

CONFORMED COPY – FOR INFORMATION PURPOSES ONLY

DATED 8 JUNE 2017 AS AMENDED ON 13 JUNE 2017, 18 JUNE 2017, 28 JUNE 2017, 4 JULY 2017, 10 JULY 2017, 30 AUGUST 2017, 29 SEPTEMBER 2017 AND 15 JANUARY 2018 AND REFLECTING THE ACCESSION DEED DATED 16 JUNE 2017

AGROKOR D.D.
as Parent

THE ENTITIES LISTED IN SCHEDULE 1
as Original Borrowers

THE ENTITIES LISTED IN SCHEDULE 1
as Guarantors

MADISON PACIFIC TRUST LIMITED
as Agent

MADISON PACIFIC TRUST LIMITED
as Security Agent

- and -

THE INSTITUTIONS LISTED IN SCHEDULE 1
as Original Lenders

EUR up to 1,060,000,000 SUPER-PRIORITY TERM FACILITIES AGREEMENT



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Hogan Lovells International LLP
Atlantic House, Holborn Viaduct, London EC1A 2FG

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THIS AGREEMENT is dated 8 June 2017, as amended on 13 June 2017, 18 June 2017, 28 June 2017 and 4 July 2017, 10 July 2017, 30 August 2017, 29 September 2017 and 15 January 2018 and reflecting the accession deed dated 16 June 2017

BETWEEN:

- (1) **AGROKOR d.d.**, a company incorporated in the Republic of Croatia (registered number (MBS) 0800 209 70 and PIN (OIB) 05937759187) with its registered office at Trg Dražena Petrovića 3, 10000 Zagreb, Croatia represented by Ante Ramljak acting in his capacity as the extraordinary Commissioner of the Company pursuant to Article 12 of the Extraordinary Administration Proceedings Law, in accordance with the resolution of the Commercial Court in Zagreb on opening Extraordinary Administration proceeding of 10 April 2017 under no. St-1138/17 (the "**Parent**");
- (2) **THE ENTITIES**, listed in Part II of Schedule 1 (*The Original Parties*) as original borrowers (together with the Parent, the "**Original Borrowers**");
- (3) **THE ENTITIES** listed in Part III of Schedule 1 (*The Original Parties*) as guarantors (together with the Parent, the "**Original Guarantors**");
- (4) **THE INSTITUTIONS** listed in Part I of Schedule 1 (*the Original Parties*) as original lenders (the "**Original Lenders**");
- (5) **Madison Pacific Trust Limited** with registered address at 1720, 17th Floor, Tower One, Admiralty Centre, 18 Harcourt Road, Hong Kong as agent of the other Finance Parties (the "**Agent**"); and
- (6) **Madison Pacific Trust Limited** with registered address at 1720, 17th Floor, Tower One, Admiralty Centre, 18 Harcourt Road, Hong Kong as security agent for the Secured Parties (the "**Security Agent**").

IT IS AGREED AS FOLLOWS:

Section 1
Interpretation

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**2019 Notes**" means the notes governed by the 2019 Notes Indenture, and constituted by:

- (a) a Regulation S global note – Euro denominated 9.875% Senior Note due 2019, ISIN: XS0776111188, Common code: 077611118; and
- (b) a Rule 144A global note – Euro denominated 9.875% Senior Note due 2019, ISIN: XS0776110966, Common code: 077611096.

"**2019 Notes Indenture**" means the indenture dated as of April 25, 2012 by and among Agrokor d.d., The BNY Mellon Corporate Trustee Services Limited, as Trustee, The Bank of New York Mellon, as Transfer Agent and Paying Agent, the Bank of New York Mellon (Luxembourg) S.A., as Registrar and the guarantor listed therein.

"**2020 Notes**" means the notes governed by the 2020 Notes Indenture, and constituted by:

- (a) a Regulation S global note – Euro denominated 9.125% Senior Notes due 2020, ISIN: XS0836495183, Common code: 083649518;

- (b) a Rule 144A global note – Euro denominated 9.125% Senior Notes due 2020, ISIN: XS0836495696, Common code: 083649569;
- (c) a Regulation S global note – US Dollar denominated 8.875% Senior Notes due 2020, ISIN: USX0027KAG32, CUSIP: X0027K AG3; and
- (d) a Rule 144A global note – US Dollar denominated 8.875% Senior Notes due 2020, ISIN: US00855UAB52, CUSIP: 00855U AB5.

"2020 Notes Indenture" means the indenture dated as of October 10, 2012 by and among Agrokor d.d., The Bank of New York Mellon, as Trustee, Transfer Agent and Paying agent, The Bank of New York Mellon (Luxembourg) S.A., as Registrar and the guarantors listed therein.

"Accession Letter" means a document substantially in the form set out in Schedule 8 (*Form of Accession Letter*).

"Accounting Principles" means generally accepted accounting principles in the Original Jurisdiction of the relevant Obligor (as applicable), including IFRS.

"Additional Guarantor" means a company which becomes a Guarantor in accordance with Clause 24 (*Changes to the Obligors*).

"Advisory Body" means, in relation to the Extraordinary Administration Proceedings of the Group, the advisory body appointed by the head official of the Ministry within 15 days from the appointment of the Commissioner and notified to the court and Commissioner.

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

"Applicable Exchange Rate" means in the case of:

- (a) EUR/USD: €1:\$1.0596; and
- (b) EUR/HRK: €1: HRK 7.4365.

"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.

"Auditors" means PricewaterhouseCoopers LLP or any other firm appointed by the Parent or the Borrowers to act as the Group's statutory auditors.

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

"Availability Period" means:

- (a) in relation to:
 - (i) the Facility A Allocated Amount, the period from and including the date of this Agreement to and including the Third Syndication Utilisation Date; and
 - (ii) any Facility A Unallocated Amount, the period from and including the date of this Agreement to and including 15 October 2017; and
- (b) in relation to the Incremental Facility, the period specified in the Incremental Facility Notice relating to such Incremental Facility delivered by the parent in accordance with Clause 2.3 (*Incremental Facility*) and those Incremental Facility Commitments.

"Available Commitment" means, in relation to a Facility, a Lender's Commitment minus:

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

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

"Backstop Letter" means the backstop letter dated on or about the date of this Agreement between the Parent and the Original Lender and Zagrebacka Banka.

"Bankruptcy Act" means the Bankruptcy Act published in the Republic of Croatia's Official Gazette no. 71/15 of 17 June 2015, as amended or re-enacted from time to time.

"Bills of Exchange" means any bills of exchange issued by a member of the Group including for the avoidance of doubt, Eligible Bills of Exchange.

"Borrower" means the Original Borrower.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Zagreb.

"Cashflow Forecast" means the Original Cashflow Forecast as updated in accordance with Clause 19.3(b) (*Information: specific requirements*).

"Cash Margin" means 3.8 per cent. per annum.

"Change of Control" means:

- (a) the direct or indirect sale, lease, transfer, conveyance or other disposition (including any nationalisation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Group (taken as a whole) to any person other than to a person or entity which is under the supervision or subject to the Extraordinary Administration Proceedings; or
- (b) cessation of the Commissioner's role, unless such cessation is due to conclusion of a Settlement 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.

"Closing Date" means the Initial Utilisation Date.

"Code" means the US Internal Revenue Code of 1986.

"Commissioner" means the court appointed extraordinary commissioner holding the rights and duties of all of the Original Borrower's corporate bodies pursuant to the Extraordinary Administration Proceedings Law.

"Commitment" means the Facility A Commitment and the Incremental Facility Commitment.

"Commitment Increase Date" means each Syndication Increase Date and each date on which an Increase Confirmation is executed in respect of the Facility A Unallocated Amount in accordance with Clause 5.3 (*Facility A Unallocated Amount*).

"Commitment Letter" means the new money financing commitment letter entered into between the Parent and the Existing Funders (as defined therein) dated on or about the date of this Agreement.

"Confidential Information" means all information relating to the Parent, any Obligor and/or any other member of the Group, the Finance Documents or the Facilities of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facilities from:

- (a) 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 member of the Group or any of its advisers,

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 37 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with 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 the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Parent and the Agent.

"Creditors' Committee" means any official committee of creditors formed in relation to the Extraordinary Administration Proceedings of the Group under the Extraordinary Administration Proceedings Law.

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

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

any Commitment or amount outstanding under this Agreement.

"Default" means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Default Margin" means 10 per cent. per annum.

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

"DIP Lender" means a financial institution which is a creditor in respect of the Existing DIP Financing and which becomes a Party as a Lender in accordance with Clause 2.2 (*Increased Commitments and New Lender Accessions*).

"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.

"Eligible Bills of Exchange" means any bill of exchange or similar negotiable instrument issued by a member of the Group (whether or not under a framework agreement) provided that it benefits from security and/or guarantees equivalent to the security, guarantees and indemnities against loss granted in respect of and/or contained in the Existing Loan Agreements and the Existing Bond Documentation, including as a minimum a guarantee or principal debt obligation from one or more of Ledo d.d. and/or Jamnica d.d., and provided further that it is properly and legally incurred.

"Eligible Institution" means any Lender or other bank, financial institution, trust, fund or other entity which, in each case, is not a Shareholder Affiliate or a member of the Group and which is a creditor in respect of Financial Indebtedness owed by a member of the Group or has exposure to a member of the Group by virtue of being a supplier to a Borrower.

"Escrow Accounts" means the Refinance Escrow Account, the Repayment Escrow Account and the Liquidity Escrow Account.

"Escrow Agreements" means the Refinance Escrow Agreement, the Repayment Escrow Agreement and the Liquidity Escrow Agreement.

"Escrow Agent" means, as at the date of this Agreement, Bank of New York Mellon, London Branch or such replacement or successor agreed by the Lenders from time to time (which shall not be a creditor of the Parent or any member of the Group).

"EURIBOR" means, in relation to any Loan:

- (a) the applicable Screen Rate as of 11.00 a.m. (Brussels time) and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero.

"Event of Default" means any event or circumstance specified as such in Clause 21 (*Events of Default*).

"Excluded Companies" means (a) Agrokor-Energija d.o.o, A.N.P. Energija d.o.o, Energija Gradec d.o.o., Agrolaguna d.d., Backstage d.o.o, Tisak-usluge d.o.o., Tisak inPost d.o.o., Photo Boutique d.o.o., Vjesnik-usluge d.o.o., Gulliver Travel d.o.o. Karisma Hotels Adriatic d.o.o., Adriasense d.o.o., HKA tri d.o.o., HKA pet d.o.o., Hoteli Kolocep d.d., Hoteli Zivogosce d.d., KHA centri d.o.o., Poslovni system Mercator d.d, Agrokor AG Zug, Fonyodi Kft and Jana North America and in respect of Poslovni system Mercator d.d, each of its direct and indirect subsidiaries and (b) until such time as it has acceded as a Guarantor in accordance with this Agreement, Tisak d.d.

"Existing Bonds" means the 2019 Notes and the 2020 Notes issued by the Parent under the Existing Bond Documentation.

"Existing Bond Documentation" means the 2019 Notes Indenture and the 2020 Notes Indenture.

"Existing DIP Financing" means the DIP financing provided by certain financial institutions on or about 13 April 2017 to certain members of the Group in an aggregate amount equal to €80,000,000.

"Existing Financial Indebtedness" means the Existing Bonds, the Existing Loans and Eligible Bills of Exchange (but excluding the Existing DIP Financing or any other post-petition indebtedness).

"Existing Loans" means any loans borrowed by a member of the Group under the Existing Loan Agreements.

"Existing Loan Agreements" means the loan agreements and other finance documents entered into by any member of the Group (including all such documents and agreements entered into by any member of the Group prior to the commencement of the Extraordinary Administration Proceedings) as set out in the list delivered by the Parent to the Agent on 25 June 2017.

"Existing Supply Arrangement" means any arrangement having a substantially similar economic effect in replacement of any Existing Supply Contract and extending the date of payment thereunder as identified in Columns M, O and P of the Supplier Schedule.

"Existing Supply Contracts" means the existing supply contracts between Trade Creditors and certain members of the Group as identified in Column L of the Supplier Schedule.

"Existing Supplier Debt" means all amounts outstanding or owed pursuant to the Existing Supply Contracts.

"Extraordinary Administration Proceeding" means administration proceedings instigated under the Extraordinary Administration Proceedings Law.

"Extraordinary Administration Proceedings Law" means the law on extraordinary administration proceedings for companies of systemic importance for the Republic of Croatia published in the Republic of Croatia's Official Gazette no. 32/17 of 6 April 2017.

"EUR 2020s" means those 2020 Notes denominated in Euros;

"Euro Notes" means the 2019 Notes and the EUR 2020s.

"Facility" means Facility A or the Incremental Facility.

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

"Facility A Allocated Amount" means the Total Facility A Commitments as at the Third Syndication Increase Date (for the avoidance of doubt, this excludes the Facility A Unallocated Amount).

"Facility A Unallocated Amount Utilisation Date" means each Utilisation Date on which a Loan is made in respect of the Facility A Unallocated Amount in accordance with Clause 5.3 (*Facility A Unallocated Amount*).

"Facility A Commitment" means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Facility A Commitment" in Part 1 of Schedule 1 (*The Original Parties*) and the amount of any other Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increased Commitments and New Lender Accessions*); and
- (b) in relation to any other Lender, the amount of any Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increased Commitments and New Lender Accessions*),

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

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

"Facility A Unallocated Amount" means the lower of (a) EUR960,000,000 less the Total Facility A Commitments immediately following the Final Syndication Increase Date and (b) €160,000,000.

"Facility Office" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"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 paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a **"withholdable payment"** described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

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

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

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

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

"FATCA FFI" means a foreign financial institution as defined in section 1471(d)(4) of the US Internal Revenue Code of 1986 which, if any Finance Party is not a FATCA Exempt Party, could be required to make a FATCA Deduction.

"Fee Letter" means any letter or letters dated on or about the date of this Agreement between any Finance Party and the Parent setting out any fees payable to a Finance Party.

"Final Increase Amount" means an amount equal to €960,000,000 less:

- (a) the aggregate of all Facility A Commitments committed prior to Third Syndication Increase Date; and
- (b) the Facility A Unallocated Amount.

"Finance Document" means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) any Incremental Facility Notice;
- (d) each Security Document;
- (e) any Accession Letter, any Increase Confirmation, New Lender Accession and Incremental Facility Lender Accession and any Resignation Letter;
- (f) each Escrow Agreement;
- (g) the Backstop Letter;
- (h) the Commitment Letter; and
- (i) any other document designated as a "**Finance Document**" by the Agent and the Parent.

"Finance Party" means the Agent, the Security Agent, the Escrow Agent or a Lender.

"Financial Adviser" means either:

- (a) until such time as they have resigned from the role, PJT Partners (as financial advisers to the Participating Bondholders as defined in the Commitment Letter);

- (b) any person or firm appointed from time to time by the Simple Majority Lenders and, where instructed by Simple Majority Lenders, such person or firm shall act in accordance with the instructions of the Simple Majority Lenders when exercising any right, power or authority vested in it pursuant to the terms of this Agreement (and in the absence of instruction act in their discretion); or
- (c) to the extent that no such person or firm is appointed in accordance with subparagraph (b) above:
 - (i) all rights and discretions that were capable of being exercised by such person or firm shall be exercised by a vote by a Lender or Lenders whose Commitments in aggregate represent more than 30 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated represent more than 30 per cent. of the Total Commitments immediately prior to the reduction); and
 - (ii) any information that was to be provided to the Financial Adviser shall instead be provided to Hogan Lovells International LLP, and be available to Lenders on the same basis as it would have been had it been provided to the Financial Adviser.

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with Accounting Principles, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity or reimbursement obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

"First Syndication Increase Date" means 20 June 2017 (or such later date as may be agreed by the Parent and the Original Lenders), being the date on which in accordance with the Commitment Letter and the Backstop Letter:

- (a) in relation to an Increase Lender, the Agent executes an Increase Confirmation entered into by such Increase Lender in respect of any increase in Facility A Commitments assumed by it; and
- (b) in relation to an Eligible Institution which is not an Original Lender, the Agent executes a New Lender Accession entered into by such Eligible Institution in respect of the Facility A Commitments assumed by it,

in each case, in accordance with Clause 2.2 (*Increased Commitments and New Lender Accessions*).

"First Syndication Utilisation Date" means 20 June 2017 (or such later date as may be agreed by the Parent and the Original Lenders).

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 10.2 (*Cost of funds*).

"Group" means the Parent and each of its direct and indirect Subsidiaries for the time being incorporated in Croatia, and in respect of which the Parent holds (directly or indirectly) 25 per cent. or more of the stock of the entity (measured by voting power or number of shares) and whether or not under the supervision or subject to the Extraordinary Administration Proceedings, excluding in all cases the Excluded Companies.

"Guarantor" means an Original Guarantor or an Additional Guarantor unless it has ceased to be a Guarantor in accordance with Clause 24 (*Changes to the Obligors*).

"Holding Company" means, in relation to a person, any other person in respect of which it is a Subsidiary.

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

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

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;
- (b) the Agent otherwise rescinds or repudiates a Finance Document;
- (c) 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:
 - (1) administrative or technical error; or
 - (2) a Disruption Event; and
- (ii) payment is made within 3 Business Days of 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 document substantially in the form set out in Schedule 5 (*Form of Increase Confirmation*).

"Increase Lender" means each the Original Lender and any other Lender that enters into an Increase Confirmation in accordance with the Commitment Letter and the Backstop Letter.

"Incremental Facility" means the term loan facility made available under this Agreement pursuant to Clause 2.3 (*Incremental Facility*).

"Incremental Facility Commitment" means:

- (a) in relation to an entity identified as a Lender in an Incremental Facility Notice which established an Incremental Facility, the amount set opposite its name under the heading "Incremental Facility Commitment" in such Incremental Facility Notice and the amount of any other Incremental Facility Commitment transferred to it under this Agreement;
- (b) in relation to any other Lender, the amount of any Incremental Facility Commitment transferred to it under this Agreement.

"Incremental Facility Lender" means any lender under the Incremental Facility.

"Incremental Facility Lender Accession" means a document substantially in the form set out in Schedule 7 (*Form of Incremental Facility Lender Accession*).

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

"Incremental Facility Maximum Amount" means an aggregate amount up to a maximum of €100,000,000.

"Incremental Facility Notice" means a notice substantially in the form set out in Schedule 15 (*Form of Incremental Facility Notice*) delivered by the Parent to the Agent in accordance with Clause 2.3 (*Incremental Facility*).

"Incremental Facility Utilisation Date" means, in relation to the Incremental Facility, the date set out in the relevant Incremental Facility Notice.

"Insolvency Event" in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or

presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:

- (f) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
- (g) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (h) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (i) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (j) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (k) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (l) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Initial Utilisation Date" means the date which is one Business Day after the date on which the Parent has opened its Euroclear, Clearstream and DTC account (as necessary for the first Utilisation) held with Bank of New York Mellon, London Branch for the purposes of paragraphs 2 and 3 of Part A of Schedule 11 (*Redemption and Repayment Mechanics*), or such earlier date as may be determined by the Original Lenders.

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*).

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

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

each as of 11.00 am (Brussels time).

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

"Key Companies" means Agrokor d.d., Agrokor Trgovina d.o.o., Belje d.d., Jamnica d.d., Roto Dinamic d.o.o., Konzum d.d., PIK Vrbovec – Mesna Industrija, d.d., Velpro Centar

d.o.o., Ledo d.d., PIK-Vinkovci d.d., Zvijezda d.d., Vukovarski Poljoprivredno Industrijski Kombinat d.d. (Vupik d.d.), Adriatica.Net d.o.o. and Tisak d.d..

"Lender" means:

- (a) the Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 2.2 (*Increased Commitments and New Lender Accessions*) or Clause 22 (*Changes to the Lenders*),

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

"Liquidity Escrow Account" means the account held in England by the Parent with the Escrow Agent with the following details:

Beneficiary: The Bank of New York Mellon SA/NV

Name: AGROKOR LIQUIDITY ESCROW CSH

Account Number: 9873109780

SWIFT: IRVTBEBB

and from which withdrawals shall be made in accordance with the Liquidity Escrow Agreement and the terms of this Agreement (as the same may be redesignated, substituted or replaced from time to time).

"LMA" means the Loan Market Association.

"Loan" means a Facility A Loan or an Incremental Facility Loan.

"Madison Account" means the account of the Agent specified in Clause 29.1 (*Payments to the Agent*).

"Majority Lenders" means:

- (a) for the purposes of Clause 2.4 (*Extension Option*) and Clause 20.6 (*Restructuring Plan*), a Lender or Lenders whose Commitments aggregate more than 60 per cent. of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregate more than 60 per cent. of the Total Commitments immediately prior to the reduction); and
- (b) for all other purposes, a Lender or Lenders whose Commitments aggregate more than $66\frac{2}{3}$ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $66\frac{2}{3}$ per cent. of the Total Commitments immediately prior to the reduction).

"Majority Non-Bank Lenders" means a Lender or Lenders which are also Funds whose Commitments aggregate more than 50 per cent. of the Total Commitments held by all Lenders which are also Funds (or, if the Total Commitments held by such non-bank lenders have been reduced to zero, aggregated more than 50 per cent. of the Total Commitments immediately prior to that reduction). For the purposes of this definition "Funds" means entities that are established as investment funds for the purposes of investing in loans, securities or other financial assets and which are managed by an investment adviser or investment manager that is independent from the majority of investors in such fund.

"Margin" means the Cash Margin or the PIK Margin or the Default Margin as determined in accordance with Clause 8 (*Interest*).

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

- (a) the business, operations or financial condition of the Group taken as a whole;
- (b) the ability of an Obligor to perform its payment obligations under the Finance Documents (including as a result of a material number of the suppliers and/or any counterparties to material supply agreements, taking any action which is detrimental to the operations of the Group); or
- (c) the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under the Finance Documents.

"Material Company" means, at any time a direct or indirect Subsidiary of the Parent which (when consolidated with its Subsidiaries, if any, to the extent consolidated numbers are available at the relevant time, or if not available, unconsolidated) has (i) turnover in excess of €5,000,000 or (ii) gross assets in excess of €20,000,000, in each case, other than an Excluded Company.

"Maturity Date" means, subject to Clause 2.4 (*Extension Option*), in relation to Facility A and the Incremental Facility, the earlier of:

- (a) 10 July 2018;
- (b) the Settlement Date; and
- (c) the opening of insolvency proceedings under the Bankruptcy Act in respect of any Obligor or Material Company.

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

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

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

"New Lender" means an Eligible Institution which has become a Party as a Lender in accordance with Clause 2.2 (*Increased Commitment and New Lender Accessions*).

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

"Obligor" means a Borrower or a Guarantor.

"Obligors' Agent" means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.6 (*Obligors' Agent*).

"Original Cashflow Forecast" means the budget for the Group (to include a 13 week cashflow forecast) delivered to the Agent pursuant to paragraph 3(e) of Part A of Schedule 2 (*Conditions Precedent to Initial Utilisation*).

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws the Obligor is incorporated as at the date of this Agreement or in the case of an Additional Guarantor, as at the date on which that Additional Guarantor becomes a Party to this Agreement.

"Original Obligor" means the Original Borrower and each Original Guarantor.

"Pari Basket" means in respect of paragraph (e) of the definition of Permitted Financial Indebtedness and paragraph (n) of the definition of Permitted Guarantee €25,000,000 (or its equivalent) in aggregate at any time.

"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.

"Permitted Company Disposal" means the disposal of Sojara d.d.o., Adriatica.NET d.o.o., Solana Pag d.d., Projektgradnja d.o.o., Poliklinika Aviva, A007 d.o.o.

"Permitted Financial Indebtedness" means subject to Clause 20.10(b) (*Ranking*) Financial Indebtedness:

- (a) arising under any of the Finance Documents, which constitutes a Permitted Transaction or in respect of which the Majority Lenders have given their prior written consent;
- (b) arising under any arrangements entered into prior to the commencement of the Extraordinary Administration Proceedings (but for the avoidance of doubt any refinancing of any such arrangements is not permitted, save to the extent the relevant debt constitutes Specified Existing Financial Indebtedness and is refinanced in accordance with the terms of this Agreement);
- (c) arising under a foreign exchange transaction for spot or forward delivery or commodity hedging in each case entered into in connection with protection against fluctuation in currency rates or commodity prices where that foreign exchange exposure or commodity price exposure arises in the ordinary course of trade, but not for investment or speculative purposes;
- (d) arising under a Permitted Loan or a Permitted Guarantee; and
- (e) any Financial Indebtedness (not permitted by the preceding paragraphs and not owed directly or indirectly to any Shareholder Affiliate) the outstanding amount of which, when aggregated with the amount of any Financial Indebtedness guaranteed under paragraph (n) of the definition of Permitted Guarantee (without double counting) does not exceed the Pari Basket. It is agreed that such Financial Indebtedness may rank pari passu with (but not senior to) the payment obligations of the Obligors under the Finance Documents.

"Permitted Guarantee" means subject to Clause 20.10(b) (*Ranking*):

- (a) the endorsement of negotiable instruments in the ordinary course of trade;

- (b) any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;
- (c) any guarantee given by a member of the Group for obligations arising in the ordinary course of business of another member of the Group (provided that after the date of this Agreement no guarantee may be provided under this sub-paragraph (c) in respect of any such obligations that arose prior to the date of this Agreement);
- (d) any guarantee of any Permitted Financial Indebtedness under paragraphs (a), (c) and (d) of such definition;
- (e) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (c) of Clause 20.3 (*Negative Pledge*) of the definition of "Permitted Security";
- (f) any guarantee under the Finance Documents, which constitutes a Permitted Transaction or to which the Majority Lenders have given their prior written consent;
- (g) any guarantee entered into prior to the commencement of the Extraordinary Administration Proceedings;
- (h) any guarantees given under the customary terms of its ordinary course of banking arrangements (excluding loans and overdrafts) in respect of a member of the Group;
- (i) any guarantee given in respect of any financial indebtedness permitted pursuant to paragraph (c) of the definition of "Permitted Financial Indebtedness";
- (j) any guarantees to landlords and counter-indemnities in favour of financial institutions which have guaranteed rent and service charge obligations of the Group;
- (k) customary indemnities given to professional advisors or consultants in the ordinary course of business;
- (l) any guarantee which, if it were a loan, would be a Permitted Loan provided that for the purposes of determining whether any monetary threshold has been complied with, the amount of all relevant loans and guarantees shall be aggregated;
- (m) any guarantee (not permitted by the preceding paragraphs) given by a member of the Group to a person who is not a member of the Group (other than Shareholder Affiliates) provided that the aggregate principal amount guaranteed at any time does not, when aggregated with any other Permitted Non-Group Transactions, exceed the Permitted Non-Group Basket; and
- (n) any guarantee (not permitted by the preceding paragraphs) given by a member of the Group, provided that the maximum aggregate guaranteed amount under all such guarantees, when aggregated with any Permitted Financial Indebtedness incurred under paragraph (e) of such definition, does not exceed the Pari Basket at any time. It is agreed that a guarantee under this paragraph may rank pari passu with (but not senior to) the payment obligations of the Obligors under the Finance Documents,

and in all circumstances excluding any guarantee given prior to the date of this Agreement in respect of Bills of Exchange in existence on the date of this Agreement and disclosed in accordance with Schedule 2 (*Conditions Precedent*).

"Permitted Loan" means:

- (a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities other than any Bills of Exchange held by a bank, financial institution or other entity regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets;
- (b) a loan existing prior to the commencement of the Extraordinary Administration Proceedings
- (c) a loan made by a member of the Group to another member of the Group;
- (d) a loan made by any member of the Group to an Excluded Company that is under or subject to the Extraordinary Administration Proceedings provided that:
 - (i) the aggregate amount of the Financial Indebtedness under any such loans does not exceed €25,000,000 at any time; and
 - (ii) the relevant member of the Group grants security over the receivable in respect of such loan within 20 Business Days of such loan being made, on terms satisfactory to the Agent (acting reasonably);
- (e) any loans to employees or to share or unit or benefit trust schemes, in an aggregate principal amount outstanding which does not at any time exceed €1,000,000 (or its equivalent);
- (f) deposits of cash with financial institutions for cash management purposes or in the ordinary course of business;
- (g) any loan or credit which constitutes Permitted Financial Indebtedness;
- (h) a loan which constitutes a Permitted Transaction or to which the Majority Lenders have given their prior written consent; and
- (i) any loan or other credit (not permitted by the preceding paragraphs) made by a member of the Group to a person who is not a member of the Group provided that the aggregate principal amount of such loans, when aggregated with other Permitted Non-Group Transactions, does not exceed the Permitted Non-Group Basket.

"Permitted Non-Group Basket" means €35,000,000 (or its equivalent) in aggregate at any time.

"Permitted Non-Group Transactions" means:

- (a) the aggregate consideration for any assets disposed of pursuant to paragraph (b)(ix) of Clause 20.15 (*Disposals*);
- (b) the outstanding amount of any loan made pursuant to paragraph (i) of "Permitted Loan";
- (c) the amount of any guarantees granted pursuant to paragraph (m) of the definition of "Permitted Guarantee"; and
- (d) the aggregate Joint Venture Investments and Total Purchase Price in respect of acquisitions and joint ventures permitted under Clause 20.24 (*Acquisitions and Joint Ventures*).

"Permitted Security" has the meaning given to it in Clause 20.3 (*Negative Pledge*).

"Permitted Transaction" means any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents.

"PIK Interest" has the meaning given to that term in Clause 8.2 (*Payment of Interest – PIK Margin*).

"PIK Margin" means 4 per cent. per annum.

"Post-Closing Obligors" means an Additional Obligor listed in Part IV of Schedule 1 (*The Original Parties*).

"Primary Lender" means:

- (a) a Lender in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility;
- (b) any New Lender which executes a New Lender Accession in respect of the Facility A Commitments assumed by it pursuant to Clause 2.2 (*Increased Commitments and New Lender Accessions*) or pursuant to Clause 29.12 (*Defaulting Lenders*);
- (c) any Incremental Facility Lender which executes an Incremental Facility Lender Accession in respect of the Incremental Facility Commitments assumed by it pursuant to an Incremental Facility Notice; or
- (d) in respect of any transfer or assignment by the Original Lender to a holder of an Existing Bond on or prior to the Third Syndication Utilisation Date.

"Public-only Lender" means each Original Lender and each Lender which has included a statement in a New Lender Accession, Transfer Certificate or Assignment Agreement confirming that it is to be treated as a Public-only Lender.

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December.

"Quasi-Security" has the meaning given to that term in Clause 20.3 (*Negative Pledge*).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two TARGET Days before the first day of that period unless market practice differs in the Relevant Market, in which case the Quotation Day 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).

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

"Refinance Escrow Account" means the account held in England by the Parent with the Escrow Agent with the following details:

Beneficiary: The Bank of New York Mellon SA/NV

Name: AGROKOR REFINANCE ESCROW CSH

Account Number: 987296780

SWIFT: IRVTBEBB

from which withdrawals shall be made in accordance with the Refinance Escrow Agreement and the terms of this Agreement (as the same may be redesignated, substituted or replaced from time to time).

"Refinance Escrow Agreement" means the Escrow Agreement entered into between the Parent, the Agent and the Escrow Agent in relation to the Refinance Escrow Account on or about the date of the Agreement.

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

"Relevant Jurisdiction" means:

- (a) the Original Jurisdiction of each Obligor;
- (b) the jurisdiction of incorporation of each other member of the Group;
- (c) the jurisdiction in which any publicly traded shares or securities subject to the Transaction Security are listed; and
- (d) the jurisdiction where any asset subject to or intended to be subject to the Transaction Security is situated.

