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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **August 28, 2019**

**HILLENBRAND, INC.**

(Exact Name of Registrant as Specified in Charter)

**Indiana**  
(State of Incorporation)

**1-33794**  
(Commission File Number)

**26-1342272**  
(IRS Employer Identification No.)

**One Batesville Boulevard**  
**Batesville, Indiana**  
(Address of Principal Executive Office)

**47006**  
(Zip Code)

Registrant's telephone number, including area code: **(812) 934-7500**

**Not Applicable**

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

<u>Title of each class:</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered:</u>
Common Stock, without par value	HI	New York Stock Exchange

Indicate by the check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01. Entry into a Material Definitive Agreement.**

**Third Amended and Restated Credit Agreement**

On August 28, 2019, Hillenbrand, Inc. (the “Company”) entered into a Third Amended and Restated Credit Agreement (the “Credit Agreement”) among the Company, as a borrower, the subsidiary borrowers party thereto, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent for the lenders. The Credit Agreement amends and restates the Company’s second amended and restated credit agreement, dated as of December 8, 2017, which provided for a revolving credit facility of up to \$900 million (which may be expanded, subject to the approval of the lenders providing the additional loans, by an additional \$450 million) in an aggregate principal amount (the “Revolver”). The Credit Agreement extends the maturity date of the Revolver to August 28, 2024 and provides for a new term loan facility in an aggregate principal amount of up to \$500 million (the “Term Loan Facility”).

The term loan lenders' commitments to advance term loans to the Company under the Term Loan Facility are subject to customary closing conditions, including the concurrent closing of the Company's previously announced acquisition of Milacron Holdings Corp (“Milacron”). The proceeds of the term loans may be used to pay a portion of the consideration payable in connection with proposed acquisition of Milacron, fees and expenses related to the proposed acquisition and the term loans and to repay certain indebtedness of Milacron and its subsidiaries on closing of the proposed acquisition.

The term loans will mature on the fifth anniversary of the date on which they are borrowed, subject to quarterly amortization payments (equal to 5% of the original principal amount of the term loans in each of years 1 and 2, 7.5% in each of years 3 and 4, and 10% in year 5). The term loan commitments will bear a ticking fee of 0.15% on the amount of the commitments commencing 60 days after the signing date until the date the term loans are funded or the commitments under the Term Loan Facility are terminated. The term loans will, once borrowed, accrue interest, at the Company’s option, at the LIBO Rate or the Alternate Base Rate (each as defined in the Credit Agreement) plus a margin based on the Company’s leverage ratio, ranging from 1.00% to 1.75% for term loans bearing interest at the LIBO Rate and 0.0% to 0.75% for term loans bearing interest at the Alternate Base Rate.

The term loans will be subject to the same affirmative and negative covenants and events of default as those applicable to the Revolver. The term loans will be guaranteed by the same subsidiaries of the Company that guarantee the Revolver.

The foregoing description of the Credit Agreement is a general description and is qualified in its entirety by reference to the Credit Agreement filed as Exhibit 10.1 hereto.

**Amendment No. 5 to Private Shelf Agreement**

On September 4, 2018, the Company and the subsidiary guarantors party thereto entered into Amendment No. 5 to Private Shelf Agreement (the “Shelf Amendment”), which amends the Private Shelf Agreement, among the Company, PGIM, Inc. (f/k/a Prudential Investment Management, Inc.) and each Prudential Affiliate (as defined therein) bound thereby, dated December 6, 2012 (as amended from time to time, including pursuant to the Shelf Amendment, the “Shelf Agreement”). The Shelf Amendment aligns certain covenants, definitions and other provisions in the Shelf Agreement with those under the Credit Agreement, as amended as described above.

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The foregoing description of the Shelf Amendment is a general description and is qualified in its entirety by reference to the Shelf Amendment filed as Exhibit 10.2 hereto.

#### **Amendment to L/G Facility Agreement**

On September 4, 2018, the Company and certain of its subsidiaries entered into that certain Amendment and Restatement Agreement (the "L/G Amendment"), which amends the Syndicated Letter of Guarantee Facility Agreement, dated March 8, 2018 (as so amended, the "L/G Facility Agreement"), by and among the Company, certain of its subsidiaries party thereto, the lenders party thereto, and Commerzbank Finance & Covered Bond S.A., acting as agent. The L/G Amendment aligns certain covenants, definitions and other provisions in the L/G Facility Agreement to align with those under the Credit Agreement, as amended as described above.

The foregoing description of the L/G Amendment is a general description and is qualified in its entirety by reference to the L/G Amendment filed as Exhibit 10.3 hereto.

#### **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information provided in Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 2.03.

#### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit No.</b>	<b>Description of Exhibit</b>
<a href="#">10.1</a>	<a href="#">Third Amended and Restated Credit Agreement, dated as of August 28, 2019, among Hillenbrand, Inc., as a borrower, the subsidiary borrowers party thereto, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent.</a>
<a href="#">10.2</a>	<a href="#">Amendment No. 5 to Private Shelf Agreement, dated as of September 4, 2019, among Hillenbrand, Inc., PGIM, Inc. (f/k/a Prudential Investment Management, Inc.), the subsidiary guarantors party thereto, and the additional parties thereto.</a>
<a href="#">10.3</a>	<a href="#">Amendment and Restatement Agreement, dated as of September 4, 2018, among Hillenbrand, Inc., certain of its subsidiaries party thereto, the lenders party thereto, and Commerzbank Finance &amp; Covered Bond S.A., acting as agent.</a>
104	Cover Page Interactive Data File (formatted as Inline XBRL)

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: September 4, 2019

HILLENBRAND, INC.

By: /s/ Nicholas R. Farrell  
Name: Nicholas R. Farrell  
Title: Vice President, General Counsel,  
Secretary and Chief Compliance Officer

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# J.P.Morgan

## THIRD AMENDED AND RESTATED CREDIT AGREEMENT

dated as of

August 28, 2019

among

HILLENBRAND, INC.

HILLENBRAND LUXEMBOURG S.À R.L.,  
COPERION K-TRON (SCHWEIZ) GMBH,  
HILLENBRAND SWITZERLAND GMBH,  
BATESVILLE CANADA LTD.,  
JEFFREY RADER CANADA COMPANY,  
ROTEX EUROPE LTD,  
COPERION GMBH and  
HILLENBRAND GERMANY HOLDING GMBH

The other Subsidiary Borrowers Party Hereto

The Lenders Party Hereto

JPMORGAN CHASE BANK, N.A.  
as Administrative Agent

CITIZENS BANK, N.A. and  
WELLS FARGO BANK, NATIONAL ASSOCIATION  
as Co-Syndication Agents

and

BMO HARRIS FINANCING, INC.,  
HSBC BANK USA, NATIONAL ASSOCIATION,  
PNC BANK, NATIONAL ASSOCIATION,  
SUMITOMO MITSUI BANKING CORPORATION and  
U.S. BANK NATIONAL ASSOCIATION  
as Co-Documentation Agents

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JPMORGAN CHASE BANK, N.A.,  
CITIZENS BANK, N.A. and  
WELLS FARGO SECURITIES, LLC  
as Joint Bookrunners and Joint Lead Arrangers

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Table Of Contents

	<u>Page</u>
ARTICLE I Definitions	2
SECTION 1.01. DEFINED TERMS	2
SECTION 1.02. CLASSIFICATION OF LOANS AND BORROWINGS	40
SECTION 1.03. TERMS GENERALLY	40
SECTION 1.04. ACCOUNTING TERMS; GAAP; PRO FORMA CALCULATIONS	40
SECTION 1.05. AMENDMENT AND RESTATEMENT OF EXISTING AGREEMENT	41
SECTION 1.06. INTEREST RATES; LIBOR NOTIFICATION	42
SECTION 1.07. DIVISIONS	42
SECTION 1.08. CERTAIN CALCULATIONS	42
SECTION 1.09. LUXEMBOURG TERMS	43
ARTICLE II The Credits	43
SECTION 2.01. COMMITMENTS	43
SECTION 2.02. LOANS AND BORROWINGS	43
SECTION 2.03. REQUESTS FOR BORROWINGS	44
SECTION 2.04. DETERMINATION OF DOLLAR AMOUNTS	45
SECTION 2.05. SWINGLINE LOANS	46
SECTION 2.06. LETTERS OF CREDIT	48
SECTION 2.07. FUNDING OF BORROWINGS	54
SECTION 2.08. INTEREST ELECTIONS	54
SECTION 2.09. TERMINATION AND REDUCTION OF COMMITMENTS	56
SECTION 2.10. REPAYMENT AND AMORTIZATION OF LOANS; EVIDENCE OF DEBT	57
SECTION 2.11. PREPAYMENT OF LOANS	58
SECTION 2.12. FEES	59
SECTION 2.13. INTEREST	60
SECTION 2.14. ALTERNATE RATE OF INTEREST	63
SECTION 2.15. INCREASED COSTS	65
SECTION 2.16. BREAK FUNDING PAYMENTS	66
SECTION 2.17. TAXES	67
SECTION 2.18. PAYMENTS GENERALLY; PRO RATA TREATMENT; SHARING OF SET-OFFS	75
SECTION 2.19. MITIGATION OBLIGATIONS; REPLACEMENT OF LENDERS	77
SECTION 2.20. EXPANSION OPTION	78
SECTION 2.21. [INTENTIONALLY OMITTED]	79
SECTION 2.22. JUDGMENT CURRENCY	79
SECTION 2.23. DESIGNATION OF SUBSIDIARY BORROWERS	79
SECTION 2.24. DEFAULTING LENDERS	80
SECTION 2.25. EXTENSION OF MATURITY DATE	82
ARTICLE III Representations and Warranties	83
SECTION 3.01. ORGANIZATION; POWERS; SUBSIDIARIES	83
SECTION 3.02. AUTHORIZATION; ENFORCEABILITY	84
SECTION 3.03. GOVERNMENTAL APPROVALS; NO CONFLICTS	84
SECTION 3.04. FINANCIAL CONDITION; NO MATERIAL ADVERSE CHANGE	84
SECTION 3.05. PROPERTIES	84
SECTION 3.06. LITIGATION, ENVIRONMENTAL AND LABOR MATTERS	85
SECTION 3.07. COMPLIANCE WITH LAWS	85

---

Table Of Contents  
(continued)

	<u>Page</u>
SECTION 3.08. INVESTMENT COMPANY STATUS	85
SECTION 3.09. TAXES	85
SECTION 3.10. ERISA	85
SECTION 3.11. DISCLOSURE	85
SECTION 3.12. FEDERAL RESERVE REGULATIONS	86
SECTION 3.13. NO DEFAULT	86
SECTION 3.14. ANTI-CORRUPTION LAWS AND SANCTIONS	86
SECTION 3.15. EEA FINANCIAL INSTITUTIONS	86
SECTION 3.16. SOLVENCY	86
ARTICLE IV Conditions	87
SECTION 4.01. EFFECTIVE DATE	87
SECTION 4.02. TERM LOAN FUNDING DATE	88
SECTION 4.03. EACH CREDIT EVENT	90
SECTION 4.04. DESIGNATION OF A SUBSIDIARY BORROWER	90
ARTICLE V Affirmative Covenants	91
SECTION 5.01. FINANCIAL STATEMENTS AND OTHER INFORMATION	91
SECTION 5.02. NOTICES OF MATERIAL EVENTS	92
SECTION 5.03. EXISTENCE; CONDUCT OF BUSINESS	93
SECTION 5.04. PAYMENT OF TAX OBLIGATIONS	93
SECTION 5.05. MAINTENANCE OF PROPERTIES; INSURANCE	93
SECTION 5.06. BOOKS AND RECORDS; INSPECTION RIGHTS	94
SECTION 5.07. COMPLIANCE WITH LAWS	94
SECTION 5.08. USE OF PROCEEDS	94
SECTION 5.09. SUBSIDIARY GUARANTY	95
ARTICLE VI Negative Covenants	95
SECTION 6.01. LIENS	95
SECTION 6.02. ACQUISITIONS	98
SECTION 6.03. INDEBTEDNESS	98
SECTION 6.04. FUNDAMENTAL CHANGES	100
SECTION 6.05. RESTRICTED PAYMENTS	101
SECTION 6.06. CHANGE IN NATURE OF BUSINESS	101
SECTION 6.07. [INTENTIONALLY OMITTED]	102
SECTION 6.08. BURDENSOME AGREEMENTS	102
SECTION 6.09. USE OF PROCEEDS	103
SECTION 6.10. FINANCIAL COVENANTS	103
ARTICLE VII Events of Default	104
ARTICLE VIII The Administrative Agent	107
SECTION 8.01. GENERAL MATTERS	107
SECTION 8.02. POSTING OF COMMUNICATIONS	110
SECTION 8.03. CERTAIN ERISA MATTERS	111

Table Of Contents  
(continued)

	<u>Page</u>
ARTICLE IX Miscellaneous	112
SECTION 9.01. NOTICES	112
SECTION 9.02. WAIVERS; AMENDMENTS	114
SECTION 9.03. EXPENSES; INDEMNITY; DAMAGE WAIVER	116
SECTION 9.04. SUCCESSORS AND ASSIGNS	118
SECTION 9.05. SURVIVAL	122
SECTION 9.06. COUNTERPARTS; INTEGRATION; ELECTRONIC EXECUTION; EFFECTIVENESS	122
SECTION 9.07. SEVERABILITY	123
SECTION 9.08. RIGHT OF SETOFF	123
SECTION 9.09. GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS	123
<b>SECTION 9.10. WAIVER OF JURY TRIAL</b>	124
SECTION 9.11. HEADINGS	125
SECTION 9.12. CONFIDENTIALITY	125
SECTION 9.13. USA PATRIOT ACT, ETC.	126
SECTION 9.14. RELEASES OF SUBSIDIARY GUARANTORS	126
SECTION 9.15. INTEREST RATE LIMITATION	127
SECTION 9.16. NO ADVISORY OR FIDUCIARY RESPONSIBILITY	127
SECTION 9.17. SEVERAL LIABILITY	128
SECTION 9.18. ACKNOWLEDGEMENT AND CONSENT TO BAIL-IN OF EEA FINANCIAL INSTITUTIONS	128
SECTION 9.19. ACKNOWLEDGEMENT REGARDING ANY SUPPORTED QFCS	128
ARTICLE X Company Guarantee	129



Table Of Contents  
(continued)

Page

SCHEDULES:

Schedule 2.01	– Commitments
Schedule 2.06	– Existing Letters of Credit
Schedule 3.01	– Subsidiaries
Schedule 6.01	– Existing Liens
Schedule 6.03	– Existing Indebtedness

EXHIBITS:

Exhibit A	– Form of Assignment and Assumption
Exhibit B-1	– Form of Borrowing Request
Exhibit B-2	– Form of Interest Election Request
Exhibit C	– Form of Increasing Lender Supplement
Exhibit D	– Form of Augmenting Lender Supplement
Exhibit E	– List of Closing Documents
Exhibit F-1	– Form of Borrowing Subsidiary Agreement
Exhibit F-2	– Form of Borrowing Subsidiary Termination
Exhibit G	– Form of Subsidiary Guaranty
Exhibit H-1	– Form of U.S. Tax Certificate (Foreign Lenders That Are Not Partnerships)
Exhibit H-2	– Form of U.S. Tax Certificate (Foreign Participants That Are Not Partnerships)
Exhibit H-3	– Form of U.S. Tax Certificate (Foreign Participants That Are Partnerships)
Exhibit H-4	– Form of U.S. Tax Certificate (Foreign Lenders That Are Partnerships)
Exhibit I-1	– Form of Revolving Loan Note
Exhibit I-2	– Form of Term Loan Note
Exhibit J	– Form of Solvency Certificate

THIRD AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") dated as of August 28, 2019, among HILLENBRAND, INC., an Indiana corporation, HILLENBRAND LUXEMBOURG S.À R.L., a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of Luxembourg, having its registered office at 15, Boulevard F.W. Raiffeisen, L-2411 Luxembourg and registered with the Luxembourg Trade and Companies Register under number B160056, COPERION K-TRON (SCHWEIZ) GMBH, a Swiss limited liability company, HILLENBRAND SWITZERLAND GMBH, a Swiss limited liability company, BATESVILLE CANADA LTD. , a Canadian corporation, JEFFREY RADER CANADA COMPANY, a Nova Scotia company, ROTEX EUROPE LTD, a private company limited by shares under the laws of England and Wales, COPERION GMBH, a German limited liability company, HILLENBRAND GERMANY HOLDING GMBH, a German limited liability company, the other SUBSIDIARY BORROWERS from time to time party hereto, the LENDERS from time to time party hereto, JPMORGAN CHASE BANK, N.A., as Administrative Agent, CITIZENS BANK, N.A. and WELLS FARGO BANK, NATIONAL ASSOCIATION as Co-Syndication Agents and BMO HARRIS FINANCING, INC., HSBC BANK USA, NATIONAL ASSOCIATION, PNC BANK, NATIONAL ASSOCIATION, SUMITOMO MITSUI BANKING CORPORATION and U.S. BANK NATIONAL ASSOCIATION as Co-Documentation Agents.

WHEREAS, the Borrowers, certain of the Lenders and the Administrative Agent are currently party to that certain Second Amended and Restated Credit Agreement dated as of December 8, 2017 (as amended, supplemented or otherwise modified prior to the date hereof, the "Existing Credit Agreement");

WHEREAS, the Borrowers, the Lenders and the Administrative Agent have agreed to enter into this Agreement in order to (i) amend and restate the Existing Credit Agreement in its entirety; (ii) re-evidence the obligations under the Existing Credit Agreement, which shall be repayable in accordance with the terms of this Agreement; and (iii) set forth the terms and conditions under which the Lenders will, from time to time, make loans and extend other financial accommodations to or for the benefit of the Borrowers;

WHEREAS, it is the intent of the parties hereto that this Agreement not constitute a novation of the obligations and liabilities of the parties under the Existing Credit Agreement or be deemed to evidence or constitute full repayment of such obligations and liabilities, but that this Agreement amend and restate in its entirety the Existing Credit Agreement and re-evidence the obligations and liabilities of the Borrowers and the other credit parties outstanding thereunder, which shall be payable in accordance with the terms hereof; and

WHEREAS, it is also the intent of the Borrowers and the Subsidiary Guarantors to confirm that all obligations under the "Loan Documents" (as referred to and defined in the Existing Credit Agreement) shall continue in full force and effect as modified and/or restated by the Loan Documents (as referred to and defined herein) and that, from and after the Effective Date, all references to the "Credit Agreement" contained in any such existing "Loan Documents" shall be deemed to refer to this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto hereby agree that the Existing Credit Agreement is hereby amended and restated as follows:

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ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABR” when used in reference to any Loan or Borrowing, refers to such Loan, or the Loans comprising such Borrowing, bearing interest at a rate determined by reference to the Alternate Base Rate.

“Additional Commitment Lender” is defined in Section 2.25(d).

“Acquisition-Related Incremental Term Loans” has the meaning assigned to such term in Section 2.20.

“Adjusted Covenant Period” has the meaning assigned to such term in Section 6.10.

“Adjusted LIBO Rate” means, with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” means JPMorgan Chase Bank, N.A. (including its branches and affiliates), in its capacity as administrative agent for the Lenders hereunder.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreed Currencies” means (i) Dollars, (ii) euro, (iii) Pounds Sterling, (iv) Swiss Francs, (v) Canadian Dollars, (vi) Japanese Yen and (vii) any other currency (x) that is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars, (y) for which a LIBOR Screen Rate is available pursuant to the definition of “LIBO Rate” in the Administrative Agent’s reasonable determination (subject to the terms of Section 2.14) and (z) that is agreed to by the Administrative Agent and each of the Revolving Lenders.

“Agreement” has the meaning assigned to such term in the introductory paragraph.

“Airport Access and Use Agreement” means that certain Airport Access and Use Agreement dated on or about March 21, 2008 by and between Hill-Rom and Batesville Services.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period in Dollars on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%, provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBOR Screen Rate (or if the LIBOR Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 hereof, then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

“Alternative Rate” has the meaning assigned to such term in Section 2.14(a).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Company or its Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable LC Sublimit” means, as of the Effective Date (i) with respect to JPMorgan Chase Bank, N.A. in its capacity as an Issuing Bank under this Agreement, \$28,600,000, (ii) with respect to Citizens Bank, N.A. in its capacity as an Issuing Bank under this Agreement, \$28,600,000, (iii) with respect to Wells Fargo Bank, National Association in its capacity as an Issuing Bank under this Agreement, \$28,600,000, (iv) with respect to PNC Bank, National Association in its capacity as an Issuing Bank under this Agreement, \$28,600,000, (v) with respect to HSBC Bank USA, National Association in its capacity as an Issuing Bank under this Agreement, \$28,600,000, (vi) with respect to U.S. Bank National Association in its capacity as an Issuing Bank under this Agreement, \$28,600,000, (vii) with respect to BMO Harris Financing, Inc. in its capacity as an Issuing Bank under this Agreement, \$28,600,000 and (viii) with respect to any other Person that becomes an Issuing Bank pursuant to the terms of this Agreement, such amount as agreed to in writing by the Company, the Administrative Agent and such Person at the time such Person becomes an Issuing Bank pursuant to the terms of the Agreement, as each of the foregoing amounts may be decreased or increased from time to time with the written consent of the Company, the Administrative Agent and the Issuing Banks (provided that any increase in the Applicable LC Sublimit with respect to any Issuing Bank (and any decrease in the Applicable LC Sublimit with respect to any Issuing Bank after any such increase in the Applicable LC Sublimit of such Issuing Bank so long as such decrease would not cause the Applicable LC Sublimit of such Issuing Bank to be less than its Applicable LC Sublimit as of the Effective Date) shall only require the consent of the Company, the Administrative Agent and such Issuing Bank).

“Applicable Maturity Date” has the meaning assigned to it in Section 2.25(a).

“Applicable Parties” has the meaning assigned to such term in Section 8.02(c).

“Applicable Payment Office” means, (a) in the case of a Canadian Revolving Borrowing, the Canadian Payment Office and (b) in the case of a Eurocurrency Borrowing (including for Designated Loans), the applicable Eurocurrency Payment Office.

“Applicable Percentage” means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure or Swingline Loans, the percentage equal to a fraction the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the aggregate Revolving Commitments of all Revolving Lenders (if the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments); and (b) with respect to the Term Loans, (i) at any time prior to the funding of the Term Loans on the Term Loan Funding Date, a percentage equal to a fraction the numerator of which is such Lender’s Term Loan Commitment and the denominator of which is the aggregate Term Loan Commitments of all Term Lenders and (ii) at any time after the funding of the Term Loans on the Term Loan Funding Date, a percentage equal to a fraction the numerator of which is such Lender’s outstanding principal amount of the Term Loans and the denominator of which is the aggregate outstanding principal amount of the Term Loans of all Term Lenders.

“Applicable Rate” means:

(a) for any day, with respect to any Eurocurrency Revolving Loan, any BA Equivalent Revolving Loan, any ABR Revolving Loan, any Canadian Base Rate Revolving Loan or with respect to any Commercial Letter of Credit or with respect to the facility fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption “Eurocurrency/BA Equivalent Revolving Spread”, “ABR/Canadian Base Rate Revolving Spread”, “Facility Fee Rate” or “Commercial Letter of Credit Rate”, as the case may be, based upon the Leverage Ratio applicable on such date:

	<u>Leverage Ratio:</u>	<u>Eurocurrency / BA Equivalent Revolving Spread</u>	<u>ABR / Canadian Base Rate Revolving Spread</u>	<u>Commercial Letter of Credit Rate</u>	<u>Facility Fee Rate</u>
<u>Category 1:</u>	< 1.00 to 1.00	0.90%	0%	0.6375%	0.10%
<u>Category 2:</u>	≥ 1.00 to 1.00 but < 1.50 to 1.00	1.00%	0%	0.7125%	0.125%
<u>Category 3:</u>	≥ 1.50 to 1.00 but < 2.00 to 1.00	1.10%	0.10%	0.7875%	0.15%
<u>Category 4:</u>	≥ 2.00 to 1.00 but < 2.50 to 1.00	1.175%	0.175%	0.84375%	0.20%
<u>Category 5:</u>	≥ 2.50 to 1.00 but < 3.00 to 1.00	1.275%	0.275%	0.90%	0.225%
<u>Category 6:</u>	≥ 3.00 to 1.00	1.50%	0.50%	1.05%	0.25%

(b) for any day, with respect to any Eurocurrency Term Loan or any ABR Term Loan, as the case may be, the applicable rate per annum set forth below under the caption “Eurocurrency Term Loan Spread”, “ABR Term Loan Spread”, as the case may be, based upon the Leverage Ratio applicable on such date:

	<u>Leverage Ratio:</u>	<u>Eurocurrency Term Loan Spread</u>	<u>ABR Term Loan Spread</u>
<u>Category 1:</u>	< 1.00 to 1.00	1.00%	0%
<u>Category 2:</u>	≥ 1.00 to 1.00 but < 1.50 to 1.00	1.125%	0.125%
<u>Category 3:</u>	≥ 1.50 to 1.00 but < 2.00 to 1.00	1.25%	0.25%
<u>Category 4:</u>	≥ 2.00 to 1.00 but < 2.50 to 1.00	1.375%	0.375%
<u>Category 5:</u>	≥ 2.50 to 1.00 but < 3.00 to 1.00	1.50%	0.50%
<u>Category 6:</u>	≥ 3.00 to 1.00	1.75%	0.75%

For purposes of the foregoing clauses (a) and (b),

(i) if at any time the Company fails to deliver the Financials by the date the Financials are due pursuant to Section 5.01, Category 6 shall be deemed applicable for the period commencing three (3) Business Days after the required date of delivery and ending on the date which is three (3) Business Days after the Financials are actually delivered, after which the Category shall be determined in accordance with the table above as applicable;

(ii) adjustments, if any, to the Category then in effect shall be effective three (3) Business Days after the Administrative Agent has received the applicable Financials (it being understood and agreed that each change in Category shall apply during the period commencing on the effective date of such change and ending on the date immediately preceding the effective date of the next such change);

(iii) notwithstanding the foregoing, Category 1 shall be deemed to be applicable from and after the Effective Date until the Administrative Agent's receipt of the Financials for the Company's fiscal year ending on or about September 30, 2019 and adjustments to the Category then in effect shall thereafter be effected in accordance with the preceding paragraphs; and

(iv) notwithstanding the foregoing (including the immediately preceding clause (iii)), Category 6 shall be deemed to be applicable from and after the Term Loan Funding Date until the Administrative Agent's receipt of the Financials for the Company's first fiscal quarter ending after the Term Loan Funding Date and adjustments to the Category then in effect shall thereafter be effected in accordance with the preceding paragraphs (i) and (ii).

"Approved Electronic Platform" has the meaning assigned to such term in Section 8.02(a).

"Approved Fund" has the meaning assigned to such term in Section 9.04(b).

"Arranger" means each of JPMorgan Chase Bank, N.A., Citizens Bank, N.A. and Wells Fargo Securities, LLC in its capacity as a joint bookrunner and a joint lead arranger hereunder.

"Assignment and Assumption" means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, in respect of any capital lease of any Person, the capitalized amount thereof that would appear on the balance sheet of such Person prepared as of such date in accordance with GAAP.

"Augmenting Lender" has the meaning assigned to such term in Section 2.20.

"Auto Extension Letter of Credit" has the meaning assigned to such term in Section 2.06(c).

“BA Equivalent”, when used in reference to any Loan or Borrowing, means that such Loan bears, or the Loans comprising such Borrowing bear, interest at a rate determined by reference to the BA Rate.

“BA Rate” means, with respect to any Interest Period for any BA Equivalent Revolving Loan (a) in the case of any Lender named in Schedule I of the *Bank Act* (Canada), the rate per annum determined by the Administrative Agent by reference to the average annual rate applicable to Canadian Dollar bankers’ acceptances having a term comparable to such Interest Period quoted on the Reuters Screen “CDOR Page” (or such other page as may replace such page on such screen for the purpose of displaying Canadian interbank bid rates for Canadian Dollar bankers’ acceptances) at 10:00 a.m. on the date of the commencement of such Interest Period (the “Canadian Dollar Offered Rate”) and (b) in the case of any other Lender, the sum of (A) the Canadian Dollar Offered Rate plus (B) 0.10%; provided that if the BA Rate is at any time less than zero, the BA Rate shall be deemed to be zero for the purposes of this Agreement. If such rates do not appear on the Reuters Screen at such time, the Canadian Dollar Offered Rate shall be the rate of interest determined by the Administrative Agent that is equal to the average (rounded upwards to the nearest 1/100 of 1%) quoted by the banks listed in Schedule I of the *Bank Act* (Canada) that are also Lenders in respect of Canadian Dollar bankers’ acceptances with a term comparable to such Interest Period.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Bengal” means Milacron Holdings Corp., a Delaware corporation.

