or any present or future official directive, regulation, guideline, request, rule, code of practice, treaty or requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is customary in accordance with the general practice of a person to whom the directive, regulation, guideline, request, rule, code of practice, treaty or requirement is intended to apply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (viii) **“losses”** includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including fees) and liabilities and **“loss”** shall be construed accordingly;
  - (ix) **“permitted”** shall be construed as including any circumstance, event, matter or thing which is not expressly prohibited;
  - (x) a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, consortium or partnership, joint venture or other entity (whether or not having separate legal personality) or any two or more of the foregoing;
  - (xi) **“proceeds”** of a disposal includes proceeds in cash and in Non-Cash Consideration;
  - (xii) **“rights”** includes all rights, title, benefits, powers, privileges, interests, claims, authorities, discretions, remedies, liberties, easements, quasi easements and appurtenances (in each case, of every kind, present, future and contingent); and
  - (xiii) **“security”** includes any mortgage, charge, pledge, lien, security assignment, hypothecation or trust arrangement for the purpose of providing security and any other encumbrance or security interest of any kind having the effect of securing any obligation of any person (including the deposit of moneys or property with a person with the intention of affording such person a right of lien, set-off, combination or counter-claim) and any other agreement or any other type of arrangement having a similar effect (including any flawed-asset or hold back arrangement) and **“security interest”** shall be construed accordingly.
- (b) A reference in this Security Agreement to any stock, share, debenture, loan stock, option, securities, bond, warrant, coupon, interest in any investment fund or any other investment includes:
- (i) all dividends, interest, coupons and other distributions paid or payable;
  - (ii) all stocks, shares, securities, rights, moneys, allotments, benefits and other assets accruing or offered at any time by way of redemption, substitution, conversion, exchange, bonus or preference, under option rights or otherwise;
  - (iii) any rights against any settlement or clearance system; and



(iv) any rights under any custodian or other agreement,

in each case, in respect of such stock, share, debenture, loan stock, securities, bond, warrant, coupon, interest in an investment fund or other investment.

(c) The fact that the details of any assets in the Schedules are incorrect or incomplete shall not affect the validity or enforceability of this Security Agreement in respect of the assets of the Chargor.

(d) Unless the context otherwise requires, a reference to Charged Property includes:

(i) any part of the Charged Property;

(ii) any proceeds of that Charged Property; and

(iii) any present and future assets of that type.

(e) Where this Security Agreement refers to any provision of any Secured Debt Document and that Secured Debt Document is amended in any manner that would result in that reference being incorrect, this Security Agreement shall be construed so as to refer to that provision as renumbered in the amended Secured Debt Document, unless the context requires otherwise.

### 1.3 Other references

(a) In this Security Agreement, unless a contrary intention appears, a reference to:

(i) any Secured Party, the Chargor or any other person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors in title, permitted assignees and transferees and in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Secured Debt Documents;

(ii) any Secured Debt Document or other agreement or instrument is to be construed as a reference to that agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced, including by way of any change to the purpose of, any extension of or increase of the facilities or other obligations or addition of new facilities or other obligations made available under them or accession or retirement of the parties to these agreements;

(iii) any clause or schedule is a reference to, respectively, a clause of and schedule to this Security Agreement and any reference to this Security Agreement includes its schedules; and

(iv) a provision of law is a reference to that provision as amended or re-enacted.

(b) The index to and the headings in this Security Agreement are inserted for convenience only and are to be ignored in construing this Security Agreement.

(c) Words importing the plural shall include the singular and vice versa.

#### 1.4 Incorporation by reference

Unless the context otherwise requires or unless otherwise defined in this Security Agreement, words and expressions defined in the Intercreditor Agreement have the same meanings when used in this Security Agreement. In the event of any inconsistency or conflict between this Security Agreement on the one hand and the Senior Facilities Agreement or the Intercreditor Agreement on the other (to the fullest extent permitted by law), the provisions of the Senior Facilities Agreement or the Intercreditor Agreement (as applicable) shall prevail.

#### 1.5 Miscellaneous

- (a) Notwithstanding anything to the contrary in this Security Agreement (and without prejudice to the terms of the Intercreditor Agreement or any other Secured Debt Document in relation to the requirement for the Security Agent to enter into documentation in relation to this Security Agreement (including releases)), nothing in this Security Agreement shall (or shall be construed to) prohibit, restrict or obstruct any transaction, matter or other step (or the Chargor taking or entering into the same) or dealing in any manner whatsoever in relation to any asset (including all rights, claims, benefits, proceeds and documentation, and contractual counterparties in relation thereto) the subject of (or expressed to be the subject of) this Security Agreement and the Security arising thereunder in each case if not prohibited by the Secured Debt Documents or where Required Creditor Consent has been obtained. The Security Agent shall promptly enter into such documentation and/or take such other action as is required by the Chargor (acting reasonably) in order to facilitate any such transaction, matter or other step, including by way of executing any confirmation, consent to dealing, release or other similar or equivalent document, provided that any costs and expenses incurred by the Security Agent entering into such documentation and/or taking such other action at the request of the Chargor pursuant to this paragraph (b) shall be for the account of the Chargor, in accordance with clause 20 (*Costs and Expenses*) of the Intercreditor Agreement.
- (b) Except as otherwise expressly provided in Clause 16 (*Protection for Third Parties*) or elsewhere in this Security Agreement, the terms of this Security Agreement may be enforced only by a Party and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- (c) Notwithstanding any term of this Security Agreement and subject to clause 25 (*Consents, Amendments and Override*) of the Intercreditor Agreement, no consent of a third party is required for any termination or amendment of this Security Agreement.
- (d) The Parties intend that this document shall take effect as a deed, notwithstanding that any party may only execute this document under hand.
- (e) All Security created pursuant to this Security Agreement is created over the present and future Charged Property of the Chargor.
- (f) The Security Agent holds the benefit of this Security Agreement on trust for itself and each of the other Secured Parties from time to time on the terms of the Secured Debt Documents.
- (g) The Security created pursuant to this Security Agreement by the Chargor is made with full title guarantee under the Law of Property (Miscellaneous Provisions) Act 1994.