"Relevant Market" means the European interbank market.

"Relevant Syndication Increase Amount" means in relation to a Syndication Commitment Increase Date, an amount equal to the aggregate of all Facility A Commitments assumed under each Lender Accession and/or Increase Confirmation dated as at such Syndication Commitment Increase Date.

"Repayment Escrow Account" means the account held in England by the Parent with the Escrow Agent with the following details:

Beneficiary: The Bank of New York Mellon SA/NV

Name: AGROKOR REPAYMENT ESCROW CSH

Account Number: 9872989780

SWIFT: IRVTBEBB

from which withdrawals shall be made in accordance with the Repayment Escrow Agreement and the terms of this Agreement (as the same may be redesignated, substituted or replaced from time to time).

"Repayment Escrow Agreement" means the escrow agreement entered into between the Parent, the Agent and the Escrow Agent in relation to the Repayment Escrow Account on or about the date of this Agreement.

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

"Restructuring Advisor" means AlixPartners.

"Screen Rate" means 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 (before any correction, recalculation or republication by the administrator) on page EBF of the Bloomberg screen (or any replacement Bloomberg page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Bloomberg. If such page or service ceases

to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Parent.

"Second Syndication Increase Date" means 27 June 2017 (or such later date as may be agreed by the Parent and the Original Lenders) being the date on which in accordance with the Commitment Letter and the Backstop Letter:

- (a) in relation to an Increase Lender, the Agent executes an Increase Confirmation entered into by such Increase Lender in respect of any increase in Facility A Commitments assumed by it; and
- (b) in relation to an Eligible Institution which is not an Original Lender, the Agent executes a New Lender Accession entered into by such Eligible Institution in respect of the Facility A Commitments assumed by it,

in each case, in accordance with Clause 2.2 (*Increased Commitments and New Lender Accessions*).

"Second Syndication Utilisation Date" means 30 June 2017 (or such later date as may be agreed by the Parent and the Original Lenders).

"Secured Obligations" means all obligations at any time due, owing or incurred by the Obligors to any Secured Party under the Finance Documents, whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or surety or in some other capacity).

"Secured Parties" means the Security Agent, any Receiver or Delegate, the Agent, the Escrow Agent and each Lender from time to time party to this Agreement.

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

"Security Documents" means any document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the Secured Obligations.

"Set-Off" has the meaning given to that term in paragraph 4 of Schedule 10 (*Utilisation and Application of Loans*).

"Settlement Date" means the date on which the Settlement Agreement is confirmed effective by the Court pursuant to the Article 43 of the Extraordinary Administration Proceedings Law.

"Settlement Agreement" means the settlement agreement between the Parent as debtor, its affiliated and controlled companies and the creditors pursuant to the Article 43 of the Extraordinary Administration Proceedings Law.

"Shareholder Affiliate" means Ivica Todorčić:

- (a) each of the Persons associated with him;
- (b) any trust of which Mr. Ivica Todorčić or any of his Subsidiaries or a Person associated with him is a trustee;
- (c) any partnership of which Mr. Ivica Todorčić or any of his Subsidiaries or Persons associated with him is a partner; and

- (d) any trust, fund or other entity which is managed by, or is under the control of, Mr. Ivica Todor or any of his Subsidiaries or Persons associated with him.

For the purposes of this definition, "**Person**" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organisation, limited liability company or other entity.

"**Simple Majority Lenders**" means a Lender or Lenders whose Commitments in aggregate represent more than 50 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated represent more than 50 per cent. of the Total Commitments immediately prior to the reduction).

"**Specified Existing Financial Indebtedness**" means:

- (a) in respect of the Original Lender or an Increase Lender:
 - (i) the amount of Existing Financial Indebtedness to which the Original Lender is legally and/or beneficially entitled under the Existing Bonds to be refinanced from a utilisation of Facility A on the Initial Utilisation Date as set out in paragraph 1.1(b) of Schedule 10 (*Utilisation and Application of Loans*); and
 - (ii) the amount of Existing Financial Indebtedness to which the Original Lender or an Increase Lender is legally and/or beneficially entitled under the relevant Specified Existing Financing Documents as set out in the relevant Increase Confirmation and to be refinanced from a utilisation of Facility A in accordance with this Agreement;
- (b) in respect of a New Lender (other than an Incremental Facility Lender) the amount of Existing Financial Indebtedness to which the New Lender is legally and/or beneficially entitled under the relevant Specified Existing Financing Documents as set out in the relevant New Lender Accession and to be refinanced from a utilisation of Facility A in accordance with this Agreement, provided that:
 - (i) in the case of any New Lender that is a DIP Lender, its Specified Existing Financial Indebtedness shall not include any of the Existing DIP Finance; and
 - (ii) no Bills of Exchange may constitute Specified Existing Financial Indebtedness unless they constitute Eligible Bills of Exchange;
- (c) in respect of an Incremental Facility Lender, the amount of the Supplier Debt under any Existing Supply Contract, the amount of any Eligible Bills of Exchange (being those set out in Column N of the Supplier Schedule, the "**Relevant Eligible Bills of Exchange**") or the amount under any Existing Supply Arrangement owed to the relevant Incremental Facility Lender under the Specified Existing Financing Documents and to be refinanced from a utilisation of the Incremental Facility as set out in the relevant Incremental Facility Notice.

"**Specified Existing Financing Documents**" means:

- (a) in respect of the Original Lender, the Existing Bond Documentation;
- (b) in respect of any New Lender (other than an Incremental Facility Lender), the Existing Bond Documentation and/or Existing Loan Agreements and/or Eligible Bills of Exchange evidencing the terms of such New Lender's Specified Existing Financial Indebtedness as set out in the New Lender Accession;

- (c) in respect of an Increase Lender, the Existing Bond Documentation and/or Existing Loan Agreements and/or Eligible Bills of Exchange evidencing the terms of such Increase Lender's Specified Existing Financial Indebtedness as set out in the Increase Confirmation; and
- (d) in respect of an Incremental Facility Lender, the Existing Supply Contracts, Relevant Eligible Bills of Exchange and/or Existing Supply Arrangements evidencing the terms of such Incremental Facility Lender's Specified Existing Financial Indebtedness as set out in the Incremental Facility Lender Notice.

"Subsidiary" means:

- (a) Ledo d.d.;
- (b) Agrokor Trgovina d.o.o.;
- (c) any person (referred to as the **"first person"**) in respect of which another person (referred to as the **"second person"**):
 - (i) holds a majority of the voting rights in that first person or has the right under the constitution of the first person to direct the overall policy of the first person or alter the terms of its constitution; or
 - (ii) is a member of that first person and has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or
 - (iii) has the right to exercise a dominant influence (which must include the right to give directions with respect to operating and financial policies of the first person which its directors are obliged to comply with whether or not for its benefit) over the first person by virtue of provisions contained in the articles (or equivalent) of the first person or by virtue of a control contract which is in writing and is authorised by the articles (or equivalent) of the first person and is permitted by the law under which such first person is established; or
 - (iv) is a member of that first person and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first person or the rights under its constitution to direct the overall policy of the first person or alter the terms of its constitution;
 - (v) has the power to exercise, or actually exercises, dominant influence or control over the first person; or
 - (vi) together with the first person are managed on a unified basis,

and, for the purposes of this definition, a person (the "holding entity") shall be treated as a member of another person if:

- (A) any of that holding entity's direct or indirect Subsidiaries is a member of that person; or
- (B) any shares in that other person are held by a person acting on behalf of the holding entity or any of its direct or indirect Subsidiaries.

A Subsidiary shall include any person the shares or ownership interests in which are subject to Security and where the legal title to the shares or ownership interests so secured are registered in the name of the secured party or its nominee pursuant to such Security. A Subsidiary shall, in respect with companies and legal entities incorporated pursuant to the

Croatian Companies Act, include (without limitation) any other company or entity deemed to be a subsidiary in accordance with the provision of the Article 473 of the Croatian Companies Act.

"Super Majority Lenders" means a Lender or Lenders whose Commitments aggregate more than 90 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 90 per cent. of the Total Commitments immediately prior to that reduction).

"Super Senior Priority" means priority over the claims of other creditors as against any member of the Group, an Obligor or any of their Affiliates, in each case derived in respect of a claim incurred in the course of the Extraordinary Administration Proceeding and for the purpose of decreasing system risk, operating business, preserving assets or settling claims arising from business operations, including (without limitation) the claims arising in the event that settlement in the Extraordinary Administration Proceeding is not agreed or if the bankruptcy procedure (or any other procedure initiated after the Extraordinary Administration Proceeding) is commenced against any member of the Group, an Obligor or any of their Affiliates within the scope of the Extraordinary Administration Proceedings Law as stipulated in Article 39 of the Extraordinary Administration Proceedings Law.

"Supplier Debt" means debt owed by any member of the Group to an Incremental Facility Lender in its capacity as a Trade Creditor prior to such Incremental Facility Lender acceding to this Agreement as a Lender.

"Supplier Schedule" means the schedule headed "*Existing Supply Contracts, Relevant Eligible Bills of Exchange and Existing Supply Arrangements*" delivered by the Parent to Hogan Lovells International LLP on 14 November 2017.

"Syndication Increase Date" means each of the First Syndication Increase Date, the Second Syndication Increase Date and the Third Syndication Increase Date.

"Syndication Utilisation Date" means each of the First Syndication Utilisation Date, the Second Syndication Utilisation Date and the Third Syndication Utilisation Date.

"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).

"Third Syndication Increase Date" means 28 June 2017 (or such later date as may be agreed by the Parent and the Original Lenders) being the date on which in accordance with the Commitment Letter and the Backstop Letter:

- (a) in relation to an Increase Lender, the Agent executes an Increase Confirmation entered into by such Increase Lender in respect of any increase in Facility A Commitments assumed by it; and
- (b) in relation to an Eligible Institution which is not an Original Lender, the Agent executes a New Lender Accession entered into by such Eligible Institution in respect of the Facility A Commitments assumed by it,

in each case, in accordance with Clause 2.2 (*Increased Commitments and New Lender Accessions*).

"Third Syndication Utilisation Date" means 30 June 2017 (or such later date as may be agreed by the Parent and the Original Lenders).

"Total Purchase Price" means the aggregate consideration for any acquisition by any member of the Group including costs and expenses and any Financial Indebtedness or other assumed actual or contingent liability (including deferred consideration), in each case remaining in any such acquired companies or businesses at the time of acquisition.

"Total Commitments" means the aggregate of the Total Facility A Commitments and the Total Incremental Facility Commitments being €200,000,000 at the date of this Agreement.

"Total Facility A Commitments" means the aggregate of the Facility A Commitments being €200,000,000 as at the date of this Agreement.

"Total Incremental Facility Commitments" means the aggregate of the Incremental Facility Commitments being zero as at the date of this Agreement.

"Trade Creditors" means trade creditors which supply members of the Group with:

- (a) products, merchandise and other supplies for the purpose of onward sale of such supplies to the customers of the Group; and
- (b) services in the ordinary course of business of such member of the Group,

and, in each case, is not a bank, financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets.

"Transaction Costs" means all fees, costs and expenses (including legal fees) incurred by the Finance Parties in connection with the preparation and syndication of the Finance Documents and any related documents, and, in relation to the participation by the Existing Funders, incurred pursuant to and as defined in the Commitment Letter, in respect of each Facility, including without limitation, any account fees payable by the Agent in respect of the opening and maintenance of the Madison Account, all fees, costs and expenses of the Escrow Agent in connection with the Escrow Agreements and Escrow Accounts and any fees costs and expenses of an Original Lender or any member of the ad hoc committee of beneficial owners of Existing Bonds incurred in connection with the acquisition of Loans before the final Utilisation Date.

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

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Parent.

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

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

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

"US Dollar" means the lawful currency of the United States of America.

"US 2020s" means those 2020 Notes denominated in US Dollars.

"US Tax Obligor" means:

- (a) a person which is resident for tax purposes in the United States of America; or
- (b) a person some or all of whose payments under the Finance Documents are from sources within the United States for US federal income tax purposes.

"Utilisation" means a utilisation of a Facility.

"Utilisation Date" means the date on which a Loan is to be made under this Agreement including the Initial Utilisation Date, each Syndication Utilisation Date, each Facility A Unallocated Amount Utilisation Date and each Incremental Facility Utilisation Date.

"Utilisation Request" means a notice substantially in the form set out in Schedule 14 (*Form of Utilisation Request (Facility A Unallocated Amount)*).

"VAT" means:

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

1.2 Construction

- (a) Unless a contrary indication appears any reference in this Agreement to:
 - (i) the **"Agent"**, the **"Parent"**, a **"Borrower"**, a **"Guarantor"**, the **"Security Agent"**, any **"Finance Party"**, any **"Lender"**, any **"Secured Party"**, or any **"Party"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
 - (ii) a transaction between a person (the first person) and another person (the second person) being on **"arm's length"** terms means a transaction on terms that are fair and reasonable to the first person and no more or less favourable to the second person than could reasonably be expected to be obtained in a comparable transaction between the second person and a person which is not an Affiliate of the first person;
 - (iii) **"assets"** includes present and future properties, revenues and rights of every description;
 - (iv) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated;
 - (v) a **"group of Lenders"** includes all the Lenders;
 - (vi) **"guarantee"** includes 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;

- (vii) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (ix) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xi) a time of day is a reference to London time.
- (b) 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 Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.

1.3 **Currency Symbols and Definitions**

"€", "EUR" and "euro" denote the single currency of the Participating Member States.

"HRK" denote Croatian Kuna, being the lawful currency of Croatia.

1.4 **Commissioner**

- (a) The parties acknowledge that the Commissioner enters into this Agreement for and on behalf of the Parent as legal representative. The Parties acknowledge that the Commissioner shall incur no personal liability under the Finance Documents nor in respect of any failure on part of the Group to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations, save as a result of any loss, liability or cost arising as a result of such individual's wilful default under the Finance documents which has a material adverse impact on the Lenders or where such individual acted fraudulently in giving a certificate, other document, representation or statement (in which case any liability of such individual shall be determined in accordance with applicable law), subject to the qualifications set forth in the Finance Documents.

- (b) The Lenders acknowledge that (i) they have not relied on any statements of the Group when making a credit decision to enter into any Finance Document (ii) the financial statements provided prior to the date of this Agreement may contain errors (iii) they have not been induced into making a credit decision on the basis any prior or current statements or representations by the Group and (iv) the result of any incorrect statement or representation under the Finance Documents shall not result in asserting any personal liability of any person associated with the Group.

1.5 **Third party rights**

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

Section 2

The Facilities

2. THE FACILITIES

2.1 The Facilities

- (a) Subject to the terms of this Agreement, the Lenders make available a Super Senior Priority term loan facility denominated in euros in an aggregate amount equal to the Total Facility A Commitments, subject to an increase of Commitments in accordance with Clause 2.2 (*Increased Commitments and New Lender Accessions*).
- (b) Facility A will be available to the Parent as Borrower.
- (c) Subject to the terms of this Agreement, a Lender may make available (but is not committed to making available) a term loan facility in an aggregate amount not exceeding the Incremental Facility Maximum Amount to the Parent as Borrower.

2.2 Increased Commitments and New Lender Accessions

- (a) On each Syndication Commitment Increase Date, the Facility A Commitments shall be increased by an aggregate amount equal to the Relevant Syndication Increase Amount.
- (b) The parties agree that the Relevant Syndication Amount on the Third Syndication Increase Date shall be equal to the Final Increase Amount.
- (c) At any time during the Availability Period applicable to Incremental Facility, at the option and request of the Parent, the Trade Creditors may accede to this Agreement pursuant to an Incremental Facility Lender Accession as a Lender provided that on the Incremental Facility Signing Date, the aggregate Incremental Facility Commitments assumed by such Incremental Lenders are equal to €100,000,000.
- (d) Each Eligible Institution by executing a New Lender Accession and each Incremental Lender by executing an Incremental Facility Lender Accession confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite New Lender(s) or Incremental Lender(s) in accordance with this Agreement on or prior to the date on which the increase in Facility A Commitments or Incremental Facility Commitments (as the case may be) becomes effective.
- (e) The Facility A Commitments shall not, at any time, exceed €960,000,000.
- (f) The Incremental Facility Commitments shall not, at any time, exceed €100,000,000.
- (g) The Agent shall, as soon as practicable on receipt, execute any Increase Confirmation or Accession Document.
- (h) The Parent shall promptly on demand pay the Agent the amount of all costs and expenses (including legal fees) properly incurred by the Agent in connection with an increase in Commitments under this Clause 2.2.
- (i) An increase in the Commitments relating to the Incremental Facility will only be effective on the execution by the Agent of an Incremental Facility Lender Accession from the relevant Eligible Institution and 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 Eligible Institution.

- (j) If prior to the First Syndication Increase Date any proposed New Lender that is a holder of any Existing Bonds notifies the Parent and/or the Backstop Parties (as defined in the Commitment Letter) that for regulatory or compliance reasons it needs to fund its proposed participation in Facility A in accordance with the Commitment Letter via private placement structure, the Parent and the Original Lenders shall make such changes to the Finance Documents as shall be reasonably required to accommodate this request.

2.3 Incremental Facility

- (a) Subject to this Clause 2.3 the Parent may, at any time and from time to time following the Third Syndication Utilisation Date by delivering to the Agent and the Security Agent a duly completed Incremental Facility Notice signed by an authorised signatory and complying with paragraphs (b) and (c) below, establish the Incremental Facility by way of the introduction of a new additional commitment or facility as a Facility under this Agreement.
- (b) No consent of any Finance Party is required to establish the Incremental Facility at any time other than the relevant Incremental Facility Lenders making available the Incremental Facility, provided that (unless otherwise agreed by the Majority Lenders) each of the following applicable conditions are met:
 - (i) the Incremental Facility Commitments specified in the relevant Incremental Facility Notice (when aggregated with all then existing Incremental Facility Commitments), if designated in full would not exceed the Incremental Facility Maximum Amount;
 - (ii) the maturity date shall be the same as the Maturity Date for Facility A and shall not provide for any scheduled repayment before the Maturity Date for Facility A; to the extent legally possible, the Incremental Facility shall rank *pari passu* (in right of payment and security) (and not, in any, case senior) with Facility A and shall be guaranteed and secured by the same guarantors and the same security as is guaranteeing and securing Facility A;
 - (iii) an aggregate amount equal to 50 per cent of the Incremental Facility Loans shall be applied or deemed to be applied in reduction of the Specified Existing Financial Indebtedness of the Incremental Facility Lender under the Specified Existing Financing Documents in accordance with paragraphs 1.4 and 2 of Schedule 10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*) of the Facilities Agreement (and that Incremental Facility Lender has acknowledged that reduction by countersigning the relevant Incremental Facility Lender Accession);
 - (iv) the Incremental Facility Lender is a Trade Creditor which has entered into a supply contract (a "**Supply Contract**") with a member of the Group after 10 July 2017, the value of which is no less than 50% of its Incremental Facility Commitments;
 - (v) no individual Trade Creditor or its Affiliates shall hold Incremental Facility Commitments aggregating more than the higher of (1) €10,000,000 and (2) 30% of all Incremental Facility Commitments.
- (c) Each Incremental Facility Notice is irrevocable and will not be regarded as having been duly completed unless it:

- (i) specifies:
 - (1) the date on which the Incremental Facility Commitments are to become effective and the applicable Availability Period;
 - (2) details of each Supply Contract provided by the Incremental Facility Lender (a summary of the terms of such contract (including, but not limited to, payment terms) to be provided to the Financial Advisor);
 - (3) the amount and currency of the Incremental Facility Commitments;
 - (4) the amount of the Incremental Facility Commitment allocated to each entity named in the Incremental Facility Notice as a Lender; and
 - (5) any provisions agreed between the Parent and the entity providing the Incremental Facility Commitments relating to conditionality; and
 - (ii) attaches a copy of each invoice delivered to the Borrower by the Incremental Facility Lender under each Supply Contract prior to the date of the Incremental Facility Notice.
- (d) Each Incremental Facility Notice shall be countersigned by each entity to which an Incremental Facility Commitment is allocated. Any entity to which an Incremental Facility Commitment is allocated shall comply with the provisions of Clause 22 (*Changes to the Lenders*) to the extent applicable. By countersigning the Incremental Facility Notice each such entity agrees to commit the Incremental Facility Commitment set out against its name and in the case of an entity which is not already a Lender, to become a Lender and party to this Agreement.
- (e) Upon receipt of a duly completed Incremental Facility Notice, the Agent and the Security Agent shall acknowledge receipt of such notice and, if appropriate, the accession of the relevant Lenders to this Agreement pursuant to the Incremental Facility Lender Accession and the Agent shall inform the Lenders of such receipt. The Agent and the Security Agent are authorised to disclose details of the Incremental Facility Notice and the Incremental Facility to the Lenders on request. The Agent and the Security Agent shall only be obliged to sign an Incremental Facility Notice upon its completion of all “know your customer” or other checks relating to any person that it is required to carry out in relation to the accession of any entity as a Lender.
- (f) The Agent shall notify the Parent and the Lenders of the changed amounts of the Incremental Facility Commitments promptly after receipt of each Incremental Facility Notice.
- (g) The Incremental Facility Commitments shall have the same terms as Facility A other than (i) Clauses 12 (*Tax-Gross-Up and Indemnities*) and 13 (*Increased Costs*) shall not apply to the Incremental Facility Commitments and (ii) as to each item required to be specified in the Incremental Facility Notice provided.
- (h) If the other provisions of this Clause 2.3 are met, each Party:
- (i) agrees the Incremental Facility Commitments may be made available to the Borrowers; and
 - (ii) irrevocably authorises and instructs the Agent and the Security Agent to sign the applicable Incremental Facility Notice to record the Incremental Facility Commitments as set out in the relevant Incremental Facility Notice

and the establishment of (or the increase in Incremental Facility Commitments in respect of) the Incremental Facility.

- (i) The Borrower shall continue to deliver to the Agent a copy of each invoice delivered to the Borrower by each Incremental Facility Lender under each Supply Contract following signature by the Agent of the Incremental Facility Notices.
- (j) Each Obligor confirms:
 - (i) the authority of the Parent to agree and implement the establishment of Incremental Facility Commitments and the Incremental Facility in accordance with the procedures and up to the amounts permitted by this agreement (as amended or modified from time to time); and
 - (ii) that all its guarantee and indemnity obligations recorded in Clause 17 (*Guarantee and Indemnity*) and/or in any Accession Letter or other Finance Document will extend to include the Incremental Facility Loans and other obligations arising under the Incremental Facility subject to any limits as specifically recorded in Clause 17 (*Guarantee and Indemnity*), the relevant Accession Deed or elsewhere in the Finance Documents.

2.4 Extension Option

- (a) Subject to paragraph (d) below, the Maturity Date applicable to Facility A and the Incremental Facility shall be extended by 24 months if:
 - (i) the Settlement Date has occurred on or before 10 July 2018;
 - (ii) the Parent requests an extension to all or any of the Facilities by notice in writing received by the Agent not less than 60 days before the Original Maturity Date (as defined below);
 - (iii) no later than 30 days prior to the Original Maturity Date, the Parent has provided the Agent with details of any additional Security, guarantees, indemnities and other assurance against loss which can be granted by any member of the Group in favour of the Security Agent on or after the Settlement Date in order to ensure that the Facilities retain the Super Senior Priority ranking expressed to be created in accordance with the Finance Documents as at the date of this Agreement (which shall include security, guarantee, indemnities and other assurance against loss requested by the Agent and as a minimum first ranking security over all material assets held by any member of the Group) (the "**Enhanced Security Package**");
 - (iv) no Event of Default has occurred and is outstanding; and
 - (v) the Majority Lenders and the Majority Non-Bank Lenders have each, as separate and distinct classes, approved the terms of the Settlement Agreement and the details relating to the Enhanced Security Package.

For the purposes of this Clause 2.4 "**Original Maturity Date**" means the earlier of 10 July 2018 and the anticipated Settlement Date.

- (b) The Agent shall promptly notify the Lenders of any request to extend the Facilities under paragraph (a) above.
- (c) Each Lender shall notify the Agent of its decision (which shall be in its sole discretion) whether or not to approve the Settlement Agreement and the Enhanced Security Package under paragraph (a) above no later than 14 days before the

Original Maturity Date. If the Settlement Agreement and Enhanced Security Package is approved by the Majority Lenders and the Majority Non-Bank Lenders, the Agent shall notify the Lenders of the new Maturity Date, which shall be the date falling 24 months after the Settlement Date.

- (d) Subject to this paragraph (d), the Extension shall be made available on the same terms as the Facilities other than:
 - (i) an amendment to this Agreement to include a cash sweep requiring mandatory prepayment of the Loans by an amount equal to no less than 60 per cent. of any excess cashflow;
 - (ii) the Parent shall (and shall ensure that each relevant member of the Group will) promptly enter into such documents as are necessary to provide the Lenders with the benefit of the Enhanced Security Package; and
 - (iii) definition of "PIK Margin" shall be deleted and the definition of "Cash Margin" shall be amended to 6 per cent per annum (with consequential amendments to provide for only Cash pay and non PIK interest) and the EURIBOR floor will be amended to reflect the then prevailing market conditions.

The Parties agree to negotiate the terms of the Extension in good faith (including but not limited to the basis of calculation of interest, any amendments to the definition of Permitted Financial Indebtedness and relevance and scope of the requirement for the consent of the Restructuring Adviser). For the avoidance of doubt, all such amendments will be subject to approval by the Majority Lenders and the Majority Non-Bank Lenders (in each case as separate and distinct classes).

2.5 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 is 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 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 specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.6 Obligors' Agent

- (a) Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Letter 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, to execute on its behalf any Accession Letter 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 or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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

3. PURPOSE

3.1 Purpose

- (a) Subject to Clause 5.6 (*Limitations*), each Borrower shall apply an aggregate amount equal to 50 per cent of the amounts borrowed by it under each Facility towards refinancing the Specified Existing Financial Indebtedness of each Lender in accordance with Schedule 10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*) and financing Transaction Costs provided that the aggregate amount of such Loans utilised by the Borrower for the purposes of refinancing any Eligible Bills of Exchange constituting Specified Existing Financial Indebtedness shall not exceed €90,000,000, or if the Zaba Backstop Commitment (as defined in the Backstop Letter) exceeds the Local Lender Individual Maximum Amount (as defined in the Commitment Letter) for Zagrebacka Banka, €100,000,000.
- (b) Subject to Clause 5.6 (*Limitations*), each Borrower shall apply an aggregate amount equal to 50 per cent of all amounts borrowed by it under each Facility (being, for the purposes of this paragraph (b) any funds credited directly or indirectly to the Liquidity Escrow Account in accordance with Schedule 10 (*Utilisation and Application of Loans*)) towards the general corporate and working capital purposes of the Group (including a transfer to an account of the Parent located in Croatia) and provided that an aggregate amount of such Loans equal to €80,000,000 shall be applied on or before 14 July 2017 in redemption, prepayment and cancellation of the Existing DIP Financing (including by way of set-off in the circumstances referred to in paragraph 4 of Schedule 10 (*Utilisation and Application of Loans*)).

- (c) The Borrower irrevocably authorises the Agent to credit amounts borrowed by it under each Facility to the balance of the Repayment Escrow Account to be applied in accordance with Schedule 10 (*Utilisation and Application of Loans*), Schedule 11 (*Redemption and Repayment Mechanics*) and the terms of the Escrow Agreements.

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 Initial Utilisation Date shall not occur unless the Agent has received all of the documents and other evidence listed in Part A of Schedule 2 (*Conditions Precedent to Initial Utilisation*) in form and substance satisfactory to the Agent. The Agent shall notify the Parent and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that a Lender notifies the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) 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.

Section 3 Utilisation

5. UTILISATION

5.1 Initial Utilisation Date

On the Initial Utilisation Date, Facility A shall be utilised by way of one Loan in an amount equal to the Total Facility A Commitments as at the date of this Agreement, being €200,000,000 to be advanced and applied in accordance with Schedule 10 (*Utilisation and Application of Loans*) and the mechanics set out in Schedule 11 (*Redemption and Repayment Mechanics*).

5.2 Syndication Utilisation Dates

On each Syndication Utilisation Date, subject to Clause 2.2 (*Increased Commitments and New Lender Accessions*), Facility A shall be utilised in an amount equal to the Available Commitments for Facility A as at the relevant Syndication Utilisation Date, being the Relevant Syndication Increase Amount, to be advanced and applied in accordance with Schedule 10 (*Utilisation and Application of Loans*) and the mechanics set out in set out in Schedule 11 (*Redemption and Repayment Mechanics*).

5.3 Facility A Unallocated Amount

- (a) At any time following the Third Syndication Utilisation Date but prior to the end of the Availability Period for the Facility A Unallocated Amount, the Borrower may request a Utilisation of the Available Commitments under Facility A by submitting a Utilisation Request in the form set out in Schedule 14 (*Form of Utilisation Request (Facility A Unallocated Amount)*) by 11am (London time) on the date falling at least 10 Business Days prior to the proposed Utilisation Date.
- (b) Each such Utilisation Request shall specify:
 - (i) the proposed Facility A Unallocated Amount Utilisation Date, which must be a Business Day within the applicable Availability Period;
 - (ii) the amount of the Utilisation, which must be in a minimum amount of €20,000,000 or if less the Available Commitment.
- (c) Each Utilisation made available under this clause 5.3 (*Facility A Unallocated Amount*) shall be advanced and applied in accordance with Schedule 10 (*Utilisation and Application of Loans*) and the mechanics set out in set out in Schedule 11 (*Redemption and Repayment Mechanics*).
- (d) Within 5 Business Days of receipt of a Utilisation Request in respect of the Facility A Unallocated Amount one or more Increase Lenders and/or New Lenders (as determined in accordance with the Backstop Letter) shall enter in Increase Confirmations and/or New Lender Accessions and assume Facility A Commitments in an aggregate amount equal to the amount of the proposed Utilisation of the Facility A Unallocated Amount.

5.4 Incremental Facility Utilisation Date

The Borrower may utilise the Incremental Facility on the applicable Incremental Facility Utilisation Date specified in the relevant Incremental Facility Notice and the Incremental Facility Loan made under the Incremental Facility shall be applied in accordance with Schedule 10 (*Utilisation and Application of Loans*) and the mechanics set out in set out in Schedule 11 (*Redemption and Repayment Mechanics*).

5.5 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.7 (*Lenders' Participations*), if on the relevant Utilisation Date, no Event of Default has occurred and is continuing or would result from the proposed Loan.

5.6 Limitations

- (a) No Facility A Loans drawn prior to the Third Syndication Utilisation Date shall be applied for the purposes of refinancing the Existing DIP Financing.
- (b) The aggregate amount of Facility A Loans utilised by the Borrower under paragraph 3.1 (*Purpose*) for the purposes of refinancing the Existing DIP Financing shall not exceed €80,000,000.
- (c) No Loans may be utilised for the purposes of refinancing or repaying any Eligible Bills of Exchange owed to a bank or financial institution (or owed to a bank or financial institution prior to the commencement of the Extraordinary Administration Proceedings but subsequently transferred) unless they constitute Specified Existing Financial Indebtedness of a Lender and such refinancing or repayment is made in accordance with the provisions of this Agreement.
- (d) No Facility A Loans may be utilised by the Borrower under paragraph (b) of Clause 3.1 (*Purpose*) directly or indirectly for the purpose of paying any debt due to a supplier of inventory or trade stock of the Group where the obligation became due and payable prior to the commencement of the Extraordinary Administration Proceedings ("**Pre-Petition Supplier Debt**") until after the Third Syndication Utilisation Date and then only if the following conditions are met:
 - (i) the Borrower shall consult with the Financial Adviser before paying any Pre-Petition Supplier Debt; and
 - (ii) the aggregate amount of Pre-Petition Supplier Debt that may be paid from the proceeds of Facility A Loans may not exceed:
 - (1) up to an aggregate amount of €75,000,000 to holders of Pre-Petition Supplier Debt incurred prior to 10 April 2017 where such holders have at the time of payment agreed to resume or continue the advance inventory on a business as usual basis. The selection of this class and payment quantum to be decided upon in consultation with the Financial Adviser; and
 - (2) up to an aggregate amount of €75,000,000 to selected holders of Pre-Petition Supplier Debt incurred prior to 10 April 2017 and with methodology and in amounts approved by the Financial Adviser.