“Bengal Acquisition” means the acquisition of all of the outstanding equity interests of Bengal by the Company (through the merger of its Subsidiary Bengal Holding and Bengal, with Bengal as the surviving corporation) pursuant to the Bengal Acquisition Agreement.

“Bengal Acquisition Agreement” means the Agreement and Plan of Merger, dated as of July 12, 2019 (together with all exhibits, schedules and disclosure letters thereto), by and among Bengal, the Company and Bengal Holding, as in effect on July 12, 2019.

“Bengal Acquisition Agreement Representations” means such of the representations made by or with respect to Bengal and its subsidiaries in the Bengal Acquisition Agreement as are material to the interests of the Lenders, but only to the extent that (x) the Company (or a Subsidiary) has the right to terminate the Company’s (or such Subsidiary’s) obligations under the Bengal Acquisition Agreement as a result of the failure of such representations to be accurate or (y) the Company (or a Subsidiary) has the right not to consummate the Bengal Acquisition pursuant to the Bengal Acquisition Agreement as a result of the failure of such representations to be accurate.

“Bengal Holding” means Bengal Delaware Holding Corporation, a Delaware corporation.

“Bengal LLC” means Milacron LLC, a Delaware limited liability company.

“Bengal Refinancing” means the consummation of the refinancing of Bengal’s outstanding existing indebtedness under (i) the Fourth Amended and Restated Credit and Guaranty Agreement, dated as of April 30, 2012, as amended and restated as of March 28, 2013, as further amended and restated as of October 17, 2014, as further amended and restated as of May 14, 2015, as further amended as of March 22, 2016, as further amended as of December 28, 2016, as further amended as of February 28, 2017, as further amended and restated as of April 27, 2018, and as further amended, restated, supplemented or otherwise modified from time to time, by and among Bengal, as holdings, Bengal LLC, as lead borrower, the other subsidiaries of Bengal party thereto as borrowers and guarantors from time to time, the lenders party thereto and Bank of America, N.A., as administrative agent and (ii) the Term Loan Agreement, dated as of May 14, 2015, as amended as of February 15, 2017, as further amended as of November 8, 2017, and as further amended, restated, supplemented or otherwise modified from time to time, by and among Bengal, as holdings, Bengal LLC, as the borrower, the subsidiaries of Bengal LLC party thereto as guarantors from time to time, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent.

“Bengal Transactions” means (i) the consummation of the Bengal Acquisition and the other transactions contemplated by the Bengal Acquisition Agreement, (ii) the Bengal Refinancing and the consummation of the refinancing of any other outstanding existing indebtedness of Bengal and its subsidiaries and (iii) the payment of the fees, costs and expenses incurred by the Company, Bengal or any of their respective Subsidiaries in connection with any of the foregoing.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means the Company or any Subsidiary Borrower.



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

(a) where it relates to a Treaty Lender that is a Lender on the date of this Agreement, contains the scheme reference number and jurisdiction of tax residence stated on the signature page of that Lender, and

(i) where the Borrower is a Borrower on the date of this Agreement, is filed with HM Revenue & Customs within thirty (30) days of the date of this Agreement; or

(ii) where the Borrower becomes a Borrower after the date of this Agreement, is filed with HM Revenue & Customs within thirty (30) days of the date on which that Borrower becomes a Borrower; or

(b) where it relates to a Treaty Lender that becomes a Lender after the date of this Agreement, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Assignment and Assumption or Augmenting Lender Supplement (as the case may be), and

(i) where the Borrower is a Borrower as at the date on which the relevant Lender becomes a Lender (“New Lender Date”), is filed with HM Revenue & Customs within thirty (30) days of that New Lender Date; or

(ii) where the Borrower is not a Borrower as at the relevant New Lender Date, is filed with HM Revenue & Customs within thirty (30) days of the date on which that Borrower becomes a Borrower.

“Borrowing” means (a) Revolving Loans of the same Class and Type, made, converted or continued on the same date to the same Borrower and, in the case of Eurocurrency Loans or BA Equivalent Loans, as to which a single Interest Period is in effect, (b) a Term Loan of the same Type, made, converted or continued on the same date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect, or (c) a Swingline Loan.

“Borrowing Request” means a request by any Borrower for a Borrowing in accordance with Section 2.03, which shall be substantially in the form attached hereto as Exhibit B-1 or any other form approved by the Administrative Agent or the Swingline Lender, as applicable.

“Borrowing Subsidiary Agreement” means a Borrowing Subsidiary Agreement substantially in the form of Exhibit F-1.

“Borrowing Subsidiary Termination” means a Borrowing Subsidiary Termination substantially in the form of Exhibit F-2.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, (i) when used in connection with a Canadian Revolving Loan or a Canadian Swingline Loan, the term “Business Day” shall also exclude any day on which banks are required or authorized by law to close in Toronto, Canada and (ii) when used in connection with a Eurocurrency Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in the relevant Agreed Currency in the London interbank market or the principal financial center of such Agreed Currency (and, if the Borrowings or LC Disbursements which are the subject of a borrowing, drawing, payment, reimbursement or rate selection are denominated in euro, the term “Business Day” shall also exclude any day on which the TARGET2 payment system is not open for the settlement of payments in euro).

“Canadian Base Rate”, when used in reference to any Loan or Borrowing, refers to a Loan, or the Loans comprising such Borrowing, bearing interest at a rate determined by reference to the Canadian Prime Rate.

“Canadian Borrower” means any Canadian Subsidiary that becomes a Subsidiary Borrower pursuant to Section 2.23 and that has not ceased to be a Subsidiary Borrower pursuant to such Section.

“Canadian Dollar Offered Rate” has the meaning assigned to such term in the definition of “BA Rate”.

“Canadian Dollars” or “Cdn.\$” means the lawful currency of Canada.

“Canadian Payment Office” of the Administrative Agent means the office, branch, affiliate or correspondent bank of the Administrative Agent for Canadian Revolving Loans as specified from time to time by the Administrative Agent to the Company and each Lender.

“Canadian Prime Rate” means, on any day, the rate determined by the Administrative Agent to be the higher of (i) the rate equal to the PRIMCAN Index rate that appears on the Bloomberg screen at 10:15 a.m. Toronto time on such day (or, in the event that the PRIMCAN Index is not published by Bloomberg, any other information services that publishes such index from time to time, as selected by the Administrative Agent in its reasonable discretion) and (ii) the average rate for 30 day Canadian Dollar bankers’ acceptances that appears on the Reuters Screen CDOR Page (or, in the event such rate does not appear on such page or screen, on any successor or substitute page or screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time, as selected by the Administrative Agent in its reasonable discretion) at 10:15 a.m. Toronto time on such day, plus 1% per annum; provided, that if any of the above rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. Any change in the Canadian Prime Rate due to a change in the PRIMCAN Index or the CDOR Rate shall be effective from and including the effective date of such change in the PRIMCAN Index or CDOR Rate, respectively.

“Canadian Revolving Borrowing” means a Borrowing of Canadian Revolving Loans.

“Canadian Revolving Loan” means a Revolving Loan denominated in Canadian Dollars and made to a Canadian Borrower.

“Canadian Subsidiary” means any Subsidiary that is organized under the laws of Canada or any province or territory thereof.

“Canadian Swingline Loan” means a Loan made to a Canadian Borrower in Canadian Dollars pursuant to Section 2.05.

“CDOR Screen Rate” means, for the relevant Interest Period, the Canadian deposit offered rate which, in turn means on any day the rate per annum equal to the average rate for bankers acceptances for a tenor equal in length to such Interest Period as displayed on Reuters Screen CDOR Page (or, in the event such rate does not appear on such Reuters page, any successor or substitute page on such screen or service that displays such rate, or other appropriate page of such other information service that publishes such rate as shall be selected from time to time by the Administrative Agent in consultation with the Company), as of 10:00 a.m. (Toronto, Ontario time) on the Quotation Day for such Interest Period; provided that (x) if such rates are not available on the Reuters Screen CDOR Page on any particular day, then the rate for such date will be the annual discount rate (rounded upward to the nearest whole multiple of 1/100 of 1%) as of 10:00 a.m. (Toronto, Ontario time) on the Quotation Day for such Interest Period at which a Canadian chartered bank listed on Schedule I of the Bank Act (Canada) (as selected by the Administrative Agent in consultation with the Company) is then offering to purchase Canadian Dollar bankers’ acceptances accepted by it having such specified term (or a term as closely as possible comparable to such specified term) and (y) if the CDOR Screen Rate is at any time less than zero, the CDOR Screen Rate shall be deemed to be zero for the purposes of this Agreement.

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the Effective Date) other than any member or members of the Hillenbrand Family Group, of Equity Interests representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Company by Persons who were neither (i) nominated by the board of directors of the Company nor (ii) appointed by directors so nominated; or (c) the Company ceases to own, directly or indirectly, and Control 100% (other than (i) directors’ qualifying shares and (ii) shares issued to foreign nationals to the extent required by applicable law) of the ordinary voting and economic power of any Subsidiary Borrower.

“Change in Law” means the occurrence, after the Effective Date (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, or (c) the making or issuance of any request, rule, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

“Charges” has the meaning assigned to such term in Section 9.15.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Term Loans or Swingline Loans.

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

“Co-Documentation Agent” means each of BMO Harris Financing, Inc., HSBC Bank USA, National Association, PNC Bank, National Association, Sumitomo Mitsui Banking Corporation and U.S. Bank National Association in its capacity as co-documentation agent for the credit facilities evidenced by this Agreement.

“Co-Syndication Agent” means each of Citizens Bank, N.A. and Wells Fargo Bank, National Association in its capacity as co-syndication agent for the credit facilities evidenced by this Agreement.

“Commercial Letter of Credit” means a commercial documentary letter of credit issued pursuant to this Agreement by an Issuing Bank for the account of the Company or any Subsidiary for the purchase of goods in the ordinary course of business.

“Commitment” means, with respect to each Lender, the sum of such Lender’s Revolving Commitment and Term Loan Commitment. The amount of each Lender’s Commitment as of the Effective Date is set forth on Schedule 2.01, or in the Assignment and Assumption or other documentation contemplated hereby pursuant to which such Lender shall have assumed its Commitment, as applicable.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Bank by means of electronic communications pursuant to Section 8.03(c), including through an Approved Electronic Platform.

“Company” means Hillenbrand, Inc., an Indiana corporation.

“Computation Date” is defined in Section 2.04.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated EBITDA” means, with reference to any period, Consolidated Net Income for such period plus, without duplication and to the extent deducted from revenues in determining Consolidated Net Income for such period, (i) interest expense, (ii) income tax expense, (iii) depreciation expense, (iv) amortization expense, (v) all non-cash expenses, charges or losses, (vi) losses attributable to the early extinguishment of Indebtedness and (vii) (A) cash fees, costs, expenses, premiums, penalties or other losses incurred in connection with any acquisition, any asset sale or other disposition, any recapitalization, any investment, any issuance of equity interests by the Company or any issuance, incurrence or repayment of any Indebtedness by the Company or its Subsidiaries, the amortization of any deferred financing charges, and/or any refinancing transaction or modification or amendment of any debt instrument (including any transaction undertaken but not completed) and (B) non-recurring or unusual expenses, in an aggregate amount for clauses (A) and (B) not to exceed \$20,000,000 during any Reference Period minus, to the extent included in Consolidated Net Income for such period, (1) interest income, (2) income tax benefits (to the extent not netted from tax expense), (3) any cash payments made during such period in respect of items described in clause (v) above subsequent to the fiscal quarter in which the relevant non-cash expense, charge or loss were incurred and (4) gains attributable to the early extinguishment of Indebtedness, all calculated for the Company and its Subsidiaries in accordance with GAAP on a consolidated basis. For the purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each such period, a “Reference Period”), (i) if at any time during such Reference Period the Company or any Subsidiary shall have made any Material Disposition, the Consolidated EBITDA for such Reference Period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Material Disposition for such Reference Period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such Reference Period, and (ii) if during such Reference Period the Company or any Subsidiary shall have made a Material Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving effect thereto on a pro forma basis as if such Material Acquisition occurred on the first day of such Reference Period. As used in this definition, “Material Acquisition” means any acquisition of property or series of related acquisitions of property that (a) constitutes (i) assets comprising all or substantially all or any significant portion of a business or operating unit of a business, or (ii) all or substantially all of the common stock or other Equity Interests of a Person, and (b) involves the payment of consideration by the Company and its Subsidiaries in excess of \$10,000,000; and “Material Disposition” means any sale, transfer or disposition of property or series of related sales, transfers, or dispositions of property that (a) constitutes (i) assets comprising all or substantially all or any significant portion of a business or operating unit of a business, or (ii) all or substantially all of the common stock or other Equity Interests of a Person, and (b) involves gross proceeds to the Company or any of its Subsidiaries in excess of \$10,000,000.

Notwithstanding the foregoing, the following changes shall be automatically deemed to be made to the definition of “Consolidated EBITDA” on, and with effect as of, the date on which (1) changes that are the substantial equivalent of each of the following changes are made to the corresponding provision of both the “LG Facility Agreement” and the “Shelf Agreement”, in each case as defined in the Company’s most recent applicable filings with the SEC and (2) the Administrative Agent shall have received from the Company an executed copy of each such amendment making such conforming changes, in each case such amendment being confirmed by the Company in writing to be effective:

(I) clause (vii) will be amended to delete the reference to “\$20,000,000 during any Reference Period” therein and replace such reference with a reference to “ten percent (10%) of Consolidated EBITDA for any Reference Period (as calculated without giving effect to the add-back of any item pursuant to this clause (vii))”; and

(II) a new clause (viii) will be inserted immediately following clause (vii) as follows: “and (viii) M&A, legal and other out-of-pocket transaction fees and expenses of the Company and Bengal relating to the Bengal Acquisition and any financing related thereto (including, without limitation, any issuance, incurrence or repayment of any Indebtedness by the Company, Bengal or their respective Subsidiaries, the amortization of any deferred financing charges, and/or any refinancing transaction or modification or amendment of any debt instrument (including any transaction undertaken but not completed) related thereto)”.

“Consolidated Indebtedness” means at any time the aggregate Indebtedness of the Company and its Subsidiaries calculated on a consolidated basis as of such time in accordance with GAAP.

“Consolidated Interest Expense” means, with reference to any period, the interest payable on, and amortization of debt discount in respect of, all Indebtedness of the Company and its Subsidiaries calculated on a consolidated basis for such period in accordance with GAAP. In the event that the Company or any Subsidiary shall have completed a Material Acquisition or a Material Disposition since the beginning of the relevant period, Consolidated Interest Expense shall be determined for such period on a pro forma basis as if such acquisition or disposition, and any related incurrence or repayment of Indebtedness, had occurred at the beginning of such period.

“Consolidated Net Income” means, with reference to any period, the net income (or loss) of the Company and its Subsidiaries calculated in accordance with GAAP on a consolidated basis (without duplication) for such period.

“Consolidated Revenues” means, with reference to any period, total revenues of the Company and its Subsidiaries calculated in accordance with GAAP on a consolidated basis as of such date.

“Consolidated Tangible Assets” means, as of any date of determination thereof, Consolidated Total Assets minus the Intangible Assets of the Company and its Subsidiaries on such date.

“Consolidated Total Assets” means, as of the date of any determination thereof, total assets of the Company and its Subsidiaries calculated in accordance with GAAP on a consolidated basis as of such date.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms “Controlling” and “Controlled” have meanings correlative thereto.

“Corporation Tax Act 2009” means the Corporation Tax Act 2009 of the United Kingdom.

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning assigned to it in Section 9.19.

“Credit Event” means a Borrowing, the issuance, amendment or extension of a Letter of Credit, an LC Disbursement or any of the foregoing.

“Credit Exposure” means, as to any Lender at any time, the sum of (a) such Lender’s Revolving Credit Exposure at such time, plus (b) an amount equal to the aggregate principal amount of such Lender’s Term Loans outstanding at such time.

“Credit Party” means the Administrative Agent, any Issuing Bank, the Swingline Lender or any other Lender.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means any Lender that (a) has failed, within two (2) Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied, (b) has notified the Company or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (A) a Bankruptcy Event or (B) a Bail-In Action.

“Designated Foreign Subsidiary Borrower” means a Foreign Subsidiary Borrower that is organized under the laws of Luxembourg or any other jurisdiction designated from time to time by the Administrative Agent.

“Designated Loan” means a Designated Revolving Dollar Loan or a Designated Swingline Dollar Loan, as applicable.

“Designated Revolving Dollar Loan” means a Revolving Loan denominated in Dollars to a Designated Foreign Subsidiary Borrower.

“Designated Swingline Dollar Loan” means a Swingline Loan denominated in Dollars to a Designated Foreign Subsidiary Borrower.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback transaction) of any property by any Person, including any sale, assignment (excluding any Lien), transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dollar Amount” of any amount of any currency means, at the time of determination thereof, (a) if such amount is expressed in Dollars, such amount, (b) if such amount is expressed in a Foreign Currency, the equivalent of such amount in Dollars determined by using the rate of exchange for the purchase of Dollars with such Foreign Currency last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Reuters source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of Dollars with such Foreign Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its sole discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems reasonably appropriate) and (c) if such amount is denominated in any other currency, the equivalent of such amount in Dollars as determined by the Administrative Agent using any method of determination it deems reasonably appropriate.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Foreign Holdco Subsidiary” means a Subsidiary organized under the laws of a jurisdiction located in the United States of America (excluding any possession or territory thereof), substantially all of the assets of which consist of the Equity Interests (including Equity Interests held through entities disregarded from their owner for U.S. federal income tax purposes) of (and/or receivables or other amounts due from) one or more Foreign Subsidiaries that are “controlled foreign corporations” within the meaning of section 957 of the Code, so long as such Domestic Subsidiary (i) does not conduct any business or other activities other than the ownership of such Equity Interests and/or receivables and (ii) does not incur, and is not otherwise liable for, any Indebtedness (other than intercompany indebtedness permitted by Section 6.03(g)), in each case, other than immaterial assets and activities reasonably related or ancillary thereto.

“Domestic Subsidiary” means a Subsidiary organized under the laws of a jurisdiction located in the United States of America (excluding any possession or territory thereof) other than any Domestic Foreign Holdco Subsidiary.

“ECP” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means August 28, 2019.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Eligible Subsidiary” means (i) any Domestic Subsidiary, (ii) any UK Subsidiary, (iii) any Canadian Subsidiary, (iv) any Luxembourg Subsidiary, (v) any Swiss Subsidiary, (vi) any German Subsidiary and (vii) any other Foreign Subsidiary that is approved from time to time by the Administrative Agent and each of the Lenders (such approval not to be unreasonably withheld or delayed).

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, or binding orders, decrees, judgments or injunctions, issued, promulgated or entered into by any Governmental Authority, relating to pollution or protection of the environment, preservation or reclamation of natural resources, the management, release or threatened release of or governing exposure to any Hazardous Material.

“Environmental Liability” means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.



“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other similar rights entitling the holder thereof to purchase or acquire any of the foregoing; provided that “Equity Interests” shall not include Indebtedness that is convertible into Equity Interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Company, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which any notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Company or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Company or any ERISA Affiliate from the PBGC or a plan administrator of any written notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Company or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of the Company or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by the Company or any ERISA Affiliate of any written notice, or the receipt by any Multiemployer Plan from the Company or any ERISA Affiliate of any written notice, concerning the imposition upon the Company or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in critical or endangered status, within the meaning of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“euro” and/or “EUR” means the single currency of the Participating Member States.

“Eurocurrency” when used in reference to a currency means an Agreed Currency and when used in reference to any Loan or Borrowing, means that such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate (except when used with reference to any Eurocurrency Swingline Loan, in which case “Eurocurrency” means that such Loan bears interest at a rate determined by reference to the Eurocurrency Swingline Rate).

“Eurocurrency Payment Office” of the Administrative Agent shall mean, for each Foreign Currency (other than Canadian Dollars in respect of Canadian Revolving Borrowings) and each Designated Loan, the office, branch, affiliate or correspondent bank of the Administrative Agent for such currency or Designated Loan (as applicable) as specified from time to time by the Administrative Agent to the Company and each Lender.

“Eurocurrency Swingline Loan” means a Swingline Loan bearing interest at the Eurocurrency Swingline Rate (including, for the avoidance of doubt, a Designated Swingline Dollar Loan).

“Eurocurrency Swingline Rate” means the sum of (i) the percentage rate per annum which is equal to the rate (rounded upwards to four decimal places) at which overnight deposits in the relevant currency in an amount approximately equal to the amount with respect to which such rate is being determined would be offered by the Swingline Lender as of 11:00 a.m. Local Time on the day of the proposed Eurocurrency Swingline Loan in the London interbank market for such currency to major banks in such market (provided that, if such rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement) plus (ii) the Applicable Rate for Eurocurrency Borrowings.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excluded Subsidiary” means (i) any Domestic Foreign Holdco Subsidiary and (ii) any Domestic Subsidiary of the Company so long as (a) its acting as a Subsidiary Guarantor under this Agreement would violate any law, rule or regulation applicable to such Domestic Subsidiary or would be prohibited by any contractual restriction or obligation in effect on the Effective Date and applicable to such Domestic Subsidiary and (b) the Administrative Agent shall have received a certificate of a Financial Officer of the Company to the effect that, based on advice of outside counsel, such Domestic Subsidiary acting as a Subsidiary Guarantor under this Agreement would cause such a violation or would be so prohibited as described in the foregoing clause (a).

“Excluded Swap Obligation” means, with respect to any Loan Party, any Specified Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Specified Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an ECP at the time the Guarantee of such Loan Party or the grant of such security interest becomes effective with respect to such Specified Swap Obligation. If a Specified Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Specified Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender (including a Participant treated as a Lender pursuant to Section 9.04(c)), U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by any Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office, (c) any Canadian federal withholding Taxes imposed on the payment as a result of having been made to a Recipient that, at the time of making such payment, (i) is a person with which a Loan Party does not deal at arm’s length (for the purposes of the Income Tax Act (Canada)), or (ii) is a “specified shareholder” (as defined in subsection 18(5) of the Income Tax Act (Canada)) of a Loan Party or does not deal at arm’s length (for the purposes of the Income Tax Act (Canada)) with such a “specified shareholder” (other than where the non-arm’s length relationship arises, or where the Recipient is a “specified shareholder” or does not deal at arm’s length with a “specified shareholder”, in connection with or as a result of the Recipient having become a party to, received or perfected a security interest under or received or enforced any rights under, a Loan Document), (d) Taxes attributable to such Recipient’s failure to comply with Section 2.17(f) and (e) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” is defined in the recitals hereof.

“Existing Letters of Credit” is defined in Section 2.06(a).

“Existing Loans” is defined in Section 2.01.

“Extended Maturity Date” is defined in Section 2.25(a).

“Extending Lender” is defined in Section 2.25(b).

“Extension Date” is defined in Section 2.25(a).

“Farm Agreement” means that certain Tenants in Common Agreement dated on or about March 21, 2008 between Hill-Rom Company, Inc., an Indiana corporation, and BCC JAWACDAH Holdings, LLC, an Indiana limited liability company.

“FATCA” means Sections 1471 through 1474 of the Code, as of the Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions (as determined in such manner as the NYFRB shall set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate; provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer, assistant treasurer or controller of the Company.

“Financials” means the annual or quarterly financial statements, and accompanying certificates and other documents, of the Company and its Subsidiaries required to be delivered pursuant to Section 5.01(a) or 5.01(b).

“Foreign Currencies” means Agreed Currencies other than Dollars.

“Foreign Currency LC Exposure” means, at any time, the sum of (a) the Dollar Amount of the aggregate undrawn and unexpired amount of all outstanding Foreign Currency Letters of Credit at such time plus (b) the aggregate principal Dollar Amount of all LC Disbursements in respect of Foreign Currency Letters of Credit that have not yet been reimbursed at such time.

“Foreign Currency Letter of Credit” means a Letter of Credit denominated in a Foreign Currency.

“Foreign Lender” means (a) if the applicable Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if the applicable Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

“Foreign Subsidiary” means any Subsidiary which is not a Domestic Subsidiary.

“Foreign Subsidiary Borrower” means any Foreign Subsidiary that is also a Subsidiary Borrower.

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

“German Borrower” means any German Subsidiary that becomes a Subsidiary Borrower pursuant to Section 2.23 and that has not ceased to be a Subsidiary Borrower pursuant to such Section.

“German Insolvency Event” means:

- (a) a German Borrower is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts when due (*zahlungsunfähig*) within the meaning of section 17 German Insolvency Code (*Insolvenzordnung*);
- (b) a German Borrower is over-indebted (*überschuldet*) within the meaning of section 19 German Insolvency Code;
- (c) a German Borrower suspends or announces its intention to suspend payments of any of its debts; or
- (d) any corporate action legal proceeding or other formal step or procedure is taken in relation to:
  - (i) the filing for the opening of insolvency proceedings (*Antrag auf Eröffnung eines Insolvenzverfahrens*) in relation to a German Borrower or any of its assets; or
  - (ii) the competent court takes any of the actions set out in section 21 German Insolvency Code (*Anordnung von Sicherungsmaßnahmen*) against a German Borrower
  - (iii) a competent court institutes or rejects (for reason of insufficiency of its funds to implement such proceedings (*Abweisung mangels Masse*)) insolvency proceedings against a German Borrower (*Eröffnung des Insolvenzverfahrens*) save that this paragraph (d) shall not apply to any action, proceeding, procedure or formal step which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement.

“German Subsidiary” means any Subsidiary organized under the laws of Germany.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the lesser of (a) the stated or determinable amount of the primary payment obligation in respect of which such Guarantee is made and (b) the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee, unless such primary payment obligation and the maximum amount for which such guaranteeing Person may be liable are not stated or determinable, in which case the amount of the Guarantee shall be such guaranteeing Person’s maximum reasonably possible liability in respect thereof as reasonably determined by the Company in good faith.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants and contaminants listed, defined, designated, regulated or classified under applicable Environmental Laws as hazardous, toxic, radioactive, dangerous, a pollutant, a contaminant, petroleum, oil or words of similar meaning or effect, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes.

“Hillenbrand Family Group” means the descendants of John A. Hillenbrand and members of such descendants’ families and trusts for the benefit of such Persons.

“IBA” has the meaning assigned to such term in Section 1.06.

“Impacted Interest Period” has the meaning assigned to such term in the definition of “LIBO Rate”.

“Increasing Lender” has the meaning assigned to such term in Section 2.20.

“Incremental Term Loan” has the meaning assigned to such term in Section 2.20.

“Incremental Term Loan Amendment” has the meaning assigned to such term in Section 2.20.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, but only to the extent included as indebtedness or liabilities in accordance with GAAP: (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (other than accounts payable incurred in the ordinary course of business or any earn-out obligations), (d) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, (e) all obligations of such Person for unreimbursed payments made under letters of credit (including standby and commercial), bankers’ acceptances and bank guarantees, (f) all obligations in respect of capital leases of such Person, (g) (only for purposes of calculating Consolidated Indebtedness) net obligations of such Person under any Swap Agreement pertaining to interest rates and (h) all Guarantees of such Person in respect of any of the foregoing. For purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation, limited liability company or other limited liability entity) in which such person is a general partner or a joint venture, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. Upon the defeasance or satisfaction and discharge of Indebtedness in accordance with the terms of such Indebtedness, such Indebtedness will cease to be “Indebtedness” hereunder (upon the giving or mailing of a notice of redemption and redemption funds being deposited with a trustee or paying agent or otherwise segregated or held in trust or under an escrow or other funding arrangement for the sole purpose of repurchasing, redeeming, defeasing, repaying, satisfying and discharging, or otherwise acquiring or retiring such Indebtedness, or other substantially comparable processes).

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Ineligible Institution” has the meaning assigned to such term in Section 9.04(b).

“Information” has the meaning assigned to such term in Section 9.12.

“Information Memorandum” means the lender presentation provided to the Lenders on July 15, 2019 relating to the Company and the Transactions.