(h) Notwithstanding any other provision of this Security Agreement, the Security constituted in relation to the trusts created by this Security Agreement and the exercise of any right or remedy by the Security Agent hereunder shall be subject to the Intercreditor Agreement.

## **1.6 Distinct Security**

All Security created pursuant to this Security Agreement shall be construed as creating a separate and distinct Security over each relevant asset within any particular class of assets defined or referred to in this Security Agreement. The failure to create an effective Security, whether arising out of any provision of this Security Agreement or any act or omission by any person, over any one such asset shall not affect the nature or validity of the Security imposed on any other such asset, whether within that same class of assets or otherwise.

## **1.7 Nature of Obligations**

Nothing in this Security Agreement is intended to make the Chargor liable as principal debtor, guarantor or otherwise, for any of the Secured Obligations.

## **2. LIMITED RECOURSE**

(a) Notwithstanding any other provision of this Security Agreement or the Secured Debt Documents, the recourse of the Security Agent against the Chargor in respect of the Secured Obligations is limited to the rights of enforcement and recovery against the Charged Property charged by the Chargor under this Security Agreement and, accordingly, the Security Agent agrees that the total amount recoverable against the Chargor under this Security Agreement shall be limited to the proceeds received by the Security Agent after realising the Charged Property of the Chargor in accordance with this Security Agreement.

(b) No Secured Party:

- (i) shall have any recourse to any assets of the Chargor other than the Charged Property of the Chargor;
- (ii) may seek to recover from the Chargor any shortfall between the amount of the proceeds received by the Security Agent after realising the Charged Property of the Chargor in accordance with this Security Agreement and the Secured Obligations; or
- (iii) may sue or commence, join or bring any action or proceeding against the Chargor or apply to have the Chargor wound up or made subject to insolvency proceedings in relation to any shortfall referred to in subparagraph (ii) above.

## **3. CHARGING PROVISIONS**

### **3.1 Effective Time**

Notwithstanding anything to the contrary in this Security Agreement, the Security constituted hereunder shall be granted pursuant to the provisions of this Security Agreement from and including the Effective Time, but not before.

### 3.2 Specific Security

Subject to Clause 3.3 (*Property restricting charging*), the Chargor, as continuing security for the payment of the Secured Obligations, charges in favour of the Security Agent with full title guarantee by way of first fixed charge all the Shares and all corresponding Related Rights from time to time owned by it or in which it has an interest.

### 3.3 Property restricting charging

For the avoidance of doubt, all and any Excluded Assets owned by the Chargor or in which the Chargor has any interest shall be excluded from the charge created by Clause 3.2 (*Specific Security*) and from the operation of Clause 4 (*Further Assurance*).

## 4. FURTHER ASSURANCE

- (a) Subject to the Agreed Security Principles, the Chargor shall 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 this Security Agreement (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 Charged Property) or for the exercise of any rights, powers and remedies of the Security Agent or the Secured Parties provided by or pursuant to this Security Agreement or by law; and/or
  - (ii) after a Declared Default which is continuing, to facilitate the realisation of the assets which are, or are intended to be, the subject of the Charged Property.
- (b) Subject to the Agreed Security Principles, the Chargor 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 Secured Parties by or pursuant to this Security Agreement.
- (c) Notwithstanding anything set out to the contrary above, or in any other term of this Security Agreement, no Regulated Entity or other member of the Group will be required:
  - (i) to give a guarantee or grant Security where, in the good faith judgment of the directors of the Chargor, the creation of Security, the giving of a guarantee and/or otherwise becoming the Chargor under this Security Agreement could materially increase the regulatory capital requirements pursuant to any applicable law or regulation or the views, guidance or interpretation of the applicable law or regulation of any Relevant Regulator, or materially adversely affect the solvency capital requirements, of the Group (or any member thereof) pursuant to any applicable law or regulation applicable to such member of the Group, or where such guarantee or grant could cause the Group (or any member thereof) to breach any applicable law or regulation; or

- (ii) to create Security over or otherwise encumber any Restricted Asset (including, without limitation, any bank accounts which contain or are reasonably likely to contain any Restricted Assets).

## **5. NEGATIVE PLEDGE**

The Chargor shall not create or permit to subsist any Security over all or any part of the Charged Property except as permitted or not prohibited by the Secured Debt Documents or with the prior written consent of the Security Agent or to the extent Required Creditor Consent has been obtained.

## **6. REPRESENTATIONS AND WARRANTIES**

### **6.1 General**

The Chargor represents and warrants, as to itself, to the Security Agent as set out in this Clause 6 on the date of this Security Agreement.

### **6.2 Status**

- (a) It is duly incorporated (or, as the case may be, organised) and validly existing under the laws of its jurisdiction of its incorporation (or, as the case may be, organisation).
- (b) It has the power to own its material assets and carry on its business substantially as it is now being conducted, save to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

### **6.3 Binding obligations**

Subject to the Legal Reservations and the Perfection Requirements:

- (a) its obligations under this Security Agreement are valid, legally binding and enforceable obligations; and
  - (b) (without limiting the generality of paragraph (a) above), this Security Agreement creates valid and effective security interests which this Security Agreement purports to make, ranking in accordance with the terms herein,
- in each case, to the extent that a failure to do so would have a Material Adverse Effect.