5.7 Lenders' Participations

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each loan available through its Facility Office in the manner set out in Schedule 10 (*Utilisation and Application of Loans*), the relevant amount of such participation to be funded to the Madison Account (for onward transmission by the Agent in accordance with Clause 5.9 (*Escrow Accounts*) below).
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to the making of the Loan.

5.8 Redemption and Repayment of Existing Financial Indebtedness

For the avoidance of doubt, each party to this Agreement acknowledges and agrees that:

- (a) the Specified Existing Financial Indebtedness owed to each Lender will be redeemed, repaid or prepaid and cancelled when a Loan which is drawn for the purposes of refinancing such Specified Existing Financial Indebtedness is transferred from the Refinance Escrow Account to the Repayment Escrow Account in accordance with paragraph 2 of Schedule 10 (*Utilisation and Application of Loans*); and
- (b) the redemption, repayment or prepayment of the relevant Specified Existing Financial Indebtedness shall take effect in accordance with Schedule 11 (*Redemption and Repayment Mechanics*).

5.9 Escrow Accounts

- (a) The Parent authorises the Agent to deduct the aggregate amount of Transaction Costs from the balance of the Repayment Account on each Utilisation Date in respect of each Facility prior to transferring funds in accordance with this Clause 5.9.
- (b) The Parent authorises:
 - (i) the Agent to credit all amounts borrowed by it under each Facility to the balance of the Repayment Escrow Account to be applied (net of Transaction Costs) in accordance with Schedule 10 (*Utilisation and Application of Loans*); and
 - (ii) the Escrow Agent to transfer any amount between the Escrow Accounts in the manner and order set out in Schedule 10 (*Utilisation and Application of Loans*) without the need for any further consents or authorisations from any party.
- (c) Any amounts credited to the balance of the Liquidity Escrow Account may be applied by the Parent in accordance with paragraph (b) of Clause 3.1 (*Purpose*).

Section 4

Repayment, Prepayment and Cancellation

6. REPAYMENT

6.1 Repayment on the Maturity Date

- (a) Each Borrower shall repay the Facility A Loans (including for the avoidance of doubt all accrued PIK Interest) made to it in full on the Maturity Date.
- (b) Each Borrower shall repay the Incremental Facility Loans made to it on the Maturity Date.

6.2 No reborrowing

The Borrowers may not reborrow any part of a Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

- (a) If, in any applicable jurisdiction, at any time, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Utilisation or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:
 - (i) that Lender shall promptly notify the Agent upon becoming aware of that event;
 - (ii) upon the Agent notifying the Parent, the Commitment of that Lender will be immediately cancelled; and
 - (iii) each Borrower shall repay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for the relevant Loan 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.

7.2 Change of Control and Extension

- (a) Upon the occurrence of a Change of Control or in the event that the extension option is not exercised pursuant to and in accordance with Clause 2.4 (*Extension Option*):
 - (i) the Parent shall promptly notify the Agent upon becoming aware of that event; and
 - (ii) a Lender shall not be obliged to fund the Utilisation; and
 - (iii) the Agent shall, by written notice to the Parent, cancel the Total Commitments of the Lenders and declare any outstanding Utilisations, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Total Commitments will be cancelled and any outstanding Utilisations and all such amounts will become immediately due and payable.

7.3 Disposals

- (a) For the purposes of this Clause 7.3:

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

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

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

"Excluded Disposal Proceeds" means the consideration receivable by any member of the Group in relation to:

- (i) any Disposal (other than a Permitted Company Disposal) where the consideration receivable is less than €10,000,000 (or its equivalent in other currencies) when aggregated with other Disposal Proceeds received since the date of this Agreement; and
- (ii) any Disposal permitted by paragraphs (b)(i) and (ii) of Clause 20.15 (*Disposals*); and
- (iii) in respect of any Disposal Proceeds which have been derived from a Permitted Company Disposal, an amount which is equal to 40 per cent. of the aggregate amount of such Disposal Proceeds ("**Retained Disposal Proceeds**") provided that the relevant Retained Disposal Proceeds are applied towards the purchase of a similar business or replacement of assets of the same general nature as those disposed of as a Permitted Company Disposal or investment of other assets for use in the Group, as soon as possible (but in any event within 180 days or such longer period as the Majority Lenders may agree) after receipt.

- (b) The Borrowers shall prepay any outstanding Facility A Loans and any Incremental Facility Loans and thereafter cancel Available Commitments, in an amount equal to:

- (i) 90 per cent. of any Disposal Proceeds other than Disposal Proceeds derived from a Permitted Company Disposal;
- (ii) the aggregate amount of any Disposal Proceeds derived from a Permitted Company Disposal and, if all or any part of the Retained Disposal Proceeds have not been applied in accordance with paragraph (iii) of the definition of Excluded Disposal Proceeds above, 100 per cent of the Retained Disposal Proceeds,

unless in the case of paragraph (b)(i) above the Parent obtains the prior written consent of the Majority Lenders to apply the relevant Disposal Proceeds for the purposes of financing:

- (1) the working capital requirements of the Group; or
- (2) any supplier invoices owed to Trade Creditors,

provided that such invoices were incurred by the relevant member of the Group prior to the commencement of the Extraordinary Administration Proceedings and have been outstanding for more than 60 days.

- (c) The Parent shall prepay Loans under this Clause 7.3 promptly following receipt of the relevant Disposal Proceeds or, in the case of Retained Disposal Proceeds on the date which is 180 days after receipt of the Retained Disposal Proceeds if they are not applied in accordance with paragraph (c) of the definition of Excluded Disposal Proceeds.

7.4 Termination of Extraordinary Administration Proceedings

Upon termination of the Extraordinary Administration Proceedings in relation to any Borrower, the Facilities will be cancelled and all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

7.5 Voluntary prepayment

- (a) A Borrower to which a Loan has been made may, if it or the Parent gives the Agent three Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Loan (but if in part, being an amount that reduces the amount of that Loan by a minimum amount of EUR 10,000,000 (and integral multiples of EUR 5,000,000 thereafter)).
- (b) Other than as permitted by paragraph (a) above, the Borrowers shall not be entitled to make any prepayment of the Facility A Loans or Incremental Facility Loans without the consent of all Lenders.

7.6 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and without premium or penalty.
- (c) No Borrower may reborrow any part of a Facility which is prepaid.
- (d) No Borrower shall repay or prepay all or any part of a Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Parent or the affected Lender, as appropriate.

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

7.7 Application of prepayments

Any prepayment of Loans pursuant to Clause 7.3 (*Disposals*) and Clause 7.5 (*Voluntary prepayment*) shall be applied pro rata across all outstanding Facility A Loans and the Incremental Facility and pro rata to each Lender's participation in the relevant Facility A Loan or Incremental Facility.

Section 5

Costs of Utilisation

8. INTEREST

8.1 Interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum determined by the Agent to be the aggregate of the applicable:

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

8.2 Payment of Interest - PIK Margin

- (a) Subject to Clause 8.3 (*Payment of Interest – Cash Margin*) and Clause 8.4 (*Payment of Interest – Default Margin*), interest shall accrue in respect of each Loan ("**PIK Interest**") at the rate which is equal to the EURIBOR and applicable PIK Margin and shall be automatically capitalised and shall be added to the outstanding principal amount of that Loan on the last day of each Interest Period.
- (b) After capitalisation, PIK Interest shall:
 - (i) be treated as part of the principal amount of the Loan;
 - (ii) accrue PIK Interest in accordance with this Clause 8.2; and
 - (iii) be subject to the repayment and prepayment provisions of this Agreement.

8.3 Payment of Interest – Cash Margin

- (a) A Lender may elect that the interest on all or part of any Loan advanced by it is to be paid by the Borrower in cash at the end of the relevant Interest Period provided that the Lender has made an election (the "**Cash Margin Option**") in writing to the Parent, with a copy to the Agent, no later than ten Business Days prior to the final day of the Interest Period.
- (b) Subject to Clause 8.4 (*Payment of Interest – Default Margin*), if a Cash Margin Option is exercised by a Lender in accordance with paragraph (a) above, the Margin on any Loans advanced by the relevant Lender shall, with effect from the first day of the next Interest Period, be calculated at a rate which is equal to EURIBOR and the Cash Margin, payable in cash on the last day of each Interest Period.

8.4 Payment of interest – Default Margin

- (a) If an Event of Default occurs, the interest on any Loans advanced by the relevant Lender shall, with effect from the earlier of the date on which the Agent gives notice to the Parent and the Parent or an Obligor becoming aware of the occurrence of the relevant Event of Default, be calculated at a rate which is equal to EURIBOR and the Default Margin, payable in cash on the last day of each Interest Period.
- (d) If an Event of Default occurs under Clause 21.13 (*Guarantee Challenge*), the Default Margin payable under paragraph (a) above on the last day of the next Interest Period shall be increased by the amount of Default Margin which would have been payable had the Default Margin for each Loan been calculated as 10 per cent. per annum from the Initial Utilisation Date.

8.5 Notification of rates of interest

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

9. INTEREST PERIODS

9.1 Duration

- (a) Each Interest Period will be twelve Months.
- (b) The first Interest Period for a Loan (other than the first Loan) shall end on the last day of the current Interest Period relating to outstanding Loans.
- (c) An Interest Period for a Loan shall not extend beyond the Maturity Date.
- (d) The Interest Period for a Loan shall start on the relevant Utilisation Date for that Loan or (if already made) on the last day of its preceding Interest Period.

9.2 Non-Business Days

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

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) Interpolated Screen Rate: If no Screen Rate is available for EURIBOR for the Interest Period of a Loan, EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) Costs of funds: If no Screen Rate is available for EURIBOR for:
 - (i) EUR; or
 - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

there shall be no EURIBOR for that Loan and Clause 10.2 (*Cost of funds*) shall apply to that Loan for that Interest Period.

10.2 Cost of funds

- (a) If this Clause 10.2 applies, the rate of interest on of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event within 5 Business Days of the first day of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.

- (b) If this Clause 10.2 applies and the Agent or the Parent so requires, the Agent and the Parent shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.
- (d) If this Clause 10.2 applies pursuant to Clause 10.3 (*Market disruption*): and
 - (i) a Lender's Funding Rate is less than EURIBOR; or
 - (ii) 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.

10.3 **Market disruption**

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 35 per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of EURIBOR then there shall be no EURIBOR for that Loan and Clause 10.2 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

10.4 **Notification to Parent**

If Clause 10.2 (*Cost of funds*) applies, the Agent shall, as soon as is practicable, notify the Parent.

11. **FEES**

11.1 **Commitment Fee**

The Parent will pay to the Agent (for the account of the Original Lender) a commitment fee in the amount and at the times agreed in a fee letter.

11.2 **Agency Fee**

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

11.3 **Security Agency Fee**

The Parent will pay to the Security Agent (for its own account) a security agency fee in the amount and at the times agreed in a Fee Letter.

Section 6 Additional Payment Obligations

12. TAX GROSS-UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

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

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

- (i) a company that is resident for Tax purposes in the Republic of Croatia; or
- (ii) a non-resident bank or financial institution for the purposes of Article 31 of the Profit Tax Act as published in the Official Gazette of the Republic of Croatia (payments to which under the said Article are exempted from any withholding taxes); or
- (iii) a Treaty Lender.

"Tax Credit" means a credit against, relief or remission for, or refund 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 12.2 (*Tax Gross-up*) or a payment under Clause 12.3 (*Tax Indemnity*).

"Treaty Lender" means a Lender which:

- (i) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (ii) does not carry on a business in the Republic of Croatia through a permanent establishment with which that Lender's participation in each Loan is effectively connected; and
- (iii) is beneficially entitled to interest payable to that Lender for the purposes of the Treaty in respect of an advance under a Finance Document.

"Treaty State" means a jurisdiction having a double taxation agreement (a **"Treaty"**) with the Republic of Croatia which makes provision for full exemption from tax imposed by the Republic of Croatia on interest.

- (b) Unless a contrary indication appears, in this clause 12, a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination acting reasonably and in good faith.

12.2 Tax Gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Parent shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Parent and that Obligor.
- (c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment:
 - (i) to (x) an Original Lender or (y) a Primary Lender, shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the Republic of Croatia if, on the date on which the payment falls due the relevant Lender is a Treaty Lender and the Obligor making the payment could have made the payment to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g); or
 - (ii) to a Lender (other than (x) an Original Lender or (y) a Primary Lender) shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the Republic of Croatia if, on the date on which the payment falls due:
 - (1) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in any law or Treaty or any published practice or published concession of any relevant taxing authority; or
 - (2) the relevant Lender is a Treaty Lender and the Obligor making the payment could have made the payment to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g),

and for the purposes of this clause 12.2(d)(ii), limb (iii) of the definition of "Treaty Lender" shall instead read as follows: "is entitled under the provisions of an applicable Treaty to receive payments under a Finance Document without a Tax Deduction, except that for this purpose it shall be assumed that the following are satisfied: (x) any condition which relates (expressly or by implication) to the amounts or terms of any Loan or the Finance Documents or any condition which relates (expressly or by implication) to there not being a special relationship between the Borrower and the Finance Party or between both of them and another person; and (y) any necessary procedural formalities."

- (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment 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 and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
- (h) The Lender shall supply to the Parent within ten Business Days of a reasonable request by the Parent such forms, documentation and other information relating to its Qualifying Lender status (including, where applicable, a certificate of tax residence issued by the relevant tax authority) or its Treaty Lender status as the Parent may reasonably request in order to make payments of interest to the Lender without a Tax Deduction. For the avoidance of doubt, the provision of any such forms, documentation and other information above shall not be a pre-condition to liability under Clause 12.2(c).

12.3 Tax Indemnity

- (a) The Parent shall (within three Business Days of demand by the Lender) pay to a Protected Party an amount equal to any loss, liability or cost which that Protected Party determines has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (1) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (2) under the law of the jurisdiction in which that Finance Party's Facility Office, branch or other permanent establishment is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (1) is compensated for by an increased payment under Clause 12.2 (*Tax Gross-up*) or a payment under Clause 12.6 (*Stamp taxes*);
 - (2) would have been compensated for by an increased payment under Clause 12.2 (*Tax Gross-up*) but was not so compensated solely because the exclusions in paragraph (d) of Clause 12.2 (*Tax Gross-up*) applied;
 - (3) relates to a FATCA Deduction required to be made by a Party; or

- (4) is attributable to VAT (which shall instead be dealt with pursuant to Clause 12.7 (VAT)).
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Parent.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3, notify the Agent.

12.4 Tax Credit

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

- (a) a Tax Credit is attributable to:
 - (i) an increased payment of which that Tax Payment forms part; or
 - (ii) that Tax Payment; or
 - (iii) a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained, and utilised, that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

12.5 Lender Status Confirmation

- (a) Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate in the New Lender Accession, Transfer Certificate or Assignment Agreement which it executes upon becoming a Party, and without liability to any Obligor, which of the following categories it falls in:
 - (i) not a Qualifying Lender;
 - (ii) a Qualifying Lender (other than a Treaty Lender); or
 - (iii) a Treaty Lender;
- (b) If a New Lender fails to confirm its status in accordance with Clause 12.5(a) then such New 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 Borrowers). For the avoidance of doubt, a New Lender Accession, Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 12.5.

12.6 Stamp Taxes

The Parent shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, save where the same arises as a result of or in connection with any assignment, transfer or novation (or other disposal) by the Secured Party (or any successor thereof) of any right, benefit or obligation under a Finance Document other than a transfer where an Event of Default is occurring or in connection with Clause 15.1 (*Mitigation*).

12.7 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to the Finance Party any (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, if applicable).
- (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 that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) the relevant Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the relevant legislation of any jurisdiction having implemented Council Directive 2006/112/EC on the common system of VAT or such equivalent concept as may be provided under equivalent legislation of another jurisdiction).
- (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 details of that Party's VAT registration and such other information as is reasonably requested in connection with the Finance Party's VAT reporting requirements in relation to such supply.

12.8 **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (1) a FATCA Exempt Party; or
 - (2) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any 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 (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

12.9 **FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make 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.

13. **INCREASED COSTS**

13.1 **Increased costs**

- (a) Subject to Clause 13.3 (*Exceptions*) the Parent shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement;
 - (ii) compliance with any law or regulation made after the date of this Agreement; or
 - (iii) the implementation or application of, or compliance with, Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

- (b) In this Agreement:

"Increased Costs" means:

- (i) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document;

"Basel III" means:

- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "**Basel III: A global regulatory framework for more resilient banks and banking systems**", "**Basel III: International framework for liquidity risk measurement, standards and monitoring**" and "**Guidance for national authorities operating the countercyclical capital buffer**" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (ii) the rules for global systemically important banks contained in "**Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text**" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "**Basel III**"; and

"CRD IV" means:

- (i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
- (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential

supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*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, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied); or
 - (iii) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 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;
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance 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.

14.2 Other indemnities

The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by it as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 28 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) any Loan (or part of any Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.

14.3 Indemnity to the Agent

The Parent shall promptly indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent as a result of:
 - (i) investigating any event which it reasonably believes is a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents.

This indemnity shall survive the termination of this Agreement and/or the resignation or removal of the Agent.

14.4 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 (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) as a result of:
 - (i) any failure by an Obligor to comply with its obligations under Clause 16 (*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) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property; and
 - (vi) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.
- (b) The Security Agent 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 14.4 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.

This indemnity shall survive the termination of the Agreement and/or the resignation of the Security Agent.

15. MITIGATION BY THE LENDERS

15.1 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 7.1 (*Illegality*), Clause 12 (*Tax Gross-Up-and Indemnities*) or Clause 13 (*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.

15.2 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 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses

The Parent shall promptly on demand pay the Agent, the Security Agent, the Escrow Agent and the Original Lenders the amount of all costs and expenses (including legal fees), incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with participation by the Existing Lenders in respect of each Facility pursuant to the Commitment Letter and the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
- (b) any Finance Documents executed after the date of this Agreement,

including without limitation any account fees payable by the Agent in respect of the opening and maintenance of the Madison Account, all fees, costs and expenses of the Escrow Agent in respect of the opening and maintenance of the Escrow Accounts and any fees, costs and expenses of an Original Lender or any member of the ad hoc committee of beneficial owners of Existing Bonds incurred in connection with the acquisition of Loans before the final Utilisation Date.

16.2 **Amendment costs**

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 29.10 (*Change of currency*),

the Parent shall, within three Business Days of demand, reimburse each of the Agent and the Security Agent for the amount of all costs and expenses (including, but not limited to, legal fees) incurred by the Agent and the Security Agent (and in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 **Enforcement and preservation costs**

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

Section 7 Guarantee

17. GUARANTEE AND INDEMNITY

17.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 if the amount claimed had been recoverable on the basis of a guarantee.

17.2 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.

17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 17 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 Waiver of defences

The obligations of each Guarantor under this Clause 17 will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 17 (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 (whether of maturity or otherwise), restatement (in each case however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of any 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.

17.5 Guarantor Intent

Without prejudice to the generality of Clause 17.4 (*Waiver of Defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental and of whatsoever nature and whether or not more onerous) 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: 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.

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

17.7 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 17.

17.8 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 17:

- (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 17.1 (*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 29 (*Payment Mechanics*).

17.9 Release of Guarantors' right of contribution

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

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

17.10 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.

17.11 Super Senior Priority

The obligations of each Guarantor under this clause 17 shall have the status of Super Senior Priority in accordance with Article 13 paragraph 4 of Article 39 of the Extraordinary Administration Proceedings Law.

Section 8

Representations, Undertakings and Events of Default

18. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement.

18.1 Status

- (a) It is a corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
- (c) It is not a FATCA FFI or a US Tax Obligor.

18.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law as at the date of this Agreement (or, in the case of an Additional Obligor, at the date of the relevant Accession Letter) limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) or Clause 24 (*Changes to the Obligors*), legal, valid, binding and enforceable obligations.

18.3 Non-conflict with other obligations

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

- (a) any law or regulation applicable to it;
- (b) its constitutional documents; or
- (c) any ruling, judgement, order, injunction or other decision binding upon it or any member of the Group or any of its assets or any member of the Group's assets or constitute a default or termination event (howsoever described) under any such agreement or instrument.

18.4 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, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

18.5 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
- (b) to make the Finance Documents to which it is a party admissible in evidence in each Relevant Jurisdiction,

have been obtained or effected and are in full force and effect.

18.6 Governing law and enforcement

- (a) The choice of governing law of each of the Finance Documents will be recognised and enforced in each Relevant Jurisdiction.
- (b) Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in each Relevant Jurisdiction.

18.7 Deduction of Tax

It is not required to make any Tax Deduction (as defined in Clause 12.1 (*Definitions*)) from any payment it may make under any Finance Document to a Lender which is (i) a Qualifying Lender (other than a Treaty Lender); or (ii) a Treaty Lender in relation to which all necessary procedural formalities have been complied with.

18.8 Transaction Security and Guarantees

- (a) Each Security Document validly creates the Security which is expressed to be created by that Security Document and evidences the Security it is expressed to evidence.
- (b) Each member of the Group listed in Part III (*Guarantors*) of Schedule 1 (*The Parties*) is or will be a Guarantor on the Closing Date.
- (c) No Security or guarantees exist over all or any of the present or future assets of any member of the Group other than as permitted by the terms of this Agreement or notified to the Agent before the date of this Agreement.

18.9 Repetition

Each of the Representations are deemed to be made by each Obligor (by reference to the facts and circumstances then existing) on each Utilisation Date, on the date on which the Facility A Commitments are increased in accordance with Clause 2.2 (*Increased Commitments and New Lender Accessions*) and the first day of each Interest Period.

19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Financial information

"Annual Financial Statements" means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 19.1 (*Financial statements*).

"Monthly Financial Statements" means the financial statements delivered pursuant to paragraph (c) of Clause 19.1 (*Financial statements*).

"Quarterly Financial Statements" means the financial statements delivered pursuant to paragraph (b) of Clause 19.1 (*Financial statements*).

"Financial Quarter" means each financial quarter ending on a Quarter Date.

"Financial Year" means the annual accounting period of the Group ending on or about 31 December in each year.

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

- (a) as soon as the same become available, but in any event within 120 days after the end of each of its Financial Years (and for the Financial Year ending 31 December 2016, as soon as the same become available, but in any event by no later than 30 September 2017), its and each Obligor's audited consolidated financial statements for that Financial Year together with, if requested by the Agent, the audited consolidated financial statements for that Financial Year of any member of the Group;
- (b) as soon as the same become available, but in any event within 90 days (or in the case of the Financial Quarter ending 30 June 2017, as soon as the same become available, but in any event by no later than 31 October 2017) after the end of each of its Financial Quarters, its and each Obligor's financial statements for that financial quarter together with, if requested by the Agent, the financial statements for that Financial Quarter of any member of the Group; and
- (c) as soon as the same become available, but in any event within 45 days after the end of each month its financial statements on a consolidated basis for that month (to include cumulative management accounts for the Financial Year to date).

19.2 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Parent pursuant to paragraphs (a) and (b) of Clause 19.1 (*Financial information*) shall be certified by a director of the relevant company as fairly representing its financial condition as at the date at which those financial statements were drawn up.
- (b) The Parent shall procure that each set of Annual Financial Statements and Quarterly Financial Statements delivered pursuant to of Clause 19.1 (*Financial information*) is prepared using the Accounting Principles and with effect from 30 June 2017 shall include:
 - (i) a balance sheet, profit and loss account and cashflow statement;
 - (i) a breakdown for each Guarantor of key performance data including revenue, earnings before interest, tax, depreciation and amortisation, capital expenditure and cashflow and for Konzum d.d., Jamnica d.d., Ledo d.d., Zvijezda d.d., Velpro Centar d.o.o., Roto Dinamic d.o.o. and PIK Vrbovec – Mesna Industrija, d.d., a monthly inventory estimate and breakdown (meaning raw materials, finished goods, work in progress and merchandise) (on a consolidated basis where appropriate); and
 - (ii) details of all liabilities (including trade creditors, accruals, provisions and payments received in advance) of each Guarantor including any liabilities incurred after the date of this Agreement (on a consolidated basis where appropriate).

In addition the Parent shall procure that the Quarterly Financial Statements shall include a statement by the directors of the Parent commenting on the performance of the Group for the month to which the financial statements relate and the Financial Year to date and any material developments or material proposals affecting the Group or its business and the Monthly Financial Statements shall include a revenue statement and a monthly inventory estimate and breakdown. The Parent shall consider in good faith any reasonable request from the Financial Adviser for more detailed information to be provided with the Monthly Financial Statements.

For the avoidance of doubt, Obligors shall include any entities which accede as Guarantors pursuant to Clause 20.23 (*Guarantors*) and Clause 20.26 (*Conditions Subsequent*).

19.3 Information: specific requirements

(a) Audited Financial Statements of the Group

- (i) Within 5 Business Days from the Closing Date, the Parent shall commission its Auditor to prepare the Group's audited consolidated financial statements for the full year 2016 (the "**2016 Audited Financial Statements**").
- (iii) The Parent shall supply to the Agent and publicly disclose the 2016 Audited Financial Statements as soon as the same become available and on any event within six calendar months of the Closing Date.

(b) Cashflow Forecast

By 10am Zagreb time on Monday of every other calendar week following the Closing Date, the Parent shall procure that the Agent is provided with (in sufficient copies for all the Lenders):

- (i) an updated Cashflow Forecast (in form and substance satisfactory to the Agent but including details of compliance (or otherwise) with the Minimum Liquidity Test (as defined in clause 20.20 (*Minimum Liquidity*)) for the 13 week period commencing after the delivery of the relevant Cashflow Forecast;
- (ii) a schedule of all disbursements above €25,000 made in the previous two calendar weeks; and
- (iii) details of any withdrawals from the Liquidity Escrow Account (including identity of recipients) made in the previous two calendar weeks.

(c) Additional information

The Parent shall use its best endeavours to enhance its reporting to the Lenders, in form and substance to be agreed with the Financial Adviser by no later than 30 September 2017. To the extent available, the reporting should include the following information:

- (i) a report of the then current inventory levels and breakdown of payables balances of each of Konzum d.d., Jamnica d.d., Ledo d.d., Zvijezda d.d., Velpro Centar d.o.o., Roto Dinamic d.o.o. and PIK Vrbovec – Mesna Industrija, d.d., together with, in each case, a comparison to the prior year, and the position which the Parent in good faith considers to be a normalised target level for that entity;
- (ii) a narrative report of not more than approximately 600 words summarising the position of discussions and negotiations with key local and international suppliers, and including in particular updates thereon from previous reports, and attaching an appendix specifying payment terms for material suppliers;
- (iii) a report detailing the use of proceeds from Facility A by the Borrower and to the extent on lent to another member of the Group, by that other member of the Group;

- (iv) a narrative report providing in reasonable detail an update on biweekly sales evolution for its food production businesses, and its retail businesses, including information on gross margin to be provided on a monthly basis;
- (v) a report setting out the then current cash on balance sheet for the companies that are reported on in the Cashflow Forecast; and
- (vi) a narrative report of not more than approximately 600 words providing commentary on the Group's competitive position, dealing separately with its food production businesses, and its retail businesses.

19.4 Information: miscellaneous

- (a) The Parent shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):
 - (i) promptly, such information as the Security Agent may require about the Charged Property and compliance of the Borrower with the terms of any Security Documents; and
 - (ii) promptly, such further information regarding the financial condition, assets, business and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request.
- (b) Once in every month (or more frequently if requested to do so by the Agent) at least two directors of the Parent (one of whom shall be the chief financial officer (to the extent one is appointed)) must attend a call with the Finance Parties (other than the Incremental Facility Lenders), or if requested by the Agent, give a presentation in Zagreb to the Finance Parties (other than the Incremental Facility Lenders) about the on-going business and financial performance of the Group with the first such meeting to take place no later than the week commencing 3 July 2017.
- (c) The Parent shall from time to time update the list of Existing Loan Agreements, Security and guarantees delivered under paragraph 3(h) of Schedule 2 (*Conditions Precedent*) to ensure that it includes all loans (including intercompany loans), Security and guarantees entered into by any member of the Group prior to the commencement of the Extraordinary Administration Proceedings.
- (d) The Parent shall clearly mark any information provided to the Agent under this Agreement that is Non-Public Information as "Non-Public Information". The Parent shall also deliver a copy of any such information to the Financial Adviser (if appointed) at the same time as such information is delivered to the Agent. The Agent is authorised and instructed not to deliver any information marked "Non-Public Information" to any Public-only Lender or any Incremental Facility Lender.

For the purposes of this Agreement:

"Non-Public Information" means any information that comprises "inside information" as defined in EU Market Abuse Regulation 596/2014 relating to the Group.

19.5 Notification of default or mandatory prepayment event

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Each Obligor shall notify the Agent promptly upon becoming aware of any circumstances which might give rise to a repayment or prepayment under

Clause 7.2 (*Change of Control and Extension*), Clause 7.3 (*Disposals*) or Clause 7.4 (*Termination of Extraordinary Administration Proceedings*).

- (c) Promptly upon a request by the Agent, the Parent shall supply to the Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or, if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.6 **"Know your customer" checks**

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

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall, promptly upon the request of the Agent or any Lender, supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) The Parent shall, by not less than 10 Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 24 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such

documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

- (e) The Agent is authorised and instructed to provide any know your customer information that it receives under and in accordance with the Commitment Letter to the Escrow Agent.

19.7 Incremental Facility information undertakings

- (a) The Parent shall, by 10am on Monday of every other calendar week following the Incremental Facility Utilisation Date, deliver to the Agent a certificate, signed by the Restructuring Advisor, confirming:
 - (i) whether each Incremental Facility Lender has delivered the goods and/or services required to be delivered by it under each Supply Contract to which is it party; and
 - (ii) that an invoice has been issued in respect of the delivery of such goods and/or services.
- (b) The Parent shall procure that the Restructuring Adviser provides to the Agent (for distribution to the Lenders), within 15 days of the end of each Month, an update on payments made, and the balance outstanding, in respect of any debt due to a supplier of inventory or trade stock of the Group to the extent the goods and/or services were supplied, or other relevant obligations of the supplier were discharged, prior to the commencement of the Extraordinary Administration Proceedings and the debt became due and payable on or after the date of commencement of the Extraordinary Administration Proceedings ("**Consolidated Pre-Petition Supplier Debt**"), on a consolidated basis for the Key Companies, with the first of such updates to be provided to Agent on or before 15 January 2018.
- (c) The Parent shall supply to the Agent such further information with regards to:
 - (i) the terms agreed with any Incremental Facility Lender; and
 - (ii) outstanding consolidated monthly balances in respect of Consolidated Pre-Petition Supplier Debt,as any Finance Party may reasonably request.

19.8 Basket information undertakings

The Parent shall procure that the Restructuring Adviser provides to the Agent (for distribution to the Lenders), within 15 days of the end of each Month, an update (in form and substance satisfactory to the Agent) on how each of the Pari Basket and the Permitted Non-Group Basket have been used (including details of (i) amounts used, (ii) the relevant instruments and/or transactions, (iii) the relevant members of the Group and, if applicable, non-members of the Group and (iv) the balance outstanding in respect of each of the Pari Basket and the Permitted Non-Group Basket), with the first of such updates to be provided to the Agent on or before 15 January 2018.

20. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 **Authorisations**

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Agent of,

any Authorisation required under any law or regulation of the Relevant Jurisdictions to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in each Relevant Jurisdiction of any Finance Document.

20.2 **Compliance with laws and regulations**

The Parent shall (and shall ensure that each member of the Group shall) comply in all material respects with all laws and regulations and any similar rules applicable in any Relevant Jurisdiction) to which it may be subject.

20.3 **Negative pledge**

In this Clause 20.3 "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

- (a) No member of the Group will create or permit to subsist any Security over any of its assets.
- (b) No member of the Group will:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,

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

- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below ("**Permitted Security**") (apart from any transaction

involving Bills of Exchange which may not benefit from any Security or Quasi-Security other than in accordance with paragraph (i) below):

- (i) any Security or Quasi-Security subsisting prior to the commencement of the Extraordinary Administration Proceeding;
- (ii) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances but only so long as such arrangement does not permit credit balances of any member of the Group to be netted or set-off against debit balances of a person who is not a member of the Group;
- (iii) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
 - (1) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
 - (2) its interest rate or currency management operations,provided that such transactions are carried out in the ordinary course of business and for non-speculative purposes only and constitute Permitted Financial Indebtedness and excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;
- (iv) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;
- (v) the Transaction Security and Security or Quasi-Security which constitutes a Permitted Transaction or in respect of which the Majority Lenders have given their prior written consent; and
- (vi) any Security or Quasi-Security constituted by deposits required to be made by any member of the Group as part of a tendering process for contracts in the ordinary course of business; and
- (vii) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group and provided that the amount secured under such arrangement or arrangements is released or discharged within 90 days of incurrence (or 120 days in respect of no more than 25 per cent. of the aggregate amount of indebtedness secured under all such arrangements).

20.4 Payments

- (a) No Obligor shall (and the Parent shall ensure that no other member of the Group will):
 - (i) make any payment to any Trade Creditors (unless funded by a utilisation of the Incremental Facility) or holder of a Bill of Exchange (to the extent such Bill of Exchange was entered into after the date of commencement of the Extraordinary Administration Proceedings in respect of the Parent but before the date of this Agreement) in an amount in excess of €50,000;

- (ii) make any payment of any Consolidated Pre-Petition Supplier Debt (save that payments made due to an administrative or technical error in an amount less than €10,000 in a single occurrence, or up to €50,000 when aggregated with all such payments, shall not be considered a breach of this provision); or
 - (iii) make any non-payroll disbursements above €100,000,
- in each case without the prior written consent of the Restructuring Advisor.
- (b) No Obligor shall (and the Parent shall ensure that no other member of the Group will) make any payments relating to compensation, severance, bonus or payroll to senior management of members of the Group without the prior written consent of the Restructuring Advisor other than payments made in the ordinary course of business or in respect of indisputable contractual obligations and not exceeding € 50,000.
 - (c) No Obligor (and the Parent shall ensure that no member of the Group) will make any payment or repayment, compromise or settlement, in cash or in kind, in respect of (nor will it refinance or reclassify the ranking of):
 - (i) any Existing Financial Indebtedness;
 - (ii) any Pre-Petition Supplier Debt (as defined in paragraph (d) of clause 5.6 (*Limitations*)); or
 - (iii) any Bills of Exchange entered into prior to the commencement of the Extraordinary Administration Proceedings in respect of the Parent,other than (1) to the extent it is Specified Existing Financial Indebtedness and is repaid or refinanced in accordance with this Agreement or (2) in the case of Pre-Petition Supplier Debt, it is made in accordance with paragraph (d) of clause 5.6 (*Limitations*).

20.5 Transactions with Affiliates

The Parent shall not, and shall not permit any other member of the Group, to directly or indirectly, conduct any business, enter into or permit to exist any transaction or series of related transactions (including the purchase, sale, transfer, assignment, lease, conveyance or exchange of any property or the rendering of any service) with, or for the benefit of, any (a) Affiliate which is not a member of the Group or (b) shareholder of a member of the Group that is not also a member of the Group (an "**Affiliate Transaction**") including intercompany loans, unless the terms of such Affiliate Transaction are no less favourable to the Parent or such Group member, as the case may be, than those that could be obtained in a comparable arm's-length transaction with a person that is not an Affiliate of the Parent or such Group member and such Affiliate Transaction is entered into in the ordinary course and has been approved by the Restructuring Advisor or such Affiliate Transaction is a Permitted Non-Group Transaction.

20.6 Restructuring Plan

- (a) Subject to any duties incumbent on senior management or any director of an Obligor as a matter of law or the Commissioner pursuant to the Extraordinary Administration Proceedings Law, no Obligor shall (and the Parent shall ensure that no other member of the Group will) propose a plan for the financial restructuring of the Group (including but not limited to any composition, compromise, assignment

or scheme of arrangement (or similar process) in any jurisdiction unless such terms have been approved by the Majority Lenders in writing.

- (b) Paragraph (a) above shall not apply to the extent that any such plan:
 - (i) ensures that the Lenders are repaid in full with respect to sums outstanding under the Finance Documents; or
 - (ii) the Final Maturity Date is extended in accordance with Clause 2.4 (*Extension Option*).
- (c) The Parent shall ensure that it and the Commissioner consult with the Lenders and Restructuring Advisor when determining any creditor classes and the composition of any Creditors' Committee or Advisory Body for the purposes of any Extraordinary Administration Proceedings of the Group and for the avoidance of doubt the Parent shall ensure that to the extent legally possible the Lenders shall be treated as a separate creditor class with a separate vote and ranking super senior for all purposes to the extent included in, and/or affected by, the Settlement Plan.

20.7 **No Merger**

No Obligor shall be enter into (or agree to enter into) any amalgamation, demerger, merger, consolidation or corporate reconstruction other than any solvent merger or reorganisation where the Obligor is the surviving entity and the Agent is satisfied (acting on the directions of the Majority Lenders (acting reasonably and on the basis of legal advice)) that such merger or reorganisation does not adversely impact on the guarantee or Security provided by such Obligor.

20.8 **Cash Management System**

The Parent shall ensure that each member of the Group shall establish and maintain a cash management system acceptable to the Restructuring Advisor.

20.9 **Milestones**

The Parent shall ensure that the milestones set out in Schedule 12 (*Restructuring Milestones*) are achieved in accordance with the timetables set out in Schedule 12 (*Restructuring Milestones*).

20.10 **Ranking**

- (a) Each Obligor shall ensure that at all times its payment obligations under the Finance Documents have Super Senior Priority, except for obligations mandatorily preferred by law.
- (b) No Obligor shall allow the creation of any claim or payment obligation that would rank *pari passu* with, or senior to, its payment obligations under the Finance Documents without the consent of all the Lenders except for:
 - (i) obligations mandatorily preferred by law; or
 - (ii) any Permitted Financial Indebtedness under paragraph (e) of such definition or Permitted Guarantees under paragraph (m) of such definition (for the avoidance of doubt provided such amounts do not exceed the Pari Basket).

20.11 **Application of FATCA**

No Obligor shall become a FATCA FFI or a US Tax Obligor.

20.12 Arm's length basis

No Obligor shall (and the Parent shall ensure that no member of the Group shall) enter into any transaction with any person except on arm's length terms and for full market value.

20.13 Further Assurance

- (a) Each Obligor shall, to the extent permitted under applicable law, promptly and duly do, or permit to be done, all such acts and execute and deliver, or permit the execution and delivery of, all such instruments and documents as the Security Agent may consider necessary for the purpose of procuring the full and complete performance by the Obligor of the obligations expressed to be assumed by it under the Finance Documents and of the rights and powers thereby granted to the Security Agent for the purpose of creating, perfecting, preserving, protecting or enforcing the interests and rights of the Security Agent under the Finance Documents, including, without limitation:
 - (i) to create or to perfect the Security created or intended to be created under or evidenced by each Security Document (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 the issue, re-issue, division or consolidation of any document of title or evidence of title, including any share certificates) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) to confer on the Security Agent or to confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Security Documents; and/or
 - (iii) following actual or putative enforcement of any Transaction Security, to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Each Obligor shall (and the Parent shall procure that each other member of the Group will) 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.

20.14 Most Favoured Nation

- (a) If, on or after the date of this Agreement any member of the Group subject to the Extraordinary Administration Proceedings enters into Financial Indebtedness ("**New Financial Indebtedness**") pursuant to which that member of the Group provides Security, guarantees or indemnities of which the Secured Parties do not have the benefit then the Parent shall:
 - (i) notify the Agent within 5 Business Days of the date of the financing agreement relating to such New Financial Indebtedness; and
 - (ii) if requested by the Agent, the Parent shall promptly provide or procure that the relevant member of the Group provides the benefit of equivalent guarantees, indemnities or Security to the Security Agent (on behalf of each Secured Party) to rank in priority to the claims of the creditors under the New Financial Indebtedness.

- (b) If on or after the date of this Agreement any member of the Group enters into Financial Indebtedness pursuant to which that member of the Group gives representations, undertakings, covenants, events of default and/or economic terms which compared to the equivalent terms in this Agreement are more beneficial to the provider of such Financial Indebtedness the Parent will:
 - (i) notify the Agent within 5 Business Days of the date of the financing agreement relating to such Financial Indebtedness; and
 - (ii) if requested by the Agent (at the direction of the Majority Lenders), the Parent shall promptly provide or procure that the relevant member of the Group provides the benefit of an equivalent representation, undertaking, covenant event of default and/or economic terms (as the case may be) to the Security Agent (on behalf of each Secured Party).

20.15 Disposals

- (a) The Parent shall not (and the Parent shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal (apart from any transaction involving Bills of Exchange or shares in any member of the Group, which is not a Permitted Disposal in any circumstances other than in respect of a disposal of shares, each Permitted Company Disposal):
 - (i) of stock in trade made in the ordinary course of trading and on arm's length terms of the disposing entity;
 - (ii) of any asset by a member of the Group to another member of the Group;
 - (iii) of assets (other than shares, businesses, real estate or intellectual property) in exchange for other assets comparable or superior as to type, value and quality;
 - (iv) pursuant to the grant of leasehold interests in, or licence of, real estate in the ordinary course of business, save to the extent prohibited under the terms of any Security Documents over such real estate;
 - (v) for cash on arm's length terms of any obsolete assets not required for the efficient operation of the business of the Group by any member of the Group;
 - (vi) of cash where that disposal is not otherwise prohibited under the Finance Documents;
 - (vii) constituting a Permitted Company Disposal on arms length terms and for cash;
 - (viii) any disposal of assets arising as a result of a Permitted Transaction or to which the Majority Lenders have given their prior written consent; and
 - (ix) of assets which are not expressed to be subject to Transaction Security (unless the prior written consent of Lender is obtained) by a member of the Group to a person which is not a member of the Group provided that the aggregate consideration for such assets, when aggregated with any other

Permitted Non-Group Transactions, does not exceed the Permitted Non-Group Basket.

20.16 Loans or credit

- (a) Except as permitted under paragraph (b) below, the Parent shall not (and the Parent shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
 - (i) a Permitted Loan; or
 - (ii) a Permitted Transaction.

20.17 No Guarantees or indemnities

- (a) Except as permitted under paragraph (b) below, the Parent shall not (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Paragraph (a) does not apply to a guarantee which is:
 - (i) a Permitted Guarantee; or
 - (ii) a Permitted Transaction.

20.18 Financial Indebtedness

- (a) Subject to paragraphs (c) and (d) below, except as permitted under paragraph (b) below, the Parent shall not (and the Parent shall ensure that no other member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is:
 - (i) Permitted Financial Indebtedness; or
 - (ii) a Permitted Transaction.
- (c) For the avoidance of doubt, notwithstanding any provision in the Finance Documents to the contrary, the Parent shall not (and shall ensure that no member of the Group will) incur any Financial Indebtedness which is expressed to rank *pari passu* with or senior to its payment obligations under the Finance Documents without the consent of all Lenders other than any Permitted Financial Indebtedness under paragraph (e) of such definition or Permitted Guarantees under paragraph (m) of such definition (for the avoidance of doubt provided such amounts do not exceed the Pari Basket).

20.19 Dividends and share redemption

- (a) Except as permitted under paragraph (b) below, the Parent shall not (and shall ensure that no member of the Group shall):
 - (i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
 - (ii) repay or distribute any dividend or share premium reserve;

- (iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Parent; or
- (iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so,

(the matters described in this paragraph (a) each a "**Restricted Payment**").

(b) Paragraph (a) above does not apply to:

- (i) the payment of a Restricted Payment under sub-paragraphs (i), (ii) and (iv) of paragraph (a) above to any member of the Group and for the avoidance of doubt not to any person which is not a member of the Group;
- (ii) the payment of a Restricted Payment under paragraph (a)(i) above to enable the Parent to meet its payment obligations under the Finance Documents (including the Payment of Transaction Costs); and
- (iii) constituting a Permitted Transaction or to which the Majority Lenders have given their prior written consent.

20.20 **Minimum Liquidity**

- (a) The Parent shall ensure that each Cashflow Forecast delivered under paragraph (b) of Clause 19.3 (*Cashflow Forecast*) demonstrates that the liquidity test set out in paragraph (b) below (the "**Minimum Liquidity Test**"):
 - (i) is satisfied as at the first day of the period covered by the relevant Cashflow Forecast; and
 - (ii) is forecast to be satisfied for the duration of the period covered by the relevant Cashflow Forecast.
- (b) The Minimum Liquidity Test referred to in paragraph (a) above means members of the Group holding a minimum of €40,000,000 in aggregate of Freely Available Cash, where "**Freely Available Cash**" means cash held with a Croatian bank (or an international bank approved by the Agent, acting on the instructions of the Majority Lenders, acting reasonably) which cash is unencumbered and is repayable within 30 days of demand.

20.21 **Extraordinary Administration Proceedings**

The Parent shall notify the Agent promptly upon becoming aware of any amendment which has been made or is proposed in respect of the terms of the Extraordinary Administration Proceedings Law.

20.22 **Additional Security**

- (a) The Parent shall:
 - (i) deliver to the Agent, as soon as possible after the Closing Date and in any event within 30 days of the date of this Agreement, a list of any assets which are held by any member of the Group and which are not expressed to be subject to any Security as at the date of this Agreement ("**Unencumbered Assets**") (the "**Asset Report**");
 - (ii) ensure that each member of the Group will continue to identify Unencumbered Assets in the ordinary course of the Extraordinary

Administration Proceedings and shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (1) for the first two Months following delivery by the Parent of the Asset Report referred to in paragraph (a)(i) above, on the last day of each month; and
- (2) thereafter on each Quarter Date,

an updated Asset Report setting out any additional material Unencumbered Assets identified by the relevant member of the Group and, to the extent not already provided to the Finance Parties prior to the date of this Agreement or the extent entered into after the date of this Agreement, including details of any material security or guarantees granted or material Financial Indebtedness incurred or material loans made by any member of the Group.

- (b) The Parent shall procure that any member of the Group which owns or otherwise holds any Unencumbered Assets identified during the process undertaken in accordance with paragraph (a) above shall, as soon as reasonably practicable after request by the Agent (and in an event by no later than 120 days after such request), execute and deliver to the Security Agent such further security documents in relation to such material assets as the Majority Lenders may reasonably require and are approved by the Creditors' Committee.
- (c) Following each of (i) the Third Syndication Utilisation Date and (ii) the earlier of 15 October 2017 and the date on which all amounts have been drawn under Facility A pursuant to Clause 5.3 (*Facility A Unallocated Amount*), the Parent shall promptly deliver to the Agent a certificate (signed by the Restructuring Advisor) setting out details of all loans between members of the Group which represent the on-lending of the proceeds of the Loans utilised on any Utilisation Date ("**Intercompany Loans**") and, as soon as possible after request by the Agent (and in any event no later than 60 days after the date of each certificate referred to in paragraphs (a)(i) and (ii) of Clause 20.26 (*Conditions subsequent*)) subject to applicable law and the Extraordinary Administration Proceedings, the Parent shall (and the Parent shall ensure that each relevant member of the Group will grant security (in form and substance satisfactory to the Agent) over each Intercompany Loan advanced by it to another member of the Group.
- (d) For the purposes of this Clause:
 - (i) subject to (ii) below it is acknowledged that it may be impossible or impractical to create security over certain categories of assets in which case following consultation with the Agent security will not be required to be granted over such assets;
 - (ii) the Asset Report shall cover any category of assets over which Transaction Security has been granted (including but not limited to material claims, bank accounts, insurance, intellectual property, material trade receivables, shares and real estate);
 - (iii) the Parent (and each relevant member of the Group) is required to enter execute and deliver to the Security Agent such further or additional Transaction Security Documents in relation to any assets to be secured pursuant to this Clause, in each case on substantially the same terms as the Transaction Security Documents (if any) charging similar assets and in each case carry out any action to protect, perfect or give priority to the relevant Security; and

- (iv) for the purposes of this Clause "material" means any asset which is considered by the Majority Lenders (acting reasonably) to be of material value or material to the operation of the business of the member of Group and will include any asset or assets the value of which exceeds €2,500,000.

20.23 Guarantors

- (a) Subject to paragraph (b) below, the Parent shall procure that any entity which becomes a Material Company after the date of this Agreement shall, as soon as possible and in any event within 20 Business Days of becoming a Material Company and subject to applicable law and the Extraordinary Administration Proceedings, become an Additional Guarantor and shall grant such Security in favour of the Security Agent as is reasonably requested by the Agent.
- (b) The obligation to become an Additional Guarantor and grant Security described in paragraph (a) will not apply to the extent that it would (i) result in any breach of corporate benefit, financial assistance, fraudulent preference or thin capitalisation laws or regulations (or analogous restrictions) of any applicable jurisdiction, (ii) result in a significant risk to the officers of the Additional Guarantor of contravention of their fiduciary duties and/or civil or criminal liability or (iii) costs that, in the opinion of the Agent (acting on the instructions of the Majority Lenders, acting reasonably), are disproportionate to the benefit obtained by the beneficiaries of the guarantee or Security proposed to be given. The relevant member of the Group will use its reasonable endeavours to overcome any such obstacle; including agreeing any limitation on the amount guaranteed or in relation to ability to deal in the charged assets as is customary in the relevant jurisdiction.
- (c) The Parent shall ensure that any entity which is incorporated in Croatia and in which the Parent holds (directly or indirectly) 25 per cent. or more of the voting stock (measured by voting power rather than number of shares) is brought under the supervision of or made subject to the Extraordinary Administration Proceedings as soon as possible thereafter and in any event within 20 Business Days of the earlier of the Agent giving notice to the Parent or the Parent becoming aware that it holds such percentage of the voting stock of the relevant entity.
- (d) The Parent is only obliged to comply with paragraph (b) above if to do so would not have a material adverse effect on the financial condition of the relevant entity.
- (e) The Parent shall ensure that the aggregate gross assets of all Immaterial Companies shall not at any time exceed €150,000,000. For the purposes of this clause "**Immaterial Company**" means any member of the Group that is not (i) an Excluded Company, (ii) a Material Company or (iii) a member of the Group as at the date of this Agreement.

20.24 Acquisitions and Joint Ventures

- (a) Except as permitted under paragraph (b) below, the Parent shall not (and the Parent shall ensure that no other member of the Group will):
 - (i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them);
 - (ii) incorporate a company;
 - (iii) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

- (iv) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- (b) Paragraph (a) above does not apply to:
 - (i) an acquisition or investment to which the Majority Lenders have given their prior written consent;
 - (ii) the incorporation of a limited liability company (or the acquisition of a shelf company) which on and at all times following incorporation (or acquisition) is a wholly owned member of the Group and does not trade or acquire any assets or liabilities and provided that the amount subscribed for such shares (or the consideration for the shares acquired) does not exceed €10,000 for each such incorporation or acquisition;
 - (iii) an acquisition (not being an acquisition by the Parent) of minority interests in a limited liability entity provided that the relevant member of the Group holds more than a controlling interest in such any entity and the aggregate Total Purchase Price for the acquisition when aggregated with the Total Purchase Price for any other acquisition of minority shares under this paragraph (b)(iii) shall not exceed €5,000,000 (or its equivalent) at any time; and
 - (iv) an acquisition by a member of the Group of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company or any acquisition of or investment in a Joint Venture ("**Joint Venture Investments**") provided that the aggregate Total Purchase Price for such acquisitions and the aggregate amount of Joint Venture Investments under this paragraph shall not (when aggregated with all other Permitted Non-Group Transactions), at any time, exceed the Permitted Non-Group Basket.

20.25 Bills of Exchange

Notwithstanding any other term of this Agreement, no member of the Group will enter into any Bills of Exchange after the date of this Agreement.

20.26 Conditions subsequent

- (a) The Parent must procure that:
 - (i) each Post-Closing Guarantor shall accede to this Agreement as an Additional Guarantor as soon as possible and no later than 5 Business Days after the date of this Agreement; and
 - (ii) the respective documents and other evidence listed in Part B of Schedule 2 (*Conditions Subsequent*) are delivered to the Agent in respect of the Original Obligors and the Post-Closing Obligors (in form and substance satisfactory to it) by no later than 10 Business Days after the Closing Date.
- (b) The Parent shall, within 15 days of:
 - (i) 15 July 2017, deliver to the Agent a certificate (signed by the Restructuring Advisor) setting out details of all loans between members of the Group (other than short term intercompany loans made in the ordinary course of trading) which represent the on-lending of the proceeds of the Loans utilised

on the First Syndication Utilisation Date, the Second Syndication Utilisation Date and the Third Syndication Utilisation Date; and

- (ii) 15 October 2017, deliver to the Agent a certificate (signed by the Restructuring Advisor) setting out all loans between members of the Group (other than short term intercompany loans made in the ordinary course of trading) which represent the on-lending of the proceeds of the Loans utilised on each Facility A Unallocated Amount Utilisation Date and carry out any action to protect, perfect or give priority to such Security by no later than the relevant date above.

together the "**2017 Intercompany Loans**".

- (c) Subject to applicable law and the Extraordinary Administration Proceedings, the Parent shall (and the Parent shall ensure that each member of the Group will) as soon as possible after the Closing Date and in any event no later than 60 days of the date of;

- (i) the certificates set out in paragraphs (b)(i) and (ii) above grant security (in form and substance satisfactory to the Agent) over each 2017 Intercompany Loan advanced by it to another member of the Group;
- (ii) this Agreement, grant Security (in form and substance satisfactory to the Agent) over all shares held in Frikom d.o.o. and Dijamant a.d. (or over the shares of a newly incorporated limited liability company which is the immediate holding company of Frikom d.o.o. and Dijamant a.d. (as applicable)) in each case to the extent reasonably practicable; and
- (iii) this Agreement, grant such other Security requested by the Agent (in form and substance satisfactory to the Agent) and agreed to by the Parent (acting reasonably),

and, in each case, shall carry out any action to protect, perfect or give priority to such Security by no later than the relevant date above.

- (d) The Parent shall procure that each member of the Group:
 - (i) identified in the table set out in Part D (*Transaction Security Documents and security related documentation to be delivered by Guarantors*) of Schedule 2 (*Conditions Precedent*) shall grant the Transaction Security described in Part D (*Transaction Security Documents and security related documentation to be delivered by Guarantors*) and carry out any action to protect, perfect or give priority to such Transaction Security by the specified date identified opposite the name of that member of the Group in Part D (*Transaction Security Documents and security related documentation to be delivered by Guarantors*) of Schedule 2 (*Conditions Precedent*); and
 - (ii) identified in Part F (*Intellectual Property*) of Schedule 2 (*Conditions Precedent*) shall grant Transaction Security over the intellectual property described in Part F (*Intellectual Property*) of Schedule 2 (*Conditions Precedent*) and carry out any action to protect, perfect or give priority to such Transaction Security as soon reasonably practicable after the Closing Date and in any event by no later than the date which is 120 days after the date of this Agreement.
- (e) Each Obligor must use, and must procure that any other member of the Group that is a potential provider of Transaction Security uses, all reasonable endeavours

lawfully available to it to avoid or mitigate the constraints on the provision of Security provided for by applicable law and the Extraordinary Administration Proceedings.

- (f) The Parent shall (and the Parent shall ensure that each member of the Group will), by no later than 31 July 2017, procure and deliver to the Agent an updated list of unencumbered assets, substantially in the form of the table set out in Schedule 2 (Part E) (Unencumbered Assets), containing, in relation to each asset listed therein:
 - (i) the name of the relevant Land Registry;
 - (ii) the name of cadastral municipality;
 - (iii) the number of the land registry folio; and
 - (iv) the number of land and/or cadastral plot(s).
- (g) The Parent shall deliver to the Agent within 10 Business Days of delivery of the audited Annual Financial Statements for the Financial Year ending 31 December 2016 a list of all Material Companies.
- (h) The Parent shall invite the express written support of holders of the Existing Bonds once sufficient detail of this Agreement has been made public, and the Original Lender shall in good faith use its reasonable efforts to contact those holders known to it with a view to obtaining that written support from holders of at least 50 per cent. +1 of each issuance of the Existing Bonds.

20.27 Composition of Creditors' Committee

- (a) In addition to the consultation obligation in paragraph (c) of Clause 20.6 (*Restructuring Plan*), the Group shall procure that the final composition of the permanent official committee of creditors formed in relation to the Extraordinary Administration Proceedings of the Group (under amongst other provisions Articles 18 and 30 of the Extraordinary Administration Proceedings Law) shall, unless otherwise approved by the Majority Lenders, at all times:
 - (i) include no more than one member in aggregate appointed to represent any and all creditor special categories or sub-categories of trade creditors; and
 - (ii) include no members to represent the interests of employees (reflecting the fact that employees are receiving payment in full by operation of law and are therefore not part of the settlement) that have no accepted claims entitled to vote on the Settlement Agreement;
 - (iii) be proportionate (as closely as mathematically possible and including classes from (i) and (ii) above, in each case, to the extent such classes are entitled to vote) to the amounts of claims duly accepted under the Extraordinary Administration Proceedings Law and in particular (without limitation) reflect any overall majority held by any group or groups of claims with credit support in identical situation and nature.

20.28 Restructuring of Financial Indebtedness owed to the Group

No Obligor shall (and the Parent shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) in respect of the financial restructuring or settlement of Financial Indebtedness (including, for the avoidance of doubt, any accounts receivable) owed to any member of the Group which exceeds in aggregate €5,000,000 without prior consultation with, and the prior written approval of, one

or more of the Restructuring Advisor, Houlihan Lokey and Kirkland and Ellis International LLP (in its capacity as legal advisors to the Obligors).

21. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 21 is an Event of Default (except for Clause 21.18 (*Acceleration*)).

21.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within three Business Days of its due date.

21.2 Breach of obligations

- (a) An Obligor or any member of the Group does not comply with the terms of Clause 3.1(a) (*Purpose*), Clause 20.3 (*Negative Pledge*) or Clause 20.20 (*Minimum Liquidity*).
- (b) No Event of Default shall occur under paragraph (a) above in respect of a breach of Clause 20.3 (*Negative Pledge*) if the failure to comply is capable of remedy and is remedied within three Business Days of the earlier of:
 - (i) the Agent giving notice to the Borrower; and
 - (ii) an Obligor becoming aware of the failure to comply.

21.3 Other obligations

- (a) An Obligor or any member of the Group does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*) or Clause 21.2 (*Breach of obligations*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within five Business Days (or in the case of paragraph (e) of Clause 20.23 (*Guarantors*), 20 Business Days) of the earlier of:
 - (i) the Agent giving notice to the Borrower; and
 - (ii) an Obligor becoming aware of the failure to comply.

21.4 Insolvency proceedings

Other than the Extraordinary Administration Proceedings existing as at the date of this Agreement, any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a

solvent liquidation or reorganisation of any member of the Group which is not an Obligor;

- (b) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of any member of the Group which is not an Obligor), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or
- (d) enforcement of any Security over any assets of any member of the Group; or
- (e) any analogous procedure or step is taken in any jurisdiction,

provided that this Clause 21.4 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within fourteen days of commencement.

21.5 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group or any Obligor having an aggregate value of €1,000,000 or more and is not discharged within fourteen days, excluding any enforcement order obtained in the courts of Serbia on an ex-parte basis but in relation to which the beneficiary has not obtained execution of that order.

21.6 Unlawfulness

- (a) It is or becomes unlawful for an Obligor or any party to a Finance Document (other than a Finance Party) to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Security Documents ceases to be effective.
- (b) Any obligation or obligations of an Obligor or any other party to a Finance Document (other than a Finance Party) under any Finance Documents are not or cease to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

21.7 Repudiation

Any Obligor or any party to a Finance Document (other than a Finance Party) repudiates a Finance Document or any of the Transaction Security or evidences an intention to repudiate a Finance Document or any of the Transaction Security.

21.8 Governmental Intervention

Other than the Extraordinary Administration Proceedings existing as at the date of this Agreement, by or under the authority of any government or court:

- (a) the management of any member of the Group is wholly or partially displaced or the authority of any member of the Group in the conduct of its business is wholly or partially curtailed; or

- (b) all or a majority of the issued shares of any member of the Group or the whole or any material part of its revenues or assets is seized, nationalised, expropriated or compulsorily acquired.

21.9 Transaction Security

- (a) Any Obligor fails to perform or comply with any of the obligations assumed by it in the Transaction Security.
- (b) At any time any of the Transaction Security is or becomes unlawful or is not, or ceases to be legal, valid, binding or enforceable or otherwise ceases to be effective.
- (c) At any time, any of the Transaction Security fails to have first ranking priority or is subject to any prior ranking or pari passu ranking Security.

21.10 Material adverse change

Any event or circumstance occurs which, in the opinion of the Majority Lenders, has or is reasonably likely to have a Material Adverse Effect.

21.11 Ranking

The payment obligations under the Finance Documents cease to benefit from super priority ranking under the Extraordinary Administration Proceedings Law except for obligations mandatorily preferred by the Extraordinary Administration Proceedings Law.

21.12 Management and supervisory committees

The Commissioner does not consult with the Lenders in relation to the appointment and identity of the management committee and the supervisory committee intended to be in place following the Settlement Date in respect of the ten largest members of the Group by revenue.

21.13 Guarantee Challenge

- (a) The Commissioner, the Parent or any member of the Group commences a challenge in respect of the guarantees contained in or in respect of the Existing Loan Agreements and/or Existing Bond Documentation and/or the co-debtorship of the Existing Loans and/or the Existing Bonds at any time after the date which is 60 Business Days after the Initial Utilisation Date.
- (b) The Commissioner, the Parent or any member of the Group or any other creditor of the Group successfully challenge the guarantees contained in or in respect of the Existing Loan Agreements and/or Existing Bond Documentation and/or the co-debtorship of the Existing Loans and/or the Existing Bonds.

21.14 Extraordinary Administration Proceedings

Any amendment is made to the terms of the Extraordinary Administration Proceedings Law unless:

- (a) such amendment does not result in or require an amendment to or otherwise affect any material term of this Agreement (and for the avoidance of doubt, any amendment to the structure of the Facilities under this Agreement, the credit risk associated with the financing under this Agreement and/or the rights of the Finance Parties under the terms of this Agreement shall be deemed to be a material term); or

- (b) the Agent (acting on the instructions of the Majority Lenders) has confirmed within 5 Business Days of the relevant amendment becoming effective that the Majority Lenders have agreed that no Event of Default shall arise under this clause 21.14 as a result of such amendment.