“Initial Subsidiary Borrowers” means, collectively, Hillenbrand Luxembourg S.à r.l., a Luxembourg private limited liability company, Coperion K-Tron (Schweiz) GmbH, a Swiss limited liability company, Hillenbrand Switzerland GmbH, a Swiss limited liability company, Batesville Canada Ltd., a Canadian corporation, Jeffrey Rader Canada Company, a Nova Scotia company, Rotex Europe Ltd, a private company limited by shares under the laws of England and Wales, Coperion GmbH, a limited liability company organized under the laws of Germany, Hillenbrand Germany Holding GmbH, a limited liability company organized under the laws of Germany, and each an “Initial Subsidiary Borrower.”

“Insolvency Act 1986” means the Insolvency Act 1986 of the United Kingdom.

“Intangible Assets” means the aggregate amount, for the Company and its Subsidiaries on a consolidated basis, of all assets classified as intangible assets under GAAP, including, without limitation, customer lists, acquired technology, goodwill, computer software, trademarks, patents, copyrights, organization expenses, franchises, licenses, trade names, brand names, mailing lists, catalogs, unamortized debt discount and capitalized research and development costs.

“Interest Coverage Ratio” has the meaning assigned to such term in Section 6.10(b).

“Interest Election Request” means a request by the applicable Borrower to convert or continue a Borrowing in accordance with Section 2.08, which shall be substantially in the form attached hereto as Exhibit B-2 or any other form approved by the Administrative Agent.

“Interest Payment Date” means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December and the Maturity Date, (b) with respect to any Eurocurrency Loan (including a Eurocurrency Swingline Loan) or BA Equivalent Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Borrowing or BA Equivalent Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period and the Maturity Date and (c) with respect to any Swingline Loan (other than a Eurocurrency Swingline Loan), the day that such Loan is required to be repaid and the Maturity Date.

“Interest Period” means (a) with respect to any Eurocurrency Borrowing (other than a Swingline Loan) or a BA Equivalent Borrowing, the period commencing on the date of such Borrowing and ending on the day that is seven (7) days (such seven (7) day period solely in the case of a Eurocurrency Borrowing and not in the case of a BA Equivalent Borrowing) thereafter or the numerically corresponding day in the calendar month that is one, two, three or six months (or, if acceptable to each Lender, nine or twelve months or a period of less than one month (other than a seven (7) day period in the case of a Eurocurrency Borrowing)) thereafter, as the applicable Borrower (or the Company on behalf of the applicable Borrower) may elect and (b) with respect to any Eurocurrency Swingline Loan, the period commencing on the date of such Loan and ending on the date one (1) day or seven (7) days thereafter, as the applicable Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurocurrency Borrowing (other than a Eurocurrency Swingline Loan) or a BA Equivalent Borrowing, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurocurrency Borrowing (other than a Eurocurrency Swingline Loan) or BA Equivalent Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the applicable Screen Rate for the longest period (for which the applicable Screen Rate is available for the applicable currency) that is shorter than the Impacted Interest Period and (b) the applicable Screen Rate for the shortest period (for which the applicable Screen Rate is available for the applicable currency) that exceeds the Impacted Interest Period, in each case, at such time; provided that if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. When determining the rate for a period which is less than the shortest period for which the applicable Screen Rate is available, the applicable Screen Rate for purposes of clause (a) above shall be deemed to be the overnight screen rate where “overnight screen rate” means the overnight rate determined by the Administrative Agent from such service as the Administrative Agent may select.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means JPMorgan Chase Bank, N.A., Citizens Bank, N.A., Wells Fargo Bank, National Association, PNC Bank, National Association, HSBC Bank USA, National Association, U.S. Bank National Association, BMO Harris Financing, Inc. and each other Lender designated by the Company as an “Issuing Bank” hereunder that has agreed to such designation (and is reasonably acceptable to the Administrative Agent), each in its capacity as an issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.06(i). Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate; provided that, regardless of whether any such Affiliate of an Issuing Bank is acting as an Issuing Bank hereunder pursuant to this sentence, all voting and consent rights of an Issuing Bank shall be held by and exercised by the Lender that is an Issuing Bank (and not any Affiliate of such Lender that is acting as an Issuing Bank pursuant to this sentence).

“ITA” means the Income Tax Act 2007 of the United Kingdom.

“Japanese Yen” means the lawful currency of Japan.

“Joint Ownership Agreements” means the four (4) Joint Ownership Agreements with respect to the joint ownership of the aircraft described therein, dated on or about March 21, 2008 by and among Hill-Rom and Batesville Services.

“LC Collateral Account” has the meaning assigned to such term in Section 2.06(j).

“LC Disbursement” means a payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn Dollar Amount of all outstanding Letters of Credit at such time plus (b) the aggregate Dollar Amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Company at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the LC Exposure at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be “outstanding” and “undrawn” in the amount so remaining available to be paid, and the obligations of the Borrower and each Lender shall remain in full force and effect until the Issuing Banks and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.



“Lender Notice Date” is defined in Section 2.25(b).

“Lender Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a Lender hereunder pursuant to Section 2.20 or pursuant to an Assignment and Assumption or other documentation contemplated hereby, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption or other documentation contemplated hereby. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and the Issuing Banks.

“Letter of Credit” means any Commercial Letter of Credit or Standby Letter of Credit.

“Leverage Ratio” has the meaning assigned to such term in Section 6.10(a).

“LIBO Rate” means, for any day and time, with respect to (a) any Eurocurrency Borrowing denominated in any Agreed Currency (other than Canadian Dollars) and for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for such Agreed Currency for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion (in each case the “LIBOR Screen Rate”) at approximately 11:00 a.m., London time, on the Quotation Day for such Agreed Currency and Interest Period; provided that, if the LIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement and (b) any Eurocurrency Borrowing denominated in Canadian Dollars and for any applicable Interest Period, the CDOR Screen Rate on the Quotation Day for such currency and Interest Period; provided that, if the CDOR Screen Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement; provided further that if the relevant Screen Rate shall not be available at the applicable time for the applicable Interest Period (the “Impacted Interest Period”), then such Screen Rate for such Agreed Currency and such Interest Period shall be the Interpolated Rate; provided, that, if any Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. It is understood and agreed that if in any instance the LIBO Rate cannot be determined pursuant to the terms of this definition, Section 2.14 will govern how to determine the LIBO Rate (or an alternative rate of interest to be used in substitution for the LIBO Rate, as applicable) in such instance.

“LIBOR Screen Rate” has the meaning assigned to such term in the definition of “LIBO Rate”.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Limited Conditionality Acquisition” means any acquisition by the Company or any Subsidiary (a) that is permitted by this Agreement and (b) for which the Company has determined, in good faith, that limited conditionality is reasonably necessary or advisable.

“Limited Conditionality Acquisition Agreement” means, with respect to any Limited Conditionality Acquisition, the definitive acquisition agreement, purchase agreement or similar agreement in respect thereof.

“Liquidity Amount” means, as of any date of determination, the lesser of (i) the sum of (a) 100% of the unrestricted and unencumbered cash and cash equivalents maintained by the Company and its Subsidiaries in the United States as of such date, plus (b) 70% of the unrestricted and unencumbered cash and cash equivalents maintained by the Company and its Subsidiaries outside of the United States as of such date and (ii) \$100,000,000; provided however, that amounts calculated under this definition shall exclude any amounts that would not be considered “cash” or “cash equivalents” as recorded on the books of the Company or the applicable Subsidiary.

“Loan Documents” means this Agreement, each Borrowing Subsidiary Agreement, each Borrowing Subsidiary Termination, the Subsidiary Guaranty, any promissory notes issued pursuant to Section 2.10(e), any Letter of Credit applications and any and all other agreements, instruments, documents and certificates identified in Section 4.01 executed and delivered by a Loan Party to, or in favor of, the Administrative Agent or any Lenders. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Parties” means, collectively, the Borrowers and the Subsidiary Guarantors.

“Loans” means the loans made by the Lenders to any of the Borrowers pursuant to this Agreement.

“Local Time” means (i) New York City time in the case of a Loan, Borrowing or LC Disbursement denominated in Dollars (other than Designated Loans), (ii) Toronto, Canada time in the case of a Loan, Borrowing or LC Disbursement denominated in Canadian Dollars made to, or for the account of, a Canadian Borrower and (iii) local time in the case of a Loan, Borrowing or LC Disbursement denominated in a Foreign Currency (other than those denominated in Canadian Dollars and made to, or for the account of, a Canadian Borrower) and Designated Loans (it being understood that such local time shall mean London, England time unless otherwise notified by the Administrative Agent).

“Luxembourg Borrower” means any Luxembourg Subsidiary that becomes a Subsidiary Borrower pursuant to Section 2.23 and that has not ceased to be a Subsidiary Borrower pursuant to such Section.

“Luxembourg Domiciliation Law” shall mean the Luxembourg law of May 31, 1999, as amended, regarding the domiciliation of companies.

“Luxembourg Insolvency Event” shall mean, with respect to any Luxembourg Borrower, (i) a situation of cessation of payments (*cessation de paiements*) and absence of access to credit (*credit ébranlé*) within the meaning of Article 437 of the Luxembourg Commercial Code, (ii) insolvency proceedings (*faillite*) within the meaning of Articles 437 ff. of the Luxembourg Commercial Code, (iii) controlled management (*gestion contrôlée*) within the meaning of the grand ducal regulation of 24 May 1935 on controlled management, (iv) voluntary arrangement with creditors (*concordat préventif de la faillite*) within the meaning of the law of 14 April 1886 on arrangements to prevent insolvency, as amended, (v) suspension of payments (*sursis de paiement*) within the meaning of Articles 593 ff. of the Luxembourg Commercial Code, (vi) voluntary or compulsory winding-up pursuant to the law of 10 August 1915 on commercial companies, as amended or (vii) the appointment of an ad hoc director (*administrateur provisoire*) by a court in respect of such Luxembourg Borrower or a substantial part of its assets.

“Luxembourg Subsidiary” means any Subsidiary organized under the Law of Luxembourg.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations or financial condition of the Company and the Subsidiaries taken as a whole, (b) the ability of the Loan Parties to perform their material obligations under the Loan Documents or (c) the material rights or remedies of the Administrative Agent and the Lenders under the Loan Documents.

“Material Domestic Subsidiary” means, as of any date of determination, each Domestic Subsidiary either (i) having (together with its subsidiaries) assets that constitute five percent (5%) or more of the Consolidated Total Assets of the Company and its Subsidiaries or (b) having (together with its Subsidiaries) revenues (excluding, for the avoidance of doubt, intercompany revenues) that constitute five percent (5%) or more of the Consolidated Revenues of the Company and its Subsidiaries, in each case as of the last day of the immediately preceding fiscal year of the Company for which annual financial statements are available.

“Material Indebtedness” means, as of any date, Indebtedness (other than the Loans and Letters of Credit), or the net obligations in respect of one or more Swap Agreements, of any one or more of the Company and its Subsidiaries in an aggregate principal amount exceeding \$75,000,000 as of such date. For purposes of determining Material Indebtedness, the “principal amount” of the net obligations of the Company or any Subsidiary in respect of any Swap Agreement at any time shall be deemed to be the Swap Termination Value thereof as of such date.

“Material Subsidiary” means, as of any date of determination, each Subsidiary either (i) having (together with its subsidiaries) assets that constitute five percent (5%) or more of the Consolidated Total Assets of the Company and its Subsidiaries or (b) having (together with its Subsidiaries) revenues that constitute five percent (5%) or more of the Consolidated Revenues of the Company and its Subsidiaries, in each case as of the last day of the immediately preceding fiscal year of the Company for which annual financial statements are available.

“Maturity Date” means the Revolving Credit Maturity Date or the Term Loan Maturity Date, as the context requires.

“Maximum Rate” has the meaning assigned to such term in Section 9.15.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA, to which the Company or any of its ERISA Affiliates is contributing or has any obligation to contribute.

“Non-Consenting Lender” is defined in Section 9.02(d).

“Non-Extending Lender” is defined in Section 2.25(b).

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m., New York City time, on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Company and the other Loan Parties to any of the Lenders, the Administrative Agent, any Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred, in each case, under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof; provided that the definition of “Obligations” shall not create or include any guarantee by any Loan Party of any Excluded Swap Obligations of such Loan Party for purposes of determining any obligations of any Loan Party.

“OFAC” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Original Currency” is defined in Section 2.18(a).

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Commitment, Loan, Letter of Credit or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Overnight Foreign Currency Rate” means, for any amount payable in a Foreign Currency, the rate of interest per annum as determined by the Administrative Agent at which overnight or weekend deposits in the relevant currency (or if such amount due remains unpaid for more than three (3) Business Days, then for such other period of time as the Administrative Agent may reasonably determine) for delivery in immediately available and freely transferable funds would be offered by the Administrative Agent to major banks in the interbank market upon request of such major banks for the relevant currency as determined above and in an amount comparable to the unpaid principal amount of the related Credit Event, plus any taxes, levies, imposts, duties, deductions, charges or withholdings (in any such case, other than Excluded Taxes) imposed upon, or charged to, the Administrative Agent by any relevant correspondent bank in respect of such amount in such relevant currency.

“Participant” has the meaning assigned to such term in Section 9.04.

“Participant Register” has the meaning assigned to such term in Section 9.04(c).

“Participating Member State” means any member state of the European Union that adopts or has adopted 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.

“Patriot Act” means the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Company or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations” means 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA, as amended from time to time.

“Pounds Sterling” means the lawful currency of the United Kingdom.

“PPSA” means the Personal Property Security Act or other personal property security legislation of the applicable Canadian province or provinces in respect of any Loan Party or any Subsidiary (including the Civil Code of the Province of Quebec) as all such legislation now exists or may from time to time to hereafter be amended, modified, recodified, supplemented or replaced, together with all rules, regulations and interpretations thereunder or related thereto.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

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

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(e)(8)(D).

“QFC Credit Support” has the meaning assigned to it in Section 9.19.

“Qualifying Lender” means:

(i) a Lender (other than a Lender within clause (ii) below) that is beneficially entitled to interest payable to that Lender in respect of an advance under a Loan Document and is:

(a) a Lender:

- (1) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Loan Document; or
- (2) in respect of an advance made under a Loan Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made,

and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or is a bank (as defined for the purposes of Section 879 of the ITA) that would be within such charge as respects such payments apart from section 18A of the Corporation Tax Act 2009; or

(b) a Lender which is:

- (1) a company resident in the United Kingdom for United Kingdom tax purposes; or
- (2) a partnership each member of which is:
  - (x) a company so resident in the United Kingdom; or
  - (y) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (for the purposes of section 19 of the Corporation Tax Act 2009) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the Corporation Tax Act 2009; or
- (3) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing its chargeable profits (within the meaning given by section 19 of the Corporation Tax Act 2009); or

(c) a Treaty Lender; or

(ii) a building society (as defined for the purpose of section 880 of the ITA) making an advance under a Loan Document.

“Quotation Day” means, with respect to any Eurocurrency Borrowing for any Interest Period, (i) if the currency is Pounds Sterling or Canadian Dollars, the first day of such Interest Period, (ii) if the currency is euro, the day that is two (2) TARGET2 Days before the first day of such Interest Period, and (iii) for any other currency, two (2) Business Days prior to the commencement of such Interest Period (unless, in each case, market practice differs in the relevant market where the LIBO Rate for such currency is to be determined, in which case the Quotation Day will be determined by the Administrative Agent in accordance with market practice in such market (and if quotations would normally be given on more than one day, then the Quotation Day will be the last of those days)).

“Recast Regulation” means the regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast).

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

“Reference Bank Rate” means the arithmetic mean of the rates (rounded upwards to four decimal places) supplied to the Administrative Agent at its request by at least two Reference Banks as of the applicable time on the Quotation Day for Loans in the applicable currency and the applicable Interest Period as the rate at which the relevant Reference Bank could borrow funds in the London (or other applicable) interbank market in the relevant currency and for the relevant Interest Period, were it to do so by asking for and then accepting interbank offers in an amount approximately equal to the principal amount of the Eurocurrency Borrowing to which such Interest Period is to apply in that currency and for a period of time comparable to such Interest Period; provided that if the Reference Bank Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. For the avoidance of doubt, the Reference Bank Rate shall be deemed to be unavailable unless rates are provided by at least two Reference Banks.

“Reference Banks” means such banks as may be appointed by the Administrative Agent and reasonably acceptable to the Company. No Lender shall be obligated to be a Reference Bank without its consent.

“Reference Period” has the meaning assigned to such term in the definition of “Consolidated EBITDA.”

“Register” has the meaning assigned to such term in Section 9.04.

“Related Indemnified Party” has the meaning assigned to such term in Section 9.03(b).

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective officers, directors, employees, advisors and agents of such Person and such Person’s Affiliates.

“Required Lenders” means, at any time, subject to Section 2.24, Lenders having Credit Exposures and unused Revolving Commitments and Term Loan Commitments representing more than 50% of the sum of the total Credit Exposures and unused Revolving Commitments and Term Loan Commitments at such time; provided that for purposes of declaring the Loans to be due and payable pursuant to Article VII, and for all purposes after the Loans become due and payable pursuant to Article VII or the Revolving Commitments expire or terminate, then, as to each Lender, clause (a) of the definition of Swingline Exposure shall only be applicable for purposes of determining its Revolving Credit Exposure to the extent such Lender shall have funded its participation in the outstanding Swingline Loans.

“Required Revolving Lenders” means, at any time, subject to Section 2.24, Revolving Lenders having Revolving Credit Exposures and Revolving Commitments representing more than 50% of the sum of the Total Revolving Credit Exposure and Revolving Commitments at such time; provided that for purposes of declaring the Loans to be due and payable pursuant to Article VII, and for all purposes after the Loans become due and payable pursuant to Article VII or the Revolving Commitments expire or terminate, then, as to each Lender, clause (a) of the definition of Swingline Exposure shall only be applicable for purposes of determining its Revolving Credit Exposure to the extent such Lender shall have funded its participation in the outstanding Swingline Loans.

“Required Term Lenders” means, subject to Section 2.24, at any time, Term Lenders having outstanding Term Loans (or, prior to funding of the Term Loans on the Term Loan Funding Date, Term Loan Commitments) representing more than 50% of the sum of the total outstanding principal amount of Term Loans (or, prior to the funding of the Term Loans on the Term Loan Funding Date, Term Loan Commitments) at such time.

“Responsible Officer” means the chief executive officer, president, a Financial Officer or a member of the senior management team of the Company or any other Person designated by any such Person in writing to the Administrative Agent and reasonably acceptable to the Administrative Agent.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Company or any Subsidiary or any option, warrant or other right to acquire any such Equity Interests in the Company or any Subsidiary.

“Reuters” means Thomson Reuters Corp., Refinitiv or any successor thereto.

“Revolving Commitment” means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, in the amount set forth on Schedule 2.01 opposite such Lender’s name under the heading “Revolving Commitment”, or in the Assignment and Assumption contemplated hereby pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable, and giving effect to (a) any reduction in such amount from time to time pursuant to Section 2.09, (b) any increase from time to time pursuant to Section 2.20 and (c) any reduction or increase in such amount from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial aggregate amount of the Revolving Commitments on the Effective Date is \$900,000,000.

“Revolving Credit Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Revolving Credit Maturity Date and the date of termination of the Revolving Commitments.

“Revolving Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Revolving Loans, its LC Exposure and its Swingline Exposure at such time.



“Revolving Credit Maturity Date” means August 28, 2024, as may be extended pursuant to Section 2.25.

“Revolving Lender” means, as of any date of determination, each Lender that has a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Credit Exposure.

“Revolving Loan” means a Loan made by a Revolving Lender pursuant to Section 2.01(a).

“Sale and Leaseback Transaction” means any sale or other transfer of any property or asset by any Person with the intent to lease such property or asset as lessee.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any comprehensive Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury of the United Kingdom or the Swiss Confederation and/or its Directorate of International Law, (b) any Person located, organized or resident in a Sanctioned Country or (c) any Person owned 50% or more or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Sanctions” means any international economic sanctions imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom or (c) the Swiss Confederation and administered by its State Secretariat for Economic Affairs SECO and/or Directorate of International Law.

“Screen Rate” means the LIBOR Screen Rate or the CDOR Screen Rate, as applicable.

“SEC” means the United States Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“Specified Indebtedness” means Indebtedness issued by the Company or any Subsidiary pursuant to (i) an offering of debt securities in the capital markets registered under the Securities Act of 1933, as amended, or exempt therefrom in reliance upon Rule 144A thereunder or (ii) a private placement of debt securities by the Company or such Subsidiary directly to institutional investors.

“Specified Representations” means the representations and warranties set forth in Section 3.01 (solely as to the corporate existence, corporate power and authority of the Company to enter into and perform the Loan Documents), Section 3.02 (as it relates to the organizational power and authority of the Company to execute, deliver and perform its obligations under the Loan Documents), Section 3.03(b) (as it relates to the execution, delivery and performance by the Company of the Loan Documents), Section 3.08, Section 3.12, the third sentence of Section 3.14 and Section 3.16.

“Specified Senior Notes” means one or more series of senior unsecured debt securities of the Company issued to finance the Bengal Transactions.

“Specified Senior Notes Indebtedness” means Indebtedness in respect of the Specified Senior Notes.

“Specified Senior Notes Indenture” means that certain indenture and/or supplemental indenture pursuant to which the Specified Senior Notes will be issued.

“Specified Swap Obligation” means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

“Standby Letter of Credit” means an irrevocable letter of credit issued pursuant to this Agreement by an Issuing Bank pursuant to which such Issuing Bank agrees to make payments in an Agreed Currency for the account of the Company or any Subsidiary in respect of obligations of such Person incurred pursuant to contracts made or performances undertaken or to be undertaken or like matters relating to contracts to which the such Person is or proposes to become a party in the ordinary course of such Person’s business, including, but not limited to, for insurance purposes and in connection with lease transactions.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve, liquid asset, fees or similar requirements (including any marginal, special, emergency or supplemental reserves or other requirements) established by any central bank, monetary authority, the Board, the Financial Conduct Authority, the Prudential Regulation Authority, the European Central Bank or other Governmental Authority for any category of deposits or liabilities customarily used to fund loans in the applicable currency, expressed in the case of each such requirement as a decimal. Such reserve, liquid asset, fees or similar requirements shall, in the case of Dollar denominated Loans, include those imposed pursuant to Regulation D of the Board. Eurocurrency Loans shall be deemed to be subject to such reserve, liquid asset, fee or similar requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under any applicable law, rule or regulation, including Regulation D of the Board. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve, liquid asset or similar requirement.

“subsidiary” means, with respect to any Person (the “parent”) at any date, (i) with respect to any financial statements and financial covenant calculations (including the defined terms used therein), any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, and (ii) for all other purposes of the Loan Documents, a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the equity securities or other ownership interests having ordinary voting power for the election of directors or other governing body (other than equity securities or other ownership interests having such power only by reason of the happening of a contingency) are at the time beneficially owned (or, in the case of a Person which is treated as a consolidated subsidiary for accounting purposes, the management of which is otherwise controlled) directly, or indirectly through one or more intermediaries, or both, by such Person.

“Subsidiary” means any subsidiary of the Company.

“Subsidiary Borrower” means (i) each Initial Subsidiary Borrower and (ii) any Eligible Subsidiary that becomes a Subsidiary Borrower pursuant to Section 2.23 and, in each case, that has not ceased to be a Subsidiary Borrower pursuant to such Section 2.23.

“Subsidiary Guarantor” means each Material Domestic Subsidiary (other than Excluded Subsidiaries) and each other Domestic Subsidiary as may be designated by the Company, in each case that is party to the Subsidiary Guaranty. The Subsidiary Guarantors on the Effective Date are identified as such in Schedule 3.01 hereto.

“Subsidiary Guaranty” means that certain Second Amended and Restated Guaranty dated as of the Effective Date in the form of Exhibit G (including any and all supplements thereto) and executed by each Subsidiary Guarantor party thereto, as amended, restated, supplemented or otherwise modified from time to time.

“Supported OFC” has the meaning assigned to it in Section 9.19.

“Swap Agreement” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or the Subsidiaries shall be a Swap Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in subsection (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

“Swingline Exposure” means, at any time, the aggregate principal Dollar Amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be the sum of (a) its Applicable Percentage of the total Swingline Exposure at such time other than with respect to any Swingline Loans made by such Lender in its capacity as a Swingline Lender and (b) the aggregate principal amount of all Swingline Loans made by such Lender as a Swingline Lender outstanding at such time (less the amount of participations funded by the other Lenders in such Swingline Loans).

“Swingline Lender” means JPMorgan Chase Bank, N.A. (including its branches and affiliates), in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Loan made pursuant to Section 2.05 (for the avoidance of doubt, each Canadian Swingline Loan and each Eurocurrency Swingline Loan is a Swingline Loan).

“Swiss Borrower” means any Swiss Subsidiary that becomes a Subsidiary Borrower pursuant to Section 2.23 and that has not ceased to be a Subsidiary Borrower pursuant to such Section.

“Swiss Francs” means the lawful currency of Switzerland.

“Swiss Federal Withholding Tax” means the Tax levied pursuant to the Swiss Federal Withholding Tax Act.

“Swiss Federal Withholding Tax Act” means the Swiss Federal Withholding Tax Act (Bundesgesetz über die Verrechnungssteuer vom 13 Oktober 1965); together with the related ordinances, regulations and guidelines, all as amended and applicable from time to time.

“Swiss Guidelines” means, together, the guideline “Interbank Loans” of 22 September 1986 (S- 02.123) (Merkblatt “Verrechnungssteuer auf Zinsen von Bankguthaben, deren Gläubiger Banken sind (Interbankguthaben)” vom 22. September 1986), the guideline “Syndicated Loans” of January 2000 (S-02.128) (Merkblatt “Steuerliche Behandlung von Konsortialdarlehen, Schuldscheindarlehen, Wechseln und Unterbeteiligungen” vom Januar 2000), the guideline S-02.130.1 in relation to money market instruments and book claims of April 1999 (Merkblatt vom April 1999 betreffend Geldmarktpapiere und Buchforderungen inländischer Schuldner), the guideline “Bonds” of April 1999 (S-02.122.1) (Merkblatt “Obligationen” vom April 1999), the circular letter No. 34 “Customer Credit Balances” of 26 July 2011 (1-034-V-2011) (Kreisschreiben Nr. 34 “Kundenguthaben” vom 26. Juli 2011), the circular letter No. 15 of 3 October 2017 (1-015-DVS-2017) in relation to bonds and derivative financial instruments as subject matter of taxation of Swiss federal income tax, Swiss Federal Withholding Tax and Swiss Federal Stamp Taxes (Kreisschreiben Nr. 15 “Obligationen und derivative Finanzinstrumente als Gegenstand der direkten Bundessteuer, der Verrechnungssteuer und der Stempelabgaben” vom 3. Oktober 2017); all as issued, and as amended from time to time, by the Swiss Federal Tax Administration (SFTA).

“Swiss Non-Bank Rules” means the Swiss Ten Non-Bank Rule and the Swiss Twenty Non-Bank Rule.

“Swiss Qualifying Bank” means any person acting on its own account which is licensed as a bank by the banking laws in force in its jurisdiction of incorporation and any branch of a legal entity, which is licensed as a bank by the banking laws in force in the jurisdiction where such branch is situated, and which, in each case, exercises as its main purpose a true banking activity, having bank personnel, premises, communication devices of its own and authority of decision making, all within the meaning of the Swiss Guidelines.

“Swiss Subsidiary” means any Subsidiary tax resident in Switzerland pursuant to Article 9 of the Swiss Federal Withholding Tax Act.

“Swiss Ten Non-Bank Rule” means the rule that the aggregate number of creditors (within the meaning of the Swiss Guidelines) under this Agreement which are not Swiss Qualifying Banks must not, at any time, exceed ten (10).

“Swiss Twenty Non-Bank Rule” means the rule that (without duplication) the aggregate number of creditors (including the Lenders), other than Swiss Qualifying Banks, of any Swiss Borrower under all outstanding debts relevant for classification as debenture (Kassenobligation) (including debt arising under this Agreement), loans, facilities and/or private placements (including under this Agreement) must not, at any time, exceed twenty (20); in each case in accordance with the meaning of the Swiss Guidelines.

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET2) payment system (or, if such payment system ceases to be operative, such other payment system (if any) reasonably determined by the Administrative Agent to be a suitable replacement) for the settlement of payments in euro.