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

Subject to the Legal Reservations, the entry into and performance by it of, and the transactions contemplated by this Security Agreement do not contravene:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets,

to an extent which has or is reasonably likely to have a Material Adverse Effect.

## **6.5 Power and authority**

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, this Security Agreement and to carry out the transactions contemplated by this Security Agreement to the extent failure to do so would have a Material Adverse Effect.

## **6.6 Ownership**

It is the sole legal and beneficial owner of the Charged Property over which it purports to grant Security under or pursuant to this Security Agreement.

# **7. PROTECTION OF SECURITY**

## **7.1 Title documents**

- (a) The Chargor will deposit with the Security Agent (or as it shall direct):
  - (i) within 20 Business Days of the Effective Time (or, if the relevant Shares are acquired after the Effective Time, within 20 Business Days of the date of such acquisition) (or, in each case, such later date as the Security Agent may agree in its reasonable discretion) all stocks and share certificates and other documents of title relating to the Shares, subject in each case to the Agreed Security Principles, together with stock transfer forms executed in blank and left undated on the basis that the Security Agent shall be able to hold such documents of title and stock transfer forms until the Final Discharge Date and shall be entitled to complete, at any time upon or after the occurrence of an Acceleration Event which is continuing, under its power of attorney given in this Security Agreement, the stock transfer forms on behalf of the Chargor in favour of itself or such other person as it shall select; and
  - (ii) promptly, at any time upon or after the occurrence of an Acceleration Event which is continuing, all other documents relating to its Shares which the Security Agent reasonably requests in writing in accordance with the Agreed Security Principles.
- (b) The Security Agent may retain any document delivered to it under this Clause 7.1 or otherwise until the Security created under this Security Agreement is released.
- (c) Any document required to be delivered to the Security Agent under paragraph (a) above which is for any reason not so delivered or which is released by the Security Agent to the Chargor shall be held on trust by the Chargor for the Security Agent.
- (d) If required or desirable to effect any transaction permitted or not prohibited under any Secured Debt Document (or in respect of which Required Creditor Consent has been obtained), the Security Agent shall, promptly upon written request by the Chargor, return any document previously delivered to it under paragraph (a) above to the Chargor, *provided* that any such document delivered to the Chargor shall be held on trust by the Chargor for the Security Agent.

- (e) For the avoidance of doubt, nothing in paragraph (a) above shall require the Chargor to deposit stocks and share certificates or other documents of title relating to any Shares where such Shares are in dematerialised or uncertificated form.

## **8. RIGHTS OF THE CHARGOR**

Notwithstanding anything in this Security Agreement to the contrary, until an Acceleration Event has occurred which is continuing (or such later date as provided by this Security Agreement), the Chargor shall continue to have the sole right to:

- (a) deal with any Charged Property (including making any disposal of or in relation thereto) and all contractual counterparties in respect thereof; and
- (b) amend, waive or terminate (or allow to lapse) any rights, benefits and/or obligations in respect of Charged Property, in each case without reference to any Secured Party,

except as expressly prohibited by the Secured Debt Documents (save where Required Creditor Consent has been obtained).

## **9. UNDERTAKINGS**

The Chargor undertakes to the Security Agent in the terms of this Clause 9 from the date of this Security Agreement and until the Final Discharge Date.

### **9.1 Voting and distribution rights**

- (a) Prior to the occurrence of an Acceleration Event:

- (i) the Chargor shall be entitled to receive, and retain all dividends, distributions and other monies paid on or derived from its Shares (whether held in certificated or uncertificated form); and
- (ii) the Chargor shall be entitled to exercise or direct the exercise of all voting and other rights and powers attaching to its Shares in its sole and absolute discretion, *provided* that it shall not exercise any such voting rights or powers in a manner which would cause an Event of Default to occur.

- (b) On or at any time after the occurrence of a Voting Event:

- (i) the Security Agent (or its nominee) may exercise (or refrain from exercising) any voting rights, powers and other rights in respect of any Shares of the Chargor as it sees fit; and
- (ii) the Chargor:
  - (A) shall comply or procure the compliance with any directions of the Security Agent (or its nominee) in respect of the exercise of those rights; and
  - (B) irrevocably appoints the Security Agent (or its nominee) as its proxy to exercise all voting rights in respect of its Shares with effect from the occurrence of that Voting Event to the extent that those Shares remain registered in its name.

- (c) If, at any time, any Shares are registered in the name of the Security Agent or its nominee, the Security Agent will not be under any duty to ensure that any dividends, distributions or other monies payable in respect of those Shares are duly and promptly paid or received by it or its nominee, or to verify that the correct amounts are paid or received, or to take any action in connection with the taking up of any (or any offer of any) stocks, shares, rights, moneys or other property paid, distributed, accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise on or in respect of or in substitution for, any of those Shares.

## **10. CONTINUING SECURITY**

### **10.1 Continuing Security**

All Security constituted by this Security Agreement is a continuing security for the payment, discharge and performance of all of the Secured Obligations, shall extend to the ultimate balance of all sums payable under the Secured Debt Documents and shall remain in full force and effect until the Final Discharge Date. No part of the Security will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### **10.2 Other Security**

The Security constituted by this Security Agreement is to be in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other Security or other right which the Security Agent and/or any other Secured Party may now or after the date of this Security Agreement hold for any of the Secured Obligations, and this Security may be enforced against the Chargor without first having recourse to any other rights of the Security Agent or any other Secured Party.