21.15 Additional Security

The Creditors' Committee does not grant approval for material new security identified by the Parent or any member of the Group in accordance with Clause 20.22 (*Additional Security*) and requested by the Majority Lenders.

21.16 Non-delivery of Audited Financial Statements

- (a) The 2016 Audited Financial Statements, written interim observations and/or any other information referred to in paragraph (a) of Clause 19.3 (*Audited Financial Statements of the Group*) has not been delivered on or before 30 September 2017.
- (b) No Event of Default will occur under paragraph (a) above if failure to comply is remedied within seven Business Days of the earlier of the Agent giving notice to the Borrower and an Obligor becoming aware of the failure to comply.

21.17 Replacement of the Commissioner or the Restructuring Advisor

The government of Croatia or the court of the Extraordinary Administration Proceedings replaces Ante Ramjlać as the Commissioner or the Restructuring Advisor.

21.18 Acceleration

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

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

Section 10

Changes to Parties

22. CHANGES TO THE LENDERS

22.1 Assignments and transfers by the Lenders

- (a) Subject to this Clause 22 and to Clause 23 (*Restriction on Debt Purchase Transactions*), a Lender (the "**Existing Lender**") may:
 - (i) assign any of its rights; or
 - (ii) transfer by novation any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Transfer Lender**").
- (b) Notwithstanding paragraph (a) above, no Facility A Lender may assign or transfer or sub-participate any of its rights and/or obligations under this Agreement to a New Transfer Lender at any time during the period from and including a Commitment Increase Date to and including the Utilisation Date under Facility A which immediately follows the relevant Commitment Increase Date.
- (c) Notwithstanding paragraph (a) above, no Incremental Facility Lender may assign or transfer or sub-participate any of its rights and/or obligations under this Agreement to a New Transfer Lender at any time prior to the satisfaction in full of that Incremental Facility Lender's obligations under the Supply Contracts to which it is a party (including, without limitation, its obligations to supply goods and/or services under such Supply Contracts which are to be supplied in connection with the funding of the Incremental Facility) and, until such time, that Incremental Facility Lender's Incremental Facility Commitments shall be held in escrow and the benefit of all of its funded Commitments shall be held on trust for the benefit of the Parent.

22.2 Conditions of assignment or transfer

- (a) An assignment will only be effective on:
 - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Transfer Lender (in form and substance satisfactory to the Agent) that the New Transfer Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
 - (ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Transfer Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Transfer Lender.
- (b) A transfer will only be effective if the procedure set out in Clause 22.6 (*Procedure for transfer*) is complied with.
- (c) 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 Transfer Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross-Up and Indemnities*),

then the New Transfer Lender or Lender acting through its new Facility Office is only entitled to receive payment under such Clause to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (c) shall not apply:

- (1) to the Original Lender;
 - (2) a Primary Lender; or
 - (3) in relation to Clause 12.2 (*Tax gross-up*), to a Treaty Lender that has complied with any necessary procedural formalities in accordance with paragraph (g) of Clause 12.2 (*Tax gross-up*) if the Obligor making the payment has not complied with any necessary procedural formalities applicable to it in accordance with paragraph (g) of Clause 12.2 (*Tax gross-up*) to enable it to make payments to such Treaty Lender without a Tax Deduction.
- (d) Each New Transfer Lender, by executing the relevant Transfer Certificate, Assignment Agreement or Accession Document confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

22.3 Right of First Refusal

- (a) No Existing Lender may assign, transfer or sub-participate any of its rights and/or obligations in respect of any Facility under this Agreement to a New Transfer Lender unless the Existing Lender has first served a notice to the Agent (for transmission to each other Lender) in writing setting out the proposed terms and conditions (including sale price and amount of the offered Commitments) and the relevant proposed LMA form trade confirmation (excluding transferee details) ("**ROFR Notice**").
- (b) The Agent shall transmit the ROFR Notice to each other Lender in accordance with the following:
 - (i) If the Agent receives the ROFR Notice before 3.00pm on a Business Day, the Agent shall transmit the ROFR Notice to each other Lender on that Business Day.
 - (ii) If the Agent receives the ROFR Notice at or after 3.00pm on a Business Day, the Agent shall transmit the ROFR Notice to each other Lender on the Business Day immediately following the day on which the Agent receives the ROFR Notice.
- (c) During the Business Day immediately following receipt of the ROFR Notice by the Lenders, any Lender (or a broker nominated by such Lender) ("**Proposed ROFR Lender**") shall notify the Existing Lender of its intention to participate in the relevant

transfer, assignment or sub-participation including the maximum amount of the offered Commitments which the Proposed ROFR Lender would be willing to assume ("**ROFR Offer**") on the terms and conditions set out in the ROFR Notice.

- (d) Any ROFR Offer which is made pursuant to paragraph (c) above shall remain open for acceptance until the end of the Business Day immediately following the date of the service of the ROFR Offer and if not accepted within that period shall be deemed to have expired.
- (e) If the aggregate ROFR Offers received are equal to or more than the offered Commitments, the Existing Lender shall transfer the offered Commitments to each Proposed ROFR Lender in the amount of their respective ROFR Offer (or if ROFR Offers are greater than the offered Commitments as reduced pro rata). The Existing Lender shall notify each Proposed ROFR Lender of the amount of Commitments to be transferred to it on the Business Day following the date of receipt of the ROFR Offers (the "**Notification Date**"), at which point the Existing Lender is deemed to enter into a contractual obligation or trade to transfer, assign or sub-participate (as the case may be) the offered Commitments to each Proposed ROFR Lender in accordance with the terms of this clause. The Existing Lender and each Proposed ROFR Lender will no later than one Business Day after the Notification Date enter into a trade confirmation in the form circulated within the ROFR Notice, confirming the terms of the trade and the effective date of the trade as being the Notification Date.
- (e) If the aggregate ROFR Offers received are less than the offered Commitments, the Existing Lender shall be entitled to make the relevant transfer, assignment or sub-participation to any third party on the proposed terms.

22.4 **Assignment or transfer fee**

The New Transfer Lender shall (unless it is already a Lender), on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) an administrative fee of € 3,000.

22.5 **Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Transfer Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Transfer Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its

related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; 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 Transfer Lender of any of the rights and obligations assigned or transferred under this Clause 22; or
 - (ii) support any losses directly or indirectly incurred by the New Transfer Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

22.6 Procedure for transfer

- (a) Subject to the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Transfer Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable (and in any event within 10 Business Days) after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Transfer Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Transfer Lender.
- (c) On the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (ii) each of the Obligors and the New Transfer Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as each of the Obligors and the New Transfer Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Agent, the Security Agent, the New Transfer Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Transfer Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

- (iv) the New Transfer Lender shall become a Party as a "**Lender**".

22.7 Procedure for assignment

- (a) Subject to the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Transfer Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable (and in any event within 10 Business Days) after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Transfer Lender once it is satisfied it has complied with all necessary "**know your customer**" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Transfer Lender.
- (c) On the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Transfer Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and
 - (iii) the New Transfer Lender shall become a Party as a "**Lender**" and will be bound by obligations equivalent to the Relevant Obligations.
 - (iv) Lenders may utilise procedures other than those set out in this Clause 22.7 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 22.6 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Transfer Lender) provided that they comply with the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*).

22.8 Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Parent

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

22.9 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 22, 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 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.

23. RESTRICTION ON DEBT PURCHASE TRANSACTIONS

23.1 Prohibition on Debt Purchase Transactions by the Group

- (a) The Parent shall not, and shall procure that each other member of the Group shall not (i) enter into any Debt Purchase Transaction other than in accordance with the other provisions of this Clause 23 or (ii) beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "Debt Purchase Transaction".
- (b) A Borrower shall purchase by way of assignment, pursuant to Clause 22 (*Changes to the Lenders*), a participation in any Incremental Facility Loan in respect of which it is a borrower, where:
 - (i) the Incremental Facility Lender (or its predecessor in title) in respect to the relevant Incremental Facility Loan has failed to deliver within 20 Business Days following the date on which they were due a supply of goods or services under a Supply Contract which were to be supplied in connection with the funding of the Incremental Facility (the "**Failed Delivery**");
 - (ii) such purchase shall be in an amount of Commitments equal to 200% of the value of the Failed Delivery for consideration equal to the value of the Failed Delivery; and
 - (iii) the consideration referred to in sub-paragraph (ii) above is satisfied by way of set-off against a Borrower's right to a refund under a Supply Contract as a result of that Incremental Facility Lender's Failed Delivery.
- (c) In relation to any Debt Purchase Transaction entered into pursuant to this Clause 23.1, notwithstanding any other term of this Agreement or other Finance Documents:
 - (i) on completion of the relevant assignment pursuant to Clause 22 (*Changes to the Lenders*), the portions of the Incremental Facility Loan to which it relates shall be extinguished;

- (ii) such Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of the Incremental Facility Loan;
- (iii) the Borrower which is the assignee shall be deemed to be an entity which fulfils the requirements of Clause 22.1 (Assignments and transfers by the Lenders) to be a New Lender;
- (iv) no member of the Group shall be deemed to be in breach of any provision of Clause 20 (General Undertakings) solely by reason of such Debt Purchase Transaction;
- (v) Clause 28 (*Sharing among the Finance Parties*) shall not be applicable to the consideration paid under such Debt Purchase Transaction;
- (vi) for the avoidance of doubt, any extinguishment of any part of the Incremental Facility Loans shall not affect any amendment or waiver which prior to such extinguishment had been approved by or on behalf of the requisite Incremental Facility Lender or Incremental Facility Lenders in accordance with this Agreement; and
- (vii) no Finance Party (including, for the avoidance of doubt, the relevant Incremental Facility Lender) shall be required to execute any documentation but shall instead be deemed to have signed such documentation to give effect to such Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above.

23.2 Disenfranchisement of Shareholder Affiliates

- (a) For so long as any Shareholder Affiliate:
 - (i) beneficially owns a Commitment; or
 - (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,in ascertaining:
 - (1) the Majority Lenders; or
 - (2) whether:
 - (aa) any given percentage (including unanimity) of the Total Commitments; or
 - (bb) the agreement of any specified group of Lenders,has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero and such Shareholder Affiliate or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender for the purposes of paragraphs (1) and (2) above (unless in the case of a person not being a Shareholder Affiliate it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment).

- (b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Shareholder Affiliate (a "**Notifiable Debt Purchase Transaction**"), such notification to be substantially in the form set out in Part A Schedule 13 (*Forms of Notifiable Debt Purchase Transaction Notice*).
- (c) A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:
 - (i) is terminated, or
 - (ii) ceases to be with a Shareholder Affiliate,

Such notification to be substantially in the form set out in Part 2 of Schedule 13 (*Forms of Notifiable Debt Purchase Transaction Notice*).

- (d) Each Shareholder Affiliate that is a Lender agrees that:
 - (i) in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

23.3 **Shareholder Affiliates' notification to other Lenders of Debt Purchase Transactions**

Any Shareholder Affiliate which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant shall, by 5.00pm on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Agent of the extent of the Commitment(s) or amount outstanding to which that Debt Purchase Transaction relates. The Agent shall promptly disclose such information to the Lenders.

24. **CHANGES TO THE OBLIGORS**

24.1 **The Obligors**

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

24.2 **Additional Guarantors**

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 19.6 ("*Know your customer*" checks) and the agreement of any amendments referred to under paragraph (d) below, the Parent may request that any of its Subsidiaries, incorporated in Croatia and under the supervision or subject to the Extraordinary Administration Proceedings become a Guarantor.
- (b) A member of the Group shall become an Additional Guarantor if:
 - (i) the Parent and the proposed Obligor deliver to the Agent a duly completed and executed Accession Letter; and
 - (ii) the Agent has received all of the documents and other evidence listed in Part C of Schedule 2 (*Additional Guarantor*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.

- (c) The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part C of Schedule 2 (*Additional Guarantor*).
- (d) If any legal prohibition would prevent or limit a Subsidiary's ability to become an Additional Guarantor and/or to enter into Transaction Security, the Obligors shall use their reasonable endeavours lawfully to overcome the prohibition.
- (e) If any Additional Guarantor is not a member of the Group, the parties agree to negotiate in good faith to agree amendments to the provisions of Clause 18 (*Representations*), Clause 19 (*Information undertakings*), Clause 20 (*General undertakings*) (and the related permissions to the undertakings in such clause) and Clause 21 (*Events of Default*) to extend and/or limit such provisions as may be appropriate to such Additional Guarantor.

Section 11

The Finance Parties

25. ROLE OF THE AGENT AND OTHERS

25.1 Appointment of the Agent

- (a) Each other Finance Party (other than the Security Agent) 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 and authorities specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers and authorities.

25.2 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power or authority vested in it as Agent in accordance with any instructions given to it by:
 - (1) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision;
 - (2) 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 or authority. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested and shall not be liable to any party for any loss pending receipt of those instructions or clarifications.
- (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) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (e) shall not apply to any legal or arbitration proceeding

relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

25.3 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 22.8 (*Copy of Transfer Certificate, Assignment Agreement and Increase Confirmation to Parent*), paragraph (a) above shall not apply to any Transfer Certificate, any Assignment Agreement, Accession Document 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, validity or completeness of any document it forwards to another Party.
- (d) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (e) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Agent shall provide to the Parent, within 5 Business Days of a request by the Parent (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at that Business Day, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the transmission 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. 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).

25.4 No fiduciary duties

- (a) Nothing in any Finance Document constitutes the Agent as a trustee or fiduciary of any other person.
- (b) The Agent shall not be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

25.5 Business with the Group

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

25.6 Rights and discretions of the Agent

- (a) The Agent may:
 - (i) rely on any representation, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (1) 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
 - (2) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (1) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (2) 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 (ii)(1) above, may assume the truth and accuracy of that certificate.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 21.1 (*Non-payment*));
 - (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 Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, 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 (at the cost of the Borrower) 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 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 personnel 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 Borrower, or the Majority Lenders shall, as soon as reasonably practicable, disclose, the identity of a Defaulting Lender to the Borrower and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to (i) 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 or authority 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 or (ii) do or omit to do anything if it would or might in its opinion constitute a breach of any law or regulation.

25.7 Responsibility for documentation

The Agent is not responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) provided by the Agent, an Obligor or any other person given in or in connection with any Finance Document or 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;
- (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 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.

25.8 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.

25.9 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of Clause 29.11 (*Disruption to Payment Systems etc.*), the Agent will not 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 or authority 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 other than by reason of its gross negligence or wilful misconduct; 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:
 - (1) any act, event or circumstance not reasonably within its control; or
 - (2) the general risks of investment in, or the holding of assets in, any jurisdiction,including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.
- (b) No Party (other than the Agent) may take any proceedings against any officer, Delegate, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, Delegate, employee or agent in relation to any Finance Document and any officer, Delegate, employee or agent of the Agent respectively may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent.

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

25.10 Lenders' indemnity to the Agent

- (a) Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the gross negligence or wilful misconduct of such Agent) (or, in the case of any cost, loss or liability pursuant to Clause 29.11 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by the Borrower pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Parent shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Agent to an Obligor.

25.11 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the other Finance Parties and the Parent.
- (b) Alternatively, the Agent may resign by giving five Business Days' notice to the other Finance Parties 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 twenty days after notice of resignation was given, the retiring Agent (after consultation with the Parent) may appoint a successor Agent acting through an office in the United Kingdom.
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 25 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 the cost of the Parent, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. The Parent shall, within three Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (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 14.3 (*Indemnity to the Agent*) and this Clause 25 (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) After consultation with the Parent, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.
- (i) 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 12.8 (*FATCA Information*) and 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 12.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Agent notifies the Parent and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and 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, requires it to resign.

25.12 Replacement of the Agent

- (a) After consultation with the Parent, the Majority Lenders may, by giving 30 days' notice to the Agent (or at any time the Agent is an Impaired Agent, by giving any

shorter notice determined by the Majority Lenders), replace the Agent by appointing a successor Agent.

- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph 25.11(e) above) but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*) and this Clause 25 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

25.13 Confidentiality

- (a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty.

25.14 Relationship with the Lenders

- (a) 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) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 32.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of

information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 32.2 (*Addresses*) and paragraph (a)(ii) of Clause 32.6 (*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.

25.15 Credit appraisal by the Lenders

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

- (a) the financial condition, creditworthiness, condition, affairs, 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 has recourse, and the nature and extent of that recourse, against any Party or any of its 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 and/or completeness of any information provided by the Agent, the Security 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.

25.16 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.

26. ROLE OF THE SECURITY AGENT

26.1 Security Agent as trustee

- (a) The Security Agent declares that it holds the Transaction Security on trust for the Secured Parties on the terms contained in this Agreement.

- (b) Each of the Secured Parties authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

26.2 Instructions

- (a) The Security Agent shall:
 - (i) subject to paragraphs (c) and (d) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Agent (acting on behalf of the Majority Lenders or, as the case may be, the 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 Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Agent as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in a Finance Document;
 - (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 of Security Agent for the Secured Parties including, without limitation, Clause 26.5 (*No duty to account*) to Clause 26.10 (*Exclusion of liability*), Clause 26.13 (*Confidentiality*) to Clause 26.19 (*Custodians and nominees*) and Clause 26.22 (*Acceptance of title*) to Clause 26.26 (*Disapplication of Trustee Acts*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (1) Clause 31.1 (*Order of application*); and
 - (2) Clause 31.4 (*Permitted Deductions*).
- (d) If giving effect to instructions given by the Agent (acting on the instructions of the Majority Lenders would (in the Security Agent's opinion) have an effect equivalent to an amendment or waiver which is subject to Clause 36.2 (*Exceptions*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (e) In exercising any discretion to exercise a right, power or authority under the Finance Documents where either:
 - (i) it has not received any instructions as to the exercise of that discretion; or

(ii) the exercise of that discretion is subject to paragraph (c)(iv) above,

the Security Agent shall do so having regard to the interests of all the Secured Parties.

- (f) The Security Agent may refrain from acting in accordance with any instructions of the Agent 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 (together with any applicable VAT) which it may incur in complying with those instructions.
- (g) Without prejudice to the provisions of the remainder of this Clause 26.2, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate, and shall not be liable for any loss suffered by any person where it refrains from acting after instructions have been sent but have not been received.
- (h) At any time after receipt by the Security Agent of notice from the Agent directing the Security Agent to exercise all or any of its rights, remedies, powers or discretions under any of the Finance Documents, the Security Agent may, and shall if so directed by the Agent (subject always to Clause 26.2(f)), take any action as it thinks fit to enforce the Transaction Security.
- (i) The Secured Parties shall not have any independent power to enforce or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

26.3 Duties of the Security Agent

- (a) The Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to the Agent a copy of any document received by the Security Agent from any Obligor under any Finance Document.
- (c) Except where a Finance Document specifically 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.
- (d) If the Security Agent receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Agent.
- (e) The Security 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).

26.4 No fiduciary duties to Obligors

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Obligor.

26.5 No duty to account

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

26.6 Business with the Group

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

26.7 Rights and discretions

- (a) The Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (1) any instructions received by it from the Agent are duly given in accordance with the terms of the Finance Documents;
 - (2) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (3) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Finance Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (1) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (2) 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 (iii)(1) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the Lenders through the Agent and may give to the Agent any notice or other communication required to be given by the Security Agent to the Lenders.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party, any Lenders or any group of Lenders has not been exercised; and
 - (iii) any notice made by the Borrower is made on behalf of and with the consent and knowledge of all the Obligors.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (d) above or paragraph (f) below, the Security Agent may at any time engage and pay for (at the cost of the Parent) the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Finance Party) if the Security Agent deems this to be desirable.

- (f) The Security 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 Security 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.
- (g) The Security Agent, any Receiver and any Delegate may act in relation to the Finance Documents and the Transaction Security through its officers, employees and agents and 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 Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (h) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it believes it has received as security trustee under this Agreement.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Finance Document to the contrary, the Security 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 assured to it.

26.8 Responsibility for documentation

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, an Obligor or any other person in or in connection with any Finance Document 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, 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 Secured 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.

26.9 No duty to monitor

The Security 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.

26.10 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 Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate 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;
 - (iii) any shortfall which arises on the enforcement or realisation of the Transaction Security; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (1) any act, event or circumstance not reasonably within its control; or
 - (2) 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; 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 Security Agent, that Receiver or that Delegate (as applicable)) 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 Finance Document or any Transaction Security and any officer, employee or agent of the

Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.

- (c) Nothing in this Agreement shall oblige the Security Agent 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 Secured Party (other than the Security Agent),

on behalf of any Secured Party (other than the Security Agent) and each Secured Party (other than the Security Agent) confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

- (d) Without prejudice to any provision of any Finance Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate 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 Security Agent, Receiver or Delegate (as the case may be) 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 Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate 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 Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

26.11 Lenders' indemnity to the Security Agent

- (a) Each Lender shall in proportion to its share of the Total Commitments (or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any 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 or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Finance Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Subject to paragraph (c) below, the Parent shall immediately on demand reimburse any Lender for any payment that Lender makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Security Agent to an Obligor.

26.12 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Parent and to the Agent on behalf of the Lenders.

- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the other Parties (or the Agent on behalf of the Lenders), in which case the Majority Lenders may appoint a successor Security Agent.
- (c) If the Majority Lenders have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall make available to the successor 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 Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Transaction Security 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 Finance Documents (other than its obligations under paragraph (b) of Clause 26.23 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 26.12 and Clause 14.4 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security 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 that successor had been an original Party.
- (g) The Majority Lenders may, 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.

26.13 Confidentiality

- (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.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty.

26.14 Information from the Lenders

Each Lender shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

26.15 Credit appraisal by the Secured Parties

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance 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 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, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document 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.

26.16 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 26.11 (*Lenders' indemnity to the Security Agent*), Clause 16 (*Costs and Expenses*) or Clause 14.4 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent and the Lenders, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default; or
 - (ii) the Security Agent being requested by an Obligor or the Lenders to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Finance Documents; or
 - (iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (b) below.

- (c) If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrower) and the determination of any investment bank shall be final and binding upon the Parties.

26.17 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 Obligor 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 Finance Document 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 law or regulation or to give notice to any person of the execution of any Finance Document or of the Transaction Security;
- (d) take, or to require any Obligor to take, any step 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 any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

26.18 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Charged Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Agent shall not be liable for any damages, costs or losses to 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 a loss payee, it shall not be liable for any damages, costs or losses to any person as a result of 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 the Agent requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

26.19 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 asset of the trust 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.

26.20 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (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.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

26.21 Additional Security Agents

- (a) The Security Agent may 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;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition 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 the Secured Parties of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

26.22 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 Obligor may have to any of the Charged Property and shall not be liable for, or bound to require any Obligor to remedy, any defect in its right or title.

26.23 Winding up of trust

If the Security Agent, with the approval of the Agent, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and

- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents,

then:

- (i) 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
- (ii) any Security Agent which has resigned pursuant to Clause 26.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

26.24 Releases

Upon a disposal of any of the Charged Property pursuant to the enforcement of the Transaction Security by a Receiver or the Security Agent, the Security Agent shall (at the cost of the Borrower), without recourse, representation or warranty, release that property from the Transaction Security and is authorised to execute, without the need for any further authority from the Secured Parties, any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

26.25 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Finance Documents 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 law or regulation or otherwise.

26.26 Disapplication of Trustee Acts

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 permitted by law and regulation, 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.

26.27 Parallel debt

- (a) Covenant to Pay

Subject to the provisions of this Agreement, each Obligor covenants and undertakes in favour of the Secured Parties to pay the Secured Obligations owed by it to the Security Agent as applicable when the same falls due for payment, provided that payment of the Secured Obligations direct to the relevant Secured Parties under the relevant Finance Documents will be a good discharge of this covenant.

- (b) Parallel debt

- (i) Without prejudice to any of the other provisions of any Finance Document, each Obligor hereby irrevocably and unconditionally undertakes to pay to the Security Agent amounts equal to and in the currency of the Secured Obligations from time to time due from it in connection with the Finance

Documents (such payment undertaking and the obligations and liabilities which are the result thereof, the "**Parallel Debt**").

- (ii) The Obligors and the Security Agent acknowledge that:
 - (1) the Parallel Debt constitutes undertakings, obligations and liabilities of the Obligors to the Security Agent which are separate and independent from, and without prejudice to, the corresponding Secured Obligations; and
 - (2) the Parallel Debt represents the Security Agent's own claim to receive payment of the Parallel Debt from the Obligors, save and except that the aggregate amount owing under the Parallel Debt shall never exceed (but shall at all times be equal to) the aggregate amount which is owing under the Secured Obligations.
- (iii) Notwithstanding any of the other provisions of this clause 26.27:
 - (1) the aggregate amount due and payable by the Obligors in satisfaction of the Parallel Debt under this clause 26.27 shall be decreased to the extent that any person shall have paid any amounts to the Finance Parties to reduce the Secured Obligations or any Finance Party otherwise receives any amount in payment of the Secured Obligations; and
 - (2) to the extent that the Obligors have paid any amounts to the Security Agent in satisfaction of the Parallel Debt or the Security Agent shall have otherwise received or applied moneys in payment of the Parallel Debt, the aggregate amount due and payable under the Secured Obligations shall be correspondingly decreased.
- (iv) For the purpose of this clause 26.27, the Security Agent acts in its own name and not as a common law trustee, and its claims in respect of the Parallel Debt shall not be held on trust. The Transaction Security granted to the Security Agent to secure the Parallel Debt is granted to the Security Agent in its capacity as creditor of the Parallel Debt and shall not be held on a common law trust.
- (v) Without limiting or affecting the Security Agent's rights against the Obligors (whether under this clause 26.7 or under any other provision of the Finance Documents), each Obligor acknowledges that:
 - (1) nothing in this clause 26.7 shall impose any obligation on the Security Agent to advance any sum to any member of the Group or otherwise under any Finance Document; and
 - (2) for the purpose of any vote taken under any Finance Document, the Security Agent solely in that capacity shall not be regarded as having any participation or commitment by virtue of that Parallel Debt.

27. 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.

28. SHARING AMONG THE FINANCE PARTIES

28.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 29 (*Payment Mechanics*) or Clause 31 (*Application of Proceeds*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 29 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Party as its share of any payment to be made, in accordance with Clause 29.6 (*Partial payments*).

28.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Lenders (other than the Recovering Party) (the "**Sharing Parties**") in accordance with Clause 29.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Parties.

28.3 Recovering Party's rights

On a distribution by the Agent under Clause 28.2 (*Redistribution of payments*) of a payment received by a Recovering Party from an Obligor as between the relevant Obligor and the Recovering Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

28.4 Reversal of redistribution

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

- (a) each Sharing Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Party an amount equal to the appropriate part of its share of the Sharing Payment (together with such amount as is necessary to reimburse that Recovering Party for its proportion of any interest on the Sharing Payment which that Recovering Party is required to pay) (the "**Redistributed Amount**"); and

- (b) as between the relevant Obligor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

28.5 **Exceptions**

- (a) This Clause 28 shall not apply to the extent that the Recovering Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Party is not obliged to share with any other Finance Party any amount which the Recovering Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that 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.

Section 12 Administration

29. PAYMENT MECHANICS

29.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or that Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) with such bank as the Agent specifies, such account being the "MADISON PACIFIC TRUST CLIENT AC CSH" held at The Bank of New York Mellon SA/NV with SWIFT IRVTBEBB and Account Number: 9873189780 as at the date of this Agreement.

29.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to an Obligor*), Clause 29.4 (*Clawback*) and Clause 25.16 (*Deduction from amounts payable by the Agent*) 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 5 Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to €, in a principal financial centre in such Participating Member State or London, as specified by that Party).

29.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 30 (*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.

29.4 Clawback

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

29.5 Impaired Agent

- (a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 29.1 (*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 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 the Recipient Parties pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 29.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with Clause 25.12 (*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 to the relevant Recipient Party or Recipient Parties in accordance with Clause 29.2 (*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.

29.6 Partial payments

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
 - (i) first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent, the Escrow Agent and the Security Agent (including of any

Receiver or any Delegate of the Security Agent) under the Finance Documents;

- (ii) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (iii) thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; 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 paragraph (a)(i) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

29.7 No set-off by an Obligor

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.

29.8 Business Days

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

29.9 Currency of account

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

29.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Parent); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

29.11 Disruption to Payment Systems etc.

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

- (a) the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Parent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 36 (*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 29.11; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

29.12 Defaulting Lenders

- (a) Without prejudice to its obligations under Clause 5.7 (*Lenders' Participations*), if a Lender (a "**Default Lender**") fails to fund its participation in any Loan within 2 Business Days of a Utilisation Date, its Commitment in respect of such Loan shall be automatically cancelled (a "**Default Cancellation**"). Following a Default Cancellation, a Backstop Party (as defined in the Commitment Letter) may assume the amount of the Commitment subject to such Default Cancellation by executing and delivering an Increase Confirmation (or procuring that Eligible Institutions execute and deliver New Lender Accessions) within 5 Business Days of the date of the Default Cancellation, in each case in accordance with and subject to the Backstop Letter and the Commitment Letter (such assumption of Commitment being a "**Backstop Commitment**").
- (b) The Backstop Commitment will be utilised on the date specified in the relevant Increase Confirmation or New Lender Accession, in accordance with the same mechanics specified in this Agreement (including Clause 5 (*Utilisation*), Schedule

10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*)) as would have applied had the Default Lender funded on the correct Utilisation Date (save that the Specified Existing Financial Indebtedness to be redeemed or refinanced shall be that specified in the relevant Increase Confirmation and/or New Lender Accession for the Backstop Commitment).

- (c) The Parent and the Original Lender shall give any required notices to the Agent and the Escrow Agent to give effect to the provisions of this Clause following a Default Cancellation, and the Agent and the Escrow Agent may rely on such notices without further authorisation from any other party.

30. **SET-OFF**

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

31. **APPLICATION OF PROCEEDS**

31.1 **Order of Application**

All moneys from time to time received or recovered by the Security Agent 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 such times as the Security Agent sees fit (and to the extent that such moneys are sufficient to satisfy the Secured Obligations in full, as soon as practicable), to the extent permitted by applicable law, in the following order of priority:

- (a) in discharging any sums owing to the Security Agent (in its capacity as trustee), any Receiver or any Delegate of the Security Agent;
- (b) in payment to the Agent, on behalf of the Secured Parties, for application towards the discharge of all sums due and payable by any Obligor under any of the Finance Documents in accordance with Clause 29.6 (*Partial payments*);
- (c) if none of the Obligors is under any further actual or contingent liability under any Finance Document, in payment to any person to whom the Security Agent is obliged to pay in priority to that Obligor; and
- (d) the balance, if any, in payment to the relevant Obligor.

31.2 **Investment of Proceeds**

Prior to the application of the proceeds of the Transaction Security in accordance with Clause 31.1 (*Order of Application*) the Security Agent may, at its discretion, hold all or part of those proceeds in a suspense or impersonal account(s) (whether or not interest bearing) in the name of the Security Agent or Agent with any financial institution (including itself) and for so long as the Security Agent thinks fit, or until such time as the proceeds are sufficient to satisfy the Secured Obligations in full, (the interest, if any, being credited or charged to the relevant account) pending the application from time to time of those monies at the Security Agent's discretion in accordance with the provisions of this Clause 31.

31.3 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 spot rate at which the Security Agent is able to purchase the currency in which the Secured Obligations are due with the amount received.
- (b) The obligations of any Obligor 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.

31.4 Permitted Deductions

The Security Agent shall be entitled (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Tax 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 Tax 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 Finance Documents or otherwise (except in connection with its remuneration for performing its duties under this Agreement).

31.5 Discharge of Secured Obligations

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent may be made to the Agent on behalf of the Lenders and that payment shall be a good discharge to the extent of that payment, to the Security Agent.
- (b) The Security Agent is under no obligation to make payment to the Agent in the same currency as that in which any Unpaid Sum is denominated.