“TARGET2 Day” means a day that TARGET2 is open for the settlement of payments in euro.

“Tax Confirmation” means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Loan Document is either:

(i) a company resident in the United Kingdom for United Kingdom tax purposes;

(ii) a partnership each member of which is:

(1) a company so resident in the United Kingdom; or

(2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the Corporation Tax Act 2009) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the Corporation Tax Act 2009; or

(iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the Corporation Tax Act 2009) of that company.

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

“Tax Deduction” means a deduction or withholding for or on account of UK Tax from a payment under any Loan Document.

“Tax Payment” means either an increased payment made by a Borrower to a Lender under Section 2.17A(d) or a payment under Section 2.17A(m).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto, but excluding UK Tax.

“Term Lender” means, as of any date of determination, each Lender having a Term Loan Commitment or that holds Term Loans.

“Term Loan Availability Period” means the period from and including the Effective Date and ending on the Term Loan Commitment Expiration Date.

“Term Loan Commitment” means (a) with respect to any Term Lender, the amount set forth on Schedule 2.01 opposite such Lender’s name under the heading “Term Loan Commitment”, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) contemplated hereby pursuant to which such Lender shall have assumed its Term Loan Commitment, as applicable, and after giving effect to (i) any reduction in such amount from time to time pursuant to Section 2.09 and (ii) any reduction or increase in such amount from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04 and (b) as to all Term Lenders, the aggregate commitments of all Term Lenders to make Term Loans. After funding the Term Loan, each Term Lender’s Term Loan Commitment shall be deemed to be zero. The initial aggregate amount of the Term Loan Commitments of all Term Lenders on the Effective Date is \$500,000,000.

“Term Loan Commitment Expiration Date” means the earliest of (i) 5:00 p.m., New York City time, on the “End Date” (as defined in the Bengal Acquisition Agreement as in effect on July 12, 2019) as extended pursuant to Section 10.01(b)(i) of the Bengal Acquisition Agreement as in effect on July 12, 2019, (ii) the closing of the Bengal Acquisition with or without the use of any of the Term Loans under this Agreement, (iii) the public announcement of the abandonment of the Bengal Acquisition by the Company (or any of its Affiliates) and (iv) the termination of the Bengal Acquisition Agreement prior to closing of the Bengal Acquisition in accordance with the terms thereof.

“Term Loan Installment Date” has the meaning assigned to it in Section 2.10(a)(ii).

“Term Loan Funded Amount” has the meaning assigned to it in Section 2.10(a)(ii).

“Term Loan Funding Date” means the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Section 4.02) and the Term Loans are funded.

“Term Loan Maturity Date” means the date that occurs on the fifth anniversary of the Term Loan Funding Date, as may be extended pursuant to Section 2.25.

“Term Loan Trigger Date” means the date on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Section 4.02).

“Term Loans” means the term loans made by the Term Lenders to the Company pursuant to Section 2.01(b).

“Total Revolving Credit Exposure” means, at any time, the sum of the outstanding principal amount of all Lenders’ Revolving Loans, their LC Exposure and their Swingline Exposure at such time; provided, that clause (a) of the definition of Swingline Exposure shall only be applicable to the extent Lenders shall have funded their respective participations in the outstanding Swingline Loans.

“Transactions” means (i) the execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents, (ii) the borrowing of Loans and other credit extensions, (iii) the use of the proceeds thereof, (iv) the issuance of Letters of Credit hereunder and (v) the Bengal Transactions.

“Treaty Lender” means a Lender which:

(i) is treated as a resident of a Treaty State for the purposes of a Treaty;

(ii) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loan is effectively connected; and

(iii) meets all other conditions of the relevant Treaty for full exemption from the United Kingdom taxation on interest and other amounts which relate to the Lender (including, without limitation, its tax or other status, the manner in which or the period for which it holds any rights under this Agreement, the reasons or purposes for its acquisition of such rights and the nature of any arrangements by which it disposes of or otherwise turns to account such rights) under the Loan Documents. In this subclause (iii), “conditions” shall mean conditions relating to an entity’s eligibility for full exemption under the relevant Treaty and shall not be treated as including any procedural formalities that need to be satisfied in relation to that Treaty.

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

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, the Alternate Base Rate, the BA Rate or the Canadian Prime Rate.

“UK Borrower” means any UK Subsidiary that becomes a Subsidiary Borrower pursuant to Section 2.23 and that has not ceased to be a Subsidiary Borrower pursuant to such Section.

“UK Bank Levy” means the UK Tax known as the bank levy, introduced by the United Kingdom Finance Act 2011, in such form as it may be imposed and/or modified from time to time.

“UK Insolvency Event” means:

(a) a UK Relevant Entity is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (other than any Credit Party under this Agreement) with a view to rescheduling any of its indebtedness. In this context, “unable to pay its debts” means that there are grounds on which such UK Relevant Entity would be deemed to be unable to pay its debts (as defined in Section 123(1) of the Insolvency Act 1986 of the United Kingdom) or on which a court would be satisfied that the value of such UK Relevant Entity’s assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities (as such term would be construed for the purposes of Section 123(2) of the Insolvency Act 1986);

(b) a moratorium is declared in respect of any indebtedness of any UK Relevant Entity; provided that, if a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by such moratorium;

(c) any corporate action, legal proceedings or other formal procedure or step is taken in relation to:

(i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise), but excluding any solvent reorganization or liquidation not prohibited by this Agreement, of any UK Relevant Entity;

(ii) a composition, compromise, assignment or arrangement with any creditor of any UK Relevant Entity;

(iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any UK Relevant Entity, or any of its assets; or

(iv) enforcement of any Lien securing Indebtedness for borrowed money in excess of £25,000,000 over any assets of any UK Relevant Entity, or any analogous procedure or step is taken in any jurisdiction in respect of any UK Relevant Entity, save that this paragraph (c) shall not apply to any action, proceeding, procedure or formal step which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement; or

(d) any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a UK Relevant Entity, in each such case, where any such actions or process described in this clause (d) would reasonably be expected to result in a Material Adverse Effect.

“UK Non-Bank Lender” means:

(a) a Lender (which falls within clause (i)(b) of the definition of Qualifying Lender) which is a party to this Agreement and which has provided a Tax Confirmation to the Company; and

(b) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment and Assumption or Augmenting Lender Supplement (as the case may be) which it executes on becoming a Party.

“UK Relevant Entity” means any Subsidiary Borrower that is a UK Subsidiary or any other Borrower capable of becoming subject of an order for winding-up or administration under the Insolvency Act 1986.

“UK Subsidiary” means any Subsidiary organized under the laws of England and Wales.

“UK 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) imposed by the government of the United Kingdom or any political subdivision thereof.

“United States” or “U.S.” mean the United States of America.

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regime” has the meaning assigned to it in Section 9.19.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

“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.

“Value Added Tax Act 1994” means the Value Added Tax Act 1994 of the United Kingdom.



“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Withholding Agent” means any Loan Party and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurocurrency Loan”) or by Class and Type (e.g., a “Eurocurrency Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurocurrency Borrowing”) or by Class and Type (e.g., a “Eurocurrency Revolving Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply), and all judgments, orders and decrees, of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document in any Loan Document (including Exhibits and Schedules) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignment set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP; Pro Forma Calculations. (a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Company notifies the Administrative Agent that the Company requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Company that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (x) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Company or any Subsidiary at “fair value”, as defined therein and (y) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof, net of discounts and premiums and (ii) any obligations relating to a lease that was accounted for by such Person as an operating lease as of July 27, 2012 and any similar lease entered into after July 27, 2012 by such Person shall be accounted for as obligations relating to an operating lease and not as obligations relating to a capital lease; provided however, that the Company may elect, with notice to Administrative Agent to treat operating leases as capital leases in accordance with GAAP as in effect from time to time and, upon such election, and upon any subsequent change to GAAP therefor, the parties will enter into negotiations in good faith in an effort to preserve the original intent of the financial covenants set forth herein (it being understood and agreed that the treatment of operating leases be interpreted on the basis of GAAP as in effect on July 27, 2012 until such election shall have been withdrawn or such provision amended in accordance herewith).

(b) All pro forma computations required to be made hereunder giving effect to any acquisition or disposition or issuance, incurrence, assumption or repayment of Indebtedness, or other transaction shall in each case be calculated giving pro forma effect thereto (and, in the case of any pro forma computation made hereunder to determine whether such acquisition or disposition, or issuance, incurrence, assumption or repayment of Indebtedness, or other transaction is permitted to be consummated hereunder, to any other such transaction consummated since the first day of the period covered by any component of such pro forma computation and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive fiscal quarters ending with the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 5.01(a) or 5.01(b) (or, prior to the delivery of any such financial statements, ending with the last fiscal quarter included in the financial statements referred to in Section 3.04(a)), and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of (but without giving effect to any synergies or cost savings unless permitted by Article 11 of Regulation S-X) and any related incurrence or reduction of Indebtedness, all in accordance with Article 11 of Regulation S-X under the Securities Act. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Agreement pertaining to interest rates applicable to such Indebtedness).

SECTION 1.05. Amendment and Restatement of Existing Agreement. The parties to this Agreement agree that, on the Effective Date, the terms and provisions of the Existing Credit Agreement shall be and hereby are amended and restated in their entirety by the terms and provisions of this Agreement. This Agreement is not intended to and shall not constitute a novation, payment and reborrowing or termination of the Obligations under the Existing Credit Agreement and the other Loan Documents as in effect prior to the Effective Date. All Loans made and Obligations incurred under the Existing Credit Agreement which are outstanding on the Effective Date shall continue as Loans and Obligations under (and shall be governed by the terms of) this Agreement and the other Loan Documents. Without limiting the foregoing, on the Effective Date: (a) all references in the "Loan Documents" (as defined in the Existing Credit Agreement) to the "Administrative Agent", the "Credit Agreement" and the "Loan Documents" shall be deemed to refer to the Administrative Agent, this Agreement and the Loan Documents, (b) Letters of Credit which remain outstanding on the Effective Date shall continue as Letters of Credit under (and shall be governed by the terms of) this Agreement, (c) all obligations constituting "Obligations" with any Lender or any Affiliate of any Lender which are outstanding on the Effective Date shall continue as Obligations under this Agreement and the other Loan Documents, (d) the Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Lender's credit exposure under the Existing Credit Agreement as are necessary in order that each such Lender's Revolving Credit Exposure and outstanding Revolving Loans hereunder reflects such Lender's Applicable Percentage of the outstanding aggregate Revolving Credit Exposures on the Effective Date and (e) the Company hereby agrees to compensate each applicable Lender for any and all losses, costs and expenses incurred by such Lender in connection with the sale and assignment of any Eurocurrency Loans (including the "Eurocurrency Loans" under the Existing Credit Agreement) and such reallocation described above, in each case on the terms and in the manner set forth in Section 2.16 hereof.

SECTION 1.06. Interest Rates: LIBOR Notification. The interest rate on Eurocurrency Loans denominated in any Agreed Currency (other than Canadian Dollars) is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurocurrency Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate is no longer available or in certain other circumstances as set forth in Section 2.14(c) of this Agreement, such Section 2.14(c) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Company, pursuant to Section 2.14, in advance of any change to the reference rate upon which the interest rate on Eurocurrency Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of “LIBO Rate” or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate, as it may or may not be adjusted pursuant to Section 2.14(c), will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

SECTION 1.07. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its equity interests at such time.

SECTION 1.08. Certain Calculations. No Default or Event of Default shall arise as a result of any limitation or threshold set forth in Dollars in Articles VI and VII under this Agreement being exceeded solely as a result of changes in currency exchange rates from those rates applicable on the last day of the fiscal quarter of the Company immediately preceding the fiscal quarter of the Company in which the applicable transaction or occurrence requiring a determination occurs.

SECTION 1.09. Luxembourg Terms. Notwithstanding any other provision of this Agreement to the contrary, in this Agreement where it relates to a Loan Party incorporated under the laws of Luxembourg, a reference to: (a) a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors, compulsory manager or other similar officer includes a *juge délégué, commissaire, juge-commissaire, mandataire ad hoc, administrateur provisoire, liquidateur or curateur*; (b) liquidation, bankruptcy, insolvency, reorganization, moratorium or any similar proceeding shall include any Luxembourg Insolvency Event; (c) a lien or security interest includes any *hypothèque, nantissement, gage, privilège, sûreté réelle, droit de rétention*, and any type of security in rem (*sûreté réelle*) or agreement or arrangement having a similar effect and any transfer of title by way of security; (d) a person being unable to pay its debts includes that person being in a state of cessation of payments (*cessation de paiements*) or having lost or meeting the criteria to lose its commercial creditworthiness (*ébranlement de crédit*); (e) attachments or similar creditors process means an executory attachment (*saisie exécutoire*) or conservatory attachment (*saisie arrêt*); (f) a “set-off” includes, for purposes of Luxembourg law, legal set-off.

## ARTICLE II

### The Credits

SECTION 2.01. Commitments. Prior to the Effective Date, certain revolving loans were previously made to the Borrowers under the Existing Credit Agreement which remain outstanding as of the date of this Agreement (such outstanding revolving loans being hereinafter referred to as the “Existing Loans”). Subject to the terms and conditions set forth in this Agreement, the Borrowers and each of the Lenders agree that on the Effective Date but subject to the reallocation and other transactions described in Section 1.05, the Existing Loans shall be re-evidenced as Revolving Loans under this Agreement, and the terms of the Existing Loans shall be restated in their entirety and shall be evidenced by this Agreement. Subject to the terms and conditions set forth herein, (a) each Revolving Lender (severally and not jointly) agrees to make Revolving Loans to the Borrowers in Agreed Currencies from time to time during the Revolving Credit Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing to any Swingline Loans outstanding pursuant to Section 2.10(a)) in, subject to Sections 2.04 and 2.11(b), (i) the Dollar Amount of such Lender’s Revolving Credit Exposure exceeding such Lender’s Revolving Commitment or (ii) the Dollar Amount of the Total Revolving Credit Exposure exceeding the aggregate Revolving Commitments, and (b) each Term Lender with a Term Loan Commitment (severally and not jointly) agrees to make a Term Loan to the Company in Dollars in a single drawing during the Term Loan Availability Period, in an amount equal to such Lender’s Term Loan Commitment, on the Term Loan Trigger Date by making immediately available funds available to the Administrative Agent’s designated account, not later than the time specified by the Administrative Agent. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and reborrow Revolving Loans. Canadian Revolving Loans may only be made to (and may only be requested by or in respect of) a Canadian Borrower, and a Canadian Borrower may not request a Eurocurrency Loan denominated in Canadian Dollars (nor may the Company or any other Person request such a Eurocurrency Loan on behalf of a Canadian Borrower in Canadian Dollars) but, for the avoidance of doubt, a Canadian Borrower may request Eurocurrency Loans denominated in any Agreed Currency other than Canadian Dollars. Amounts repaid or prepaid in respect of Term Loans may not be reborrowed.

SECTION 2.02. Loans and Borrowings. (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the applicable Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required. Any Swingline Loan shall be made in accordance with the procedures set forth in Section 2.05. The Term Loans shall amortize as set forth in Section 2.10.

(b) Subject to Section 2.14, (i) each Revolving Borrowing (other than a Canadian Revolving Borrowing) and Term Loan Borrowing shall be comprised entirely of ABR Loans or Eurocurrency Loans as the relevant Borrower may request in accordance herewith; provided that each ABR Loan shall only be made in Dollars and no ABR Loan shall be made to a Designated Foreign Subsidiary Borrower, (ii) each Swingline Loan shall be (w) an ABR Loan in the case of a Swingline Loan denominated in Dollars (other than a Designated Swingline Dollar Loan), (x) a Eurocurrency Swingline Loan in the case of a Swingline Loan denominated in any Foreign Currency (for the avoidance of doubt, other than a Canadian Swingline Loan), (y) a Canadian Base Rate Loan in the case of a Canadian Swingline Loan or (z) a Eurocurrency Swingline Loan in the case of a Designated Swingline Dollar Loan, and (iii) each Canadian Revolving Borrowing shall be comprised entirely of BA Equivalent Loans. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16, 2.17 and 2.17A shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the relevant Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurocurrency Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 (or, if such Borrowing is denominated in (i) Japanese Yen, JPY10,000,000 or (ii) a Foreign Currency other than Japanese Yen, 100,000 units of such currency) and not less than \$1,000,000 (or, if such Borrowing is denominated in (i) Japanese Yen, JPY100,000,000 or (ii) a Foreign Currency other than Japanese Yen, 1,000,000 units of such currency). At the commencement of each Interest Period for any BA Equivalent Revolving Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of Cdn.\$100,000 and not less than Cdn.\$1,000,000. At the time that each ABR Revolving Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000; provided that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the aggregate Revolving Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be in an amount that is an integral multiple of \$100,000 (or, if such Swingline Loan is denominated in (i) Japanese Yen, JPY10,000,000 or (ii) a Foreign Currency other than Japanese Yen, 100,000 units of such currency) and not less than \$100,000 (or, if such Swingline Loan is denominated in (i) Japanese Yen, JPY10,000,000 or (ii) a Foreign Currency other than Japanese Yen, 100,000 units of such currency). Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of twenty five (25) Eurocurrency Borrowings and BA Equivalent Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date.

SECTION 2.03. Requests for Borrowings. To request a Borrowing, the applicable Borrower, or the Company on behalf of the applicable Borrower, shall notify the Administrative Agent of such request (a) (i) by irrevocable written notice (via a written Borrowing Request signed by the applicable Borrower, or the Company on behalf of the applicable Borrower) not later than 3:00 p.m., Local Time, three (3) Business Days before the date of the proposed Borrowing (in the case of a Eurocurrency Borrowing denominated in Dollars or a BA Equivalent Borrowing) or (ii) by irrevocable written notice (via a written Borrowing Request signed by such Borrower, or the Company on its behalf) not later than 2:00 p.m., Local Time, three (3) Business Days before the date of the proposed Borrowing (in the case of a Eurocurrency Borrowing denominated in a Foreign Currency) or (b) by irrevocable written notice (via a written Borrowing Request signed by the applicable Borrower, or the Company on behalf of the applicable Borrower), not later than 1:30 p.m., Local Time, on the date of a proposed ABR Borrowing. Each such Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the name of the applicable Borrower;
- (ii) the aggregate amount of the requested Borrowing;
- (iii) the date of such Borrowing, which shall be a Business Day;
- (iv) whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing (or, in the case of a Canadian Revolving Borrowing, stating that such Borrowing is to be a BA Equivalent Borrowing) and whether such Borrowing is a Revolving Borrowing or a Term Loan Borrowing;
- (v) in the case of a Eurocurrency Borrowing, the Agreed Currency and initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";
- (vi) in the case of a BA Equivalent Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (vii) the location and number of the applicable Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

If no election as to the Type of Borrowing is specified, then (x) in the case of a Borrowing denominated in Dollars (other than a Designated Loan), the requested Borrowing shall be an ABR Borrowing and (y) in the case of a Canadian Revolving Borrowing, the requested Borrowing shall be a BA Equivalent Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Revolving Borrowing or BA Equivalent Revolving Borrowing, then the relevant Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04. Determination of Dollar Amounts. The Administrative Agent will determine the Dollar Amount of:

- (a) each Eurocurrency Borrowing or Canadian Revolving Borrowing, on each of the following: (i) the date of the making of such Loan and (ii) each date of a conversion or continuation of such Loan pursuant to the terms of this Agreement,
- (b) (i) each Eurocurrency Swingline Loan denominated in a Foreign Currency (for the avoidance of doubt, other than a Canadian Swingline Loan) as of the date one (1) Business Day prior to the date of the making of such Swingline Loan and (ii) each Canadian Swingline Loan on the date of the making of such Swingline Loan,

(c) any Letter of Credit denominated in a Foreign Currency, on each of the following: (i) the date on which such Letter of Credit is issued, (ii) the first Business Day of each calendar month and (iii) the date of any amendment of such Letter of Credit that has the effect of increasing the face amount thereof, and

(d) all outstanding Credit Events, on any additional date as the Administrative Agent may determine at any time when an Event of Default exists.

Each day upon or as of which the Administrative Agent determines Dollar Amounts as described in the preceding clauses (a), (b), (c) and (d) is herein described as a "Computation Date" with respect to each Credit Event for which a Dollar Amount is determined on or as of such day.

SECTION 2.05. Swingline Loans. (a) Subject to the terms and conditions set forth herein, the Swingline Lender may in its sole discretion make Swingline Loans in any of the Agreed Currencies to any Borrower from time to time during the Revolving Credit Availability Period, in an aggregate principal Dollar Amount at any time outstanding that will not result in (i) the aggregate principal Dollar Amount of outstanding Swingline Loans exceeding \$75,000,000, (ii) the Swingline Lender's Revolving Credit Exposure exceeding its Revolving Commitment or (iii) the Dollar Amount of the Total Revolving Credit Exposure exceeding the aggregate Revolving Commitments; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, any Borrower may borrow, prepay and reborrow Swingline Loans. Canadian Swingline Loans may only be made to (and may only be requested by or in respect of) a Canadian Borrower, and a Canadian Borrower may not request a Swingline Loan that is a Eurocurrency Loan denominated in Canadian Dollars (nor may the Company or any other Person request such a Swingline Loan that is a Eurocurrency Loan on behalf of a Canadian Borrower in Canadian Dollars) but, for the avoidance of doubt, a Canadian Borrower may request a Eurocurrency Swingline Loan denominated in any Agreed Currency other than Canadian Dollars.

(b) To request a Swingline Loan, the applicable Borrower, or the Company on behalf of the applicable Borrower, shall notify the Administrative Agent of such request (i) by irrevocable written notice (via a written Borrowing Request signed by the applicable Borrower, or the Company on behalf of the applicable Borrower), not later than 12:00 noon, New York City time, on the day of a proposed Swingline Loan in Dollars (other than a Designated Swingline Dollar Loan), (ii) by irrevocable written notice (via a written Borrowing Request signed by the applicable Borrower, or the Company on behalf of the applicable Borrower), not later than 11:00 a.m., Local Time, on the day of a proposed Eurocurrency Swingline Loan in a Foreign Currency (for the avoidance of doubt, other than a Canadian Swingline Loan) and a Designated Swingline Dollar Loan and (iii) by irrevocable written notice (via a written Borrowing Request signed by the applicable Borrower, or the Company on behalf of the applicable Borrower), not later than 12:00 noon, Local Time, on the day of a proposed Canadian Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day), applicable currency, Interest Period (in the case of a Eurocurrency Swingline Loan), Type and amount of the requested Swingline Loan and the account to which the proceeds of such Swingline Loan are to be credited. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Company or any other applicable Borrower. The Swingline Lender shall make each Swingline Loan available to the applicable Borrower by means of a credit to an account of such Borrower (as designated by such Borrower in such notice) (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(c), by remittance to the relevant Issuing Bank) by 3:00 p.m., Local Time, on the requested date of such Swingline Loan.

(c) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., Local Time, (i) in respect of Swingline Loans denominated in Dollars (other than a Designated Swingline Dollar Loan), on any Business Day, (ii) in respect of Eurocurrency Swingline Loans denominated in a Foreign Currency (for the avoidance of doubt, other than a Canadian Swingline Loan) and a Designated Swingline Dollar Loan, three (3) Business Days before the date of the proposed acquisition of participations and (iii) in respect of Canadian Swingline Loans, three (3) Business Days before the date of the proposed acquisition of participations, require the Revolving Lenders to acquire participations in all or a portion of the Swingline Loans outstanding in the applicable Agreed Currency of such Swingline Loans. Such notice shall specify the aggregate amount and the applicable Agreed Currency of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans and the applicable Agreed Currency of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, promptly upon receipt of notice as provided above (and in any event, if such notice is received by 12:00 noon, Local Time, on a Business Day, no later than 5:00 p.m., Local Time, on such Business Day and if received after 12:00 noon, Local Time, on a Business Day, no later than 10:00 a.m., Local Time, on the immediately succeeding Business Day), to pay in the applicable Agreed Currency to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Company of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the applicable Borrower (or other party on behalf of such Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the applicable Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Company or any other applicable Borrower of any default in the payment thereof.

(d) The Swingline Lender may be replaced at any time by written agreement among the Company, the Administrative Agent, the replaced Swingline Lender and the successor Swingline Lender. The Administrative Agent shall notify the Revolving Lenders of any such replacement of the Swingline Lender. At the time any such replacement shall become effective, the Company shall pay all unpaid interest accrued for the account of the replaced Swingline Lender pursuant to Section 2.13(a). From and after the effective date of any such replacement, (i) the successor Swingline Lender shall have all the rights and obligations of the replaced Swingline Lender under this Agreement with respect to Swingline Loans made thereafter and (ii) references herein to the term "Swingline Lender" shall be deemed to refer to such successor or to any previous Swingline Lender, or to such successor and all previous Swingline Lenders, as the context shall require. After the replacement of a Swingline Lender hereunder, the replaced Swingline Lender shall remain a party hereto and shall continue to have all the rights and obligations of a Swingline Lender under this Agreement with respect to Swingline Loans made by it prior to its replacement, but shall not be required to make additional Swingline Loans.



(e) Subject to the appointment and acceptance of a successor Swingline Lender, the Swingline Lender may resign as a Swingline Lender at any time upon thirty (30) days' prior written notice to the Administrative Agent, the Company and the Revolving Lenders, in which case, such Swingline Lender shall be replaced in accordance with Section 2.05(d) above.

SECTION 2.06. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, any Borrower may request the issuance of, and each Issuing Bank agrees to issue, Letters of Credit denominated in Agreed Currencies for its own account or for the account of any Subsidiary, in a form reasonably acceptable to the Administrative Agent and the relevant Issuing Bank, at any time and from time to time during the Revolving Credit Availability Period. Notwithstanding the foregoing, the letters of credit identified on Schedule 2.06 (the "Existing Letters of Credit") shall be deemed to be "Letters of Credit" issued on the Effective Date for all purposes of the Loan Documents. Notwithstanding anything herein to the contrary, no Issuing Bank shall have any obligation hereunder to issue any Letter of Credit if (i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank shall prohibit, or require that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or (ii) (x) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is a Sanctioned Country or (y) in any manner that would result in a violation of any Sanctions by any party to this Agreement. The Company unconditionally and irrevocably agrees that, in connection with any Letter of Credit issued for the account of any Subsidiary as provided in the first sentence of this paragraph, the Company will be fully responsible for the reimbursement of LC Disbursements in accordance with the terms hereof, the payment of interest thereon and the payment of fees due under Section 2.12(b) to the same extent as if it were the sole account party in respect of such Letter of Credit (the Company hereby irrevocably waiving any defenses that might otherwise be available to it as a guarantor or surety of the obligations of such a Subsidiary that shall be an account party in respect of any such Letter of Credit).