## **11. ENFORCEMENT OF SECURITY**

### **11.1 Timing and manner of enforcement**

- (a) Subject to the terms of the Intercreditor Agreement, the Security constituted by this Security Agreement shall become enforceable and the powers referred to in Clause 11.2 (*Enforcement powers*) shall become exercisable immediately upon or after the occurrence of an Acceleration Event which is continuing.
- (b) Without prejudice to any other provision of this Security Agreement, any time after the Security created pursuant to this Security Agreement has become enforceable, the Security Agent may without notice to the Chargor enforce all or any part of that Security and exercise all or any of the powers, authorities and discretions conferred by the Secured Debt Documents including this Security Agreement or otherwise by law on mortgagees, chargees and Receivers (whether or not it has appointed a Receiver), in each case at the times, in the manner and on the terms it thinks fit or as otherwise directed in accordance with the terms of the Secured Debt Documents.
- (c) No Secured Party shall be liable to the Chargor for any loss arising from the manner in which the Security Agent or any other Secured Party enforces or refrains from enforcing the Security constituted by this Security Agreement.



## 11.2 Enforcement powers

- (a) The Secured Obligations shall be deemed to have become due and payable on the date of this Security Agreement in respect of the Chargor for the purposes of section 101 of the Law of Property Act 1925.
- (b) The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (as varied and extended by this Security Agreement) and all other powers conferred on a mortgagee by law shall be deemed to arise immediately upon an Acceleration Event which is continuing.
- (c) For the purposes of sections 99 and 100 of the Law of Property Act 1925, the expression “**mortgagor**” shall include any encumbrancer deriving title under the original mortgagor and section 99(18) of the Law of Property Act 1925 and section 100(12) of the Law of Property Act 1925 shall not apply.

## 11.3 Statutory powers

The powers conferred on mortgagees, receivers or administrative receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (as the case may be) shall apply to the Security created under this Security Agreement, unless they are expressly or impliedly excluded. If there is ambiguity or conflict between the powers contained in those Acts and those contained in this Security Agreement, those contained in this Security Agreement shall prevail.

## 11.4 Exercise of powers

All or any of the powers conferred upon mortgagees by the Law of Property Act 1925 as varied or extended by this Security Agreement, and all or any of the rights and powers conferred by this Security Agreement on a Receiver (whether expressly or impliedly), may be exercised by the Security Agent without further notice to the Chargor at any time upon or after the occurrence of an Acceleration Event which is continuing, irrespective of whether the Security Agent has taken possession or appointed a Receiver of the Charged Property.

## 11.5 Disapplication of statutory restrictions

The restriction on the consolidation of mortgages and on power of sale imposed by sections 93 and 103 respectively of the Law of Property Act 1925 shall not apply to the Security constituted by this Security Agreement.

## 11.6 Appropriation under the Financial Collateral Regulations

To the extent that any of the Charged Property constitute “financial collateral” and this Security Agreement and the obligations of the Chargor under it constitute a “security financial collateral arrangement” (in each case, as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226) (the “**FCR Regulations**”)), upon and after the Security created pursuant to this Security Agreement has become enforceable, the Security Agent or any Receiver shall have the benefit of all the rights of a collateral taker conferred upon it by the FCR Regulations, including the right to appropriate without notice to the Chargor (either on a single occasion or on multiple occasions) all or any part of that financial collateral in or towards discharge of the Secured Obligations and, for this purpose, the value of the financial collateral so appropriated shall be:

- (a) in the case of cash, the face value at the time of appropriation; and
  - (b) in the case of any other financial collateral, the market price at the time of appropriation of that financial collateral determined by the Security Agent or any Receiver (as applicable) in a commercially reasonable manner (including by reference to a public index or independent valuation),
- as converted, where necessary, into the currency in which the liabilities under the Secured Debt Documents are denominated at a market rate of exchange prevailing at the time of appropriation selected by the Security Agent or any Receiver. The Parties agree that the methods of valuation set out in paragraphs (a) and (b) above are commercially reasonable methods of valuation for the purposes of the FCR Regulations.

## **12. RECEIVERS**

### **12.1 Appointment of Receiver**

- (a) At any time upon or after the occurrence of an Acceleration Event which is continuing, or if so requested by the Chargor, the Security Agent may, by writing under hand signed by an officer or manager of the Security Agent, appoint any person (or persons) to be a Receiver of all or any part of the Charged Property (save to the extent prohibited by section 72A of the Insolvency Act 1986).
- (b) Section 109(1) of the Law of Property Act 1925 shall not apply to this Security Agreement.
- (c) If the Security Agent appoints more than one person as Receiver, the Security Agent may give those persons power to act either jointly or severally.
- (d) Any Receiver may be appointed Receiver of all of the Charged Property or Receiver of a part of the Charged Property specified in the appointment. In the case of an appointment in respect of a part of the Charged Property, the rights conferred on a Receiver as set out in Clause 12.2 (*Powers of Receiver*) shall have effect as though every reference in Clause 12.2 (*Powers of Receiver*) to the Charged Property were a reference to the part of the Charged Property so specified or any part of that Charged Property.