31.6 Sums received by Obligors

If any of the Obligors receives any sum which, pursuant to any of the Finance Documents, should have been paid to the Security Agent, that sum shall promptly be paid to the Security Agent for application in accordance with this Clause.

32. NOTICES

32.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

32.2 Addresses

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

- (a) in the case of the Parent, that identified with its name below;
- (b) in the case of each Lender (other than the Original 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, the Original Lender, and Security Agent, that identified with its name below,

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

32.3 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 32.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or to the Security Agent will be effective only when actually received by the Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Parent in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.
- (e) All notices to a Lender from the Security Agent shall be sent through the Agent.
- (f) Any communication or document which becomes effective, in accordance with paragraphs (a) to (e) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

32.4 **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 32.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

32.5 **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.

32.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address (and the email address(es) identified with its name below shall constitute such notification by each relevant Party) and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than 5 Business Days' notice.
- (b) Any electronic communication made between those two 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 only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

32.7 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

33. CALCULATIONS AND CERTIFICATES

33.1 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.

33.2 Certificates and determinations

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

33.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of

360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

34. **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.

35. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any 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 this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

36. **AMENDMENTS AND WAIVERS**

36.1 **Required consents**

- (a) Subject to Clause 36.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Agent, or in respect of the Security Documents the Security Agent, may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

36.2 **Exceptions**

- (a) An amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:
 - (i) the definition of "**Majority Lenders**", the "**Super Majority Lenders**" or "**Majority Non-Bank Lenders**" in Clause 1.1 (*Definitions*);
 - (ii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
 - (iii) an extension of the Availability Period or any requirement that a cancellation of Commitments reduced the Commitment of the Lenders rateably under a Facility;
 - (iv) a change to the Borrowers or Guarantors (other than, for the avoidance of doubt, a change to the Parties pursuant to the operation of Clause 24 (*Changes to the Obligors*));
 - (v) any provision which expressly requires the consent of the Lenders, the Super Majority Lenders or the Majority Non-Bank Lenders;
 - (vi) Clause 2.5 (*Finance Parties' rights and obligations*), Clause 7.2 (*Change of Control and Extension*), Clause 7.3 (*Disposals*), Clause 7.4 (*Termination of Extraordinary Administration Proceedings*), Clause 7.7 (*Application of prepayments*), Clause 22 (*Changes to the Lenders*), Clause 24 (*Changes*

to the Obligors), Clause 28 (*Sharing among the Finance Parties*) or this Clause 36 (*Amendments and Waivers*);

- (vii) the nature and scope of the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*);
- (viii) the nature or scope of the Charged Property; or
- (ix) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

shall not be made without the prior consent of the Super Majority Lenders and, in the case of an amendment or waiver relating to the definition of "Majority Non-Bank Lenders", may not be effected without the consent of the Majority Non-Bank Lenders.

- (b) An amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

- (i) the definition of "**Group**" in Clause 1.1 (*Definitions*);
- (ii) an increase in any Commitment or the definition of "Maturity Date" in Clause 1.1 (*Definitions*);
- (iii) any extension to the date of payment of any amount under the Finance Document (other than pursuant to Clause 2.4 (*Extension Option*)); and
- (iv) Clause 40 (*Governing Law*) or Clause 41.1 (*Jurisdiction of English Courts*),

shall not be made without the consent of all the Lenders.

- (c) An amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to Clause 2.4 (*Extension Option*) shall not be effected without the consent of the Majority Lenders and the Majority Non-Bank Lenders.
- (d) An amendment or waiver which relates to the rights or obligations of the Agent, or the Security Agent (each in their capacity as such) may not be effected without the consent of the Agent or the Security Agent (as the case may be).

36.3 Excluded Commitments

If any Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document (other than in relation to Clause 2.4 (*Extension Option*) or any other vote of Lenders under the terms of this Agreement (other than an amendment, waiver or consent referred to Clause 36.2 (*Exceptions*)) within 5 Business Days of that request being made (unless, the Parent and the Agent agree to a longer time period in relation to any request):

- (a) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (b) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

37. CONFIDENTIALITY

37.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 37.2 (*Disclosure of Confidential Information*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

37.2 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, members, 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(s):
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraphs (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 25.14 (*Relationship with the Lenders*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body or the rules of any relevant stock exchange, listing authority 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 22.9 (*Security over Lenders' rights*);

- (vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (viii) who is a Party; or
- (ix) with the consent of the Borrower,

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

- (1) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (2) 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;
 - (3) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;
- (c) to any person appointed by that Finance Party or by a person to whom paragraphs (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Finance Party;
- (d) to the Escrow Agent, the Custodian, any Delegate or Representative of the Security Agent, any Receiver, any Security Agent or co-security trustee or co-security agent and to any such person's Affiliates and any of 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 (d) 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; and

- (e) 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 Borrower 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.

37.3 Entire agreement

This Clause 37 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.

37.4 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.

37.5 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 37.2 (*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 37.

37.6 Continuing obligations

The obligations in this Clause 37 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Obligor under or in connection with this Agreement 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.

38. CONFIDENTIALITY OF FUNDING RATES

38.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate to the relevant Borrower pursuant to Clause 8.5 (*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.
- (c) The Agent may disclose any Funding Rate, 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 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 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 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 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.

38.2 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)(ii) of Clause 38.1 (*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 38.

38.3 No Event of Default

No Event of Default will occur under Clause 21.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 38.

39. 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.

Section 13

Governing law and Enforcement

40. GOVERNING LAW

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

41. ENFORCEMENT

41.1 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) Each Obligor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Obligor will argue to the contrary.
- (c) Notwithstanding paragraph (a) above, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

41.2 Service of Process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor:
 - (i) irrevocably appoints Kirkland and Ellis International LLP as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
 - (ii) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must immediately (and in any event within 3 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

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

SCHEDULE 1

The Original Parties

Part I - The Original Lenders

Original Lender	Facility A	Incremental Facility
Knighthead Master Fund, L.P.	€155,808,000	-
Knighthead (NY) Fund, L.P.	€19,782,000	-
Knighthead Annuity & Life Assurance Company	€24,410,000	-
Total	€200,000,000	-

Part II - The Original Borrowers

Name of Original Borrower	Original Jurisdiction and registration number (or equivalent, if any)
Agrokor d.d.	[MBS] 0800 20970

Part III - The Guarantors

Name of Guarantor	Original Jurisdiction and registration number (or equivalent, if any)
Agrokor d.d.	Croatia OIB 05937759187
Agrokor Trgovina d.o.o.	Croatia OIB 40715974731
Belje d.d.	Croatia OIB 92404445155
Jamnica d.d.	Croatia OIB 05050436541
Roto Dinamic d.o.o.	Croatia OIB 24723122482
Konzum d.d.	Croatia OIB 29955634590
PIK Vrbovec – Mesna Industrija, d.d.	Croatia OIB 78909170415
Velpro Centar d.o.o.	Croatia OIB 46660800468
Ledo d.d.	Croatia OIB 87955947581
mStart d.o.o.	Croatia OIB 19895453012
PIK-Vinkovci d.d.	Croatia OIB 17774531631
Solana Pag d.d.	Croatia OIB 34949147151
Zvijezda d.d.	Croatia OIB 91492011748
Sojara d.o.o.	Croatia OIB 87720689078
Vukovarski Poljoprivredno Industrijski Kombinat d.d. (Vupik d.d.)	Croatia OIB 06849543412
Adriatica.Net d.o.o.	Croatia OIB 20350489217
Belje Agro-vet d.o.o.	Croatia OIB 78769491591
Mladina d.d.	Croatia OIB 00233318664
DB Kantun Veleprodaja d.o.o.	Croatia OIB 57339268482
Zitnjak d.d.	Croatia OIB 25435300118
IRIDA d.o.o.	Croatia OIB 72383446154
LG Moslavina d.o.o.	Croatia OIB 55613437019
Mondo-Tera d.o.o.	Croatia OIB 14072680184
Eko Biograd d.o.o.	Croatia OIB 42005576448
Felix d.o.o.	Croatia OIB 94397504836
A007 d.o.o.	Croatia OIB 42312821469
Projektgradnja d.o.o.	Croatia OIB 19659143269

Part IV – The Post-Closing Guarantors

Name of Guarantor	Original Jurisdiction and registration number (or equivalent, if any)
Belje Agro-vet d.o.o.	Croatia OIB 78769491591
Mladina d.d.	Croatia OIB 00233318664
DB Kantun Veleprodaja d.o.o.	Croatia OIB 57339268482
Zitnjak d.d.	Croatia OIB 25435300118
IRIDA d.o.o.	Croatia OIB 72383446154
LG Moslavina d.o.o.	Croatia OIB 55613437019
Mondo-Tera d.o.o.	Croatia OIB 14072680184
Eko Biograd d.o.o.	Croatia OIB 42005576448
Felix d.o.o.	Croatia OIB 94397504836
A007 d.o.o.	Croatia OIB 42312821469
Projektgradnja d.o.o.	Croatia OIB 19659143269

SCHEDULE 2

Conditions Precedent

Part A - Conditions precedent to Initial Utilisation

1. FINANCE DOCUMENTS

The following agreements duly executed by the Obligors party to them:

- (a) this Agreement
- (b) the Backstop Agreement;
- (c) the Commitment Letter; and
- (d) the Fee Letters.

2. ESCROW ACCOUNTS AND ESCROW AGREEMENT

- (a) Evidence that each of the Escrow Accounts is open and fully operational and a letter between the Agent and the Borrower specifying the details of each account name and account number.
- (b) Each Escrow Agreement has been duly executed by the parties thereto.

3. OTHER DOCUMENTS AND EVIDENCE

- (a) Evidence that Kirkland and Ellis International LLP has accepted its appointment as process agent in accordance with Clause 41.2 (*Service of process*).
- (b) The Original Cashflow Forecast.
- (c) A funds flow statement detailing the proposed movement of funds on or before the Closing Date.
- (d) A legal opinion from Bogdanović, Dolički & Partners to the Agent and the Original Lenders confirming the validity of the mechanism by which the Existing Financial Indebtedness intended to be refinanced to create super priority ranking indebtedness under and in accordance with the terms of this Agreement.
- (e) The Agent being satisfied that no law, regulation, ruling, judgment, order, injunction or other restraint exists that, in the judgment of the Majority Lenders, prohibits, restricts or imposes a materially adverse condition on the Parent's ability to comply with or perform under the Facilities or the exercise by the Lenders of their rights as a secured party with respect to the Security or guarantees.
- (f) Evidence that all Transaction Costs then due from the Parent or any other member of the Group (including but not limited to fees payable to the Finance Parties' legal and other advisers and any agreed on-account payments) have been paid or will be paid by the Closing Date.
- (g) Confirmation from the Finance Parties that all documents required for completion by the Finance Parties of all necessary "know your customer" requirements have been provided.
- (h) A list of each Existing Loan Agreement and Eligible Bills of Exchange, each of the guarantees issued by any member of the Group and any Obligor and a list of all

assets held by a member of the Group which are expressed to be subject to Security.

- (i) A list of each Material Company as at 31 December 2015.
- (j) Creditors' Committee's approval of the Finance Documents on behalf of the Parent, duly executed by the chairman of the Creditors' Committee.
- (k) Commissioner's approval of the terms of the Finance Documents on behalf of the Guarantors, duly executed by the Commissioner.
- (l) Instruction notice from the Agent to the Escrow Agent to transfer funds from the Agent's client account to the Refinance Escrow Account.
- (m) Release notice from the Agent to the Escrow Agent in respect of the following transfers:
 - (i) transfer from the Repayment Escrow Account to the Agent's client account in respect of Transaction Costs; and
 - (ii) transfer of the balance of the funds held in the Repayment Escrow Account to the Liquidity Escrow Account.
- (n) Release notice from Parent to the Escrow Agent transferring monies from the Liquidity Escrow Account to an account held by the Parent.
- (o) A copy of any other Authorisation or other document, opinion or assurance which the Agent reasonably considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document, such Authorisations not to impose any conditions that are not acceptable to the Lenders.

Part B - Conditions Subsequent

- (a) A copy of the constitutional documents of each Obligor.
- (b) A copy of a resolution of the board of directors of each Obligor:
 - (i) Approving and ratifying the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and ratifying the execution of the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute any further Finance Documents to which it is a party on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A copy of a resolution signed by all the shareholders in each Guarantor established as a limited liability company approving and ratifying the terms of, and the transactions contemplated by, Finance Documents to which the Guarantor is a party.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above and who has signed any Finance Document.
- (e) A certificate of each Obligor (signed by a director) confirming that:
 - (i) borrowing or guaranteeing (and, as applicable, granting Security in respect of) the Total Commitments would not cause any borrowing, guarantee or security limit binding on it to be exceeded;
 - (ii) subject to the Transaction Security, there subsists no Security or Quasi-Security over an Escrow Account.
 - (iii) other than the Extraordinary Administration Proceedings, none of the circumstances set out in Clause 21.4 (*Insolvency proceedings*) or Clause 21.5 (*Creditors' process*) applies to any Obligor or would be likely to apply as a consequence of borrowing and guaranteeing (and granting Security in respect of) the Total Commitments.
- (f) A certificate of an authorised signatory of each Obligor certifying that each copy document relating to it specified in this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

Part C - Conditions precedent to be delivered by an Additional Guarantor

- (a) An Accession Letter executed by an Additional Guarantor and the Parent.
- (b) A copy of the constitutional documents of the Additional Guarantor.
- (c) A copy of a resolution of the board of directors of the Additional Guarantor:
 - (i) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Finance Document to which it is party;
 - (ii) authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (iv) authorising the Parent to act as its agent in connection with the Finance Documents.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (c)(ii) above.
- (e) A certificate of the Additional Guarantor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
- (f) A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Part C of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.
- (g) If applicable, Creditors' Committee's approval of the Finance Documents on behalf of the Parent, duly executed by the chairman of the Creditors' Committee.
- (h) If applicable, Commissioner's approval of the terms of the Finance Documents on behalf of the Guarantors, duly executed by the Commissioner.
- (i) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.
- (j) If available, the latest audited financial statements of the Additional Guarantor.
- (k) If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 41.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Guarantor.
- (l) The Security Documents which are required by the Agent to be executed by the proposed Additional Guarantor.

- (m) Any notices or documents required to be given or executed under the terms of those Security Documents.
- (n) Evidence that all necessary or desirable Authorisations from any government authority or other regulatory body in connection with the entry into and performance of the transactions contemplated by the Accession Letter, any Finance Document or Transaction Document to which the Additional Guarantor is party or for the validity or enforceability of any of those documents have been obtained and are in full force and effect, together with certified copies of those obtained.
- (o) Such other information or documents that the Agent may reasonably require, including any information and evidence in respect of the Additional Guarantor required by any Finance Party to enable it to be satisfied with the results of all "know your customer" or other checks which it is required to carry out in relation to such Guarantor.
- (p) If the Additional Guarantor is not incorporated in England and Wales such documentary evidence as legal counsel to the Agent may require, that such Additional Guarantor has complied with any law in its jurisdiction relating to financial assistance or analogous process.

Part D - Transaction Security Documents and security related documents to be delivered by Guarantors

Name of Guarantor	Capacity (Borrower and/or Guarantor)	Date by which must become Additional Guarantor	Description of Transaction Security Document and Transaction Security	Date by which Transaction Security Document to be executed and delivered to Agent	Description of Security related documents and other action to be taken by Guarantor to protect or perfect or give priority to Transaction Security and date by which action is to be completed
Konzum d.d.	Guarantor	N/A	Croatian law Security to be granted by the Guarantor in favour of the Security Agent over all assets specified opposite the name of the Guarantor (and set out as "Konzum") in Sections IA (<i>Konzum – Stores</i>), IB (<i>Konzum – Land</i>), IC (<i>Konzum – Other Buildings</i>) and ID (<i>Konzum - Others</i>) of the table set out in Schedule 2 (Part E) (<i>Unencumbered Assets</i>)	Within 120 days of the Closing Date	<ol style="list-style-type: none"> 1. Delivery of land registry excerpts within 45 days of the Closing Date; 2. Delivery of the consent of the Commissioner within 60 days; 3. Execution of the security agreement in the form of an enforceable notarial deed within 75 days of the Closing Date; 4. Final and conclusive decision on registration of pledge with a land registry within 90 days; and 5. Registration of the pledge with a land registry within 120 days.
Vupik d.d.	Guarantor	N/A	Croatian law Security to be granted by the Guarantor in favour of the Security Agent over all assets specified opposite the name of the Guarantor (and set out as "Vupik") in Sections IIB (<i>Non-Konzum Croatian Unencumbered Assets – Land</i>), IIC (<i>Non-Konzum Croatian Unencumbered Assets – Other Buildings</i>) and IID (<i>Non-Konzum Croatian Unencumbered Assets – Others</i>) of the table set out in Schedule 2 (Part E) (<i>Unencumbered Assets</i>)	Within 120 days of the Closing Date	<ol style="list-style-type: none"> 1. Delivery of land registry excerpts within 45 days of the Closing Date; 2. Delivery of the consent of the Commissioner within 60 days; 3. Execution of the security agreement in the form of an enforceable notarial deed within 75 days of the Closing Date; 4. Final and conclusive decision on registration of pledge with a land registry within 90 days; and

					5. Registration of the pledge with a land registry within 120 days.
Pik Vinkovci d.d.	Guarantor	N/A	Croatian law Security to be granted by the Guarantor in favour of the Security Agent over all assets specified opposite the name of the Guarantor (and set out as "Pik Vinkovci") in Sections IIB (<i>Non-Konzum Croatian Unencumbered Assets – Land</i>), IIC (<i>Non-Konzum Croatian Unencumbered Assets – Other Buildings</i>) and IID (<i>Non-Konzum Croatian Unencumbered Assets – Others</i>) of the table set out in Schedule 2 (Part E) (<i>Unencumbered Assets</i>)	Within 120 days of the Closing Date	<ol style="list-style-type: none"> 1. Delivery of land registry excerpts within 45 days of the Closing Date; 2. Delivery of the consent of the Commissioner within 60 days; 3. Execution of the security agreement in the form of an enforceable notarial deed within 75 days of the Closing Date; 4. Final and conclusive decision on registration of pledge with a land registry within 90 days; and 5. Registration of the pledge with a land registry within 120 days.
Jamnica d.d.	Guarantor	N/A	Croatian law Security to be granted by the Guarantor in favour of the Security Agent over all assets specified opposite the name of the Guarantor (and set out as "Jamnica") in Section IIC (<i>Non-Konzum Croatian Unencumbered Assets – Other Buildings</i>) of the table set out in Schedule 2 (Part E) (<i>Unencumbered Assets</i>)	Within 120 days of the Closing Date	<ol style="list-style-type: none"> 1. Delivery of land registry excerpts within 45 days of the Closing Date; 2. Delivery of the consent of the Commissioner within 60 days; 3. Execution of the security agreement in the form of an enforceable notarial deed within 75 days of the Closing Date; 4. Final and conclusive decision on registration of pledge with a land registry within 90 days; and 5. Registration of the pledge with a land registry within 120 days.
Belje d.d.	Guarantor	N/A	Croatian law Security to be granted by the Guarantor in favour of the Security Agent over all assets specified opposite the name of the Guarantor (and set out as "Belje") in Section IIC (<i>Non-Konzum Croatian Unencumbered</i>	Within 120 days of the Closing Date	<ol style="list-style-type: none"> 1. Delivery of land registry excerpts within 45 days of the Closing Date; 2. Delivery of the consent of the Commissioner within 60 days;

			Assets – <i>Other Buildings</i>) of the table set out in Schedule 2 (Part E) (<i>Unencumbered Assets</i>)		<ol style="list-style-type: none"> 3. Execution of the security agreement in the form of an enforceable notarial deed within 75 days of the Closing Date; 4. Final and conclusive decision on registration of pledge with a land registry within 90 days; and 5. Registration of the pledge with a land registry within 120 days.
Ledo d.d.	Guarantor	N/A	Croatian law Security to be granted by the Guarantor in favour of the Security Agent over all assets specified opposite the name of the Guarantor (and set out as "Ledo") in Sections IIC (<i>Non-Konzum Croatian Unencumbered Assets – Other Buildings</i>) and IID (<i>Non-Konzum Croatian Unencumbered Assets – Others</i>) of the table set out in Schedule 2 (Part E) (<i>Unencumbered Assets</i>)	Within 120 days of the Closing Date	<ol style="list-style-type: none"> 1. Delivery of land registry excerpts within 45 days of the Closing Date; 2. Delivery of the consent of the Commissioner within 60 days; 3. Execution of the security agreement in the form of an enforceable notarial deed within 75 days of the Closing Date; 4. Final and conclusive decision on registration of pledge with a land registry within 90 days; and 5. Registration of the pledge with a land registry within 120 days.
PIK Vrbovec – Mesna Industrija, d.d.	Guarantor	N/A	Croatian law Security to be granted by the Guarantor in favour of the Security Agent over all assets specified opposite the name of the Guarantor (and set out as "Pik Vrbovec") in Section IIC (<i>Non-Konzum Croatian Unencumbered Assets – Other Buildings</i>) of the table set out in Schedule 2 (Part E) (<i>Unencumbered Assets</i>)	Within 120 days of the Closing Date	<ol style="list-style-type: none"> 1. Delivery of land registry excerpts within 45 days of the Closing Date; 2. Delivery of the consent of the Commissioner within 60 days; 3. Execution of the security agreement in the form of an enforceable notarial deed within 75 days of the Closing Date; 4. Final and conclusive decision on registration of pledge with a land registry within 90 days; and

					5. Registration of the pledge with a land registry within 120 days.
Roto Dinamic d.o.o.	Guarantor	N/A	Croatian law Security to be granted by the Guarantor in favour of the Security Agent over all assets specified opposite the name of the Guarantor (and set out as "Roto Dinamic") in Section IIC (<i>Non-Konzum Croatian Unencumbered Assets – Other Buildings</i>) of the table set out in Schedule 2 (Part E) (<i>Unencumbered Assets</i>)	Within 120 days of the Closing Date	<ol style="list-style-type: none"> 1. Delivery of land registry excerpts within 45 days of the Closing Date; 2. Delivery of the consent of the Commissioner within 60 days; 3. Execution of the security agreement in the form of an enforceable notarial deed within 75 days of the Closing Date; 4. Final and conclusive decision on registration of pledge with a land registry within 90 days; and 5. Registration of the pledge with a land registry within 120 days.
Zvijezda d.d.	Guarantor	N/A	Croatian law Security to be granted by the Guarantor in favour of the Security Agent over all assets specified opposite the name of the Guarantor (and set out as "Zvijezda") in Section IIE (<i>Non-Konzum Croatian Unencumbered Assets – Unallocated</i>) of the table set out in Schedule 2 (Part E) (<i>Unencumbered Assets</i>)	Within 120 days of the Closing Date	<ol style="list-style-type: none"> 1. Delivery of land registry excerpts within 45 days of the Closing Date; 2. Delivery of the consent of the Commissioner within 60 days; 3. Execution of the security agreement in the form of an enforceable notarial deed within 75 days of the Closing Date; 4. Final and conclusive decision on registration of pledge with a land registry within 90 days; and 5. Registration of the pledge with a land registry within 120 days.

Part E - Unencumbered Assets

City	Adress	Property Type	Book Value (EUR)	Revaluation (EUR)	Total area (SQM)	Store Profitability	Entity Owner
I. Konzum							
A. Stores							
Rovinj	M.Marulića 24	Store	2,065,714		1,150	+ve	Konzum
Split	Put Vrbovnika bb	Store	1,654,017			-	Konzum
Pula	Labinska 2	Store	1,119,703			-	Konzum
Rovinj	Luja Adamovića bb	Store	1,063,890		597	+ve	Konzum
Zagreb	Pavlenski put 6K	Store	1,024,413		526	+ve	Konzum
Oriovac	Trg hrvatskog preporoda 7	Store	899,809		603	+ve	Konzum
Drniš	Ivana Meštrovića 21	Store	835,561		1,200	+ve	Konzum
Zagreb	Dobri dol 47	Store	830,125		614	+ve	Konzum
Medulin	Brajdine 114	Store	716,985		297	+ve	Konzum
Kotoriba	Kralja Tomislava 94	Store	660,952		500	+ve	Konzum
Jadranovo	Ivani 27	Store	620,149		251	+ve	Konzum
Umag	Jadranska 5	Store	585,031		318	+ve	Konzum
Bilje	Kralja Zvonimira 28	Store	574,681		535	+ve	Konzum
Krapinske toplice	Zagrebačka cesta 1	Store	558,070		192	+ve	Konzum
Dramalj	Milovana Muževića 122	Store	534,027		260	+ve	Konzum
Selce	Ivana Jeličića 7	Store	527,874		284	+ve	Konzum
Varaždin	Jalkovečka 60	Store	524,758		372	+ve	Konzum
Delnice	Supilova 20	Store	488,029		350	-ve	Konzum
Krapina	Mihaljekov jarek 56	Store	477,900		370	+ve	Konzum
Đurmanec	Đurmanec 48	Store	474,900		310	+ve	Konzum
Nova Gradiška	Gundulićeva 15	Store	470,502		440	+ve	Konzum
Pribislavec	Braće Radić 46	Store	453,170		501	+ve	Konzum
Varaždin	Br.Radića 8	Store	451,012		404	+ve	Konzum
Krapina	Matije Gupca 11	Store	449,098		335	+ve	Konzum
Crikvenica	Dr. I. Kostrenčića 6	Store	437,099		221	+ve	Konzum
Split	Domovinskog rata 24	Store	417,501		220	+ve	Konzum
Konjščina	Kolodvorska 1a	Store	391,055		400	+ve	Konzum
Buje	Istarska 15	Store	390,272		386	+ve	Konzum
Poreč	Ul. Nikole Tesle 11	Store	388,796		284	+ve	Konzum
Batrina	Stjepana Radića 91	Store	347,579		396	+ve	Konzum
Zagreb	D.Cesarića 71	Store	346,503		203	+ve	Konzum
Orahovica	Kralja Zvonimira 16	Store	343,356		205	+ve	Konzum
Zagreb	Hercegovačka 111	Store	338,173		224	+ve	Konzum
Pregrada	Trg Gospe Kunagorske	Store	337,104		293	+ve	Konzum
Zlatar-Bistrica	Vladimira Nazora bb	Store	334,855		980	+ve	Konzum
Đurđenovac	Kardinala A.Stepinca 2	Store	311,518		367	+ve	Konzum
Sv. Križ Začretje	Trg Kraljice Jelene 16	Store	310,367		192	+ve	Konzum
Rovinj	Matije Vlačića bb	Store	260,240		208	+ve	Konzum
Slavonski Brod	Naselje A.Hebranga blok br.6	Store	256,974		213	+ve	Konzum
Knin	Tomislavova 10	Store	247,443		233	+ve	Konzum
Tršće	Školska 3	Store	204,421		430	+ve	Konzum
Jadranovo	Kloštar 55	Store	185,958		118	+ve	Konzum
Osijek	Vladimira Nazora 12	Store	148,102		75	+ve	Konzum
Total Konzum Stores Book Value			24,057,684				

City	Adress	Property Type	Book Value (EUR)	Revaluation (EUR)	Total area (SQM)	Store Profitability	Entity Owner
B. Land							
Split	Put Stinica	Land	4,306,238		5,097	-	Konzum
Kukuljanovo		Land	3,863,908		33,239	-	Konzum
Zagreb	Črnomerec, Ilica 288	Land	3,364,919			-	Konzum
Dubrovnik	Mokošica	Land	1,813,738			-	Konzum
Supetar		Land	1,695,371		27,406	-	Konzum
Dugo Selo	Obrovska	Land	1,570,436		12,105	-	Konzum
Zagreb	Voćarska cesta	Land	1,523,671		3,374	-	Konzum
Sesvete		Land	1,042,934		3,507	-	Konzum
Cavtat		Land	938,083			-	Konzum
Velika Gorica	Kolodvorska bb	Land	491,229	476,750	1,907	-	Konzum
Sesvete	Glavničica, Šašinovec	Land	417,832		78,668	-	Konzum
Zadar	Ante Starčevića	Land	381,767		1,492	-	Konzum
Vukovar	Ulica bana J.Jelačića	Land	355,107	344,640	4,308	-	Konzum
Makarska		Land	332,759		1,801	-	Konzum
Požega		Land	276,815		1,362	-	Konzum
Nemetin		Land	157,938			-	Konzum
Zaprešić	Brdovec	Land	152,511		1,340	-	Konzum
Total Konzum Land Book Value			22,685,257				
C. Other Buildings							
Bjelovar	Male Sredice	Buildings	9,119,580			-	Konzum
Poreč	Mate Vlašića 49	Buildings	1,822,242			-	Konzum
Novi Vinodolski	Bribirska cesta	Buildings	1,254,963			-	Konzum
Šibenik	Kralja Zvonimira 241	Buildings	938,682			-	Konzum
Poreč	Mate Vlašića 49	Buildings	874,603			-	Konzum
Zagreb	Albaharijeva 4	Buildings	669,616			-	Konzum
Poreč	Mate Vlašića 49	Buildings	273,171			-	Konzum
Crikvenica	Braće Brožićević 2	Buildings	202,935			-	Konzum
Varaždin	Trg Bana Jelačića	Buildings	136,171			-	Konzum
Total Konzum Other Buildings Book Value			15,291,962				
D. Others							
Nova Gradiška	Industrijski park	Other	751,687			-	Konzum
Crikvenica	Vinodolska 23	Other	315,514			-	Konzum
Total Konzum Others Book Value			1,067,201				
TOTAL KONZUM BOOK VALUE			63,102,104				

City	Adress	Property Type	Book Value (EUR)	Revaluation (EUR)	Total area (SQM)	Store Profitability	Entity Owner
II. Non-Konzum Croatian Unencumbered Assets							
B. Land							
Vukovar	Lužac	Land	5,603,859		272,976	-	Vupik
Vukovar	Majuri	Land	4,152,609		161,826	-	Vupik
Vukovar	Adica	Land	3,711,759		366,188	-	Vupik
Vukovar	Sajmište	Land	2,330,836		72,961	-	Vupik
Bobota	Markovo brdo	Land	2,193,280		72,386	-	Vupik
Vukovar	Ekonomija I	Land	1,705,029		92,284	-	Vupik
VINKOVCI	Ervenica	Land	1,188,856		49,761	-	Pik Vinkovci
Tovarnik	Gecija	Land	861,274		59,935	-	Vupik
Trpinja	Orlovača	Land	703,093		47,439	-	Vupik
Svinjarevci	Svinjarevci	Land	576,285		40,103	-	Vupik
Čakovci	Radičeva	Land	569,240		34,727	-	Vupik
OTOK	Šumica	Land	473,257		44,478	-	Pik Vinkovci
Vukovar	Budžak	Land	336,795		16,406	-	Vupik
Sotin	Bana J.Jelačića	Land	296,513		20,634	-	Vupik
Trpinja	Gajčanska	Land	255,036		3,660	-	Vupik
Vukovar	Čvorkovac	Land	246,930		13,365	-	Vupik
Bobota	Patkovičeva	Land	241,274		16,354	-	Vupik
Vukovar	Bara	Land	230,936		56,247	-	Vupik
Vera	Pašnjak	Land	220,151		9,191	-	Vupik
VINKOVCI	Jošine	Land	197,018		9,591	-	Pik Vinkovci
Vukovar	Splitska ulica	Land	137,399		2,231	-	Vupik
Total Non-Konzum Land Book Value			26,231,431				
C. Other Buildings							
Zagreb	Zagreb, Getaldičeva 3	Buildings	19,988,249		34,642	-	Jamnica
Sveta Ana	Sveta Ana, Svetojanske Toplice bb	Buildings	13,507,553		5 j 2.518 čhv	-	Jamnica
Darda	Svetog Ivana Krstitelja 1A	Buildings	12,746,483		79,953	-	Belje
Kneževi Vinogradi	Sokolovac 13	Buildings	10,822,638		75,550	-	Belje
Vukovar	Priljevo	Buildings	10,808,700		59,908	-	Vupik
Zagreb	Marijana Čavića 9	Buildings	8,309,170		23,129	-	Ledo
Čeminac	Franjin dvor 1	Buildings	7,553,128		155,675	-	Belje
Darda	Svetog Ivana Krstitelja 1	Buildings	7,476,506		343,096	-	Belje
Popovac	Velike međe 1	Buildings	7,118,849		277,851	-	Belje
Čeminac	Krčevine	Buildings	6,645,224		55,506	-	Belje
Pačetin	Šugarica	Buildings	6,262,993		42,869	-	Vupik
Petlovac	Sudaraž	Buildings	6,029,164		175,365	-	Belje
Pisarovina	Pisarovina, Ulica V. Nazora 57	Buildings	5,873,377		9 j 1.262 čhv	-	Jamnica
Popovac	Hatvan 1	Buildings	5,829,616		159,960	-	Belje
Beli Manastir	Valpovačka ulica 5	Buildings	5,753,190		148,731	-	Belje
Čeminac	Kozarac, Donje polje 1	Buildings	5,620,513		62,853	-	Belje