(b) Notice of Issuance, Amendment, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit), the applicable Borrower shall deliver (including by electronic communication, if arrangements for doing so have been approved by the relevant Issuing Bank) to the relevant Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment or extension, but in any event no less than three (3) Business Days unless the Administrative Agent and such Issuing Bank shall otherwise agree) a written notice pursuant to, and in accordance with, Section 9.01 requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the Agreed Currency applicable thereto, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend or extend such Letter of Credit. If requested by an Issuing Bank, the applicable Borrower also shall submit a letter of credit application, continuing agreement and/or other similar agreement on such Issuing Bank's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by any Borrower to, or entered into by any Borrower with, the relevant Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit the applicable Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension (i) subject to Sections 2.04 and 2.11(b), the Dollar Amount of the LC Exposure shall not exceed the sum of the total Applicable LC Sublimits of all of the Issuing Banks, (ii) subject to Sections 2.04 and 2.11(b), the Dollar Amount of the Total Revolving Credit Exposures shall not exceed the aggregate Revolving Commitments, (iii) subject to Sections 2.04 and 2.11(b), the Dollar Amount of each Lender's Revolving Credit Exposure shall not exceed such Lender's Revolving Commitment and (iv) subject to Sections 2.04 and 2.11(b), the Dollar Amount of the aggregate face amount of all Letters of Credit issued and then outstanding by any Issuing Bank shall not exceed such Issuing Bank's Applicable LC Sublimit.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination by notice from the relevant Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date two years after the date of the issuance of such Letter of Credit (or, in the case of any extension thereof, one year after such extension) and (ii) the date that is five (5) Business Days prior to the Revolving Credit Maturity Date; provided that any Letter of Credit may contain customary automatic extension provisions agreed upon by the Company and the applicable Borrower and the relevant Issuing Bank pursuant to which the expiration date of such Letter of Credit (an “Auto Extension Letter of Credit”) shall automatically be extended for consecutive periods of up to twenty four (24) months (but, subject to the penultimate sentence of this Section 2.06(c), not to a date later than the date set forth in clause (ii) above). Unless otherwise directed by the relevant Issuing Bank, the Company and the applicable Borrower shall not be required to make a specific request to such Issuing Bank for any such extension. Once an Auto Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the relevant Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the date set forth in clause (ii) above. Notwithstanding the foregoing to the contrary, a Letter of Credit may expire up to one year beyond the Revolving Credit Maturity Date so long as the applicable Borrower cash collateralizes an amount equal to 105% of the face amount of such Letter of Credit in the manner described in Section 2.06(j) or provides a backup letter of credit in such amount and otherwise in form and substance reasonably acceptable to the relevant Issuing Bank and the Administrative Agent in their discretion, in each case no later than thirty (30) days prior to the Revolving Maturity Date. For the avoidance of doubt, if the Revolving Credit Maturity Date shall be extended pursuant to Section 2.25, “Revolving Credit Maturity Date” as referenced in this clause (c) shall refer to the Maturity Date as extended pursuant to Section 2.25; provided that, notwithstanding anything in this Agreement (including Section 2.25 hereof) or any other Loan Document to the contrary, the Revolving Credit Maturity Date, as such term is used in reference to the relevant Issuing Bank or any Letter of Credit issued thereby, may not be extended without the prior written consent of such Issuing Bank.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the relevant Issuing Bank or the Revolving Lenders, the relevant Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the relevant Issuing Bank, a participation in such Letter of Credit equal to such Lender’s Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the relevant Issuing Bank, such Lender’s Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the applicable Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to any Borrower for any reason, including after the Revolving Credit Maturity Date. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If the relevant Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the applicable Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent in Dollars the Dollar Amount equal to such LC Disbursement, calculated as of the date such Issuing Bank made such LC Disbursement (or if such Issuing Bank shall so elect in its sole discretion by notice to the applicable Borrower, in such other Agreed Currency which was paid by such Issuing Bank pursuant to such LC Disbursement in an amount equal to such LC Disbursement) not later than 12:00 noon, Local Time, on the date that such LC Disbursement is made, if the applicable Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., Local Time, on such date, or, if such notice has not been received by such Borrower prior to such time on such date, then not later than 12:00 noon, Local Time, on the Business Day immediately following the day that such Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that such Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with (i) to the extent such LC Disbursement was made in Dollars, an ABR Revolving Borrowing, Eurocurrency Revolving Borrowing or Swingline Loan in Dollars in an amount equal to such LC Disbursement or (ii) to the extent such LC Disbursement was made in a Foreign Currency, a Eurocurrency Revolving Borrowing in such Foreign Currency in an amount equal to such LC Disbursement and, in each case, to the extent so financed, such Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing, Eurocurrency Revolving Borrowing or Swingline Loan, as applicable. If any Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from such Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the applicable Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the relevant Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from any Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to such Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the relevant Issuing Bank for any LC Disbursement (other than the funding of Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the applicable Borrower of its obligation to reimburse such LC Disbursement. If any Borrower's reimbursement of, or obligation to reimburse, any amounts in any Foreign Currency would subject the Administrative Agent, any Issuing Bank or any Lender to any stamp duty, ad valorem charge or similar tax that would not be payable if such reimbursement were made or required to be made in Dollars, such Borrower shall, at its option, either (x) pay the amount of any such tax requested by the Administrative Agent, the relevant Issuing Bank or the relevant Lender or (y) reimburse each LC Disbursement made in such Foreign Currency in Dollars, in an amount equal to the Dollar Amount thereof calculated on the date such LC Disbursement is made.

(f) Obligations Absolute. Each Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) any payment by the relevant Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, any Borrower's obligations hereunder. Neither the Administrative Agent, the Revolving Lenders nor the Issuing Banks, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the relevant Issuing Bank; provided that the foregoing shall not be construed to excuse the relevant Issuing Bank from liability to a Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by each Borrower to the extent permitted by applicable law) suffered by such Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of any Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. Each Issuing Bank for any Letter of Credit shall promptly examine all documents purporting to represent a demand for payment under such Letter of Credit. Such Issuing Bank shall promptly after such examination notify the Administrative Agent and the applicable Borrower by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve such Borrower of its obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If any Issuing Bank for any Letter of Credit shall make any LC Disbursement, then, unless the applicable Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that such Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans (or in the case such LC Disbursement is denominated in a Foreign Currency, at the Overnight Foreign Currency Rate for such Agreed Currency plus the then effective Applicable Rate with respect to Eurocurrency Revolving Loans); provided that, if such Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(e) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the relevant Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank for such LC Disbursement shall be for the account of such Lender to the extent of such payment.

(i) Replacement and Resignation of Issuing Bank. (A) Any Issuing Bank may be replaced at any time by written agreement among the applicable Borrower, the Administrative Agent, the successor Issuing Bank and, unless the replaced Issuing Bank is a Defaulting Lender that is not responsive to a request for such written agreement after reasonable notice, the replaced Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of any Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued by such successor Issuing Bank thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(B) Subject to the appointment and acceptance of a successor Issuing Bank, an Issuing Bank may resign as an Issuing Bank at any time upon thirty days' prior written notice to the Administrative Agent, the Company and the Revolving Lenders, in which case, such resigning Issuing Bank shall be replaced in accordance with Section 2.06(i)(A) above.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that any Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, such Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the Dollar Amount of the LC Exposure for such Borrower as of such date plus any accrued and unpaid interest thereon; provided that (i) the portions of such amount attributable to undrawn Foreign Currency Letters of Credit or LC Disbursements in a Foreign Currency that such Borrower is not late in reimbursing shall be deposited in the applicable Foreign Currencies in the actual amounts of such undrawn Letters of Credit and LC Disbursements and (ii) the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or (i) of Article VII. For the purposes of this paragraph, the Dollar Amount of the Foreign Currency LC Exposure shall be calculated on the date notice demanding cash collateralization is delivered to the applicable Borrower. Each Borrower also shall deposit cash collateral pursuant to this paragraph as and to the extent required by Section 2.11(b). Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option of the Company with the consent of the Administrative Agent in its reasonable discretion and at such Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in any such account shall be applied by the Administrative Agent to reimburse the relevant Issuing Bank for LC Disbursements for which it has not been reimbursed, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the applicable Borrower for the LC Exposure for such Borrower at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations. If any Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to such Borrower within three (3) Business Days after all Events of Default have been cured or waived. If the Company is required to provide an amount of cash collateral hereunder pursuant to Section 2.11(b), such amount (to the extent not applied as aforesaid) shall be returned to the Company as and to the extent that, after giving effect to such return, the aggregate Revolving Credit Exposures would not exceed the aggregate Revolving Commitments and no Event of Default shall have occurred and be continuing.

(k) Issuing Bank Agreements. Each Issuing Bank agrees that, unless otherwise requested by the Administrative Agent, such Issuing Bank shall report in writing to the Administrative Agent (i) on or prior to each Business Day on which such Issuing Bank expects to issue, amend or extend any Letter of Credit, the date of such issuance, amendment or extension, and the aggregate face amount and currency of the Letters of Credit to be issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension occurred (and whether the amount thereof changed), (ii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date of such LC Disbursement and the amount and currency of such LC Disbursement, (iii) on any Business Day on which any Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount and currency of such LC Disbursement and (iv) on any other Business Day, such other information as the Administrative Agent shall reasonably request.

(l) LC Exposure Determination. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time.

SECTION 2.07. Funding of Borrowings. (a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof (which shall be the Term Loan Funding Date in the case of the Term Loans) solely by wire transfer of immediately available funds (i) in the case of Revolving Loans denominated in Dollars (other than a Designated Loan), by 2:30 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders, (ii) in the case of each Revolving Loan denominated in a Foreign Currency (other than Swiss Francs) and Designated Loans, by 12:00 noon, Local Time, in the city of the Administrative Agent's Applicable Payment Office for such currency and at such Applicable Payment Office for such currency, (iii) in the case of each Revolving Loan denominated in Swiss Francs, by 8:00 a.m., Local Time, in the city of the Administrative Agent's Applicable Payment Office for such currency and at such Applicable Payment Office for such currency, (iv) in the case of Term Loans, as provided in Section 2.01(b) and (v) in the case of Swingline Loans, as provided in Section 2.05. The Administrative Agent will make such Loans available to the relevant Borrower by promptly crediting the amounts so received, in like funds, to an account of such Borrower designated by such Borrower in the applicable Borrowing Request; provided that Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the relevant Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing (or in the case of an ABR Borrowing, prior to 2:30 p.m., New York City time, on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the relevant Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and such Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (including without limitation the Overnight Foreign Currency Rate in the case of Loans denominated in a Foreign Currency) or (ii) (x) in the case of such Borrower (other than a Canadian Borrower in respect of a Canadian Revolving Loan), the interest rate applicable to ABR Loans and (y) in the case of a Canadian Borrower in respect of a Canadian Revolving Loan, the interest rate applicable to Canadian Base Rate Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.08. Interest Elections. (a) Subject to the provisions of this Section 2.08 and of Sections 2.13 and 2.14, (i) Loans (other than Canadian Revolving Loans) may be made or maintained only as ABR Loans or Eurocurrency Loans (provided that no ABR Loan shall be made to a Designated Foreign Subsidiary Borrower), (ii) Swingline Loans may be made or maintained only as (w) an ABR Loan in the case of a Swingline Loan denominated in Dollars (other than a Designated Swingline Dollar Loan), (x) a Eurocurrency Loan in the case of a Eurocurrency Swingline Loan denominated in any Foreign Currency (for the avoidance of doubt, other than a Canadian Swingline Loan), (y) a Canadian Base Rate Loan in the case of a Canadian Swingline Loan or (z) a Eurocurrency Loan in the case of any Designated Swingline Dollar Loan, and (iii) Canadian Revolving Loans may be made or maintained only as BA Equivalent Loans.

(b) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing or a BA Equivalent Revolving Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the relevant Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing or a BA Equivalent Borrowing, may elect Interest Periods therefor, all as provided in this Section. A Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(c) To make an election pursuant to this Section, a Borrower, or the Company on its behalf, shall notify the Administrative Agent of such election (by irrevocable written notice in the case of a Borrowing denominated in Dollars (other than Designated Loans) or a Canadian Revolving Borrowing or by irrevocable written notice (via an Interest Election Request signed by such Borrower, or the Company on its behalf) in the case of a Borrowing denominated in a Foreign Currency (other than a Canadian Revolving Borrowing) or a Designated Loan) by the time that a Borrowing Request would be required under Section 2.03 if such Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Notwithstanding any contrary provision herein, this Section shall not be construed to permit any Borrower to (i) change the currency of any Borrowing, (ii) elect an Interest Period for Eurocurrency Loans or BA Equivalent Loans that does not comply with Section 2.02(d) or (iii) convert any Borrowing to a Borrowing of a Type not available under the Class of Commitments pursuant to which such Borrowing was made.

(d) Each Interest Election Request shall specify the following information in compliance with Section 2.02:

(i) the name of the applicable Borrower and Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii), (iv) and (v) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) in the case of a Eurocurrency Borrowing, whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing;

(iv) in the case of a Canadian Revolving Borrowing, stating that the resulting Borrowing is to be a BA Equivalent Borrowing; and

(v) if the resulting Borrowing is a Eurocurrency Borrowing or a BA Equivalent Borrowing, the Interest Period and Agreed Currency to be applicable thereto after giving effect to such election, which Interest Period shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurocurrency Borrowing or a BA Equivalent Borrowing but does not specify an Interest Period, then the applicable Borrower shall be deemed to have selected an Interest Period of one month's duration.



(e) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(f) If the relevant Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing or a BA Equivalent Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period (i) in the case of a Eurocurrency Borrowing denominated in Dollars (other than Designated Loans), such Borrowing shall be converted to an ABR Borrowing, (ii) in the case of a Eurocurrency Borrowing denominated in a Foreign Currency, or a Designated Loan, in respect of which the applicable Borrower shall have failed to deliver an Interest Election Request prior to the third (3<sup>rd</sup>) Business Day preceding the end of such Interest Period, such Borrowing shall automatically continue as a Eurocurrency Borrowing in the same Agreed Currency with an Interest Period of one month unless such Eurocurrency Borrowing is or was repaid in accordance with Section 2.11 and (iii) in the case of a BA Equivalent Borrowing, in respect of which the applicable Canadian Borrower shall have failed to deliver an Interest Election Request prior to the third (3<sup>rd</sup>) Business Day preceding the end of such Interest Period, such Borrowing shall automatically continue as a BA Equivalent Borrowing with an Interest Period of one month unless such BA Equivalent Borrowing is or was repaid in accordance with Section 2.11. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Company, then, so long as an Event of Default is continuing (i) no outstanding Revolving Borrowing denominated in Dollars (other than a Designated Loan) may be converted to or continued as a Eurocurrency Borrowing, (ii) unless repaid, each Eurocurrency Revolving Borrowing denominated in Dollars (other than a Designated Loan) shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto but without duplication for interest payments made by any Borrower on such amount, (iii) unless repaid, each Eurocurrency Revolving Borrowing denominated in a Foreign Currency, and each Designated Loan, shall automatically be continued as a Eurocurrency Borrowing with an Interest Period of one month and (iv) unless repaid, each BA Equivalent Borrowing shall automatically be continued as a BA Equivalent Borrowing with an Interest Period of one month.

SECTION 2.09. Termination and Reduction of Commitments. (a) Unless previously terminated, (i) the Term Loan Commitments shall terminate on the Term Loan Commitment Expiration Date and (ii) the Revolving Commitments shall terminate on the Revolving Credit Maturity Date.

(b) The Company may at any time terminate, or from time to time reduce, the Revolving Commitments and/or the Term Loan Commitments; provided that (i) each reduction of the Revolving Commitments or the Term Loan Commitments, as applicable, shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (ii) the Company shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, (A) any Lender's Revolving Credit Exposure would exceed its Revolving Commitment or (B) the Dollar Amount of the Total Revolving Credit Exposure would exceed the aggregate Revolving Commitments.

(c) The Company shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments or the Term Loan Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the applicable Class of the contents thereof. Each notice delivered by the Company pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Commitments or the Term Loan Commitments delivered by the Company may state that such notice is conditioned upon the effectiveness of other credit facilities or one or more other events specified therein, in which case such notice may be revoked by the Company (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Revolving Commitments or the Term Loan Commitments shall be permanent. Each reduction of the Revolving Commitments or the Term Loan Commitments shall be made ratably among the applicable Lenders in accordance with their respective Revolving Commitments or Term Loan Commitments, as applicable.

(d) The Term Loan Commitments shall be reduced pursuant to Section 4.02(b), to the extent required thereunder.

SECTION 2.10. Repayment and Amortization of Loans; Evidence of Debt

(a) Repayment and Amortization of Loans.

(i) Each Borrower hereby unconditionally promises to pay to the Administrative Agent (A) for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan made to such Borrower on the Maturity Date in the currency of such Loan, (B) for the account of each Term Lender the principal amount of each Term Loan of such Term Lender on such dates and in such amounts as provided in Section 2.10(a)(ii) and (C) to the Swingline Lender the then unpaid principal amount of each Swingline Loan made to such Borrower on the earlier of the Maturity Date and the fifth (5<sup>th</sup>) Business Day (or such longer period as the Swingline Lender may agree in its sole discretion) after such Swingline Loan is made; provided that on each date that a Revolving Borrowing is made, the Company shall repay all Swingline Loans then outstanding and the proceeds of any such Borrowing shall be applied by the Administrative Agent to repay any Swingline Loans outstanding.

(ii) The Company shall repay Term Loans in installments as follows (each such day referred to in the immediately succeeding clauses (i) through (iii), a "Term Loan Installment Date"): (i) on the last day of the first calendar quarter ending following the Term Loan Funding Date and on the last day of each of the seven calendar quarters ending immediately after such first calendar quarter, 1.25% of the aggregate principal amount of the Term Loans actually funded on the Term Loan Funding Date (such amount, the "Term Loan Funded Amount"); (ii) on the last day of the ninth calendar quarter ending following the Term Loan Funding Date and on the last day of each of the seven calendar quarters ending immediately after such ninth calendar quarter, 1.875% of the Term Loan Funded Amount; and (iii) on the last day of the seventeenth calendar quarter ending following the Term Loan Funding Date and on the last day of each calendar quarter ending after such seventeenth calendar quarter, 2.50% of the Term Loan Funded Amount (in each of the foregoing cases, as adjusted from time to time pursuant to Section 2.11(a)). To the extent not previously repaid, all unpaid Term Loans shall be paid in full in Dollars by the Company on the Term Loan Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class, Agreed Currency and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of any Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it to any Borrower be evidenced by a promissory note. In such event, the relevant Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns and in the form attached hereto as Exhibit L-1 or Exhibit L-2, as applicable. Thereafter, unless otherwise agreed to by the applicable Lender, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

#### SECTION 2.11. Prepayment of Loans.

(a) Any Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (but subject to break funding payments required by Section 2.16) subject to prior notice in accordance with the provisions of this Section 2.11(a). The applicable Borrower, or the Company on behalf of the applicable Borrower, shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) in writing of any prepayment hereunder (i) (x) in the case of prepayment of a Eurocurrency Borrowing denominated in Dollars or a BA Equivalent Revolving Borrowing, not later than 11:00 a.m., Local Time, three (3) Business Days before the date of prepayment or (y) in the case of a prepayment of a Eurocurrency Revolving Borrowing denominated in a Foreign Currency, four (4) Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Revolving Borrowing, not later than 11:00 a.m., Local Time, on the date of prepayment, or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, Local Time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Revolving Loans included in the prepaid Revolving Borrowing, and each voluntary prepayment of a Term Loan Borrowing shall be applied ratably to the Term Loans as directed by the Company. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments to the extent required pursuant to Section 2.16.

(b) If (i) at any time, other than as a result of fluctuations in currency exchange rates, the aggregate principal Dollar Amount of the Total Revolving Credit Exposure (calculated, with respect to those Credit Events denominated in Foreign Currencies, as of the most recent Computation Date with respect to each such Credit Event) exceeds the aggregate Revolving Commitments or (ii) at any time determined pursuant to Section 2.04, solely as a result of fluctuations in currency exchange rates, the aggregate principal Dollar Amount of the Total Revolving Credit Exposure (so calculated) exceeds 105% of the aggregate Revolving Commitments, the Company shall in each case immediately repay Revolving Borrowings or cash collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate principal amount sufficient to cause the aggregate Dollar Amount of the Total Revolving Credit Exposure (so calculated) to be less than or equal to the aggregate Revolving Commitments.

SECTION 2.12. Fees. (a) The Company agrees to pay to the Administrative Agent for the account of each Revolving Lender a facility fee, which shall accrue at the Applicable Rate on the daily amount of the Revolving Commitment of such Lender (whether used or unused) during the period from and including the Effective Date to but excluding the date on which such Revolving Commitment terminates; provided that, if such Lender continues to have any Revolving Credit Exposure after its Revolving Commitment terminates, then such facility fee shall continue to accrue on the daily amount of such Lender's Revolving Credit Exposure from and including the date on which its Revolving Commitment terminates to but excluding the date on which such Lender ceases to have any Revolving Credit Exposure. Facility fees accrued through and including the last day of March, June, September and December of each year shall be payable in arrears on the fifteenth (15<sup>th</sup>) day following such last day and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof; provided that any facility fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. All facility fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in Standby Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurocurrency Revolving Loans on the average daily Dollar Amount of such Lender's LC Exposure in respect of Standby Letters of Credit (excluding any portion thereof attributable to unreimbursed LC Disbursements in respect of Standby Letters of Credit) during the period from and including the Effective Date to but excluding the later of the date on which such Revolving Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure in respect of Standby Letters of Credit, (ii) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in Commercial Letters of Credit, which shall accrue at the Applicable Rate applicable to Commercial Letters of Credit on the average daily Dollar Amount of such Lender's LC Exposure in respect of Commercial Letters of Credit (excluding any portion thereof attributable to unreimbursed LC Disbursements in respect of Commercial Letters of Credit) during the period from and including the Effective Date to but excluding the later of the date on which such Revolving Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure in respect of Commercial Letters of Credit and (iii) to the relevant Issuing Bank for its own account a fronting fee, which shall accrue at the rate of 0.125% per annum on the average daily Dollar Amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) attributable to Letters of Credit issued by such Issuing Bank during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank's standard fees and commissions with respect to the issuance, amendment, cancellation, negotiation, transfer, presentment or extension of any Letter of Credit or processing of drawings thereunder. Unless otherwise specified above, participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the fifteenth (15<sup>th</sup>) day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand (or such later time specified in any invoice delivered to the Company with respect thereto or otherwise agreed to by the relevant Issuing Bank). All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Participation fees and fronting fees in respect of Letters of Credit denominated in Dollars shall be paid in Dollars, and participation fees and fronting fees in respect of Letters of Credit denominated in a Foreign Currency shall be paid in such Foreign Currency.

(c) The Company agrees to pay to the Administrative Agent for the account of each Term Lender, a ticking fee of 0.15% per annum on the amount of such Term Lender's Term Loan Commitment (as such amount shall be adjusted to give effect to any voluntary reductions of the Term Loan Commitments in accordance with the terms of Section 2.09(c)), which ticking fee shall accrue during the period commencing on the date that is 60 days after the Effective Date and ending on the earlier of (i) the Term Loan Funding Date and (ii) the date of the termination the Term Loan Commitments. Ticking fees accrued through and including the last day of March, June, September and December of each year shall be payable in arrears on the fifteenth (15<sup>th</sup>) day following such last day and on the earlier of (i) the Term Loan Funding Date and (ii) the date of the termination the Term Loan Commitments. All ticking fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) The Company agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Company and the Administrative Agent from time to time.

(e) All fees payable hereunder shall be paid on the dates due, in Dollars (except as otherwise expressly provided in this Section 2.12) and immediately available funds, to the Administrative Agent (or to each Issuing Bank, in the case of fees payable to it) for distribution, in the case of facility fees, participation fees and ticking fees, to the applicable Lenders. Fees paid shall not be refundable under any circumstances (except, in the case of demonstrable error in the calculation of such fees, the excess of the fees paid in respect of such erroneous calculation over the correctly calculated amount of such fees). Notwithstanding anything to the contrary herein or in any other Loan Document, each Foreign Subsidiary Borrower shall severally and not jointly pay fees owed by it pursuant to this Section 2.12 and no Foreign Subsidiary Borrower shall be responsible for any other Borrower's failure to pay any fees due hereunder.

SECTION 2.13. Interest. (a) (i) The Loans comprising each ABR Borrowing (including each Swingline Loan denominated in Dollars other than a Designated Swingline Dollar Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate for ABR Revolving Loans. (ii) Each Eurocurrency Swingline Loan denominated in any Foreign Currency (for the avoidance of doubt, other than a Canadian Swingline Loan) and each Designated Swingline Dollar Loan shall bear interest at the Eurocurrency Swingline Rate. (iii) Each Canadian Swingline Loan shall bear interest at the Canadian Prime Rate plus the Applicable Rate for Canadian Base Rate Borrowings.

(b) [Intentionally Omitted].

(c) The Loans comprising each Eurocurrency Borrowing (other than a Eurocurrency Swingline Loan) shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate for Eurocurrency Revolving Loans.

(d) The Loans comprising each BA Equivalent Borrowing shall bear interest at the BA Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(e) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by any Borrower hereunder is not paid when due (after the expiration of any applicable grace period set forth in Article VII), whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(f) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments; provided that (i) interest accrued pursuant to paragraph (e) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Revolving Credit Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(g) All interest hereunder shall be computed on the basis of a year of 360 days, except that (i)(A) interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate and (B) interest computed by reference to the CDOR Screen Rate, in each case of the foregoing clauses (A) and (B) shall be computed on the basis of a year of 365 days (or 366 days in a leap year), (ii) interest for Borrowings denominated in Pounds Sterling shall be computed on the basis of a year of 365 days and (iii) interest for Canadian Revolving Borrowings shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Canadian Base Rate, Adjusted LIBO Rate, LIBO Rate or BA Equivalent Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

(h) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith by a Canadian Borrower is to be calculated on the basis of a 360-, 365- or 366-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360, 365 or 366, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(i) If any provision of this Agreement would oblige a Canadian Borrower to make any payment of interest or other amount payable to any Secured Party in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Secured Party of “interest” at a “criminal rate” (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Secured Party of “interest” at a “criminal rate”, such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

(i) first, by reducing the amount or rate of interest; and

(ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

(j) With respect to any Swiss Borrower, (i) the interest rates provided for in this Agreement, including this Section 2.13 are minimum interest rates, (ii) when entering into this Agreement, the parties have assumed that the interest payable at the rates set out in this Section or in other Sections of this Agreement is not and will not become subject to the Swiss Federal Withholding Tax, (iii) notwithstanding that the parties do not anticipate that any payment of interest will be subject to the Swiss Federal Withholding Tax, they agree that, in the event that the Swiss Federal Withholding Tax should be imposed on interest payments, the payment of interest due by any Swiss Borrower shall, in line with and subject to Section 2.17 including the limitations therein, be increased to an amount which (after making any deduction of the Non-Refundable Portion (as defined below) of the Swiss Federal Withholding Tax) results in a payment to each Lender entitled to such payment of an amount equal to the payment which would have been due had no deduction of Swiss Federal Withholding Tax been required, (iv) for this purpose, the Swiss Federal Withholding Tax shall be calculated on the full grossed-up interest amount. For the purposes of this Section, “Non-Refundable Portion” shall mean Swiss Federal Withholding Tax at the standard rate (being, as at the date hereof, 35%) unless a tax ruling issued by the Swiss Federal Tax Administration (SFTA) confirms that, in relation to a specific Lender based on an applicable double tax treaty, the Non-Refundable Portion is a specified lower rate in which case such lower rate shall be applied in relation to such Lender and (v) each Swiss Borrower shall provide to the Administrative Agent the documents required by law or applicable double taxation treaties for the Lenders to claim a refund of any Swiss Federal Withholding Tax so deducted.

(k) Notwithstanding anything to the contrary herein or in any other Loan Document, each Foreign Subsidiary Borrower shall severally and not jointly pay interest on any Loans outstanding to it and no Foreign Subsidiary Borrower shall be responsible for any other Borrower’s failure to pay any interest due hereunder.

(l) Interest in respect of Loans denominated in Dollars shall be paid in Dollars, and interest in respect of Loans denominated in a Foreign Currency shall be paid in such Foreign Currency.

SECTION 2.14. Alternate Rate of Interest.