### **12.2 Powers of Receiver**

Each Receiver appointed under this Security Agreement shall have (subject to any limitations or restrictions which the Security Agent may incorporate in the deed or instrument appointing it) all the powers conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this Security Agreement), so that the powers set out in Schedule 1 to the Insolvency Act 1986 shall extend to every Receiver, whether or not an administrative receiver. In addition, notwithstanding any liquidation of the Chargor, each Receiver shall have the following rights, powers and discretions:

- (a) all the rights conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on any receiver appointed under the Law of Property Act 1925;
- (b) all the rights expressed to be conferred upon the Security Agent in this Security Agreement and all the rights to release the Charged Property from the Security conferred upon the Security Agent in the Secured Debt Documents;

- (c) to take immediate possession of, get in and collect any Charged Property and to require payment to it or to the Security Agent of any monetary claims or credit balance on any Account;
  - (d) to bring, prosecute, enforce, defend and abandon any action, suit and proceedings in relation to any Charged Property or any business of the Chargor;
  - (e) to give a valid receipt for any moneys and execute any assurance or thing which may be necessary or desirable for realising any Charged Property;
  - (f) to exercise all voting and other rights attaching to the Shares and stocks, shares and other securities owned by the Chargor and comprised in the Charged Property, but only following a written notification from either the Receiver or the Security Agent to the Chargor stating that the Security Agent shall exercise all voting rights in respect of the Shares and stocks, shares and other securities owned by the Chargor and comprised in the Charged Property;
  - (g) to redeem any prior Security on or relating to the Charged Property and settle and pass the accounts of the person entitled to that prior Security, so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver;
  - (h) to exercise in relation to any Charged Property all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Charged Property; and
  - (i) to do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental or conducive to any of the matters or powers in this Clause 12.2, or otherwise incidental or conducive to the preservation, improvement or realisation of the Charged Property, and use the name of the Chargor for all such purposes,
- and in each case may use the name of the Chargor and exercise the relevant power in any manner which he may think fit.

### **12.3 Receiver as Agent**

- (a) Any Receiver shall be the agent of the Chargor for all purposes and accordingly shall be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Law of Property Act 1925.
- (b) The Chargor is solely responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver.

### **12.4 Removal of Receiver**

The Security Agent may by notice remove from time to time any Receiver appointed by it (subject to the provisions of section 45 of the Insolvency Act 1986 in the case of an administrative receivership) and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has terminated, for whatever reason.

### **12.5 Remuneration of Receiver**

The Security Agent may (subject to section 36 of the Insolvency Act 1986) reasonably determine the remuneration of any Receiver appointed by it and any maximum rate imposed by any law

(including under section 109(6) of the Law of Property Act 1925) shall not apply to this Security Agreement and may direct payment of such remuneration out of moneys accruing to him as Receiver, but the Chargor alone shall be liable for the payment of such remuneration and for all other reasonable costs, charges, losses, liabilities and expenses of the Receiver.

#### **12.6 Several Receivers**

If at any time there is more than one Receiver, each Receiver may separately exercise all of the powers conferred by this Security Agreement (unless the deed or instrument appointing such Receiver states otherwise).

### **13. APPLICATION OF PROCEEDS**

#### **13.1 Order of application**

All moneys and other proceeds or assets received or recovered by the Security Agent or any Receiver pursuant to this Security Agreement or the powers conferred by it shall be applied in the order and manner specified in the Intercreditor Agreement.

#### **13.2 Section 109 Law of Property Act 1925**

Sections 109(6) of the Law of Property Act 1925 shall not apply to a Receiver appointed under this Security Agreement.

#### **13.3 Application against Secured Obligations**

Subject to Clause 13.1 (*Order of application*) above, any moneys or other value received or realised by the Security Agent from the Chargor or a Receiver under this Security Agreement may be applied by the Security Agent to any item of account or liability or transaction forming part of the Secured Obligations to which they may be applicable in any order or manner which the Security Agent may determine.

#### **13.4 Suspense account**

At any time upon or after the occurrence of an Acceleration Event which is continuing, until the Final Discharge Date, the Security Agent may place and keep (for such time as it shall determine) any money received, recovered or realised pursuant to this Security Agreement or on account of the Chargor's liability in respect of the Secured Obligations in an interest bearing separate suspense account (to the credit of either the Chargor or the Security Agent as the Security Agent shall think fit) and the Receiver may retain the same for the period which he and the Security Agent consider expedient without having any obligation to apply all or any part of that money in or towards discharge of such Secured Obligations.

### **14. PROTECTION OF SECURITY AGENT AND RECEIVER**

#### **14.1 Possession of Charged Property**

If the Security Agent or the Receiver enters into possession of the Charged Property, it will not be liable to account as mortgagee in possession by reason of viewing or repairing any of the present or future Charged Property of the Chargor and may at any time at its discretion go out of such possession.

#### 14.2 Waiver of defences

Clause 24.4 (*Waiver of defences*) of the Intercreditor Agreement is incorporated *mutatis mutandis* into this Security Agreement (including all capitalised terms as defined therein) but as if each reference therein to:

- (a) a “Debtor” is a reference to the Chargor; and
- (b) a “Debt Document” is a reference to a Secured Debt Document.

#### 14.3 Security Agent

The provisions set out in clause 17 (*The Security Agent*) of the Intercreditor Agreement shall govern the rights, duties and obligations of the Security Agent under this Security Agreement.

#### 14.4 Cumulative powers

The powers which this Security Agreement confers on the Security Agent, the other Secured Parties and any Receiver appointed under this Security Agreement are cumulative, without prejudice to their respective powers under the general law, and may be exercised as often as the relevant person thinks appropriate. The Security Agent, the other Secured Parties or the Receiver may, in connection with the exercise of their powers, join or concur with any person in any transaction, scheme or arrangement whatsoever. The respective powers of the Security Agent, the other Secured Parties and the Receiver will in no circumstances be suspended, waived or otherwise prejudiced by anything other than an express consent or amendment.