City	Adress	Property Type	Book Value (EUR)	Revaluation (EUR)	Total area (SQM)	Store Profitability	Entity Owner
Kneževi Vinogradi	Mirkovac 4	Buildings	5,179,440		130,094	-	Belje
Kneževi Vinogradi	Petefi Šandora 1	Buildings	4,620,966		4,916	-	Belje
Čeminac	Braće Radić 11	Buildings	4,564,248		92,835	-	Belje
Darda	Kokingrad	Buildings	4,556,925		503,841	-	Belje
Beli Manastir	Imre Nagya 1	Buildings	4,363,182		41,472	-	Belje
Darda	Mece, Industrijska zona 4	Buildings	4,321,316		242,616	-	Belje
ANDRIJAŠEVCI	Stara sela	Buildings	4,165,668		55,373	-	Pik Vinkovci
Petlovac	Širine 5	Buildings	4,058,551		112,627	-	Belje
Jagodnjak	Brod pustara 1	Buildings	3,545,240		38,000	-	Belje
Križevci	Bjelovarska ulica	Buildings	3,445,898		38,416	-	Belje
POLAČA	Posl.zona Primat bb	Buildings	3,434,502		15,027	-	Pik Vinkovci
Beli Manastir	Kralja Petra Svačića 1	Buildings	3,372,213		27,767	-	Belje
Gradec	Gradec 183	Buildings	2,876,328		34,023	-	Pik Vrbovec
Beli Manastir	Bartoka Bele 33	Buildings	2,848,932		12,066	-	Belje
Bilje	Eblin	Buildings	2,805,362		116,992	-	Belje
Žminj	Žminj, Matka Laginje bb	Buildings	2,545,362	1,609,525	26,609	-	Jamnica
Kneževi Vinogradi	Prosina 1	Buildings	2,534,409		84,791	-	Belje
Vukovar	Grabovo	Buildings	2,491,937		154,741	-	Vupik
Šolta	Nečujam, ul. Vesne Parun	Buildings	2,424,758	2,424,758	1,795	-	Adriatica.net
Popovača	Kolodvorska 93	Buildings	2,382,414		100,973	-	Belje
PRIVLAKA	Zvirinac 1	Buildings	2,378,090		66,052	-	Pik Vinkovci
Bilje	Eblin	Buildings	2,332,604		150,513	-	Belje
Beli Manastir	Osječka ulica 4, 4B, 4D	Buildings	2,232,366		68,398	-	Belje
VINKOVCI	Matije Gupca 130	Buildings	2,166,591		45,081	-	Pik Vinkovci
Petlovac	Zeleno polje	Buildings	2,001,435		87,519	-	Belje
Bršadin	Težačka međa	Buildings	1,526,088		74,339	-	Vupik
Popovača	Potok, Ulica Kutanijska 128	Buildings	1,332,076		74,404	-	Belje
ČERETINCI	Čeretinci	Buildings	1,226,854		35,933	-	Pik Vinkovci
Kneževi Vinogradi	Karanac, Prelazna pustara 7	Buildings	1,207,385		76,240	-	Belje
Darda	Kokingrad 1	Buildings	1,172,664		57,123	-	Belje
Lovas	Lovas	Buildings	1,138,726		49,465	-	Vupik
Bilje	Var erde	Buildings	1,102,610		107,421	-	Belje
Kneževi Vinogradi	Donje polje	Buildings	1,023,267		51,631	-	Belje
Popovac	Popovac planina 61	Buildings	977,457		13,059	-	Belje
Jagodnjak	Cerik	Buildings	961,276		66,894	-	Belje
Bilje	Podunavlje 1	Buildings	899,229		16,428	-	Belje
Kneževi Vinogradi	Petefi Šandora 2	Buildings	850,711		9,369	-	Belje
Bobota	Patkovićeva	Buildings	813,918		24,696	-	Vupik
Bilje	Kozjak	Buildings	797,541		53,096	-	Belje
Darda	Mece, Industrijska zona 1	Buildings	732,765		8,029	-	Belje
Vukovar	Županijska	Buildings	709,932		7,215	-	Vupik
Kneževi Vinogradi	Jasenovac	Buildings	663,643		46,152	-	Belje
Vukovar	Županijska	Buildings	616,176		1,631	-	Vupik
Pačetin	Pačetin	Buildings	543,551		16,248	-	Vupik
RETKOVCI	Matije Gupca	Buildings	512,687		8,272	-	Pik Vinkovci








City	Adress	Property Type	Book Value (EUR)	Revaluation (EUR)	Total area (SQM)	Store Profitability	Entity Owner
Popovac	Kneževo, Graničarska 4A i 4B	Buildings	503,306		40,717	-	Belje
Osijek	Vukovarska 314	Buildings	466,609		5,051	-	Ledo
Sotin	Đerma	Buildings	456,568		31,772	-	Vupik
Vodnjan	Vodnjan, Antonia Smareglia bb	Buildings	419,232	419,446	13,894	-	Jamnica
Vukovar	Grabovo	Buildings	367,473		25,572	-	Vupik
Vera	Trešnjeva bara	Buildings	346,062		24,082	-	Vupik
Slavonski Brod	Ljudevita Posavskog bb	Buildings	342,605		5,563	-	Ledo
ROKOVCI	Ulica Sremac	Buildings	326,063		74,952	-	Pik Vinkovci
Petlovac	Širine	Buildings	320,281		22,288	-	Belje
Zagreb	Samoborska cesta 145	Buildings	311,005	405,506	1,371	-	Roto Dinamic
Samobor	Ulica grada Wirgesa 14	Buildings	297,887	1,338,193	3,966	-	Roto Dinamic
Šibenik	Žaborička bb	Buildings	211,419		477	-	Roto Dinamic
Križevci	Ulica Drage Grdenića 27	Buildings	205,589		2,350	-	Belje
Popovac	Kneževo, Trg Darka Drevenškega 2	Buildings	202,865		9,882	-	Belje
Zagreb	Gradišćanska 30	Buildings	190,931		135	-	Pik Vrbovec
Samobor	Pušine 1	Buildings	147,209	147,209	155	-	Adriatica.net
Pula	M. Laginje 7	Buildings	141,160	141,160	209	-	Adriatica.net
Zagreb	Bukovačka cesta 345	Buildings	138,135	138,135	107	-	Adriatica.net
Zagreb	Ante Mike Tripala 5-7-9	Buildings	66,781	368,784	277	-	Roto Dinamic
Total Non-Konzum Other Buildings Book Value			246,263,824				
D. Others							
OTOK	Šumica	Others	437,265		53,442	-	Pik Vinkovci
Zagreb	Marijana Čavića 9	Others	303,569		845	-	Ledo
Vukovar	Sajmište	Others	252,321		5,823	-	Vupik
Total Non-Konzum Others Book Value			993,155				
E. Unallocated							
Zagreb	Marijana Čavića	Buildings	43,293,306		118,597	-	Zvijezda
Total Non-Konzum Unallocated Book Value			43,293,306				
TOTAL NON-KONZUM BOOK VALUE			316,781,716				
TOTAL KONZUM & NON-KONZUM BOOK VALUE			379,883,820				





Notes

1. HRK / EUR of 7.44

2. For Zvijezda, there is an encumbrance in the land registry relating to natural restitution of the property. The party that is claiming natural restitution of the property lost the court case on the first instance and it is expected that the claim will be dismissed by the court

Part F – Intellectual Property

Company	Trademark	Identity number of application of the trademark	Identity number of registration of the trademark	Type of the trademark	Name of the holder of the trademark
Konzum d.d.		Z20040790A	Z20040790	Figurative	Konzum d.d.
Konzum d.d.		Z20122122A	Z20122122	Figurative	Konzum d.d.
Jamnica d.d.		Z20060623A	Z20060623	Figurative	Jamnica d.d.
Jamnica d.d.		Z20061081A	Z20061081	Figurative	Jamnica d.d.
Jamnica d.d.		Z20061080A	Z20061080	Figurative	Jamnica d.d.
Jamnica d.d.		Z20060625A	Z20060625	Figurative	Jamnica d.d.
Jamnica d.d.		Z20021139A	Z20021139	Figurative	Jamnica d.d.

Jamnica d.d.		Z20060624A	Z20060624	Figurative	Jamnica d.d.
Ledo d.d.	LEDO, verb.	Z20011091A	Z20011091	Verbal	Ledo d.d.
Ledo d.d.		Z20130699A	Z20130699	Figurative	Ledo d.d.
Ledo d.d.		Z20020213A	Z20020213	Figurative	Ledo d.d.
Ledo d.d.		Z20130697A	Z20130697	Figurative	Ledo d.d.
Sarajevski Kiseljak d.d.		BAZ1115742A	BAZ1115742	Figurative	Sarajevski kiseljak d.d., Bosnia and Hercegovina

SCHEDULE 3

Form of Transfer Certificate

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

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

Dated:

Agrokor d.d. – [***] facilities agreement dated [•] 2017 (the "**Agreement**")

1. We refer to the Agreement. This is a Transfer Certificate for the purposes of the Agreement. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 22.6 (*Procedure for transfer*):
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 22.6 (*Procedure for transfer*) all of the Existing Lender's rights and obligations under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement as specified in the Schedule.
 - (b) The proposed Transfer Date is [•].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 22.5 (*Limitation of responsibility of Existing Lenders*).
4. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower or any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].
5. 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.
6. The New Lender confirms that it [does/does not] wish to be treated as a Public-only Lender.
7. This Transfer Certificate is intended by the parties to constitute, and shall constitute, an instrument acknowledging indebtedness for the purposes of Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 as amended. Further it is intended that the participation in the Loans transferred under this Transfer Certificate are to be a transferable security for the purposes of the FSA Handbook on Collective Investment Schemes Rule 5.2.7(1).

8. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
9. 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 the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments,]

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted for the purposes of the Agreement by the Agent and the Transfer Date is confirmed as [•].

[Agent]

By:

[Security Agent]

By:

SCHEDULE 4

Form of Assignment Agreement

To: [●] as Agent, [●] as Security Agent and [●] as Parent (for and on behalf of each Obligor)

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

Dated:

Agrokor d.d. – [●] facilities agreement dated [●] 2017 (the "**Agreement**")

1. We refer to the Agreement. This is an Assignment Agreement. This agreement shall take effect as an Assignment Agreement for the purpose of the Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 22.7 (*Procedure for assignment*):
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement, the other Finance Documents and in respect of the Transaction Security which relate to that portion of the Existing Lender's Commitments and participations in Loans under the 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 Loans under the Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [●].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 32.2 (*Addresses*) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 22.5 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].
8. The New Lender confirms that it [does/does not] wish to be treated as a Public-only Lender.

9. This Assignment Agreement is intended by the parties to constitute, and shall constitute, an instrument acknowledging indebtedness for the purposes of Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 as amended. Further it is intended that the participation in the Loans assigned under this Assignment Agreement are to be a transferable security for the purposes of the FSA Handbook on Collective Investment Schemes Rule 5.2.7(1).
10. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 22.8 (*Copy of Transfer Certificate and Assignment Agreement to Borrower*), to the Borrower of the assignment referred to in this Assignment Agreement.
11. This Assignment 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 Assignment Agreement.
12. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
13. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment 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

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments,]

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the Agent as an Assignment Agreement for the purposes of the Agreement and the Transfer Date is confirmed as [•].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

SCHEDULE 5

Form of Increase confirmation¹

To: [] as Agent and [] as Parent, for and on behalf of each Obligor

From: [***] (the "Increase Lender")

Dated:

Agrokor D.D. - [] Facilities Agreement dated [] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and the Commitment Letter (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 the Commitment Letter. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement. References to clauses are to clauses of the Facilities Agreement.
2. We refer to Clause 2.2 (*Increased Commitments and New Lender Accessions*) of the Facilities Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Facility A Commitments specified in paragraph 5 below (the "**Relevant Commitments**").
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 [***/ the First Syndication Increase Date / the Second Syndication Increase Date / the Third Syndication Increase Date / *[insert date of commitments being assumed in the case of any proposed Utilisation of the Facility A Unallocated Amount ***]*².
5. On the Increase Date the Facility A Commitment of the Increase Lender shall be increased by an amount equal to €[***] (such increase being the "**Facility A Increase Amount**"³),

[EITHER⁴:

6. The Parent and the Increase Lender agree that on the [*** First Syndication Utilisation Date / Second Syndication Utilisation Date / Third Syndication Utilisation Date ***]⁵ (the "**Relevant Utilisation Date**"):
 - (a) an amount equal to 50 per cent of the Facility A Increase Amount shall be applied in accordance with Clause 5.2 (*Syndication Utilisation Dates*) to redeem the Specified Existing Financial Indebtedness of the Increase Lender set out in the Schedule; and
 - (b) an amount equal to 50 per cent of the Facility A Increase Amount shall be applied in accordance with paragraph 3.1(b) of Clause 3.1 (*Purpose*).

¹ To be entered into by Original Lender and Increase Lenders increasing their Facility A Commitments on any Commitment Increase Date.

² Delete as applicable

³ This amount is calculated as the aggregate Specified Existing Financial Indebtedness for the relevant Lender (as specified in the Schedule) multiplied by two.

⁴ Use this option on each Increase Commitment Date other than in respect of the Facility A Unallocated Amount.

⁵ Delete as applicable. If the Increase Confirmation is being entered into under the provisions set out in clause 29.12 (*Defaulting Lenders*), insert the proposed Utilisation Date for the increased Commitment.

7. The Increase Lender, by executing this Agreement:

- (a) confirms that it is legally and beneficially entitled to the Specified Existing Financial Indebtedness set out in the Schedule free from any encumbrances and that there are no other representations or warranties applicable to the redemption of the Specified Existing Financial Indebtedness set out in the Schedule, either express or implied;
- (b) irrevocably authorises the Agent to apply:
 - (i) an amount equal to 50 per cent. of the Facility A Increase Amount in accordance with Clause 5.2 (*Syndication Utilisation Dates*) of the Facilities Agreement for the purposes of redeeming the Specified Existing Financial Indebtedness and confirms that application of an amount equal to 50 per cent of the Facility A Increase Amount in accordance with and pursuant to paragraphs 1.2 and **Error! Reference source not found.** of Schedule 10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*) of the Facilities Agreement will constitute a redemption in full and cancellation of the Specified Existing Financial Indebtedness under and in accordance with the Specified Existing Financing Documents; and
 - (ii) to apply an amount equal to 50 per cent of the Facility A Increase Amount in accordance with paragraph 3 of Schedule 10 (*Utilisation and Application of Loans*) and the Liquidity Escrow Agreement;
- (c) confirms that no further act, consent, agreement, undertaking, settlement, waiver, amendment, variation, notice, trade confirmation or other communication or action is required under the Specified Existing Financing Documents in order to effect a redemption and cancellation of the Specified Existing Financial Indebtedness in accordance with the Specified Existing Financing Documents as contemplated in the Facilities Agreement and the Commitment Letter; and
- (d) irrevocably waives any redemption/repayment notice periods, any redemption/repayment fees or break costs in respect of the redemption/prepayment of its Specified Existing Financial Indebtedness.]⁶

[OR⁷:

8. The Parent and the Increase Lender agree that on the Facility A Unallocated Amount Utilisation Date (the "**Relevant Utilisation Date**"):

- (a) an amount equal to 50 per cent of the Facility A Increase Amount shall be applied in accordance with Clause 5.3 (*Facility A Unallocated Amount*) to redeem the Specified Existing Financial Indebtedness of the Increase Lender set out in the Schedule; and
- (b) an amount equal to 50 per cent of the Facility A Increase Amount shall be applied in accordance with paragraph 3.1(b) of Clause 3.1 (*Purpose*).

9. The Increase Lender confirms that it and any of its Affiliates will not take any action, or cause any other person to take any action, or support any action to challenge the validity or ranking of Facility A or any element thereof, or seek relief against any party in relation

⁶ This option will need to be amended in circumstances where a DIP Lender elects to redeem, prepay or cancel the Existing DIP Financing by way of set off in the circumstances referred to in paragraph 4 of Schedule 10 (*Utilisation and Application of Loans*).

⁷ Use this option on each Increase Commitment Date in respect of the Facility A Unallocated Amount.

thereto. This shall include, without limitation, any action challenging the mechanism by which Specified Existing Financial Indebtedness was intended to be refinanced, repaid or otherwise discharged.

10. The Increase Lender, by executing this Agreement:

- (a) confirms that it is legally and beneficially entitled to the Specified Existing Financial Indebtedness set out in the Schedule free from any encumbrances and that there are no other representations or warranties applicable to the redemption of the Specified Existing Financial Indebtedness set out in the Schedule, either express or implied;
- (b) irrevocably authorises the Agent to apply:
 - (i) an amount equal to 50 per cent. of the Facility A Increase Amount in accordance with Clause 5.3 (*Facility A Unallocated Amount*) of the Facilities Agreement for the purposes of redeeming the Specified Existing Financial Indebtedness and confirms that application of an amount equal to 50 per cent of the Facility A Increase Amount in accordance with and pursuant to paragraphs 1.2 and **Error! Reference source not found.** of Schedule 10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*) of the Facilities Agreement will constitute a redemption in full and cancellation of the Specified Existing Financial Indebtedness under and in accordance with the Specified Existing Financing Documents; and
 - (ii) to apply an amount equal to 50 per cent of the Facility A Increase Amount in accordance with paragraph 3 of Schedule 10 (*Utilisation and Application of Loans*) and the Liquidity Escrow Agreement;
- (c) confirms that no further act, consent, agreement, undertaking, settlement, waiver, amendment, variation, notice, trade confirmation or other communication or action is required under the Specified Existing Financing Documents in order to effect a redemption and cancellation of the Specified Existing Financial Indebtedness in accordance with the Specified Existing Financing Documents as contemplated in the Facilities Agreement and the Commitment Letter; and
- (d) irrevocably waives any redemption/repayment notice periods, any redemption/repayment fees or break costs in respect of the redemption/prepayment of its Specified Existing Financial Indebtedness.]

11. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 32.2 (*Addresses*) of the Facilities Agreement are set out in the Schedule.

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

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

Note: The execution of this 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

Specified Existing Financial Indebtedness of the Increase Lender to be redeemed on the Relevant Utilisation Date

Specified Existing Financing Documents	Amount of Specified Existing Financial Indebtedness (converted into Euro at the Applicable Exchange Rate)
[details]	€[***]
[details]	€[***]

[Facility office address, fax number and attention details for notices and account details for payments]

[Increase Lender]

By:

This Agreement is accepted as an Increase Confirmation for the purposes of the Facilities Agreement by the Agent and as an Increase Confirmation for the purposes of the Commitment Letter and the Increase Date is confirmed as [].

Agent

By:

SCHEDULE 6

Form of New Lender Accession⁸

To: [] as Agent and [] as Parent, for and on behalf of each Obligor

From: [***] (the "New Lender")

Dated:

Agrokor D.D. - [] Facilities Agreement dated [] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and the Commitment Letter (as defined in the Facilities Agreement). This agreement (the "Agreement") shall take effect as an New Lender Accession for the purpose of the Facilities Agreement and the Commitment Letter. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement. References to clauses are to clauses of the Facilities Agreement.
2. We refer to Clause 2.2 (*Increased Commitments and New Lender Accessions*) of the Facilities Agreement and agree:
 - (a) the New Lender will become a Party as a Lender under the Agreement and agrees to assume and will assume all of the obligations corresponding to the Facility A Commitments specified in paragraph 4 below (the "**Relevant Commitments**") as if it were an Original Lender under the Facilities Agreement;
 - (b) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the New Lender would have assumed and/or acquired had the New Lender been an Original Lender;
 - (c) the New Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that New Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
 - (d) the Commitments of the other Lenders under the Facilities Agreement shall continue in full force and effect.
3. The proposed date on which the New Lender becomes a Party and the increase in relation to the New Lender and the Relevant Commitment is to take effect (the "**Accession Date**") is [***/ the First Syndication Increase Date / the Second Syndication Increase Date / the Third Syndication Increase Date / *[insert date of commitments being assumed in the case of any proposed Utilisation of the Facility A Unallocated Amount ***]*⁹.
4. On the Accession Date the Facility A Commitment of the New Lender will be €[***] (the "**Facility A Amount**").¹⁰

⁸ To be used by a Lender which is not the Original Lender on any Commitment Increase Date.

⁹ Delete as applicable

¹⁰ This amount is calculated as the aggregate specified Existing Financial Indebtedness for the relevant Lender (as specified in the Schedule) multiplied by two.

[EITHER¹¹

5. The Parent and the New Lender agree that on the [*** First Syndication Utilisation Date / Second Syndication Utilisation Date / Third Syndication Utilisation Date ***]¹² (the "**Relevant Utilisation Date**"):
- (a) an amount equal to 50 per cent of the Facility A Amount shall be applied in accordance with Clause 5.2 (*Syndication Utilisation Dates*) to redeem the Specified Existing Financial Indebtedness of the New Lender as set out in the Schedule; and
 - (b) an amount equal to 50 per cent of the Facility A Amount shall be applied in accordance with paragraph (c) of Clause 3.1 (Purpose).
6. The New Lender, by executing this Agreement:
- (a) confirms that it is legally and beneficially entitled to the Specified Existing Financial Indebtedness set out in the Schedule free from any encumbrances and that there are no other representations or warranties applicable to the redemption or repayment (as the case may be) of the Specified Existing Financial Indebtedness set out in the Schedule, either express or implied;
 - (b) irrevocably authorises the Agent to:
 - (i) apply an amount equal to 50 per cent of the Facility A Amount in accordance with Clause 5.2 (*Syndication Utilisation Dates*) of the Facilities Agreement for the purposes of redeeming the Specified Existing Financial Indebtedness and confirms that application of the Facility A Amount in accordance with and pursuant to paragraphs 1.2 and **Error! Reference source not found.** of Schedule 10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*) of the Facilities Agreement will constitute a redemption in full and cancellation of the Specified Existing Financial Indebtedness under and in accordance with the Specified Existing Financing Documents; and
 - (ii) to apply an amount equal to 50 per cent of the Facility A Amount in accordance with paragraph 3 of Schedule 10 (*Utilisation and Application of Loans*) and the Liquidity Escrow Agreement;
 - (c) confirms that no further act, consent, agreement, undertaking, settlement, waiver, amendment, variation, notice, trade confirmation or other communication or action is required under the Specified Existing Financing Documents in order to effect a redemption and cancellation of the Specified Existing Financial Indebtedness in accordance with the Specified Existing Financing Documents as contemplated in the Facilities Agreement and the Commitment Letter; and
 - (d) irrevocably waives any redemption/repayment notice periods, any redemption/repayment fees or break costs in respect of the redemption/prepayment of its Specified Existing Financial Indebtedness.]¹³

¹¹ Use this option on each Increase Confirmation Date other than in respect of the Facility A Unallocated Amount.

¹² Delete as applicable. If the Increase Confirmation is being entered into under the provisions set out in clause 29.12 (*Defaulting Lenders*), insert the proposed Utilisation Date for the increased Commitment.

¹³ This option will need to be amended in circumstances where a DIP Lender elects to redeem, prepay or cancel the Existing DIP Financing by way of set off in the circumstances referred to in paragraph 4 of Schedule 10 (*Utilisation and Application of Loans*).

[OR¹⁴

7. The Parent and the New Lender agree that on the Facility A Unallocated Amount Utilisation Date (the "**Relevant Utilisation Date**"):
 - (a) an amount equal to 50 per cent of the Facility A Amount shall be applied in accordance with Clause 5.3 (*Facility A Unallocated Amount*) to redeem the Specified Existing Financial Indebtedness of the New Lender as set out in the Schedule; and
 - (b) an amount equal to 50 per cent of the Facility A Amount shall be applied in accordance with paragraph (c) of Clause 3.1 (*Purpose*).
8. The New Lender, by executing this Agreement:
 - (a) confirms that it is legally and beneficially entitled to the Specified Existing Financial Indebtedness set out in the Schedule free from any encumbrances and that there are no other representations or warranties applicable to the redemption or repayment (as the case may be) of the Specified Existing Financial Indebtedness set out in the Schedule, either express or implied;
 - (b) irrevocably authorises the Agent to:
 - (i) apply an amount equal to 50 per cent of the Facility A Amount in accordance with Clause 5.3 (*Facility A Unallocated Amount*) of the Facilities Agreement for the purposes of redeeming the Specified Existing Financial Indebtedness and confirms that application of the Facility A Amount in accordance with and pursuant to paragraphs 1.2 and **Error! Reference source not found.** of Schedule 10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*) of the Facilities Agreement will constitute a redemption in full and cancellation of the Specified Existing Financial Indebtedness under and in accordance with the Specified Existing Financing Documents; and
 - (ii) to apply an amount equal to 50 per cent of the Facility A Amount in accordance with paragraph 3 of Schedule 10 (*Utilisation and Application of Loans*) and the Liquidity Escrow Agreement;
 - (c) confirms that no further act, consent, agreement, undertaking, settlement, waiver, amendment, variation, notice, trade confirmation or other communication or action is required under the Specified Existing Financing Documents in order to effect a redemption and cancellation of the Specified Existing Financial Indebtedness in accordance with the Specified Existing Financing Documents as contemplated in the Facilities Agreement and the Commitment Letter; and
 - (d) irrevocably waives any redemption/repayment notice periods, any redemption/repayment fees or break costs in respect of the redemption/prepayment of its Specified Existing Financial Indebtedness.]
9. The New Lender confirms that it and any of its Affiliates will not take any action or cause any other person to take any action or support any action to challenge the validity or ranking of Facility A or any element thereof or seek relief against any party in relation thereto. This shall include, without limitation, any action challenging the mechanism by which Specified

¹⁴

Use this option on each Increase Commitment Date in respect of the Facility A Unallocated Amount.

Existing Financial Indebtedness was intended to be refinanced, repaid or otherwise discharged.

10. The New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
 - (a) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in the Facilities Agreement and has not relied exclusively on any information provided to it by any other Finance Party; and
 - (b) 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.
11. The New Lender confirms, for the benefit of the Agent and without liability to the Borrower or any Obligor, that it is:
 - (a) [a Qualifying Lender (other than a Treaty Lender);]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].
12. The New Lender confirms that it [does/does not] wish to be treated as a Public-only Lender.
13. The Facility Office and address, fax number and attention details for notices to the New Lender for the purposes of Clause 32.2 (*Addresses*) of the Facilities Agreement are set out in the Schedule.
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 New Lender Accession may not be sufficient for the New Lender to obtain the benefit of 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 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

Specified Existing Financial Indebtedness of the New Lender to be redeemed on the Relevant Utilisation Date

Specified Existing Financing Documents	Amount of Specified Existing Financial Indebtedness (converted into Euro at the Applicable Exchange Rate)
[details]	€[***]
[details]	€[***]

[Facility office address, fax number and attention details for notices and account details for payments]

[New Lender]

By:

This Agreement is accepted as a New Lender Accession for the purposes of the Facilities Agreement by the Agent and as a New Lender Accession for the purposes of the Commitment Letter and the Accession Date is confirmed as [].

Agent

By:

SCHEDULE 7

Form of Incremental Facility Lender Accession

To: [] as Agent and [] as Parent, for and on behalf of each Obligor

From: [****] (the "**Incremental Facility Lender**")

Dated:

Agrokor D.D. - [] Facilities Agreement dated [] (the "Facilities Agreement")

1. We refer to the Facilities Agreement and the Commitment Letter (as defined in the Facilities Agreement). This agreement (the "**Agreement**") shall take effect as an Incremental Facility Lender Accession for the purpose of the Facilities Agreement and the Commitment Letter. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement. References to clauses are to clauses in the Facilities Agreement.
2. We refer to Clause 2.2 (*Increased Commitments and New Lender Accessions*) of the Facilities Agreement and agree:
 - (a) the Incremental Facility Lender will become a Party as a Lender under the Agreement and agrees to assume and will assume all of the obligations corresponding to the Incremental Facility Commitments specified in paragraph 4 below (the "**Relevant Commitments**") as if it were an Original Lender under the Facilities Agreement;
 - (b) each of the Obligors and the Incremental Facility Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Incremental Facility Lender would have assumed and/or acquired had the Incremental Facility Lender been an Original Lender;
 - (c) the Incremental Facility Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Incremental Facility Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
 - (d) the Commitments of the other Lenders under the Facilities Agreement shall continue in full force and effect.
3. The proposed date on which the Incremental Facility Lender becomes a Party and the increase in relation to the Incremental Facility Lender and the Relevant Commitment is to take effect (the "**Accession Date**") is [****].
4. On the Accession Date, the Incremental Facility Commitment of the Incremental Facility Lender will be €[****] (the "**Incremental Facility Amount**").
5. The Parent and the Incremental Facility Lender agree that on the Incremental Facility Utilisation Date:
 - (a) an amount equal to 50 per cent of the Incremental Facility Amount shall be applied or deemed to be applied in accordance with Clause 5.4 (*Incremental Facility Utilisation Date*) to redeem the Specified Existing Financial Indebtedness of the Incremental Facility Lender as set out in the Schedule; and

- (b) an amount equal to 50 per cent of the Incremental Facility Amount shall be applied in accordance with Schedule 10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*) of the Facilities Agreement and the terms of the Escrow Agreements.
6. The Incremental Facility Lender, by executing this Agreement:
- (a) confirms that it is legally and beneficially entitled to the Specified Existing Financial Indebtedness set out in the Schedule free from any encumbrances and that there are no other representations or warranties applicable to the repayment of the Specified Existing Financial Indebtedness set out in the Schedule, either express or implied;
 - (b) irrevocably authorises the Agent to:
 - (iii) apply an amount equal to 50 per cent of the Incremental Facility Amount in accordance with Clause 5.4 (*Incremental Facility Utilisation Date*) of the Facilities Agreement for the purposes of redeeming the Specified Existing Financial Indebtedness of the Incremental Facility Lender set out in the Schedule and confirms that application of the Incremental Facility Amount in accordance with and pursuant to paragraphs 1.4 and 2 of Schedule 10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*) of the Facilities Agreement will constitute a redemption in full and cancellation of the Specified Existing Financial Indebtedness under and in accordance with the Specified Existing Financing Documents; and
 - (iv) to apply an amount equal to 50 per cent of the Incremental Facility Amount in accordance with paragraph 3 of Schedule 10 (*Utilisation and Application of Loans*) and the Liquidity Escrow Agreement;
 - (c) confirms that no further act, consent, agreement, undertaking, settlement, waiver, amendment, variation, notice, trade confirmation or other communication or action is required under the Specified Existing Financing Documents in order to effect a redemption and cancellation of the Specified Existing Financial Indebtedness in accordance with the Specified Existing Financing Documents as contemplated in the Facilities Agreement;
 - (d) irrevocably waives any redemption/repayment notice periods, any redemption/repayment fees or break costs in respect of the redemption/prepayment of its Specified Existing Financial Indebtedness; and
 - (e) confirms that if it fails to deliver or provide any goods or services under a Supply Contract to which it is a party within 20 Business Days of the delivery date under that Supply Contract, a Borrower shall purchase its participation in any Incremental Facility Loan in accordance with Clause 23.1 (*Permitted Debt Transactions*) of the Facilities Agreement and its consent shall be deemed to be provided in respect of such purchase.
7. The Incremental Facility Lender confirms that it and any of its Affiliates will not take any action or cause any other person to take any action or support any action to challenge the validity or ranking of the Incremental Facility or any element thereof or seek relief against any party in relation thereto in any jurisdiction. This shall include, without limitation, any

action challenging the mechanism by which Specified Existing Financial Indebtedness was intended to be refinanced, repaid or otherwise discharged.