(a) If, on the earlier of a Quotation Day and two (2) Business Days prior to the commencement of any Interest Period for a Eurocurrency Borrowing or a BA Equivalent Borrowing:

(x) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis), for a Loan in the applicable currency or for the applicable Interest Period;

(y) the Administrative Agent shall seek to determine the applicable LIBO Rate on the Quotation Day for any Interest Period for a Eurocurrency Borrowing pursuant to the definition of "LIBO Rate", such LIBO Rate shall not be available for such Interest Period and/or for the applicable currency with respect to such Eurocurrency Borrowing for any reason, then the LIBO Rate shall be the Reference Bank Rate for such Interest Period for such Eurocurrency Borrowing; provided that if the Reference Bank Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement provided, further, however, that if less than two Reference Banks shall supply a rate to the Administrative Agent for purposes of determining the LIBO Rate for such Eurocurrency Borrowing; or in the case of a BA Equivalent Borrowing, that adequate and reasonable means do not exist for ascertaining the BA Rate for such Interest Period; or

(z) the Administrative Agent is advised by the Required Lenders that (i) in the case of a Eurocurrency Borrowing, the Adjusted LIBO Rate or the LIBO Rate, as applicable, for a Loan in the applicable currency or for such Interest Period, or (ii) in the case of a BA Equivalent Borrowing, the BA Rate for such Interest Period, in either case will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the applicable Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the applicable Borrower and the Lenders that the circumstances giving rise to such notice no longer exist,

(A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing shall be ineffective and, unless repaid, such Borrowing shall:

(i) in the case of a Eurocurrency Borrowing denominated in Dollars (other than a Designated Loan), be continued as or converted to an ABR Borrowing;

(ii) in the case of a Eurocurrency Borrowing denominated in a Foreign Currency and a Designated Loan, such Eurocurrency Borrowing, at the option of the applicable Borrower, (i) be repaid on the last day of the then current Interest Period applicable thereto or (ii) be continued at the a rate equal to the rate determined by the Administrative Agent in its reasonable discretion and consented to in writing by the Company and the Required Lenders (the "Alternative Rate");



(B) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a BA Equivalent Borrowing, such Borrowing shall, at the option of the applicable Borrower, (i) be repaid on the last day of the then current Interest Period applicable thereto or (ii) be continued at the Alternative Rate;

(C) any Borrowing Request that requests a Eurocurrency Borrowing in Dollars (other than a Designated Loan) shall be made as an ABR Borrowing;

(D) any Borrowing Request that requests a Eurocurrency Borrowing in a Foreign Currency or a Designated Loan, shall be deemed to be, at the option of the applicable Borrower, (i) ineffective or (ii) made as a Eurocurrency Borrowing, the LIBO Rate for which shall be equal to the Alternative Rate; and

(E) any Borrowing Request that requests a BA Equivalent Borrowing shall be deemed to be, at the option of the applicable Borrower, (i) ineffective or (ii) a Borrowing Request for a Borrowing at the Alternative Rate (provided that, for the avoidance of doubt, nothing herein shall preclude the applicable Borrower from requesting a Canadian Swingline Loan in accordance with the terms of this Agreement);

provided, that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(b) Notwithstanding the foregoing, if at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.14(a)(x) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.14(a)(x) have not arisen but any of (w) the supervisor for the administrator of the LIBOR Screen Rate has made a public statement that the administrator of the LIBOR Screen Rate is insolvent (and there is no successor administrator that will continue publication of the LIBOR Screen Rate), (x) the administrator of the LIBOR Screen Rate has made a public statement identifying a specific date after which the LIBOR Screen Rate will permanently or indefinitely cease to be published by it (and there is no successor administrator that will continue publication of the LIBOR Screen Rate), (y) the supervisor for the administrator of the LIBOR Screen Rate has made a public statement identifying a specific date after which the LIBOR Screen Rate will permanently or indefinitely cease to be published or (z) the supervisor for the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBOR Screen Rate may no longer be used for determining interest rates for loans, then the Administrative Agent and the Company shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable; provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.02, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this Section 2.14(b) (but, in the case of the circumstances described in clause (ii)(w), clause (ii)(x) or clause (ii)(y) of the first sentence of this Section 2.14(b), only to the extent the LIBOR Screen Rate for the applicable currency and such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing in the applicable currency or for the applicable Interest Period, as the case may be, shall be ineffective, (y) if any Borrowing Request requests a Eurocurrency Borrowing in Dollars, such Borrowing shall be made as an ABR Borrowing and (z) if any Borrowing Request requests a Eurocurrency Borrowing in a Foreign Currency, then such request shall be ineffective.

SECTION 2.15. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or any Issuing Bank;

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes or UK Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes or UK Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, (C) Connection Income Taxes and (D) UK Taxes (i) consisting of a Tax Deduction required by law to be made by a Borrower or (ii) compensated for by Section 2.17A or that would have been compensated for by Section 2.17A but was not compensated for because one of the exclusions in Section 2.17A applied) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan or of maintaining its obligation to make any such Loan or to increase the cost to such Lender, such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, such Issuing Bank or such other Recipient hereunder, whether of principal, interest or otherwise, then the applicable Borrower will pay to such Lender, such Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered as reasonably determined by such Lender or such Issuing Bank (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and consistent with similarly situated customers of the applicable Lender or the applicable Issuing Bank under agreements having provisions similar to this Section 2.15 after consideration of such factors as such Lender or such Issuing Bank then reasonably determines to be relevant).

(b) If any Lender or any Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the applicable Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered as reasonably determined by such Lender or such Issuing Bank (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and consistent with similarly situated customers of the applicable Lender or the applicable Issuing Bank under agreements having provisions similar to this Section 2.15 after consideration of such factors as such Lender or such Issuing Bank then reasonably determines to be relevant).

(c) A certificate of a Lender or an Issuing Bank setting forth, in reasonable detail, the basis and calculation of the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Company and shall be conclusive absent manifest error. The Company shall pay, or cause the other Borrowers to pay, such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

(d) Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; provided that the Company shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Eurocurrency Loan or BA Equivalent Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurocurrency Loan or BA Equivalent Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(a) and is revoked in accordance therewith) or (d) the assignment of any Eurocurrency Loan or BA Equivalent Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Company pursuant to Section 2.19 or 9.02(d), then, in any such event, the Company shall compensate each Lender for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate or BA Equivalent Rate, as applicable, that would have been applicable to such Loan (but not the Applicable Rate applicable thereto), for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in the relevant currency of a comparable amount and period from other banks in the eurocurrency market or the Canadian bank market, as applicable. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section, and setting forth in reasonable detail the calculations used by such Lender to determine such amount or amounts, shall be delivered to the Company and shall be conclusive absent manifest error. The Company shall pay such Lender the amount shown as due on any such certificate within fifteen (15) days after receipt thereof; provided that the Company shall not be required to compensate a Lender pursuant to this Section for any amounts under this Section 2.16 incurred more than 180 days prior to the date that such Lender notifies the Company of such amount and of such Lender's intention to claim compensation therefor.

SECTION 2.17. Taxes. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrowers. The relevant Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, Other Taxes.

(c) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Loan Parties. Without duplication of Section 2.17(a), the applicable Loan Party shall indemnify each Recipient, within 30 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability and basis for calculating such amount delivered to the applicable Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) **Status of Lenders.** (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, prior to the date on which such Lender becomes a Lender under this Agreement or acquired an interest therein and at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f) (ii)(A), (ii)(B) and (ii)(D) below, or the UK tax documentation required under Section 2.17A) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to such Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Administrative Agent), an executed copy of IRS Form W-9 or successor form certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) duly executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of such Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, an executed copy of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as may be required; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit such Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to such Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by such Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by such Borrower or the Administrative Agent as may be necessary for such Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the Effective Date.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, upon such expiration or change, it shall update such form or certification or promptly notify the Company and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(i) Issuing Bank. For purposes of this Section 2.17, the term "Lender" includes each Issuing Bank.

(j) Luxembourg Registration Duty. In order to not unnecessarily cause application of Luxembourg's registration duty applicable to documents in writing evidencing an obligation to pay, neither the Administrative Agent nor any Lender will take any action to file or register this Agreement or any of the Loan Documents with applicable Luxembourg authorities which would cause such registration duty to be payable unless the Administrative Agent reasonably deems such action necessary or advisable in connection with the protection of rights or pursuit of remedies during the continuance of an Event of Default.

(k) Compliance with Swiss Non-Bank Rules. Each Lender confirms that it is a Swiss Qualifying Bank or, if not, a single (1) person only for the purpose of the Swiss Non-Bank Rules and any other Person that shall become a Lender or a Participant pursuant to Section 9.04 of this Agreement shall be deemed to have confirmed that it is a Swiss Qualifying Bank or, if not, a single (1) person only for the purpose of Swiss Non-Bank Rules. Each Swiss Borrower may request a Lender to confirm (i) whether or not it is (and each of its Participants are) a Swiss Qualifying Bank or (ii) whether it (or any of its Participants) does count as a single (1) person for purposes of the Swiss Non-Bank Rules, if it reasonably believes that that Lender's status has changed during the term of this Agreement.

(l) Certain FATCA Matters. For purposes of determining withholding Taxes imposed under FATCA, the Borrowers and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) this Agreement and the Loans as not qualifying as "grandfathered obligations" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

SECTION 2.17A. UK Tax.

(a) Unless a contrary indication appears, in this Section 2.17A 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.

(b) A Borrower shall make all payments to be made by it under a Loan Document without any Tax Deduction, unless a Tax Deduction is required by law.

(c) A Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Administrative Agent accordingly. Similarly, a Lender shall notify the Administrative Agent on becoming so aware in respect of a payment payable to that Lender. If the Administrative Agent receives such notification from a Lender it shall promptly notify the relevant Borrower.

(d) If a Tax Deduction is required by law to be made by a Borrower under any Loan Document, the amount of the payment due from a Borrower 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.

(e) A Borrower is not required to make an increased payment to a Lender under clause (d) above for a Tax Deduction from a payment of interest on a Loan, if on the date on which the payment falls due:

(i) the payment could have been made to the relevant Lender without a Tax Deduction if it was a 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 (or in the interpretation, administration, or application of) any law or any published practice or concession of any relevant taxing authority; or

(ii) the relevant Lender is a Qualifying Lender solely under sub-paragraph (i)(b) of the definition of Qualifying Lender and:

(A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a Direction) under section 931 of the ITA which relates to that payment and that Lender has received from a Borrower a certified copy of that Direction; and

(B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or

(iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(b) of the definition of Qualifying Lender and:

(A) the relevant Lender has not given a Tax Confirmation to the Borrower; and

(B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Borrower, on the basis that the Tax Confirmation would have enabled the Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or



(iv) the relevant Lender is a Treaty Lender and a Borrower is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under clauses (h) or (i) below.

(f) If a Borrower is required to make a Tax Deduction, such Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(g) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, a Borrower shall deliver to the Administrative Agent for the Lender entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(h) (i) Subject to paragraph (ii) below, a Treaty Lender and a Borrower which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Borrower to obtain authorisation to make that payment without a Tax Deduction.

(ii) (A) A Treaty Lender which becomes a part to this Agreement on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence by including such details on its signature page to this Agreement; and

(B) a Treaty Lender that becomes a party to this Agreement after the date of this Agreement and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Assignment and Assumption or Augmenting Lender Supplement which it executes,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.

(i) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (h)(ii) above and:

(A) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or

(B) a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:

a. that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

b. HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 40 days of the date of the Borrower DTTP Filing, and in each case, the Borrower has notified that Lender in writing, that Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for that Borrower to obtain authorisation to make that payment without a Tax Deduction.

(j) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (h)(ii) above, no Borrower shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Loan unless the Lender otherwise agrees. A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Administrative Agent for delivery to the relevant Lender.

(k) Each Lender which becomes a Party on the Effective Date confirms, for the benefit of the Administrative Agent and without liability to any Borrower, that it is a Treaty Lender. Each Lender which becomes a Party after the Effective Date (each a "New Lender") shall indicate in the Assignment and Assumption or the Augmenting Lender Supplement (as the case may be) which it executes on becoming a Party, and for the benefit of the Administrative Agent and without liability to any Borrower, which of the following categories it falls in: (a) not a Qualifying Lender; (b) a Qualifying Lender (other than a Treaty Lender); or (c) a Treaty Lender. If a New Lender fails to indicate its status in accordance with this clause 2.17A(k) then such New Lender shall be treated for the purposes of this Agreement (including by each Borrower) as if it is not a Qualifying Lender until such time as it notifies the Administrative Agent which category applies (and the Administrative Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, the Assignment and Assumption or the Augmenting Lender Supplement (as the case may be) shall not be invalidated by any failure of a Lender to comply with this clause 2.17A(k).

(l) With respect to a Tax Confirmation:

(i) a UK Non-Bank Lender which becomes a Party on the Effective Date gives a Tax Confirmation to the Company by entering into this Agreement; and

(ii) a UK Non-Bank Lender shall promptly notify the Company and the Administrative Agent if there is any change in the position from that set out in the Tax Confirmation.

(m) A Borrower shall (within 3 Business Days of demand by the Administrative Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of UK Tax by that Protected Party in respect of any Loan Document.

(n) Clause (m) above shall not apply with respect to any UK Tax assessed on a Protected Party:

(i) under the law of the jurisdiction in which that Protected Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Protected Party is treated as resident or as carrying on a business through a permanent establishment in the United Kingdom to which any right (including sums received or receivable) under a Loan Document is attributable for tax purposes;

(ii) under the law of the jurisdiction in which that Protected Party's lending office is located in respect of amounts received or receivable in that jurisdiction; or

(iii) under the law of any jurisdiction in which that Protected Party carries out a significant people function or a key entrepreneurial risk-taking function in connection with a Loan Document,

if that UK 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 Protected Party.

(o) Furthermore, clause (m) above shall not apply to the extent a loss, liability or cost:

(i) is compensated for by an increased payment under clause (d) above;

(ii) would have been compensated for by an increased payment under clause (d) above but was not so compensated solely because one of the exclusions in clause (e) applied; or

(iii) arises from, in respect of or in connection with the UK Bank Levy.

(p) A Protected Party making, or intending to make a claim under clause (m) above shall promptly notify the Administrative Agent of the event which will give, or has given, rise to the claim, following which the Administrative Agent shall notify the Borrowers.

(q) A Protected Party shall, on receiving a payment from a Borrower under clause (m) above, notify the Administrative Agent.

(r) If a Borrower makes a Tax Payment and the relevant Lender determines that:

(i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(ii) that Lender has obtained and utilized all or part of that Tax Credit,

the relevant Lender shall pay an amount to that Borrower which that Lender 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 made by that Borrower.

(s) A Borrower shall pay and, within three (3) Business Days of demand, indemnify each Credit Party against any cost, loss or liability that Credit Party incurs in relation to all stamp duty, registration and other similar UK Taxes payable in respect of any Loan Document other than where such stamp duty, registration or other similar UK Taxes are in relation to an assignment, transfer or novation (or other disposal) by a Lender (or any successor thereof) of any right, benefit or obligation under a Loan Document, save to the extent such assignment, transfer or novation (or other disposal) is made pursuant to Section 2.19.

(t) All amounts set out, or expressed to be payable under a Loan Document by any party to a Credit Party which (in whole or part) constitute the consideration for any supply for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply, and accordingly, subject to clause (u) below, if VAT is or becomes chargeable on any supply made by any Credit Party to any party under a Loan Document (not being VAT for which the recipient of the supply has to account for to the relevant taxing authority), that party must pay to the Credit Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of such VAT (and such Credit Party shall promptly provide an appropriate VAT invoice to that party).

(u) If VAT is or becomes chargeable on any supply made by any Credit Party (the “Supplier”) to any other Credit Party (the “Recipient”) under a Loan Document, and any party other than the Recipient (the “Relevant Party”) is required by the terms of any Loan Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT and 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.

(v) Where a Loan Document requires any Party to reimburse or indemnify a Credit Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Credit Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Credit Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

(w) Any reference in this Section 2.17A to any Party shall, at any time when such Person 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 Value Added Tax Act 1994 or such similar or equivalent concept or entity as may be provided under similar or equivalent legislation in any jurisdiction other than the United Kingdom).

(x) In relation to any supply made by a Credit Party to any Party under a Loan Document, if reasonably requested by such Credit Party, that Party must promptly provide such Credit Party with details of that Party’s VAT registration and such other information as is reasonably requested in connection with such Credit Party’s VAT reporting requirements in relation to such supply.

#### SECTION 2.18. Payments Generally; Pro Rata Treatment; Sharing of Set-offs

(a) Each Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16, 2.17 or 2.17A, or otherwise) prior to (i) in the case of payments denominated in Dollars (other than in respect of Designated Loans), 12:00 noon, New York City time and (ii) in the case of payments denominated in a Foreign Currency or in respect of Designated Loans, 12:00 noon, Local Time, in the city of the Administrative Agent’s Applicable Payment Office for such currency or Designated Loan (as applicable), in each case on the date when due, in immediately available funds, without set-off, recoupment or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made (i) in the same currency in which the applicable Credit Event was made (or where such currency has been converted to euro, in euro) and (ii) to the Administrative Agent at its offices at 10 South Dearborn Street, Chicago, Illinois 60603 or, in the case of a Credit Event denominated in a Foreign Currency or a Designated Loan, the Administrative Agent’s Applicable Payment Office for such currency or Designated Loan (as applicable), except payments to be made directly to any Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17, 2.17A and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments denominated in the same currency received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Notwithstanding the foregoing provisions of this Section, if, after the making of any Credit Event in any Foreign Currency, currency control or exchange regulations are imposed in the country which issues such currency with the result that the type of currency in which the Credit Event was made (the “Original Currency”) no longer exists or any Borrower is not able to make payment to the Administrative Agent for the account of the Lenders in such Original Currency, then all payments to be made by such Borrower hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Amount (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrowers take all risks of the imposition of any such currency control or exchange regulations.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) [Intentionally Omitted].

(d) If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by any Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements and Swingline Loans to any assignee or participant, other than to the Company or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received notice from the relevant Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the relevant Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the relevant Lenders or each of the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (including without limitation the Overnight Foreign Currency Rate in the case of Loans denominated in a Foreign Currency).

(f) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(e) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender and for the benefit of the Administrative Agent, the Swingline Lender or the Issuing Banks to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender under such Sections; in the case of each of (i) and (ii) above, in any order as determined by the Administrative Agent in its discretion.

**SECTION 2.19. Mitigation Obligations: Replacement of Lenders.** (a) If any Lender requests compensation under Section 2.15, or if any Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 or 2.17A, then such Lender shall (at the request of the Company) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15, 2.17 or 2.17A, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Company hereby agrees to pay all reasonable out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If (i) any Lender requests compensation under Section 2.15, (ii) any Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 or 2.17A, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.19(a) or (iii) any Lender becomes a Defaulting Lender, then the Company may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15, 2.17 or 2.17A) and obligations under the Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Company shall have received the prior written consent of the Administrative Agent (and if a Revolving Commitment is being assigned, the Issuing Banks and the Swingline Lender), which consent shall not unreasonably be withheld, conditioned or delayed, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, and subject to Section 2.24, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Company (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17 or 2.17A, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Company to require such assignment and delegation cease to apply. Each party hereto agrees that (i) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Company, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof.

SECTION 2.20. Expansion Option. The Company may, on behalf of itself and/or one or more other Borrower, from time to time elect to increase the Revolving Commitments or enter into one or more tranches of term loans (each an "Incremental Term Loan"), in each case in minimum increments of \$10,000,000 so long as, after giving effect thereto, the aggregate amount of such increases and all such Incremental Term Loans does not exceed \$450,000,000. The Company may arrange for any such increase or tranche to be provided by one or more Lenders (each Lender so agreeing to an increase in its Revolving Commitment, or to participate in such Incremental Term Loans, an "Increasing Lender"), or by one or more new banks, financial institutions or other entities (each such new bank, financial institution or other entity, an "Augmenting Lender"; provided that no Ineligible Institution may be an Augmenting Lender), which agree to increase their existing Revolving Commitments, or to participate in such Incremental Term Loans, or provide new Revolving Commitments, as the case may be; provided that (i) each Augmenting Lender, shall be subject to the approval of the Company and the Administrative Agent (such approval not to be unreasonably withheld, delayed or conditioned) and (ii) (x) in the case of an Increasing Lender, the Company and such Increasing Lender execute an agreement substantially in the form of Exhibit C hereto, and (y) in the case of an Augmenting Lender, the Company and such Augmenting Lender execute an agreement substantially in the form of Exhibit D hereto. No consent of any Lender (other than the Lenders participating in the increase or any Incremental Term Loan) shall be required for any increase in Revolving Commitments or Incremental Term Loan pursuant to this Section 2.20. Increases and new Revolving Commitments and Incremental Term Loans created pursuant to this Section 2.20 shall become effective on the date agreed by the Company, the Administrative Agent and the relevant Increasing Lenders or Augmenting Lenders, and the Administrative Agent shall notify each Lender thereof. Notwithstanding the foregoing, no increase in the Revolving Commitments (or in the Revolving Commitment of any Lender) or tranche of Incremental Term Loans shall become effective under this paragraph unless, (i) on the proposed date of the effectiveness of such increase or Incremental Term Loans, (A) the conditions set forth in paragraphs (a) and (b) of Section 4.03 shall be satisfied or waived by the Required Lenders and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Financial Officer of the Company and (B) the Company shall be in compliance (with Indebtedness calculated on a pro forma basis) with the covenants set forth in Section 6.10 (based on the financial statements of the Company) as of the last day of the most recently ended fiscal quarter after giving effect to such increase or Incremental Term Loans and (ii) the Administrative Agent shall have received documents of the same type, to the extent applicable, as those delivered on the Effective Date as to the organizational power and authority of the Borrowers to borrow hereunder after giving effect to such increase or Incremental Term Loan; provided that, with respect to any Incremental Term Loans incurred for the primary purpose of financing a Limited Conditionality Acquisition ("Acquisition-Related Incremental Term Loans"), (x) clause (i)(A) of this sentence shall be deemed to have been satisfied so long as (1) as of the date of execution of the related Limited Conditionality Acquisition Agreement by the parties thereto, no Default shall have occurred and be continuing or would result from entry into such Limited Conditionality Acquisition Agreement, (2) as of the date of the borrowing of such Acquisition-Related Incremental Term Loans, no Event of Default under clause (a), (b), (h) or (i) of Article VII is in existence immediately before or after giving effect (including on a pro forma basis) to such borrowing and to any concurrent transactions and any substantially concurrent use of proceeds thereof, (3) the representations and warranties set forth in Article III shall be true and correct in all material respects as of the date of execution of the applicable Limited Conditionality Acquisition Agreement by the parties thereto, except to the extent any such representations or warranties are expressly limited to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such specified earlier date (provided that no materiality qualifier set forth in this subclause (3) shall be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) and (4) as of the date of the borrowing of such Acquisition-Related Incremental Term Loans, customary "Sungard" representations and warranties (with such representations and warranties to be reasonably determined by the Lenders providing such Acquisition-Related Incremental Term Loans) shall be true and correct in all material respects immediately before and after giving effect to the incurrence of such Acquisition-Related Incremental Term Loans, except to the extent any such representations or warranties are expressly limited to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such specified earlier date (provided that no materiality qualifier set forth in this subclause (4) shall be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) and (y) clause (i)(B) of this sentence shall be deemed to have been satisfied so long as the Company shall be in compliance (on a pro forma basis) with the covenants contained in Section 6.10 as of the date of execution of the related Limited Conditionality Acquisition Agreement by the parties thereto. On the effective date of any increase in the Revolving Commitments or any Incremental Term Loans being made, (i) each relevant Increasing Lender and Augmenting Lender shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its Applicable Percentage of such outstanding Revolving Loans, and (ii) except in the case of any Incremental Term Loans, the Borrowers shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase in the Revolving Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the applicable Borrower, or the Company on behalf of the applicable Borrower, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Eurocurrency Loan or BA Equivalent Loan, shall be subject to indemnification by the Borrowers pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. The Incremental Term Loans (a) shall rank pari passu in right of payment with the Revolving Loans and the initial Term Loans, (b) shall not mature earlier than the Revolving Credit Maturity Date or the Term Loan Maturity Date (but may have amortization and mandatory prepayments prior to such date) and (c) shall be treated substantially the same (as reasonably determined by the Company and the Administrative Agent) as (and in any event no more favorably than) the Revolving Loans and the initial Term Loans; provided that (i) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the Revolving Credit Maturity Date and the Term Loan Maturity Date may provide for material additional or different financial or other covenants or prepayment requirements applicable only during periods after the Revolving Credit Maturity Date and the Term Loan Maturity Date and (ii) the Incremental Term Loans may have different pricing and economics (including, without limitation, with respect to upfront fees, original issue discount, premiums, and interest rate) than the Revolving Loans and the initial Term Loans. Incremental Term Loans may be made hereunder pursuant to an amendment or restatement (an "Incremental Term Loan Amendment") of this Agreement and, as appropriate, the other Loan Documents, executed by the Borrowers, each Increasing Lender participating in such tranche, each Augmenting Lender participating in such tranche, if any, and the Administrative Agent. The Incremental Term Loan Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.20. Nothing contained in this Section 2.20 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Revolving Commitment hereunder, or provide Incremental Term Loans, at any time. This Section shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

SECTION 2.21. [Intentionally Omitted].

SECTION 2.22. Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from any Borrower hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent's main New York City office on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of each Borrower in respect of any sum due to any Lender or the Administrative Agent hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Administrative Agent (as the case may be) of any sum adjudged to be so due in such other currency such Lender or the Administrative Agent (as the case may be) may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Lender or the Administrative Agent, as the case may be, in the specified currency, each Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Administrative Agent, as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to any Lender or the Administrative Agent, as the case may be, in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 2.18, such Lender or the Administrative Agent, as the case may be, agrees to remit such excess to such Borrower.

SECTION 2.23. Designation of Subsidiary Borrowers. On the Effective Date, and subject to the satisfaction of the applicable conditions in Article IV hereto, the Initial Subsidiary Borrowers have become Subsidiary Borrowers party to this Agreement until the Company shall have executed and delivered to the Administrative Agent a Borrowing Subsidiary Termination with respect to any such Subsidiary, whereupon such Subsidiary shall cease to be a Subsidiary Borrower and a party to this Agreement. After the Effective Date, the Company may at any time and from time to time designate any Eligible Subsidiary as a Subsidiary Borrower by delivery to the Administrative Agent of a Borrowing Subsidiary Agreement executed by such Subsidiary and the Company and the satisfaction of the other conditions precedent set forth in Section 4.04, and upon such delivery and satisfaction such Subsidiary shall for all purposes of this Agreement be a Subsidiary Borrower and a party to this Agreement. Each Subsidiary Borrower shall remain a Subsidiary Borrower until the Company shall have executed and delivered to the Administrative Agent a Borrowing Subsidiary Termination with respect to such Subsidiary, whereupon such Subsidiary shall cease to be a Subsidiary Borrower and a party to this Agreement. Notwithstanding the preceding sentences, no Borrowing Subsidiary Termination will become effective as to any Subsidiary Borrower at a time when any principal of or interest on any Loan to such Borrower shall be outstanding hereunder, provided that such Borrowing Subsidiary Termination shall be effective to terminate the right of such Subsidiary Borrower to make further Borrowings under this Agreement. As soon as practicable upon receipt of a Borrowing Subsidiary Agreement, the Administrative Agent shall furnish a copy thereof to each Lender.



SECTION 2.24. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the Commitment of such Defaulting Lender pursuant to Section 2.12(a) and Section 2.12(c);

(b) the Commitment and Revolving Credit Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders, the Required Revolving Lenders or the Required Term Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02); provided, that this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification pursuant to clauses (i), (ii), (iii), (iv), (v), and (vi) of the proviso in Section 9.02(b);

(c) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender that is a Revolving Lender (other than, in the case of a Defaulting Lender that is a Swingline Lender, the portion of such Swingline Exposure referred to in clause (b) of the definition of such term) shall be reallocated among the non-Defaulting Lenders that are Revolving Lenders in accordance with their respective Applicable Percentages but only to the extent (x) that such reallocation does not, as to any non-Defaulting Lender that is a Revolving Lender, cause such non-Defaulting Lender's Revolving Credit Exposure to exceed its Revolving Commitment and (y) no Event of Default has occurred and is then continuing

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Company shall within one (1) Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize for the benefit of each Issuing Bank only the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Company cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the relevant Issuing Bank or any other Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Revolving Commitment that was utilized by such LC Exposure) and letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to such Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(d) so long as a Revolving Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the relevant Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Company in accordance with Section 2.24(c), and Swingline Exposure related to any such newly made Swingline Loan or any LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.24(c)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the Effective Date and for so long as such event shall continue or (ii) the Swingline Lender or any Issuing Bank has a good faith belief that any Revolving Lender has defaulted in fulfilling its funding obligations under one or more other agreements in which such Revolving Lender commits to extend credit, the Swingline Lender shall not be required to fund any Swingline Loan and no Issuing Bank shall be required to issue, amend or increase any Letter of Credit, unless the Swingline Lender or the relevant Issuing Bank, as the case may be, shall have entered into arrangements with the Company or such Revolving Lender, reasonably satisfactory to the Swingline Lender or such Issuing Bank, as the case may be, to defease any risk to it in respect of such Revolving Lender hereunder.

In the event that the Administrative Agent, the Company, the Swingline Lender and each Issuing Bank each agrees that a Defaulting Lender that is a Revolving Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Revolving Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on such date such Lender shall purchase at par such of the Loans of the other Revolving Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Borrower while that Lender was a Defaulting Lender; provided, further, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

SECTION 2.25. Extension of Maturity Date.

(a) Requests for Extension. The Company may, by notice to the Administrative Agent (who shall promptly notify the applicable Class of Lenders) not earlier than 120 days and not later than 30 days prior to each anniversary of the date of this Agreement (each such date, an "Extension Date"), request that each applicable Lender extend such Lender's Revolving Credit Maturity Date or Term Loan Maturity Date, as the case may be (the "Applicable Maturity Date") to the date that is one year after the Applicable Maturity Date then in effect with respect to such Class for such Lender (such date that is one year after such Applicable Maturity Date, the "Extended Maturity Date").