#### 15. POWER OF ATTORNEY

- (a) The Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any person nominated for the purpose by the Security Agent or any Receiver (in writing and signed by an officer of the Security Agent or Receiver) as its attorney (with full power of substitution and delegation) in its name and on its behalf and as its act and deed at any time upon or after the occurrence of an Acceleration Event which is continuing and in such manner as the attorney considers fit:
  - (i) to do anything which the Chargor is obliged to do under this Security Agreement (including to do all such acts or execute all such documents, assignments, transfers, mortgages, charges, notices, instructions, filings and registrations 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))); and
  - (ii) to exercise any of the rights conferred on the Security Agent, any Receiver or any delegate in relation to (i) the Security granted pursuant to this Agreement, (ii) any Secured Debt Document or (iii) under any law.
- (b) The power of attorney conferred on the Security Agent and each Receiver pursuant to paragraph (a) above shall continue notwithstanding the exercise by the Security Agent or any Receiver of any right of appropriation pursuant to Clause 11.6 (*Appropriation under the Financial Collateral Regulations*).

- (c) The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the proper exercise of the power of attorney granted by it in this Clause 15.

## **16. PROTECTION FOR THIRD PARTIES**

### **16.1 No obligation to enquire**

No purchaser from, or other person dealing with, the Security Agent or any Receiver (or their agents) shall be obliged or concerned to enquire:

- (a) whether the right of the Security Agent or any Receiver to exercise any of the powers conferred by this Security Agreement has arisen or become exercisable or as to the propriety or validity of the proper exercise of any such power;
- (b) whether any consents, regulations, restrictions or directions relating to such powers have been obtained or complied with;
- (c) whether the Security Agent, any Receiver or its agents is acting within such powers;
- (d) as to the propriety or validity of acts purporting or intended to be in exercise of any such powers;
- (e) whether any of the Secured Obligations remain outstanding and/or are due and payable or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters; or
- (f) as to the application of any money paid to the Security Agent, any Receiver or its agents,

and any such person who is not a party to this Security Agreement may rely on this Clause 16.1 and enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

### **16.2 Receipt conclusive**

The receipt of the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser, and shall relieve him of any obligation to see to the application of any moneys paid to or by the direction of the Security Agent or any Receiver.

## **17. REINSTATEMENT AND RELEASE**

### **17.1 Amounts avoided**

- (a) If any payment by the Chargor or any discharge, arrangement or release given by a Secured Party (whether in respect of the obligations of any Debtor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
  - (i) the liability of the Chargor and the relevant security shall continue as if the payment, discharge, release, avoidance or reduction had not occurred; and
  - (ii) the relevant Secured Party shall be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

- (b) The Security Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

### 17.2 Discharge conditional

Any settlement or discharge between the Chargor and any Secured Party shall be conditional upon no security or payment to that Secured Party by the Chargor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency and accordingly (but without limiting the other rights of that Secured Party under this Security Agreement) that Secured Party shall be entitled to recover from the Chargor the value which that Secured Party has placed on that security or the amount of any such payment as if that settlement or discharge had not occurred.

### 17.3 Covenant to release

- (a) Subject to paragraphs (b) and (c) below, on the Final Discharge Date, the Security Agent and each Secured Party shall, at the request and cost of the Chargor:
- (i) promptly take any and all action which the Chargor reasonably requests and/or which may be necessary to release, reassign or discharge (as appropriate) the Charged Property from the Security constituted by this Security Agreement; and
  - (ii) promptly take all other actions and steps contemplated by the Intercreditor Agreement in relation to the release of any Security contemplated by this Security Agreement, or any other steps, confirmations or actions in relation to this Security Agreement.
- (b) Notwithstanding anything to the contrary in this Security Agreement, to the extent contemplated by the Intercreditor Agreement or any other Secured Debt Document (or to the extent agreed between the Security Agent and the Chargor), the Security Agent and each Secured Party shall, at the request and cost of the Chargor, take any and all action which is necessary to release the Charged Property from the Security constituted by this Security Agreement in accordance with the terms of the Intercreditor Agreement.
- (c) Notwithstanding anything to the contrary in this Security Agreement, on the date of any disposal of any of the Charged Property, as contemplated in the Tax Structure Memorandum (or in order to facilitate any of the intermediate steps or actions necessary to implement the steps, circumstances, payments or transactions described therein), the Security Agent (on behalf of itself and the Secured Parties and is irrevocably authorised and instructed to do so without any consent, sanction, authority or further confirmation) hereby agrees that it:
- (i) irrevocably and unconditionally:
    - (A) releases and discharges the Chargor from all present or future, actual or contingent liabilities, obligations, guarantees and security created, evidenced or conferred by, and all claims, actions, suit, accounts and demands arising under this Security Agreement;
    - (B) reassigns and retransfers to the Chargor all rights, interest and title to the Charged Property; and

(C) relinquishes any and all rights effectively granted to it by the Chargor under any power of attorney or proxy, or submission to enforcement, pursuant to or in connection with this Security Agreement; and

(ii) shall promptly (at the request and cost of the Chargor) take any and all action which is necessary to release such Charged Property from the Security constituted by this Security Agreement.

#### **17.4 Immediate recourse**

(a) The Chargor waives any right it may have of first requiring any Secured 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 or enforcing against the Chargor under this Security Agreement.

(b) The waiver in this Clause 17.4 applies irrespective of any law or any provision of a Secured Debt Document to the contrary.

#### **17.5 Appropriations**

Upon or after the occurrence of an Acceleration Event which is continuing and until the Final Discharge Date, each Secured 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 Secured 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 considers fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and

(b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Security Agreement.