8. The Incremental Facility Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:
 - (a) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in the Facilities Agreement and has not relied exclusively on any information provided to it by any other Finance Party; and
 - (b) 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.
9. The Facility Office and address, fax number and attention details for notices to the Incremental Facility Lender for the purposes of Clause 32.2 (*Addresses*) of the Facilities Agreement are set out in the Schedule.
10. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
11. This Agreement has been entered into on the date stated at the beginning of this Agreement.

Note: The execution of this Incremental Facility Lender Accession may not be sufficient for the Incremental Facility Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Incremental Facility 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

Specified Existing Financial Indebtedness of the Incremental Facility Lender to be redeemed in accordance with Clause 5.4 (*Incremental Facility Utilisation Date*) of the Facilities Agreement

Specified Existing Finance Documents	Amount of Specified Existing Financial Indebtedness (converted into Euro at the Applicable Exchange Rate)
[details]	€[***]

[Facility office address, fax number and attention details for notices and account details for payments]

[Incremental Facility Lender]

By:

This Agreement is accepted as an Incremental Facility Lender Accession for the purposes of the Facilities Agreement by the Agent [and as an Incremental Facility Lender Accession for the purposes of the Commitment Letter and the Accession Date is confirmed as [***]].

Agent

By:

SCHEDULE 8

Form of Accession Letter

To: [•] as Agent and [***] as Security Agent

From: [Subsidiary] and Agrokor d.d.

Dated:

Dear Sirs

Agrokor d.d. – [•] facilities agreement dated [•] 2017 (the "Facilities Agreement")

1. We refer to the Facilities Agreement. This letter (the "**Accession Letter**") shall take effect as an Accession Letter for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement and the other Finance Documents as an Additional Guarantor pursuant to Clause 24.2 (*Additional Guarantors*) of the Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction].
3. [The Borrower confirms that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional Guarantor.]
4. [Subsidiary's] administrative details are as follows:

Address:

Fax No:

Attention:
5. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[This Accession Letter is entered into by deed.]

For and on behalf of

[•]

By:

For and on behalf of

[Subsidiary]

SCHEDULE 9

Existing Security

[TO BE DELETED]

SCHEDULE 10

Utilisation and Application of Loans

1. Utilisation

On each Utilisation Date, the amount of each Loan will be applied as follows:

1.1 Initial Utilisation Date

- (a) Each Original Lender shall make its participation in the Facility A Loan available by the Business Day prior to the Initial Utilisation Date through its Facility Office.
- (b) An amount equal to 50 per cent of the proceeds of the Facility A Loan advanced pursuant to clause 5.1 (*Initial Utilisation Date*), being an amount equal to €100,000,000, shall be made available by the Original Lenders by payment of funds into the Madison Account for value on the Business Day prior to the Initial Utilisation Date, which funds shall be applied in redemption of the Specified Existing Financial Indebtedness of the Original Lenders set out below, such redemption to occur in accordance with paragraph 2 of this Schedule.

Original Lender	Specified Existing Finance Documents	Specified Existing Financial Indebtedness (EUR)
Knighthead Capital Investments S.à.r.l.	US00855UAB52 (EUR)	46,484,522.46
	XS0836495183	31,419,000.00
Knighthead Capital Investments II S.à.r.l.	US00855UAB52 (EUR)	5,901,283.50
	XS0836495183	3,990,000.00
Kala Investments S.à.r.l.	US00855UAB52 (EUR)	7,282,936.96
	XS0836495183	4,922,000.00

- (c) An amount equal to the remaining 50 per cent of the Facility A Loan advanced pursuant to clause 5.1 (*Initial Utilisation Date*), being an amount equal to €100,000,000, shall then be advanced on the Initial Utilisation Date pursuant to the mechanism set out in paragraph 3 of this Schedule.

1.2 Syndication Utilisation Dates

- (a) Each Lender under Facility A shall make its participation in the Facility A Loan available by the Business Day prior to the relevant Syndication Utilisation Date through its Facility Office.
- (b) An amount equal to 50 per cent of the proceeds of the Facility A Loan advanced pursuant to clause 5.2 (*Syndication Utilisation Dates*) on each Syndication Utilisation Date shall be made available by each New Lender (and any Increase Lender) by payment of funds into the Madison Account for value on the Business Day prior to the relevant Syndication Utilisation Date, which funds shall be applied in redeeming and/or repaying the Specified Existing Financial Indebtedness owed to that New Lender (or Increase Lender) under the relevant Specified Existing Financing Documents and in each case as set out in the relevant New Lender

Accession (or Increase Confirmation) dated on or about the date of the applicable Syndication Commitment Increase Date, such redemption to occur in accordance with paragraph 2 of this Schedule.

- (c) An amount equal to the remaining 50 per cent of the Facility A Loan advanced pursuant to clause 5.1 (*Syndication Utilisation Date*) shall then be advanced on each Syndication Utilisation Date pursuant to the mechanism set out in paragraph 3 of this Schedule.

1.3 Facility A Unallocated Amount Utilisation Dates

- (a) Each Lender under Facility A shall make its participation in the Facility A Loan available by the Business Day prior to each Facility A Unallocated Amount Utilisation Date through its Facility Office.
- (b) An amount equal to 50 per cent of the proceeds of the Facility A Loan advanced pursuant to clause 5.3 (*Facility A Unallocated Amount*) on the each Facility A Unallocated Amount Utilisation Date shall be made available by each Increase Lender (or New Lender) by payment of funds into the Madison Account for value on the Business Day prior to the relevant Facility A Unallocated Amount Utilisation Date, which funds shall be applied in redeeming and/or repaying the Specified Existing Financial Indebtedness incurred by each such Increase Lender (or New Lender) under the relevant Specified Existing Financing Documents and in each case as set out in the applicable Increase Confirmation (or New Lender Accession), in each case entered into prior to the relevant Facility A Unallocated Amount Utilisation Date in accordance with clause 5.3 (*Facility A Unallocated Amount*), such redemption to occur in accordance with paragraph 2 of this Schedule.
- (c) An amount equal to the remaining 50 per cent of the Facility A Loan advanced pursuant to clause 5.1 (*Facility A Unallocated Amount*) shall then be advanced on each Facility A Unallocated Amount Utilisation Date pursuant to the mechanism set out in paragraph 3 of this Schedule.

1.4 Incremental Facility Utilisation Dates

- (a) Each Lender under the Incremental Facility shall make its participation in the Incremental Facility Loan available by the Business Day prior to the relevant Incremental Facility Utilisation Date through its Facility Office.
- (b) An amount equal to 50 per cent of the proceeds of the Incremental Facility Loan advanced pursuant to clause 5.4 (*Incremental Facility Utilisation Date*) on the relevant Incremental Facility Utilisation Date shall be made available by each Incremental Facility Lender by payment of funds into the Madison Account for value on the Business Day prior to the relevant Incremental Facility Utilisation Date, which funds shall be applied in redeeming and/or repaying the Specified Existing Financial Indebtedness incurred by that Incremental Facility Lender under the Specified Existing Financing Documents and in each case as set out in the applicable Incremental Facility Lender Accession entered into prior to the relevant Incremental Facility Utilisation Date in accordance with clause 5.4 (*Incremental Facility Utilisation Date*), such redemption to occur in accordance with paragraph 2 of this Schedule.
- (c) An amount equal to the remaining 50 per cent of the Incremental Facility Loan advanced pursuant to clause 5.4 (*Incremental Facility Utilisation Date*) shall then be advanced on the relevant Incremental Utilisation Date pursuant to the mechanism set out in paragraph 3 of this Schedule.

2. **Redemption and/or Repayment of Existing Financial Indebtedness**

(a) **Payments into Refinance Escrow Account**

On each Utilisation Date in respect of Facility A or Incremental Facility (as applicable), the Agent shall pay the proceeds of the portion of Facility A Loan or Incremental Facility Loan (as applicable) referenced under paragraph 1.1(b), 1.2(b), 1.3(b) or 1.4(b) (as the case may be) into the Refinance Escrow Account by giving a written instruction to the Escrow Bank to do so before 10:00am London time on that Utilisation Date including the payment reference "MadPac client a/c".

It is acknowledged by the Parties that the Refinance Escrow Account is in the name of the Parent, and all sums in the Refinance Escrow Account from time to time are the property of the Parent. Any interest accruing on the Refinance Escrow Account shall be for the account of the Parent.

(b) **Payments into Repayment Escrow Account**

The Parent shall unconditionally and irrevocably instruct the Escrow Agent (as set out in the Refinance Escrow Agreement) that immediately upon receipt of the above amounts into the Refinance Escrow Account pursuant to paragraph 2(a) above, the Escrow Agent shall pay the full amount of such sums into the Repayment Escrow Account.

It is acknowledged by the Parties that the Repayment Escrow Account is in the name of the Agent on behalf of the Lenders in its capacity as Agent under and subject to the terms of the Facility Agreement. Any interest accruing on the Repayment Escrow Account shall be for the account of the Lenders.

The payments of the above monies into the Repayment Escrow Account shall satisfy the payment obligation of the Borrowers in relation to the refinancing of the Specified Existing Financial Indebtedness of each Lender in accordance with this Schedule and in the amounts set out in the relevant Increase Confirmation, the relevant New Lender Accession and/or the Incremental Facility Lender Accession.

3. **Advance of balance of Utilisation**

(a) **Payments into Liquidity Escrow Account**

The Agent shall issue a release notice to the Escrow Agent before 10:00am London time on that Utilisation Date in accordance with the Repayment Escrow Agreement which shall unconditionally and irrevocably instruct the Escrow Agent to immediately upon receipt of the above amounts into the Repayment Escrow Account under paragraph 2(b) above, to:

- (i) transfer the Transaction Costs pursuant to Clause 5.9(a) (*Escrow Accounts*) of this Agreement to the Agent; and
- (ii) to transfer the remaining sums on the Repayment Escrow Account to the Liquidity Escrow Account.

It is acknowledged by the Parties that the Liquidity Escrow Account is in the name of the Parent, and all sums in the Liquidity Escrow Account from time to time are the property of the Parent. Any interest accruing on the Liquidity Escrow Account shall be for the account of the Parent.

The payments of the above monies from the Repayment Account shall satisfy the obligation on each Lender, New Lender and/or Increase Lender to advance the

remaining balance of the relevant Facility A Loan or Incremental Facility Loan (as applicable) as referenced under paragraph 1.1(c), 1.2(c), 1.3(c) or 1.4(c) above (as the case may be).

(b) **Funds on Liquidity Escrow Account**

The Parent agrees that the Escrow Agent shall hold all such amounts in the Liquidity Escrow Account until such time as there is a drawing from the Liquidity Escrow Account to fund the Borrowers' working capital requirements in accordance with Clause 3.1(b) of the Facility Agreement.

4. **Netting of Existing DIP Financing**

A DIP Lender may elect to satisfy its obligation to fund 50 per cent. of a Facility A Loan pursuant to paragraph 1.2(b) by way of set-off of that obligation against its right to receive an amount in repayment of the relevant Existing DIP Financing as required pursuant to paragraph (b) of Clause 3.1 (*Purpose*) (the "**Set-Off**"). For the avoidance of doubt, the Set-Off shall satisfy the requirements under paragraphs 1.2(c), 2 and 3 above so that any requirement to make any advance, fund or payment of any amount of the Facility A Loan or the proceeds thereof shall be satisfied by way of the Set-Off.

SCHEDULE 11

Redemption and Repayment Mechanics

For the purpose of all Utilisations and repayment, prepayment, redemption and repurchase transactions contemplated by this Schedule 11, all fractions shall be rounded to the nearest €1,000 or USD 1,000, as applicable (whether such fraction arises by virtue of Applicable Exchange Rates, pro rata allocation methodology, or otherwise).

Part A: Existing Bonds

Where a Lender holds Existing Bonds (a "**Bondholder Lender**"), the Borrower shall apply an amount equal to 50 per cent of the amounts utilised under Facility A and funded by that Bondholder Lender in repurchase of an equivalent amount of the Existing Bonds held legally or beneficially by Bondholder Lender. This Part A of Schedule 11 governs the terms on which that repurchase shall occur.

1. COMPANY NOTES REPURCHASE OBLIGATIONS

1.1 Where a Bondholder Lender owns any Existing Bonds, the repurchase shall be in the relevant amount (and in relation to the relevant series) of Specified Existing Financial Indebtedness for that Bondholder Lender as set out in its Increase Confirmation or New Lender Accession that Bondholder Lender.

1.2 The following common terms shall apply to the repurchase:

- (a) the price payable by the Borrower for the purposes of refinancing the Specified Existing Financial Indebtedness shall be calculated as the aggregate par value of the relevant Existing Bonds being purchased by the Borrower from that Bondholder Lender excluding any accrued interest (the "**Redemption Price**") (such accrued interest remaining payable by the relevant issuer to the Bondholder Lender in its capacity as bondholder under the relevant Existing Bond Documentation);
- (b) payment of the Redemption Price shall be satisfied by the transfer from the Refinance Escrow Account to the Repayment Escrow Account of an amount equal to the Redemption Price in accordance with Schedule 10 (*Utilisation and Application of Loans*). The Bondholder Lender agrees (in its capacity as a bondholder under the relevant Existing Bond Documentation) that this is in substitution for any obligation to transfer the amount to a designated account established at Euroclear or Clearstream or DTC, as the case may be;
- (c) settlement of the Specified Existing Financial Indebtedness shall be in Euro. To the extent that the relevant repurchase of Specified Existing Indebtedness includes any US 2020s, the relevant Bondholder Lender and Borrower agree that the Applicable Exchange Rate shall apply;
- (d) the Bondholder Lender warrants that the Existing Bonds transferred are:
 - (i) transferred with good, valid and marketable title;
 - (ii) fully paid, not subject to any option to purchase or similar rights, and not subject to any restriction on transfer; and
 - (iii) free and clear of any encumbrance save for such encumbrances as may be contained in the Facility Agreement;

there are no other representations or warranties applicable to the sale, express or implied; and

- (e) the purchase shall be deemed to take effect on, be settled on, and the transfer of the Existing Bond effected on, the relevant Utilisation Date.
- 1.3 The procedures for the delivery of Existing Bonds affected by the above transactions is set forth in paragraph 2 (with respect to Euro Notes) and paragraph 3 (with respect to US 2020s) below.
- 2. **PROCEDURE FOR THE TRANSFER OF EURO NOTES**
 - 2.1 The transfer of Euro Notes by a Bondholder Lender to the Borrower pursuant to the Agreement shall be executed via Euroclear Bank, SA/NV ("**Euroclear**") or Clearstream Banking, société anonyme ("**Clearstream**"), as applicable.
 - 2.2 Each Bondholder Lender shall arrange to have its Euro Notes delivered to the account designated by the Parent with Euroclear or Clearstream, held with Bank of New York Mellon, London Branch, as the case may be, without the simultaneous payment for such Euro Notes.
 - 2.3 Upon the purchase of Euro Notes by the Borrower, that Borrower shall either:
 - (a) hold such Notes in its own name or within a wholly owned subsidiary, and not thereafter transfer such Notes whilst the relevant indenture is outstanding; or
 - (b) provide instructions that such Euro Notes be transferred to the account designated by BNY Mellon Corporate Trustee Services Limited, as trustee for the Existing Bonds (the "**Trustee**") at either Euroclear or Clearstream, as the case may be and provide written instructions to the Trustee to cancel any Euro Notes so delivered.
- 3. **PROCEDURE FOR THE TRANSFER OF US 2020s**
 - 3.1 The transfer of US 2020s by Bondholder Lenders to the Borrower pursuant to the Agreement shall be executed via The Depository Trust Company ("**DTC**").
 - 3.2 Each Bondholder Lender shall arrange to have its relevant US 2020s delivered to the DTC account held with Bank of New York Mellon, London Branch designated by the Borrower without the simultaneous payment for such US 2020s.
 - 3.3 Upon the purchase of US 2020s by a Borrower, that Borrower shall either:
 - (a) hold such Notes in its own name or within a wholly owned subsidiary, and not thereafter transfer such Notes whilst the relevant indenture is outstanding; or
 - (b) provide instructions that such US 2020s be transferred to the account designated by the Trustee at DTC, and provide written instructions to the Trustee to cancel any US 2020s so delivered.

Part B: Existing Loans

Where a New Lender is a party to an Existing Loan Agreement (a "**Bank Lender**"), the Borrower[(s)] shall apply an amount equal to 50 per cent of the amounts utilised under Facility A and funded by that relevant Bank Lender in repayment or prepayment of an equivalent amount of the outstanding Existing Loans held legally or beneficially by that Bank Lender. This Part B of Schedule 11 governs the terms on which any repayment or prepayment of the Existing Loans shall occur.

- 1. Where a Bank Lender has outstanding Existing Loans under more than one Existing Loan Agreement, the repayment or prepayment will be made against the loans (and in the amounts) set out in the relevant Accession Document;

2. The following common terms shall apply to any repayment or prepayment under this Part B, notwithstanding any provision to the contrary in the Existing Loan Agreement:
 - (a) the price payable by the Borrower for the purposes of refinancing the Specified Existing Financial Indebtedness shall be at the aggregate par value of the debt being repaid by the Borrower from that Bank Lender, excluding any accrued interest, break costs and without premium or penalty (such accrued interest remaining payable by the relevant borrower to the Bank Lender in its capacity as lender under the relevant Existing Loan Documentation) ("**Repayment Amount**"); any repayment or prepayment of the relevant Existing Loans shall be immediately satisfied by the transfer of funds from the Refinance Escrow Account to the Repayment Escrow Account in an aggregate amount equal the Repayment Amount in accordance with Schedule 10 (*Utilisation and Application of Loans*);
 - (b) settlement of funds relating to the Repayment Amount shall be in Euro and to the extent that any of the Existing Loans are denominated in a currency other than Euro, the relevant Bank Lender and Borrower agree that the Applicable Exchange Rate shall apply when calculating the Repayment Amount;
 - (c) the relevant Existing Loans shall be deemed to be repaid or prepaid in full and the corresponding facilities under the relevant Existing Loan Agreements shall be cancelled, in each case on the relevant Utilisation Date; the Bank Lender hereby waives any prepayment, repayment, make-whole or break fees costs or expenses that might otherwise have been payable in respect of the repayment;
 - (d) the Bank Lender hereby waives any notice or other process requirements or restrictions that might otherwise have been applicable to the repayment;
 - (e) [the Bank Lender shall waive or be responsible for procuring the waiver of any restriction relating to non-pro rata repayment or prepayment of the relevant Existing Loans under the Existing Loan Agreements]; and **[TBC]**
 - (f) the Borrower shall not be liable to gross up the payment to the Bank Lender to account for tax, currency conversion, partial payment or otherwise notwithstanding any provision in the relevant Existing Loan Agreement to the contrary.
3. Where a Bank Lender is also a DIP Lender, the provisions of this Part B shall apply in respect of any repayment or prepayment of the outstanding Existing Loans held legally or beneficially by that DIP Lender, save that any requirement to make any advance, apply any amount or the settlement of funds shall be satisfied by way of the Set-Off.

Part C – Eligible Bills of Exchange

Where a New Lender is the holder of an Eligible Bill of Exchange (a "**Local Lender**"), the Borrower shall apply an amount equal to 50 per cent. of the amounts utilised under Facility A or the Incremental Facility (as applicable) and funded by that relevant Local Lender in repayment or prepayment of an equivalent amount of the outstanding Eligible Bills of Exchange held legally by that Local Lender. This Part C of Schedule 11 governs the terms on which any repayment or prepayment of the Eligible Bills of Exchange shall occur.

1. The repayment or prepayment will be made against the Eligible Bills of Exchange (and in the amounts) set out in the relevant Accession Document;
2. The following common terms shall apply to any repayment or prepayment under this Part C, notwithstanding any provision to the contrary in the Eligible Bills of Exchange:

- (a) the price payable by the Borrower for the purposes of refinancing the Specified Existing Financial Indebtedness shall be at the aggregate par value of the debt being repaid by the Borrower from that Local Lender, excluding any accrued interest, break costs and without premium or penalty (such accrued interest remaining payable by the relevant borrower to the Local Lender in its capacity as lender under the relevant Eligible Bills of Exchange) ("**Repayment Amount**"); any repayment or prepayment of the relevant Eligible Bills of Exchange shall be immediately satisfied by the transfer of funds from the Refinance Escrow Account to the Repayment Escrow Account in an aggregate amount equal to the Repayment Amount in accordance with Schedule 10 (*Utilisation and Application of Loans*);
 - (b) settlement of funds relating to the Repayment Amount shall be in Euro and to the extent that any of the Eligible Bills of Exchange are denominated in a currency other than Euro, the relevant Local Lender and Borrower agree that the Applicable Exchange Rate shall apply when calculating the Repayment Amount;
 - (c) the relevant Eligible Bills of Exchange shall be deemed to be repaid or prepaid in full and cancelled in an amount equal to the Repayment Amount, in each case on the Third Syndication Utilisation Date; the Local Lender hereby waives any prepayment, repayment, make-whole or break fees costs or expenses that might otherwise have been payable in respect of the repayment;
 - (d) the Local Lender hereby waives any notice or other process requirements or restrictions that might otherwise have been applicable to the repayment; and
 - (e) the Borrower shall not be liable to gross up the payment to the Local Lender to account for tax, currency conversion, partial payment or otherwise notwithstanding any provision in the relevant Eligible Bills of Exchange to the contrary.
3. Where a Local Lender is also a DIP Lender, the provisions of this Part C shall apply in respect of any repayment or prepayment of the outstanding Eligible Bills of Exchange held legally or beneficially by that DIP Lender, save that any requirement to make any advance, apply any amount or the settlement of funds shall be satisfied by way of the Set-Off.

Part D – DIP Financing

1. This Part D of Schedule 11 governs the terms on which any Set-Off shall occur.
2. The following common terms shall apply to any Set-Off, notwithstanding any provision to the contrary in the Existing DIP Financing:
- (a) the amount of the Existing DIP Financing discharged by way of Set-Off shall be the aggregate par value of the Existing Loans of the relevant DIP Lender being refinanced pursuant to paragraph 2(a) of Part B above (the "**Repayment Amount**");
 - (b) the Set-Off shall be in Euro and, to the extent that any of the Existing DIP Financing is denominated in a currency other than Euro, the relevant DIP Lender and the Borrower agree that the Applicable Exchange Rate shall apply when calculating the Repayment Amount;
 - (c) the relevant Existing DIP Financing shall be deemed to be repaid or prepaid in full and the corresponding facilities under the relevant Existing DIP Financing shall be cancelled, in each case on the relevant Utilisation Date; the DIP Lender hereby waives any prepayment, repayment, make-whole or break fees costs or expenses that might otherwise have been payable in respect of the Set-Off;

- (d) the DIP Lender hereby waives any notice or other process requirements or restrictions that might otherwise have been applicable to the Set-Off;
- (e) the DIP Lender shall waive or be responsible for procuring the waiver of any restriction relating to non-pro rata repayment or prepayment of the Existing DIP Financing; and
- (f) the Borrower shall not be liable to gross up the payment to the DIP Lender to account for tax, currency conversion, partial payment or otherwise notwithstanding any provision in the Existing DIP Financing to the contrary.

The Parent, Original Lenders, and any relevant New Lender shall endeavour to agree, acting in good faith, such technical, mechanical, or administrative clarifications or adjustments to this Schedule 11 (*Redemption and Repayment Mechanics*) as they may consider necessary or advisable in order to effect properly the refinance of Existing Financial Indebtedness as provided for in this Agreement, and shall instruct the Agent to effect such changes. Such clarifications or adjustments shall not oblige any party to assume any additional risk obligation or liability beyond that already included.

Part E - Existing Supply Contracts and Existing Supply Arrangements

Where an Incremental Facility Lender is a creditor under an Existing Supply Contract, Relevant Eligible Bill of Exchange or Existing Supply Arrangement (a "**Supply Lender**"), the Borrower shall apply an amount equal to 50 per cent. of the amounts utilised under the Incremental Facility and funded by that relevant Supply Lender in repayment or prepayment of an equivalent amount of the outstanding Existing Supply Contracts, Relevant Eligible Bill of Exchange or Existing Supply Arrangement (as applicable) held legally by that Supply Lender. This Part E of Schedule 11 governs the terms on which any repayment or prepayment of the Existing Supply Contracts, Relevant Eligible Bill of Exchange or Existing Supply Arrangement (as applicable) shall occur.

1. The repayment or prepayment will be made against the Existing Supply Contract, Relevant Eligible Bill of Exchange or Existing Supply Arrangement (as applicable) (and in the amounts) set out in the relevant Incremental Facility Lender Accession;
2. The following common terms shall apply to any repayment or prepayment under this Part E, notwithstanding any provision to the contrary in the Existing Supply Contract, Relevant Eligible Bill of Exchange or Existing Supply Arrangement (as applicable):
 - (a) the price payable by the Borrower for the purposes of refinancing the Specified Existing Financial Indebtedness shall be at the aggregate par value of the debt being repaid by the Borrower from that Supplier Debt ("**Repayment Amount**"); any repayment or prepayment of the relevant Existing Supply Contract, Relevant Eligible Bill of Exchange or Existing Supply Arrangement (as applicable) shall be immediately satisfied by the transfer of funds from the Refinance Escrow Account to the Repayment Escrow Account in an aggregate amount equal to the Repayment Amount in accordance with Schedule 10 (*Utilisation and Application of Loans*);
 - (b) settlement of funds relating to the Repayment Amount shall be in Euro and to the extent that any of the Existing Supply Contract, Relevant Eligible Bill of Exchange or Existing Supply Contract (as applicable) is denominated in a currency other than Euro, the relevant Supply Lender and Borrower agree that the Applicable Exchange Rate shall apply when calculating the Repayment Amount;
 - (c) the relevant Existing Supply Contract, Relevant Eligible Bill of Exchange or Existing Supply Arrangement (as applicable) shall be deemed to be repaid or prepaid in full

and cancelled in an amount equal to the Repayment Amount, in each case on the relevant Incremental Facility Utilisation Date; and

- (d) the Incremental Facility Lender hereby waives any notice or other process requirements or restrictions that might otherwise have been applicable to the repayment.

SCHEDULE 12

Restructuring Milestones

1. The Parent shall undertake a review of the senior management executives and assess the requirements for a business of the size of the Group.
2. The Parent shall procure that AlixPartners (or any third party firms selected by the Commissioner) provide recommendations of suitable candidates and the Parent shall appoint the relevant senior management executives in line with those recommendations by the earlier of (a) consensual agreement and (b) during the implementation of the Settlement Agreement.
3. The Parent shall procure that a Group business plan is made public by the Restructuring Advisor by 31 October 2017 including, but not be limited to, cost savings and working capital initiatives including details of non-core disposal programs, timing and execution plan.
4. The Parent shall deliver a proposal for the financial restructuring of the Group (the "**Restructuring Proposal**") to the legal and financial advisors to the Lenders by 30 November 2017.
5. The Parent shall make public the Restructuring Proposal of the Group by 12 January 2018.

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:

Agrokor d.d. – [•] facilities agreement dated [•] 2017 (the "Agreement")

1. We refer to paragraph (b) of Clause 23.2 (*Disenfranchisement of Shareholder Affiliates*) of the Agreement. Terms defined in the 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.

Commitment	Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)
[Facility A 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 / Notifiable Debt Purchase Transaction ceasing to be with Shareholder Affiliate

To: [] as Agent

From: [The Lender]

Dated:

Agrokor d.d. – [•] facilities agreement dated [•] 2017 (the "Agreement")

1. We refer to paragraph (c) of Clause 23.2 (*Disenfranchisement of Shareholder Affiliates*) of the Agreement. Terms defined in the 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 Shareholder Affiliate].
3. The Notifiable Debt Purchase Transaction referred to in paragraph 2 above relates to the amount of our Commitment(s) as set out below.

Commitment	Amount of our Commitment to which Notifiable Debt Purchase Transaction relates (Base Currency)
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[Facility A 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:

SCHEDULE 14

Form of Utilisation Request (Facility A Unallocated Amount)

From: [Parent]

To: Madison Pacific Trust Limited (as Agent)

Dated:

Dear Sirs

AGROKOR D.D. – SUPER-PRIORITY TERM FACILITIES AGREEMENT DATED [] 2017 (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: [Parent]
 - (b) Proposed Utilisation Date: [***] (or, if that is not a Business Day, the next Business Day)*
 - (c) Facility to be utilised: Facility A
 - (d) Currency of Loan: Euro
 - (e) Amount: [***] or, if less, the Available Facility
 - (f) Interest Period: [***]
3. We confirm that no Event of Default has occurred and is continuing or would result from the proposed Loan.
4. This Loan is to be made available in accordance with clause 5.3 (*Facility A Unallocated Amount*), Schedule 10 (*Utilisation and Application of Loans*) and Schedule 11 (*Redemption and Repayment Mechanics*) of the Facilities Agreement.
5. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
[the Parent]

NOTES:

- * To be at least [10] Business Days after date of Utilisation Request.

SCHEDULE 15

Form of Incremental Facility Notice

To: [] as Agent

From: [The Parent]

[Incremental Facility Lender]

Dated:

Agrokor d.d. – [•] facilities agreement dated [•] 2017 (the "Agreement")

1. We refer to the Agreement and in particular Clause 2.3 (*Incremental Facility*) thereof. Terms defined in this Agreement have the same meaning when used in this Incremental Facility Notice.
2. We have agreed with the following Trade Creditor that they commit Incremental Facility Commitments as follows:

Name of Trade Creditor/Incremental Facility Lender	Incremental Facility Commitment (€)

3. The details of the Supply Contract entered into with the Trade Creditors referred to in paragraph 2 are as follows:

Name of Trade Creditor/Incremental Facility Lender	Details of Supply Contract / Relevant Eligible Bill of Exchange / Existing Supply Arrangement

We confirm that we have provided a summary of the terms of each Supply Contract to the Financial Advisor.

4. The Availability Period is: [•]
5. The date on which the Incremental Facility Commitments referred to above are to become effective is [DATE] (the "**Utilisation Date**").

The Parent

For and on behalf of Parent

[•]

Director

[Incremental Facility Lender]

For and on behalf of [Incremental Facility Lender]

[•]

Director