(b) Lender Elections to Extend. Each Lender of the applicable Class, acting in its sole and individual discretion, shall, by notice to the Administrative Agent given not later than the date that is 20 days after the date on which the Administrative Agent received the Company's extension request (the "Lender Notice Date"), advise the Administrative Agent whether or not such Lender agrees to such extension (each Lender of the applicable Class that determines to so extend its Applicable Maturity Date, an "Extending Lender"). Each Lender of the applicable Class that determines not to so extend its Applicable Maturity Date (a "Non-Extending Lender") shall notify the Administrative Agent of such fact promptly after such determination (but in any event no later than the Lender Notice Date), and any Lender of the applicable Class that does not so advise the Administrative Agent on or before the Lender Notice Date shall be deemed to be a Non-Extending Lender. The election of any Lender to agree to such extension shall not obligate any other Lender to so agree, and it is understood and agreed that no Lender shall have any obligation whatsoever to agree to any request made by the Company for extension of the Applicable Maturity Date.

(c) Notification by Administrative Agent. The Administrative Agent shall notify the Company of each applicable Lender's determination under this Section no later than the date that is 15 days prior to the applicable Extension Date (or, if such date is not a Business Day, on the next preceding Business Day).

(d) Additional Commitment Lenders. The Company shall have the right, but shall not be obligated, on or before the Applicable Maturity Date for any Non-Extending Lender to replace such Non-Extending Lender with, and add as a "Revolving Lender" (in the case of any extension of the Revolving Credit Maturity Date) or as a "Term Lender" (in the case of any extension of the Term Loan Maturity Date) under this Agreement in place thereof, one or more financial institutions that are not Ineligible Institutions (each, an "Additional Commitment Lender") approved by the Administrative Agent in accordance with the procedures provided in Section 2.19(b), each of which Additional Commitment Lenders shall have entered into an Assignment and Assumption (in accordance with and subject to the restrictions contained in Section 9.04, with the Company or replacement Lender obligated to pay any applicable processing or recordation fee) with such Non-Extending Lender, pursuant to which such Additional Commitment Lenders shall, effective on or before the Applicable Maturity Date for such Non-Extending Lender, assume a Revolving Commitment and/or Term Loans, as applicable (and, if any such Additional Commitment Lender is already a Lender of the applicable Class, its Revolving Commitment and/or Term Loans, as applicable, so assumed shall be in addition to such Lender's Revolving Commitment and/or its Term Loans. Prior to any Non-Extending Lender being replaced by one or more Additional Commitment Lenders pursuant hereto, such Non-Extending Lender may elect, in its sole discretion, by giving irrevocable notice thereof to the Administrative Agent and the Company (which notice shall set forth such Lender's new Applicable Maturity Date), to become an Extending Lender. The Administrative Agent may effect such amendments to this Agreement as are reasonably necessary to provide for any such extensions with the consent of the Company but without the consent of any other Lenders.

(e) Conditions to Effectiveness of Extension. Notwithstanding the foregoing, (x) no more than two (2) extensions of the Maturity Date shall be permitted hereunder and (y) any extension of any Maturity Date pursuant to this Section 2.25 shall not be effective with respect to any Lender unless:

(i) no Default or Event of Default shall have occurred and be continuing on the applicable Extension Date and immediately after giving effect thereto;

(ii) the representations and warranties of the Company set forth in this Agreement are true and correct in all material respects (or in all respects if such representation is qualified by materiality or Material Adverse Effect) on and as of the applicable Extension Date and after giving effect thereto, as though made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date); and

(iii) the Administrative Agent shall have received a certificate from the Company signed by a Financial Officer of the Company certifying the accuracy of the foregoing clauses (i) and (ii).

(f) Maturity Date for Non-Extending Lenders. On the Applicable Maturity Date of each Non-Extending Lender, (i) to the extent of the Revolving Commitments and Term Loans of each Non-Extending Lender of the relevant Class not assigned to the Additional Commitment Lenders of such Class, the Revolving Commitment of each Non-Extending Lender of such Class shall automatically terminate and (ii) the Company shall repay such Non-Extending Lender of such Class in accordance with Section 2.10 (and shall pay to such Non-Extending Lender all of the other Obligations owing to it under this Agreement) and after giving effect thereto shall prepay any Loans of the applicable Class outstanding on such date (and pay any additional amounts required pursuant to Section 2.16) to the extent necessary to keep outstanding Loans of the applicable Class ratable with any revised Applicable Percentages of the respective Lenders of such Class effective as of such date, and the Administrative Agent shall administer any necessary reallocation of the applicable Credit Exposures (without regard to any minimum borrowing, pro rata borrowing and/or pro rata payment requirements contained elsewhere in this Agreement).

(g) Conflicting Provisions. This Section shall supersede any provisions in Section 2.18 or Section 9.02 to the contrary.

### ARTICLE III

#### Representations and Warranties

Each Borrower for itself, and the Company on behalf of itself and its Subsidiaries, represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers; Subsidiaries. Each of the Loan Parties is duly organized, validly existing and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing (to the extent such concept is applicable) in, every jurisdiction where such qualification is required. Schedule 3.01 hereto identifies each Subsidiary as of the Effective Date, noting whether such Subsidiary is a Material Domestic Subsidiary as of the Effective Date, the jurisdiction of its incorporation or organization, as the case may be, the percentage of issued and outstanding shares of each class of its capital stock or other equity interests owned by the Company and the other Subsidiaries and, if such percentage is not 100% (excluding (i) directors' qualifying shares and (ii) shares issued to foreign nationals to the extent required by applicable law), a description of each class issued and outstanding.

SECTION 3.02. Authorization; Enforceability. The Transactions are within each Loan Party's organizational powers and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders. The Loan Documents to which each Loan Party is a party have been duly executed and delivered by such Loan Party and constitute a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate the charter, by-laws or other organizational documents of the Loan Parties, (c) will not violate any applicable material law or regulation or any order of any Governmental Authority, (d) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Company or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Company or any of its Subsidiaries, except for any such violation or right which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, and (e) will not result in the creation or imposition of any Lien on any asset of the Company or any of its Subsidiaries.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) The Company has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended September 30, 2018 reported on by PricewaterhouseCoopers LLP, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended March 31, 2019 and June 30, 2019. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Company and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) Since September 30, 2018, there has been no material adverse change in the business, operations or financial condition of the Company and its Subsidiaries, taken as a whole.

SECTION 3.05. Properties. (a) Each of the Loan Parties has good title to, or valid leasehold interests in, all its real and personal property material to its business, except to the extent any failure to have such title or leasehold interest would not reasonably be expected to have a Material Adverse Effect.

(b) Each of the Loan Parties owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Company and its Subsidiaries does not infringe upon the rights of any other Person, except for any ownership or license issues or infringements that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06. Litigation, Environmental and Labor Matters. (a) There are no actions, suits, proceedings or investigations by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Borrower, threatened against or affecting the Company or any of its Subsidiaries (i) that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of this Agreement or the Transactions.

(b) Except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, neither the Company nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) is party to any administrative or judicial proceeding relating to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any facts or conditions that are reasonably expected to give rise to any Environmental Liability.

SECTION 3.07. Compliance with Laws.

(a) Each of the Company and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Each Swiss Borrower is compliant with the Swiss Non-Bank Rules; provided, however, that a Swiss Borrower shall not be in breach of this Section 3.07(b) if such number of creditors (which are not Swiss Qualifying Banks) is exceeded solely by reason of a breach by one or more Lenders of a confirmation contained in Section 2.17(k) or a failure by one or more Lenders to comply with their obligations and transfer restrictions in Section 9.04.

(c) For the purposes of paragraph (b) above, the Swiss Borrowers shall assume that the aggregate number of Lenders which are not Swiss Qualifying Banks is 10 (ten).

SECTION 3.08. Investment Company Status. Neither the Company nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each of the Company and its Subsidiaries has timely filed or caused to be filed all Tax and UK Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes and UK Taxes required to have been paid by it, except (a) Taxes or UK Taxes that are being contested in good faith by appropriate proceedings and for which the Company or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11. Disclosure. All written information, including the information set forth in the Information Memorandum (when prepared), other than any projections and information of a general economic or general industry nature furnished by or on behalf of the Company or any Subsidiary to the Administrative Agent or any Lender pursuant to or in connection with this Agreement or any other Loan Document, taken as a whole, together with and as modified by any publicly filed information and all other written information so delivered on or prior to any date of determination does not (when furnished) contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made; provided that, with respect to forecasts or projections, the Company represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time prepared (it being understood by the Administrative Agent and the Lenders that any such projections are not to be viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond the control of the Company or its Subsidiaries, that no assurances can be given that such projections will be realized and that actual results may differ materially from such projections). As of the Effective Date, to the best knowledge of the Company, the information included in the Beneficial Ownership Certification (if any) provided on or about the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.12. Federal Reserve Regulations. No part of the proceeds of any Loan have been used or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

SECTION 3.13. No Default. No Default or Event of Default has occurred and is continuing.

SECTION 3.14. Anti-Corruption Laws and Sanctions. The Company has implemented and maintains in effect policies and procedures reasonably designed to promote compliance in all material respects by the Company, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Company, its Subsidiaries and their respective officers and employees and to the knowledge of the Company its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Company, any Subsidiary or to the knowledge of the Company any of their respective directors, officers or employees, or (b) to the knowledge of the Company, any agent of the Company or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrower or any Subsidiary will use any Borrowing or Letter of Credit in violation in any material respect of any Anti-Corruption Law or in violation in any respect of applicable Sanctions. The representations and warranties given in this Section 3.14 shall not be given (i) by any Loan Party or (ii) to any Lender to the extent that any such representation and warranty would result in any violation of, conflict with or liability under EU Regulation (EC) 2271/96, section 7 of the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) or a similar anti-boycott statute.

SECTION 3.15. EEA Financial Institutions. No Borrower is an EEA Financial Institution.

SECTION 3.16. Solvency. As of the Term Loan Funding Date, and immediately after giving effect to the Bengal Transactions and the incurrence of the indebtedness and obligations being incurred in connection with this Agreement and the Bengal Transactions on the Term Loan Funding Date, that, with respect to the Company and its Subsidiaries on a consolidated basis, (a) the sum of the liabilities of the Company and its Subsidiaries, taken as a whole, does not exceed the present fair saleable value of the assets of the Company and its Subsidiaries, taken as a whole; (b) the capital of the Company and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Company and its Subsidiaries, taken as a whole, contemplated on the date hereof and (c) the Company and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes of this Section 3.16, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

ARTICLE IV

Conditions

SECTION 4.01. Effective Date. The effectiveness of the amendment and restatement of the Existing Credit Agreement in the form of this Agreement, and the obligations of the Lenders to make Loans (other than the Term Loans) and of the Issuing Banks to issue Letters of Credit hereunder, shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

- (a) The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include telecopy or electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) duly executed copies of the Loan Documents and such other customary closing documents and certificates as the Administrative Agent shall reasonably request in connection with the Transactions, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel and as further described in the list of closing documents attached as Exhibit E (excluding those items set forth in Part E of such Exhibit E).
- (b) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) (i) of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Loan Parties, (ii) of Faegre Baker Daniels LLP, special Indiana counsel for the Loan Parties, (iii) Baker & McKenzie, Luxembourg counsel for the Loan Parties, (iv) Baker & McKenzie Zurich, Swiss counsel for the Loan Parties, (v) Osler Hoskin & Harcourt LLP, Canadian counsel for the Loan Parties, (vi) McInnes Cooper, Nova Scotia counsel for the Loan Parties, (vii) Skadden, Arps, Slate, Meagher & Flom (UK) LLP, UK counsel for the Loan Parties and (viii) Skadden, Arps, Slate, Meagher & Flom LLP, German counsel for the Loan Parties, in each case covering such matters relating to the Loan Parties, the Loan Documents or the Transactions as the Administrative Agent shall reasonably request. The Company hereby requests such counsels to deliver such opinions.
- (c) The Administrative Agent shall have received a certificate, dated the Effective Date and signed by the President, a Vice President or a Financial Officer of the Company, certifying (in such officer's capacity as an officer and not in any individual capacity) compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.03.
- (d) (i) The Administrative Agent shall have received, at least three (3) Business Days prior to the Effective Date, all documentation and other information regarding the Borrowers required in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, to the extent reasonably requested in writing of the Company at least ten (10) Business Days prior to the Effective Date and (ii) to the extent any Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least three (3) Business Days prior to the Effective Date, any Lender that has reasonably requested, in a written notice to the Company at least ten (10) Business Days prior to the Effective Date, a Beneficial Ownership Certification in relation to such Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (d) shall be deemed to be satisfied).



(e) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced at least one Business Day prior to the Effective Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Company hereunder.

The Administrative Agent shall notify the Company and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02. Term Loan Funding Date. The obligations of the Term Lenders to make Term Loans shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Effective Date shall have occurred.

(b) The Bengal Acquisition shall, substantially concurrently with the funding of the Term Loans hereunder, be consummated in all material respects in accordance with the Bengal Acquisition Agreement, without giving effect to any amendments, modifications, supplements or waivers by the Company (or any of its Subsidiaries) thereto or consents by the Company (or any of its Subsidiaries) thereunder that are materially adverse to the Administrative Agent or the Lenders in their capacities as such without the Administrative Agent's prior written consent (not to be unreasonably withheld, conditioned or delayed) (it being understood and agreed that (i) amendments, waivers and other changes to the definition of "Material Adverse Effect" (as defined in the Bengal Acquisition Agreement as in effect on July 12, 2019) shall be deemed to be materially adverse to the Lenders, and (ii) any modification, amendment or express waiver or consents by the Company (or any of its Subsidiaries) that results in (x) an increase to the purchase price shall be deemed to not be materially adverse to the Lenders so long as such increase is not in excess of 10% of the purchase price or not funded with proceeds of indebtedness (other than borrowings of Revolving Loans under this Agreement) and (y) a decrease to the purchase price shall be deemed to not be materially adverse to the Lenders so long as (1) such reduction is less than 10% of the purchase price or (2) such reduction is allocated to reduce on a dollar-for-dollar basis simultaneously both (A) the Term Loan Commitments and (B) the commitments provided to the Company in connection with the Bengal Acquisition pursuant to the 364-day senior unsecured bridge facility commitment letter, dated as of July 12, 2019, by and among the Company, JPMorgan Chase Bank, N.A. and certain other lenders (and any bridge credit agreement entered into in connection therewith) (such commitments described in this clause (B), the "Specified Commitments") (it being understood and agreed, for the avoidance of doubt and by way of example, for purposes of the foregoing clause (2), a \$1 decrease in the purchase price would reduce the Term Loan Commitments by \$1 and also reduce the Specified Commitments by \$1)).

(c) The Bengal Refinancing shall have been consummated prior to or substantially concurrently with the funding of the Term Loans.

(d) Each of the Bengal Acquisition Agreement Representations and the Specified Representations shall be true and correct in all material respects on and as of the Term Loan Funding Date (provided that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such date).

(e) Since July 12, 2019, there shall not have not occurred any effect, change, development, event, circumstance, occurrence, condition, fact or state of facts that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on Bengal (it being understood and agreed that for purposes of this clause (e), the term “Material Adverse Effect” shall be defined in the same manner as the definition of “Material Adverse Effect” set forth in the Bengal Acquisition Agreement).

(f) The Administrative Agent shall have received a certificate, dated as of the Term Loan Funding Date and signed by the President, a Vice President or a Financial Officer of the Company as described in item 15 of the list of closing documents attached as Exhibit E.

(g) The Administrative Agent shall have received a solvency certificate, dated as of the Term Loan Funding Date and signed by the chief financial officer of the Company, substantially in the form of Exhibit J.

(h) The Administrative Agent shall have received (i) audited consolidated balance sheets and related statements of income, stockholders’ equity and cash flows of (A) the Company and its Subsidiaries for the three most recently completed fiscal years ended at least 90 days before the Term Loan Funding Date and (B) Bengal and its subsidiaries for the most recently completed fiscal year ended at least 90 days before the Term Loan Funding Date and (ii) unaudited consolidated balance sheets and related statements of income, stockholders’ equity and cash flows of each of the Company and its Subsidiaries and Bengal and its subsidiaries, for each subsequent fiscal quarter ended at least 60 days before the Term Loan Funding Date and the corresponding period of the prior fiscal year; provided that (x) filing of the required financial statements on form 10-K and/or form 10-Q, as applicable, by the Company or Bengal, respectively will satisfy the foregoing applicable requirements and (y) the required financial statements on form 10-K and/or form 10-Q, as applicable, that have been filed on or prior to the date hereof by (1) the Company has satisfied the foregoing applicable requirements with respect to (I) the fiscal years ended September 31, 2016, September 31, 2017 and September 31, 2018 and (II) the fiscal quarters ended December 31, 2018, March 31, 2019 and June 30, 2019 and (2) Bengal has satisfied the foregoing applicable requirements with respect to (I) the fiscal year ended December 31, 2018 and (II) the fiscal quarters ended March 31, 2019 and June 30, 2019.

(i) The Administrative Agent shall have received a pro forma consolidated balance sheet and related pro forma consolidated statement of income of the Company and its Subsidiaries as of and for the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period ended at least 45 days prior to the Term Loan Funding Date (or 90 days prior to the Term Loan Funding Date in case such four fiscal quarter period is the end of the Company’s fiscal year), prepared after giving effect to the Bengal Transactions (including the acquisition of Bengal) as if the Bengal Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income).

(j) All fees and expenses due and payable to the Administrative Agent and the Lenders that are required to be paid on or prior to the Term Loan Funding Date shall have been paid or shall have been authorized to be deducted from the proceeds of the Term Loans, so long as any such fees or expenses have been invoiced not less than three (3) Business Days prior to the Term Loan Funding Date (except as otherwise reasonably agreed by the Company).

(k) The Term Loan Commitment Expiration Date shall not have occurred.

The Administrative Agent shall be entitled to rely on a certificate signed by the President, a Vice President or a Financial Officer of the Company certifying, in the manner described in such certificate, as to the accuracy of the matters set forth in clauses (b) through (f) of this Section 4.02 in making a determination of the satisfaction of the conditions precedent set forth in such clauses. The Administrative Agent shall notify the Company and the Lenders of the Term Loan Trigger Date, and such notice shall be conclusive and binding.

SECTION 4.03. Each Credit Event. The obligation of each Lender to make a Loan (other than (i) a Term Loan (which shall only be subject to the conditions set forth in Section 4.02) and (ii) an Acquisition-Related Incremental Term Loan made in accordance with, and subject to the terms and conditions of, Section 2.20) on the occasion of any Borrowing, and of the Issuing Banks to issue, amend or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrowers set forth in this Agreement shall be true and correct in all material respects (provided that any representation or warranty qualified by materiality or Material Adverse Effect shall be true and correct in all respects) on and as of the date such Loan is made or the date of issuance, amendment or extension of such Letter of Credit, as applicable (except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date).

(b) At the time of and immediately after giving effect to the making of a Loan on the occasion of such Borrowing or the issuance, amendment or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

The making of a Loan (other than (i) a Term Loan and (ii) an Acquisition-Related Incremental Term Loan made in accordance with, and subject to the terms and conditions of, Section 2.20) on the occasion of any Borrowing and each issuance, amendment or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

SECTION 4.04. Designation of a Subsidiary Borrower. The designation of a Subsidiary Borrower pursuant to Section 2.23 is subject to the condition precedent that the Company or such proposed Subsidiary Borrower shall have furnished or caused to be furnished to the Administrative Agent:

(a) Copies, certified by the Secretary or Assistant Secretary of such Subsidiary, of its Board of Directors' resolutions (and resolutions of other bodies, if any are deemed necessary by counsel for the Administrative Agent) approving the Borrowing Subsidiary Agreement and any other Loan Documents to which such Subsidiary is becoming a party and such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of such Subsidiary;

(b) An incumbency certificate, executed by the Secretary or Assistant Secretary of such Subsidiary, which shall identify by name and title and bear the signature of the officers of such Subsidiary authorized to request Borrowings hereunder and sign the Borrowing Subsidiary Agreement and the other Loan Documents to which such Subsidiary is becoming a party, upon which certificate the Administrative Agent and the Lenders shall be entitled to rely until informed of any change in writing by the Company or such Subsidiary;

(c) Opinions of counsel to such Subsidiary, in form and substance reasonably satisfactory to the Administrative Agent and its counsel, with respect to the laws of its jurisdiction of organization and such other matters as are reasonable and customary and addressed to the Administrative Agent and the Lenders; and

(d) Any promissory notes requested by any Lender, and any other instruments and documents reasonably requested by the Administrative Agent in connection with applicable laws, rules and regulations.

(e) Any documentation and other information with respect to such proposed Subsidiary Borrower that is reasonably requested by the Administrative Agent or any of the Lenders (acting through the Administrative Agent) at least three Business Days in advance of the proposed effective date of such designation in connection with requirements by regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Patriot Act and, to the extent such Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Beneficial Ownership Regulation.

## ARTICLE V

### Affirmative Covenants

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated (or shall have been cash collateralized or backstopped pursuant to arrangements reasonably satisfactory to the Administrative Agent) and all LC Disbursements shall have been reimbursed, the Company covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements and Other Information. The Company will furnish to the Administrative Agent for distribution to each Lender:

(a) within one hundred (100) days after the end of each fiscal year of the Company (or, if earlier, within five (5) days after the date that the Annual Report on Form 10-K of the Company for such fiscal year would be required to be filed under the rules and regulations of the SEC, giving effect to any automatic extension available thereunder for the filing of such form), its audited consolidated balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing (without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within fifty-five (55) days after the end of each of the first three fiscal quarters of each fiscal year of the Company (or, if earlier, by the date that the Quarterly Report on Form 10-Q of the Company for such fiscal quarter would be required to be filed under the rules and regulations of the SEC, giving effect to any automatic extension available thereunder for the filing of such form), its consolidated balance sheet and related statements of operations, stockholders’ equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Company (i) certifying as to whether a Default has occurred and is continuing and, if a Default has occurred that is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.10 and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Company or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Company to its shareholders generally, as the case may be; and

(e) promptly following any request therefor, (x) such other information regarding the operations, business affairs and financial condition of the Company or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent may reasonably request and (y) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and, to the extent any Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Beneficial Ownership Regulation.

Documents required to be delivered pursuant to clauses (a), (b) and (d) of this Section 5.01 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are (i) filed for public availability on the SEC’s Electronic Data Gathering and Retrieval System; (ii) posted or the Company provides a link thereto on <http://www.hillenbrand.com>; or (iii) posted on the Company’s behalf on an Internet or intranet website, if any, to which the Administrative Agent and the Lenders have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent).

SECTION 5.02. Notices of Material Events. The Company will furnish to the Administrative Agent (for distribution to each Lender) written notice of the following, promptly upon a Responsible Officer of the Company having actual knowledge thereof:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Company or any Subsidiary thereof that would reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect;

(d) to the extent any Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification; and

- (e) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Company setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Information required to be delivered pursuant to clause (b), (c) and (d) of this Section shall be deemed to have been delivered if such information, or one or more annual or quarterly or other periodic reports containing such information is (i) filed for public availability on the SEC's Electronic Data Gathering and Retrieval System, (ii) posted or the Company provides a link thereto on <http://www.hillenbrand.com>; or (iii) posted on the Company's behalf on an Internet or intranet website, if any, to which the Administrative Agent and the Lenders have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent). Information required to be delivered pursuant to this Section may also be delivered by electronic communications pursuant to procedures approved by the Administrative Agent.

SECTION 5.03. Existence; Conduct of Business. The Company will, and will cause each of its Material Subsidiaries to, do or cause to be done (i) all things necessary to preserve, renew and keep in full force and effect its legal existence and (ii) take, or cause to be taken, all reasonable actions to preserve, renew and keep in full force and effect the rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted (except, for purposes of this clause (ii), to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect); provided that (x) the foregoing shall not prohibit any merger, consolidation, amalgamation, disposition, liquidation or dissolution permitted under Section 6.04 and (y) neither the Company nor any of its Subsidiaries shall be required to preserve any right, qualification, license, permit, privilege, franchise, governmental authorization, intellectual property right or authority to conduct its business if the Company or such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of business of the Company or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to the Company, such Subsidiary or the Lenders. Each Borrower incorporated in a European Union jurisdiction shall cause its registered office and "centre of main interests" (as that term is used in Article 3(1) of the Recast Regulation) to be situated solely in its jurisdiction of incorporation and shall have an "establishment" (as that term is used in Article 2(10) of the Recast Regulation) situated solely in its jurisdiction of incorporation.

SECTION 5.04. Payment of Tax Obligations. The Company will, and will cause each of its Subsidiaries to, pay its Tax and UK Tax liabilities, that, if not paid, would reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Company or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05. Maintenance of Properties; Insurance. The Company will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of the business of the Company and its Subsidiaries (taken as a whole) in good working order and condition, ordinary wear and tear excepted, and (b) maintain, with financially sound and reputable insurance companies or with a captive insurance company that is an Affiliate of the Company, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 5.06. Books and Records; Inspection Rights. The Company will, and will cause each of its Subsidiaries to, keep proper books of record and account in which entries true and correct in all material respects are made of all material financial dealings and transactions in relation to its business and activities and, subject to Section 5.01, in form permitting financial statements conforming with GAAP to be derived therefrom. The Company will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent, at reasonable times and upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and, provided that the Company or such Subsidiary is afforded the opportunity to participate in such discussions, its independent accountants, all at such reasonable times and as often as reasonably requested; provided, however, in no event shall such visitations, inspections or examinations occur more frequently than once per calendar year so long as no Event of Default has occurred and is continuing. The Company acknowledges that the Administrative Agent, after exercising its rights of inspection, may, subject to Section 9.12, prepare and distribute to the Lenders certain reports pertaining to the Company and its Subsidiaries' assets for internal use by the Administrative Agent and the Lenders. Notwithstanding anything to the contrary in this Section 5.06, neither the Company nor any of its Subsidiaries will be required to disclose, permit the inspection, examination or making of extracts, or discussion of, any documents, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent (or any designated representative) is then prohibited by law or any agreement binding on the Company or any of its Subsidiaries or (iii) is subject to attorney-client or similar privilege constitutes attorney work-product.

SECTION 5.07. Compliance with Laws .

(a) The Company will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including without limitation Environmental Laws), in each case except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Company will maintain in effect and enforce policies and procedures reasonably designed to promote compliance in all material respects by the Company, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

(b) Each Swiss Borrower shall be compliant with the Swiss Non-Bank Rules; provided, however, that a Swiss Borrower shall not be in breach of this Section 5.07(b) if such number of creditors (which are not Swiss Qualifying Banks) is exceeded solely by reason of a breach by one or more Lenders of a confirmation contained in Section 2.17(k) or a failure by one or more Lenders to comply with their obligations and transfer restrictions in Section 9.04.

(c) For the purposes of paragraph (b) above, the Swiss Borrowers shall assume that the aggregate number of Lenders which are not Swiss Qualifying Banks is 10 (ten).

SECTION 5.08. Use of Proceeds. The proceeds of the Revolving Loans will be used only to finance the working capital needs, and for general corporate purposes, of the Company and its Subsidiaries. Notwithstanding anything to the contrary set forth in this Section 5.08, all proceeds of the Term Loans will be used only to finance the Bengal Transactions and to pay fees, costs and expenses related hereto and thereto. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. No Borrower will request any Borrowing or Letter of Credit, and no Borrower shall use, and the Company shall procure that its other Subsidiaries shall not use, the proceeds of any Borrowing or Letter of Credit (i) for the purpose of making an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation in any material respect of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, in each case, in violation of applicable Sanctions or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto. The undertaking given in the immediately preceding sentence shall not be given (i) by any Loan Party or (ii) to any Lender to the extent that such undertaking would result in any violation of, conflict with or liability under EU Regulation (EC) 2271/96, section 7 of the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) or a similar anti-boycott statute.