#### **17.6 Deferral of the Chargor's rights**

(a) Until the Final Discharge Date and unless the Security Agent otherwise directs, the Chargor shall not exercise any rights which it may have to:

(i) be indemnified by any Obligor or surety or Group Company of any Debtor's or the Chargor's obligations under the Secured Debt Documents;

(ii) claim any contribution from any Obligor in respect of any Debtor's obligations under the Secured Debt Documents;

(iii) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Secured Debt Documents or of any other guarantee or security taken pursuant to, or in connection with, the Secured Debt Documents by any Secured Party;

(iv) bring legal or other proceedings for an order requiring any Obligor or the Chargor to make any payment, or perform any obligation, in respect of which the relevant Obligor or the Chargor had given a guarantee, undertaking or indemnity;

(v) exercise any right of set-off against a Debtor; and/or



(vi) claim or prove as a creditor of any Debtor in competition with any Secured Party.

- (b) If the Chargor 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 Secured Parties by the Chargor and Debtors under or in connection with the Secured Debt Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with the Intercreditor Agreement.

#### **17.7 Security held by the Chargor**

- (a) The Chargor shall not, without the prior written consent of the Security Agent, hold or otherwise take the benefit of any Security from any other Debtor in respect of the Chargor's liability under this Security Agreement.
- (b) The Chargor shall hold any Security and the proceeds thereof held by it in breach of this Clause 17.7 on trust for the Security Agent and shall promptly pay or transfer those proceeds to the Security Agent or as the Security Agent may direct.

#### **17.8 Additional security/non-merger**

The Security created pursuant to this Security Agreement is in addition to, independent of and not in substitution for or derogation of, and shall not be merged into or in any way be excluded or prejudiced by, any other guarantees or Security at any time held by any Secured Party in respect of or in connection with any or all of the Secured Obligations or any other amount due by the Chargor to any Secured Party.

#### **17.9 New accounts and ruling off**

- (a) Any Secured Party may open a new account in the name of the Chargor at any time after that Secured Party has received or is deemed to have received notice of any subsequent Security affecting any Charged Property (except as permitted by the Secured Debt Documents or where Required Creditor Consent has been obtained).
- (b) If a Secured Party does not open a new account in the circumstances referred to in paragraph (a) above it shall nevertheless be deemed to have done so upon the occurrence of such circumstances, and all payments made by or on behalf of the Chargor to that Secured Party shall be credited or be treated as having been credited to the relevant new account.
- (c) No moneys paid into any account (whether new or continuing) after the occurrence of the circumstances referred to in paragraph (a) above shall reduce or discharge the Secured Obligations.

### **18. CURRENCY CLAUSES**

#### **18.1 Conversion**

All monies received or held by the Security Agent, or any Receiver, under this Security Agreement may be converted into any other currency which the Security Agent considers necessary to cover the obligations and liabilities comprised in the Secured Obligations in that other currency, at the Security Agent's spot rate of exchange then prevailing for purchasing that other currency with the existing currency.

## **18.2 No discharge**

No payment to the Security Agent (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Security Agent has received payment in full in the currency in which the obligation or liability is payable or, if the currency of payment is not specified, was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Security Agent shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security constituted by this Security Agreement to recover the amount of the shortfall.

## **19. SET-OFF**

### **19.1 Set-off rights**

Upon or after the occurrence of an Acceleration Event which is continuing, the Security Agent may set off any matured obligation due from the Chargor under the Secured Debt Documents (to the extent beneficially owned by the Security Agent) against any matured obligation owed by the Security Agent to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Security Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **19.2 Unliquidated claims**

If, at any time upon or after the occurrence of an Acceleration Event which is continuing, the relevant obligation or liability is unliquidated or unascertained, the Secured Party may set-off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

## **20. REDEMPTION OF PRIOR SECURITY**

The Security Agent or any Receiver may, at any time upon or after the occurrence of an Acceleration Event which is continuing, redeem any prior Security on or relating to any of the Charged Property or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will on demand pay to the Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

## **21. NOTICES**

Any communication to be made under or in connection with this Security Agreement shall be made in accordance with clause 23 (*Notices*) of the Intercreditor Agreement.

## **22. CHANGES TO PARTIES**

### **22.1 Assignment by the Security Agent**

The Security Agent may at any time assign or otherwise transfer all or any part of its rights under this Security Agreement in accordance with the Secured Debt Documents.

## 22.2 Assignment by the Chargor

The Chargor may not assign or transfer, or attempt to assign or transfer, any of its rights or obligations under this Security Agreement.

## 22.3 Changes to Parties

The Chargor authorises and agrees to changes to parties under clause 20 (*Changes to the Parties*) of the Intercreditor Agreement, and authorises the Security Agent to execute on its behalf any document required to effect the necessary transfer of rights or obligations contemplated by those provisions.

## 23. MISCELLANEOUS

### 23.1 Certificates conclusive

A certificate or determination of the Security Agent or any Receiver under this Security Agreement will be conclusive evidence of the matters to which it relates and binding on the Chargor, except in the case of manifest error.

### 23.2 Counterparts

This Security 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 Security Agreement. Delivery of a counterpart of this Security Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

### 23.3 Invalidity of any provision

If any provision of this Security Agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

### 23.4 Failure to execute

Failure by one or more Parties ("**Non-Signatories**") to execute this Security Agreement on the date hereof will not invalidate the provisions of this Security Agreement as between the other Parties who do execute this Security Agreement. Such Non-Signatories may execute this Security Agreement on a subsequent date and will thereupon become bound by its provisions.

### 23.5 Amendments

Subject to the terms of the Intercreditor Agreement, any provision of this Security Agreement may be amended in writing by the Security Agent and the Chargor, and the Chargor irrevocably appoints the Parent as its agent for the purpose of agreeing and executing any amendment on its behalf.

## 24. GOVERNING LAW AND JURISDICTION

- (a) This Security Agreement and any non-contractual claims arising out of or in connection with it shall be governed by and construed in accordance with English law.
- (b) Subject to paragraph (c) below, the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Security

Agreement, whether contractual or non-contractual (including a dispute regarding the existence, validity or termination of this Security Agreement) (a “**Dispute**”). 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) The Chargor agrees that a judgment or order of any court referred to in this Clause 24 is conclusive and binding and may be enforced against it in the courts of any other jurisdiction.

**IN WITNESS** whereof this Security Agreement has been duly executed and delivered as a deed on the date first above written, and shall take effect as a deed notwithstanding the fact that some parties may have signed under hand.

**SCHEDULE 1**

**SHARES**

<b>Name of the Chargor</b>	<b>Name of company issuing shares</b>	<b>Number and class of shares</b>
Paysafe Group Limited	Paysafe Holdings UK Limited	101,690,004 ordinary shares of EUR 1.00 each 881,500,000 preference shares of EUR 1.00 each 81,000,000 preference shares of USD 1.00 each

*[Signature Page to Paysafe Security Agreement]*

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**SIGNATORIES TO SECURITY AGREEMENT**

**THE CHARGOR**

**EXECUTED as a DEED** on behalf of)

**PAYSAFE GROUP LIMITED)**

a company incorporated in the)

Isle of Man by)

Elliott Wiseman)

who in accordance with the laws of)

that territory is acting under the)

authority of the company) /s/ Elliott Wiseman

Director

*[Signature Page to Paysafe Security Agreement]*

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**THE SECURITY AGENT**  
**EXECUTED as a DEED** by  
**LUCID TRUSTEE SERVICES LIMITED** acting by:

Caroline Horvath-Franco as Authorised Signatory: /s/ Caroline Horvath-Franco

Sean Rutter as Witness: /s/ Sean Rutter

*[Signature Page to Paysafe Security Agreement]*

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## LIST OF SUBSIDIARIES OF PAYSAFE LIMITED

The significant subsidiaries of the Company are listed below.

Name	Country of Incorporation and Place of Business Address	Nature of Business	Proportion of Ownership Interest Held by the Company
Paysafe Payments Solutions Limited	Ireland 3rd Floor, Kilmore House, Spencer Dock, Dublin 1, Ireland, D01 YE64	Payment Services	100 %
Paysafe Payment Processing Solutions LLC	United States 1725 Hughes Landing Blvd, 11th Floor The Woodlands, TX 77380	Payment Services	100 %
Skrill Limited	United Kingdom 25 Canada Square, Floor 27, London, England E14 5LQ	Payment Services	100 %
Paysafe Prepaid Services Limited	Ireland 3rd Floor, Kilmore House, Spencer Dock, Dublin 1, Ireland, D01 YE64	Payment Services	100 %



## SECTION 302 CERTIFICATION

I, Bruce Lowthers, certify that:

1. I have reviewed this annual report on Form 20-F of Paysafe Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Dated: March 15, 2023

Signed: /s/ Bruce Lowthers

Title: Chief Executive Officer

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## SECTION 302 CERTIFICATION

I, Alexander Gersh, certify that:

1. I have reviewed this annual report on Form 20-F of Paysafe Limited;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;

4. The company's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Dated: March 15, 2023

Signed: /s/ Alexander Gersh

Title: Chief Financial Officer

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**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Paysafe Limited (the “Company”) on Form 20-F for the fiscal year ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Bruce Lowthers, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 15, 2023

Signed: /s/ Bruce Lowthers  
Title: Chief Executive Officer

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**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Paysafe Limited (the “Company”) on Form 20-F for the fiscal year ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Alexander Gersh, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 15, 2023

Signed: /s/ Alexander Gersh  
Title: Chief Financial Officer

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement No. 333-256692 on Form S-8 and Registration Statement No. 333-263910 on Form F-3 of our reports dated March 15, 2023, relating to the financial statements of Paysafe Limited and the effectiveness of Paysafe Limited's internal control over financial reporting appearing in this Annual Report on Form 20-F for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

Houston, Texas  
March 15, 2023

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement No. 333-256692 on Form S-8 of our report dated March 29, 2021, relating to the financial statements of Pi Jersey Holdco 1.5 Limited (predecessor of Paysafe Limited) appearing in this Annual Report on Form 20-F for the year ended December 31, 2022.

/s/ Deloitte LLP

London, United Kingdom  
March 15, 2023

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**Section 13(r) Disclosure**

Blackstone Inc. disclosed the following regarding the activities of Atlantia S.p.A., which may be considered our affiliate, in its annual report for the fiscal year ended December 31, 2022. We have not independently verified or participated in the preparation of this disclosure.

“Disclosure pursuant to Section 13(r) of the Securities Exchange Act of 1934. Funds affiliated with Blackstone first invested in Atlantia S.p.A. on November 18, 2022 in connection with the voluntary public tender offer by Schema Alfa S.p.A. for all of the shares of Atlantia S.p.A., pursuant to which such funds obtained a minority non-controlling interest in Atlantia S.p.A. Atlantia S.p.A. owns and controls Aeroporti di Roma S.p.A. (“ADR”), an operator of airports in Italy including Leonardo da Vinci-Fiumicino Airport. Iran Air has historically operated periodic flights to and from Leonardo da Vinci-Fiumicino Airport as authorized, from time to time, by an aviation-related bilateral agreement between Italy and Iran, scheduled in compliance with European Regulation 95/93, and approved by the Italian Civil Aviation Authority. ADR, as airport operator, is under a mandatory obligation to provide airport services to all air carriers (including Iran Air) authorized by the applicable Italian authority. The relevant turnover attributable to these activities (whose consideration is calculated on the basis of general tariffs determined by such independent Italian authority) in the quarter ended December 31, 2022 was less than €30,000. Atlantia S.p.A. does not track profits specifically attributable to these activities.”

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