SECTION 5.09. Subsidiary Guaranty. As promptly as possible but in any event within forty-five (45) days (or such later date as may be agreed upon by the Administrative Agent) after delivery of the applicable annual Compliance Certificate showing that any Person qualifies as a Material Domestic Subsidiary (other than Excluded Subsidiaries), the Company shall cause such Material Domestic Subsidiary to deliver to the Administrative Agent a joinder to the Subsidiary Guaranty (in the form contemplated thereby) pursuant to which such Subsidiary agrees to be bound by the terms and provisions thereof, such Subsidiary Guaranty to be accompanied by appropriate corporate resolutions, other customary corporate documentation and legal opinions, to the extent reasonably requested by the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

## ARTICLE VI

### Negative Covenants

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated (or shall have been cash collateralized or backstopped pursuant to arrangements reasonably satisfactory to the Administrative Agent) and all LC Disbursements shall have been reimbursed, the Company covenants and agrees with the Lenders that:

SECTION 6.01. Liens. The Company will not, and will not permit any Subsidiary to, create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign any right to receive income other than:

- (a) Liens pursuant to any Loan Document (including Liens on any cash in favor of an Issuing Bank required pursuant to the terms of this Agreement);
- (b) Liens existing on the Effective Date (i) that do not exceed \$1,000,000 or (ii) are listed on Schedule 6.01 and any renewals or extensions thereof; provided that the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by Section 6.03(b);
- (c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings in the circumstances, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than sixty (60) days or which are being contested in good faith and by appropriate proceedings in the circumstances, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP;



(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (including, but not limited to, section 8a of the German Semi-retirement Act (*Altersteilzeitgesetz*) and section 7d of the German Social Law Act No. 4 (*Sozialgesetzbuch*) but other than any Lien imposed by ERISA), including cash collateral for obligations in respect of letters of credit, guarantee obligations or similar instruments related to the foregoing, and deposits securing liability insurance carriers under insurance or self-insurance arrangements in the ordinary course of business;

(f) pledges or deposits (including cash collateral for obligations in respect of letters of credit and bank guarantees) to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property and other minor defects or irregularities in title and other similar encumbrances including the reservations, limitations, provisos and conditions, which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property of the Company and its Subsidiaries taken as a whole or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing Indebtedness permitted under Section 6.03(d); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(i) Liens securing Indebtedness permitted under Section 6.03(r);

(j) statutory rights of set-off arising in the ordinary course of business;

(k) Liens existing on property at the time of acquisition thereof by the Company or any Subsidiary and not created in contemplation thereof;

(l) Liens existing on property of a Subsidiary at the time such Subsidiary is merged, consolidated or amalgamated with or into, or acquired by, the Company or any Subsidiary or becomes a Subsidiary and not created in contemplation thereof;

(m) Liens in favor of banks which arise under Article 4 of the Uniform Commercial Code on items in collection and documents relating thereto and the proceeds thereof or which arise under banks' standard terms and conditions;

(n) judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII or Liens securing appeal or surety bonds related to such judgments;

- (o) any interest or title of a landlord, lessor or sublessor under any lease of real estate or any Lien affecting solely the interest of the landlord, lessor or sublessor;
- (p) leases, licenses, subleases or sublicenses granted (i) to others not interfering in any material respect with the business of the Company and its Subsidiaries, taken as a whole, or (ii) between or among any of the Loan Parties or any of their Subsidiaries;
- (q) purported Liens evidenced by the filing of precautionary UCC financing statements, PPSA financing statements or similar filings relating to operating leases of personal property entered into by the Company or any of its Subsidiaries in the ordinary course of business;
- (r) any interest or title of a licensor under any license or sublicense entered into by the Company or any Subsidiary as a licensee or sublicensee (i) existing on the Effective Date or (ii) in the ordinary course of its business;
- (s) with respect to any real property, immaterial title defects or irregularities that do not, individually or in the aggregate, materially impair the use of such real property;
- (t) Liens on any cash earnest money deposits or other escrow arrangements made in connection with any letter of intent or purchase agreement;
- (u) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (v) Liens arising out of sale and leaseback transactions;
- (w) customary rights of first refusal, “tag along” and “drag along” rights, and put and call arrangements under joint venture agreements;
- (x) Liens on treasury stock of the Company;
- (y) Liens (x) in favor of collecting or payor banks having a right of setoff, revocation, refund or chargeback with respect to money or instruments on deposit with or in possession of such bank, (y) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or (z) in favor of banking institutions arising as a matter of law or standard business terms and conditions encumbering deposits (including the right of setoff) and which are within the general parameters customary in the banking industry;
- (z) Liens securing obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under any Swap Agreement;
- (aa) other Liens securing liabilities or assignments of rights to receive income in an aggregate amount not to exceed the greater of (i) \$150,000,000 and (ii) 15% of Consolidated Tangible Assets (calculated as of the end of the immediately preceding fiscal quarter for which the Company’s financial statements were most recently delivered pursuant to Section 5.01(a) or (b) or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 5.01(a) or (b), the most recent financial statements referred to in Section 3.04(a)) at any time outstanding; provided that, for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred if, at the time of the creation, incurrence, assumption or initial existence thereof, such Liens were permitted to be incurred pursuant to this clause (aa) notwithstanding a decrease after such time in the basket amount permitted under this clause (aa) as a result of a decrease in Consolidated Tangible Assets;

(bb) Liens on property or assets deposited with a trustee or paying agent or otherwise segregated or held in trust or under an escrow or other funding arrangement with respect to the Specified Senior Notes Indebtedness prior to the consummation of the Bengal Acquisition (or during the period from the Effective Date until the date that is 90 days after the termination of the Bengal Acquisition Agreement); and

(cc) Liens on property or assets deposited with a trustee or paying agent or otherwise segregated or held in trust or under an escrow or other funding arrangement for the sole purpose of repurchasing, redeeming, defeasing, repaying, satisfying and discharging or otherwise acquiring or retiring Indebtedness.

SECTION 6.02. Acquisitions. The Company will not, and will not permit any Subsidiary to, acquire (in one or a series of transactions) all of the capital stock or equity interests or all or substantially all of the assets of any Person, unless (i) immediately before and after giving effect thereto, no Default shall have occurred and be continuing or would result therefrom and (ii) if the aggregate amount invested (including assumed debt) is greater than \$375,000,000, relevant financial information, statements and projections reasonably requested by the Administrative Agent in respect of the Company and its Subsidiaries as of the end of the most recent fiscal quarter for the four fiscal quarters most recently ended giving effect to the acquisition of the company or business pursuant to this Section 6.02 are delivered to the Administrative Agent not less than five (5) Business Days prior to the consummation of any such acquisition or series of acquisitions, together with a certificate of a Responsible Officer of the Company delivered to the Lenders demonstrating pro forma compliance with Section 6.10 after giving effect to such acquisition or series of acquisitions; provided that notwithstanding anything to the contrary set forth in this Section 6.02, it is hereby understood and agreed that the Bengal Acquisition is permitted under this Section 6.02 and is not subject to the requirements set forth in the foregoing clauses (i) and (ii).

SECTION 6.03. Indebtedness. The Company will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist, any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness that (i) is outstanding on the Effective Date that is less than \$2,000,000 individually or \$15,000,000 in the aggregate or (ii) arises or is incurred under agreements listed on Schedule 6.03, and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(c) obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under any Swap Agreement; provided that such obligations are (or were) entered into in the ordinary course of business, and not for purposes of speculation;

(d) Indebtedness in respect of capital leases and purchase money obligations for fixed or capital assets and any refinancings, refundings, renewals or extensions thereof; provided further that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder; provided that the only property subject to such capital leases and purchase money obligations is the property so acquired;

(e) Indebtedness that may be deemed to exist pursuant to surety bonds, appeal bonds, supersedeas bonds or similar obligations incurred in the ordinary course of business;

(f) so long as no Default has occurred and is continuing or would result therefrom at the time of incurrence, (1) the Specified Senior Notes Indebtedness and (2) any other unsecured Indebtedness of (x) the Company or any Subsidiary Guarantor and (y) any Foreign Subsidiary Borrower, in the case of clause (y), in an aggregate principal amount not to exceed the greater of (i) \$200,000,000 and (ii) 20% of Consolidated Tangible Assets (calculated as of the end of the immediately preceding fiscal quarter for which the Company's financial statements were most recently delivered pursuant to Section 5.01(a) or (b) or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 5.01(a) or (b), the most recent financial statements referred to in Section 3.04(a)); provided that, in each case, such Indebtedness is not senior in right of payment to the payment of the Indebtedness arising under this Agreement and the Loan Documents;

(g) Indebtedness of a Subsidiary of the Company to the Company or any of the Company's other Subsidiaries or Indebtedness of the Company to any Subsidiary of the Company in connection with loans or advances; provided that each item of intercompany debt shall be unsecured and such Indebtedness shall only be permitted under this clause (g) to the extent it will be eliminated for purposes of the consolidated financial statements of the Company in accordance with GAAP;

(h) Indebtedness arising as a result of the endorsement in the ordinary course of business of negotiable instruments in the course of collection;

(i) Indebtedness incurred in connection with the acquisition of all or a portion of Hill-Rom Company, Inc.'s interest in the real and personal property described in the Farm Agreement;

(j) Guarantees by the Company of Indebtedness of any Subsidiary of the Company and by any Subsidiary of the Company of Indebtedness of the Company or any other Subsidiary of the Company; provided that the Indebtedness so Guaranteed is permitted by this Section 6.03;

(k) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty, liability or other insurance to the Company or any Subsidiary of the Company, including pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(l) customary contingent indemnification obligations to purchasers in connection with any disposition;

(m) Indebtedness of any Person that becomes a Subsidiary after the Effective Date; provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation thereof and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(n) Indebtedness in respect of netting services, cash management obligations, overdraft protections and otherwise in connection with deposit accounts and Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business;

(o) Indebtedness with respect to the deferred purchase price of property acquired and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to any existing commitments unutilized thereunder or by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(p) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards or purchase cards (including so-called "procurement cards" or "P-cards"), in each case, incurred in the ordinary course of business;

(q) contingent liabilities in respect of any indemnification obligations, adjustment of purchase price, non-compete, or similar obligations (other than Guarantees of any Indebtedness for borrowed money) of the Company or any Subsidiary of the Company incurred in connection with the consummation of one or more acquisitions; and

(r) other Indebtedness (exclusive of Indebtedness permitted under clauses (a) through (q) above) in an aggregate principal amount not to exceed the greater of (i) \$150,000,000 and (ii) 15% of Consolidated Tangible Assets (calculated as of the end of the immediately preceding fiscal quarter for which the Company's financial statements were most recently delivered pursuant to Section 5.01(a) or (b) or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 5.01(a) or (b), the most recent financial statements referred to in Section 3.04(a)) at any time outstanding; provided that, for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred if, at the time of the creation, incurrence, assumption or initial existence thereof, such Indebtedness was permitted to be incurred pursuant to this clause (r) notwithstanding a decrease after such time in the basket amount permitted under this clause (r) as a result of a decrease in Consolidated Tangible Assets.

SECTION 6.04. Fundamental Changes. The Company will not, and will not permit any of its Subsidiaries to, merge, dissolve, liquidate, consolidate or amalgamate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may (i) merge or consolidate with or into the Company, provided that the Company shall be the continuing or surviving Person or (ii) merge, consolidate or amalgamate with any one or more other Subsidiaries, provided that when any wholly-owned Subsidiary is merging or amalgamating with another Subsidiary, the wholly owned Subsidiary shall be the continuing or surviving Person (or the continuing corporation resulting from such amalgamation shall be a wholly owned Subsidiary);

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Company or to another Subsidiary; provided that if the transferor in such a transaction is a wholly-owned Subsidiary, then the transferee must either be the Company or a wholly-owned Subsidiary;

(c) the Company or any Subsidiary may merge (or, in the case of a Subsidiary, amalgamate) with any Person in a transaction that would be an acquisition or a Disposition that is permitted under this Agreement; provided that in the case of an acquisition (i) if the Company is a party to such merger, it shall be the continuing or surviving Person, or (ii) if any Subsidiary Guarantor or Subsidiary Borrower is a party to such merger or amalgamation, such Subsidiary shall be the continuing or surviving Person (or the continuing corporation resulting from such amalgamation shall be a Subsidiary Guarantor or Subsidiary Borrower, as applicable, and shall have executed and delivered to the Administrative Agent a confirmation to that effect reasonably satisfactory to the Administrative Agent); and

(d) the Company may Dispose of its Treasury Stock.

SECTION 6.05. Restricted Payments. The Company will not, and will not permit any of its Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may make Restricted Payments to the Company and to other Subsidiaries (and, in the case of a Restricted Payment by a non-wholly-owned Subsidiary, such Restricted Payment may be made to each other owner of capital stock or other equity interests of such Subsidiary on a pro rata basis based on their relative ownership interests);

(b) the Company and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common equity interests of such Person;

(c) the Company and each Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other common equity interests or warrants or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common equity interests;

(d) the Company and each Subsidiary may make distributions to current and former employees, officers, or directors of the Company and its Subsidiaries (or any spouses, ex-spouses, or estates of any of the foregoing) on account of purchases, redemptions or other acquisitions of Equity Interests of the Company or its Subsidiaries held by such Persons; and

(e) the Company may declare and pay cash dividends to its stockholders and purchase, redeem or otherwise acquire shares of its capital stock or warrants, rights or options to acquire any such shares for cash; provided that immediately after giving effect to such proposed action, no Event of Default would exist.

SECTION 6.06. Change in Nature of Business. The Company will not, and will not permit any of its Subsidiaries to, enter into any material line of business if, after giving effect thereto, the business of the Company and its Subsidiaries, taken as a whole, would be substantially different from the business in which the Company and its Subsidiaries, taken as a whole, are presently engaged, provided that this Section 6.06 shall not prohibit the Company or its Subsidiaries from entering into (x) any line of business that is reasonably related, incidental, ancillary or complementary to, or any reasonable extension, development or expansion of, the business in which the Company and its Subsidiaries, taken as a whole, are presently engaged, or (y) any other non-core incidental businesses acquired in connection with any acquisition or investment not prohibited hereunder.

SECTION 6.07. [Intentionally Omitted].

SECTION 6.08. Burdensome Agreements. The Company will not, and will not permit any of its Subsidiaries to, enter into any Contractual Obligation that: limits the ability (a) of any Subsidiary to make Restricted Payments to the Company; (b) of any Subsidiary to Guarantee the Indebtedness of the Borrowers under the Loan Documents or (c) of the Company or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person to secure the obligations of the Loan Parties under the Loan Documents, other than, in each case limitations and restrictions:

- (a) set forth in this Agreement and any other Loan Document;
- (b) on subletting or assignment of any leases or licenses of the Company or any Subsidiary or on the assignment of a Contractual Obligation or any rights thereunder or any other customary non-assignment provisions, in each case entered into in the ordinary course of business;
- (c) set forth in Contractual Obligations for the disposition of assets (including any Equity Interests in any Subsidiary) of the Company or any Subsidiary of the Company; provided such restrictions and conditions apply only to the assets or Subsidiary that is to be sold;
- (d) set forth in the Farm Agreement, the Airport Access and Use Agreement or the Joint Ownership Agreements;
- (e) set forth in any Contractual Obligation governing Indebtedness permitted under Section 6.03(b), (d), (f), (j), (m), (o) and (r);
- (f) with respect to cash or other deposits (including escrowed funds) received by Company or any Subsidiary in the ordinary course of business and assets subject to Liens permitted by Section 6.01(b), (e), (f), (h), (j), (k), (l), (n), (t), (v) and (z);
- (g) set forth in joint venture agreements and other similar agreements concerning joint ventures and applicable solely to such joint venture;
- (h) set forth in any Contractual Obligation relating to an asset being acquired existing at the time of acquisition or a Subsidiary existing at the time such Subsidiary is merged, consolidated or amalgamated with or into, or acquired by, the Company or any Subsidiary or becomes a Subsidiary and, in each case, not in contemplation thereof;
- (i) contained in any trading, netting, operating, construction, service, supply, purchase, credit card, credit card processing service, debit card, stored value card, purchase card (including a so-called "procurement card" or "P-card") or other agreement to which the Company or any of its Subsidiaries is a party and entered into in the ordinary course of business; provided that such agreement prohibits the encumbrance of solely the property or assets of the Company or such Subsidiary that are the subject of such agreement, the payment rights arising thereunder, the accounts associated with such agreement, or the proceeds thereof and does not extend to any other asset or property of the Company or such Subsidiary or the assets or property of any other Subsidiary;

(j) (A) existing by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of the Company or any Material Subsidiary not otherwise prohibited by this Agreement (so long as such limitation or restriction applies only to the property or assets subject to such transfer, agreement to transfer, option, right or Lien), (B) contained in mortgages, pledges or other security agreements securing Indebtedness of a Subsidiary to the extent restricting the transfer of the property or assets subject thereto, (C) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Subsidiary, (D) pursuant to customary provisions in any swap or derivative transactions (including any Swap Agreement), (E) pursuant to customary provisions in leases or licenses of intellectual property (or in other contracts governing intellectual property rights) and other similar agreements entered into in the ordinary course of business, (F) pursuant to customary net worth provisions contained in real property leases entered into by Subsidiaries, so long as the Company has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of Company and its Subsidiaries to meet their ongoing obligations or (G) on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(k) customary restrictions and conditions contained in the document relating to Liens permitted under this Agreement, so long as (1) such restrictions or conditions relate only to the specific asset subject to such Lien, and (2) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.08; or

(l) customary restrictions required by, or arising by operation of law under, applicable law, rule or regulation to the extent contained in a document relating to the Equity Interests or governance of any Foreign Subsidiary that is not a Borrower.

SECTION 6.09. Use of Proceeds. The Company will not, and will not permit any Subsidiary to, use the proceeds of any Loans or Letters of Credit, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case, in violation of Regulation U of the Board.

#### SECTION 6.10. Financial Covenants.

(a) Maximum Leverage Ratio. The Company will not permit the ratio (the "Leverage Ratio"), determined as of the last day of each of its fiscal quarters ending on and after September 30, 2019, of (i) (x) Consolidated Indebtedness minus (y) the Liquidity Amount, in each case as of the last day of such fiscal quarter to (ii) Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ending with the last day of such fiscal quarter, all calculated for the Company and its Subsidiaries on a consolidated basis, to be greater than 3.50 to 1.00; provided that (x) the Company may, by written notice to the Administrative Agent for distribution to the Lenders and not more than twice during the term of this Agreement, elect to increase the maximum Leverage Ratio to 4.00 to 1.00 for a period of three (3) consecutive fiscal quarters in connection with an acquisition that involves the payment of consideration by the Company and/or its Subsidiaries in excess of \$75,000,000 occurring during the first of such three fiscal quarters (each such period, an "Adjusted Covenant Period") and (y) notwithstanding the foregoing clause (x), the Company may not elect an Adjusted Covenant Period for at least two (2) full fiscal quarters following the end of an Adjusted Covenant Period before a new Adjusted Covenant Period is available again pursuant to the preceding clause (x) for a new period of three (3) consecutive fiscal quarters. For purposes of calculations under this Section 6.10(a), Consolidated Indebtedness shall not include 75% of the principal amount of any mandatorily convertible unsecured bonds, debentures, preferred stock or similar instruments in a principal amount not to exceed \$500,000,000 in the aggregate during the term of this Agreement which are payable in no more than three years (whether by redemption, call option or otherwise) solely in common stock or other common equity interests.



Notwithstanding the foregoing, the following change shall be automatically deemed to be made to Section 6.10(a) on, and with effect as of, the date on which (1) a change that is the substantial equivalent of the following change is made to the corresponding provision of both the “LG Facility Agreement” and the “Shelf Agreement”, in each case as defined in the Company’s most recent applicable filings with the SEC and (2) the Administrative Agent shall have received from the Company an executed copy of each such amendment making such conforming change, in each case such amendment being confirmed by the Company in writing to be effective:

A new sentence will be added to the end of Section 6.10(a) as follows:

“For purposes of calculations under this Section 6.10(a), prior to the consummation of the Bengal Acquisition (or during the period from the Effective Date until the date that is 90 days after the termination of the Bengal Acquisition Agreement), Consolidated Indebtedness shall not include Specified Senior Notes Indebtedness; provided that (a) the release of the proceeds of the Specified Senior Note Indebtedness to the Company and its Subsidiaries is contingent upon the consummation of the Bengal Acquisition and, pending such release, such proceeds are held in escrow (and, if the Bengal Acquisition Agreement is terminated prior to the consummation of the Bengal Acquisition or if the Bengal Acquisition is otherwise not consummated by the date specified in the Specified Senior Notes Indenture, such proceeds shall be promptly applied to satisfy and discharge all obligations of the Company and its Subsidiaries in respect of the Specified Senior Notes Indebtedness) or (b) the Specified Senior Notes Indenture contains a “special mandatory redemption” provision (or other similar provision) or otherwise permits the Specified Senior Notes Indebtedness to be redeemed or prepaid if the Bengal Acquisition is not consummated by the date specified in the Specified Senior Notes Indenture (and if the Bengal Acquisition Agreement is terminated in accordance with its terms prior to the consummation of the Bengal Acquisition or the Bengal Acquisition is otherwise not consummated by the date specified in the Specified Senior Notes Indenture, the Specified Senior Notes Indebtedness is so redeemed or prepaid within 90 days of such termination or such specified date, as the case may be).”

(b) Minimum Interest Coverage Ratio. The Company will not permit the ratio (the “Interest Coverage Ratio”), determined as of the last day of each of its fiscal quarters ending on and after September 30, 2019, of (i) Consolidated EBITDA to (ii) Consolidated Interest Expense, in each case for the period of four (4) consecutive fiscal quarters ending with the last day of such fiscal quarter, all calculated for the Company and its Subsidiaries on a consolidated basis, to be less than 3.00 to 1.00.

## ARTICLE VII

### Events of Default

If any of the following events (“Events of Default”) shall occur:

(a) any Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement or fail to make a payment pursuant to Article X, in each case when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Borrower or any Subsidiary in this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) any Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.03 (with respect to any Borrower's existence), 5.08 or 5.09, in Article VI or in Article X;

(e) any Borrower or any Subsidiary Guarantor, as applicable, shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after notice thereof from the Administrative Agent to the Company (which notice will be given at the request of any Lender);

(f) the Company or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable, which is not cured within any applicable grace period therefor;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits, after the expiration of any applicable grace period, and delivery of any applicable required notice, provided in the applicable agreement or instrument under which such Indebtedness was created, the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to (i) secured Material Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (ii) any Material Indebtedness that becomes due as a result of a refinancing thereof permitted by Section 6.01, (iii) any reimbursement obligation in respect of a letter of credit as a result of a drawing thereunder by a beneficiary thereunder in accordance with its terms, (iv) any such Material Indebtedness that is mandatorily prepayable prior to the scheduled maturity thereof with the proceeds of the issuance of capital stock, the incurrence of other Indebtedness or the sale or other disposition of any assets, so long as such Material Indebtedness that has become due is so prepaid in full with such net proceeds required to be used to prepay such Material Indebtedness when due (or within any applicable grace period) and such event shall not have otherwise resulted in an event of default with respect to such Material Indebtedness, (v) any redemption, conversion or settlement of any such Material Indebtedness that is convertible into Equity Interests (and cash in lieu of fractional shares) and/or cash (in lieu of such Equity Interests in an amount determined by reference to the price of the common stock of the Company at the time of such conversion or settlement) in the Company pursuant to its terms unless such redemption, conversion or settlement results from a default thereunder or an event of a type that constitutes an Event of Default, (vi) prepayments required by the terms of Indebtedness as a result of customary provisions in respect of illegality, replacement of lenders and gross-up provisions for Taxes, increased costs, capital adequacy and other similar customary requirements and (vii) any voluntary prepayment, redemption or other satisfaction of Indebtedness that becomes mandatory in accordance with the terms of such Indebtedness solely as the result of the Company or any Subsidiary delivering a prepayment, redemption or similar notice with respect to such prepayment, redemption or other satisfaction;

(h) (1) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Company or any Material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect (including, without limitation, any applicable provisions or any corporations legislation) or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered, (2) a UK Insolvency Event shall occur in respect of any UK Relevant Entity, (3) a Luxembourg Insolvency Event shall occur in respect of any Luxembourg Borrower or (4) a German Insolvency Event shall occur in respect of any German Borrower;

(i) the Company or any Material Subsidiary (other than any UK Relevant Entity or German Borrower) shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect (including, without limitation, any applicable provisions or any corporations legislation), (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Company or any Material Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) judgments or orders for the payment of money in excess of \$75,000,000 in the aggregate (net of any amounts that are covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and as to which such insurer, which shall be rated at least "A" by A.M. Best Company, has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order) shall be rendered against the Company or any of its Subsidiaries and remain undischarged or unpaid and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 60 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect;

(m) a Change in Control shall occur; or

(n) any material provision of the Subsidiary Guaranty for any reason (other than the release of any Subsidiary Guarantor permitted under this Agreement or any other Loan Document) ceases to be valid, binding and enforceable in accordance with its terms (or any Subsidiary Guarantor shall challenge the enforceability of the Subsidiary Guaranty or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of the Subsidiary Guaranty has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms);

then, and in every such event (other than an event with respect to any Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may with the consent of the Required Lenders, and shall at the request of the Required Lenders, by notice to the Company, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately (provided that, solely in the case of the Term Loan Commitments, the Term Loan Commitments shall not terminate prior to the earliest of, as applicable (A) the Term Loan Commitment Expiration Date and (B) the Term Loan Funding Date (after consummation of the Bengal Transactions); provided, further, that, for the avoidance of doubt, the availability of Term Loans shall be subject solely to the satisfaction of the conditions set forth in Section 4.02), (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations of the Borrowers accrued hereunder and under the other Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers and (iii) require that the Company provide cash collateral as required in Section 2.06(j); and in case of any event with respect to any Borrower described in clause (h) or (i) of this Article, the Commitments shall automatically terminate (provided that, solely in the case of the Term Loan Commitments, the Term Loan Commitments shall not terminate prior to the earliest of, as applicable (A) the Term Loan Commitment Expiration Date and (B) the Term Loan Funding Date (after consummation of the Bengal Transactions); provided, further, that, for the avoidance of doubt, the availability of Term Loans shall be subject solely to the satisfaction of the conditions set forth in Section 4.02) and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations accrued hereunder and under the other Loan Documents, shall automatically become due and payable, and the obligations of the Company to cash collateralize the LC Exposure as provided in clause (iii) above shall automatically become effective, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers. Subject to the foregoing with respect to Term Loan Commitments before the Term Loan Funding Date, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity.

## ARTICLE VIII

### The Administrative Agent

#### SECTION 8.01. General Matters.

(a) Each of the Lenders and the Issuing Banks hereby irrevocably appoints JPMorgan Chase Bank, N.A. as its agent and authorizes the Administrative Agent to take such actions on its behalf, including execution of the other Loan Documents, and to exercise such powers as are delegated to the Administrative Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders (including the Swingline Lender and the Issuing Banks), and neither the Company nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" as used herein or in any other Loan Documents (or any similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Company or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

(c) The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (i) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (ii) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (iii) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct as determined by a final nonappealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Company or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or in connection with any Loan Document, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

(d) The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Company), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(e) The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as their respective activities as the Administrative Agent.

(f) Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Banks and the Company. Upon any such resignation, the Required Lenders shall have the right (with the consent of the Company (such consent not to be unreasonably withheld or delayed), provided that no consent of the Company shall be required if an Event of Default under clauses (a), (b), (h), (i) or (j) of Article VII has occurred and is continuing) to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by any Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between such Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

(g) Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and letters of credit and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon the Administrative Agent, any arranger of the credit facilities evidenced by this Agreement or any other Lender and their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon the Administrative Agent, any arranger of the credit facilities evidenced by this Agreement or any amendment thereof or any other Lender and their respective Related Parties and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Company and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a Lender or otherwise transfer its rights, interests and obligations hereunder.

(h) None of the Lenders, if any, identified in this Agreement as a Co-Syndication Agent or Co-Documentation Agent shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to the relevant Lenders in their respective capacities as Co-Syndication Agents or Co-Documentation Agents, as applicable, as it makes with respect to the Administrative Agent in the preceding paragraph.

(i) The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of the Administrative Agent) authorized to act for, any other Lender. The Administrative Agent shall have the exclusive right on behalf of the Lenders to enforce the payment of the principal of and interest on any Loan after the date such principal or interest has become due and payable pursuant to the terms of this Agreement.

SECTION 8.02. Posting of Communications.

(a) The Borrowers agree that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic platform chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the Issuing Banks and the Borrowers acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, the Issuing Banks and the Borrowers hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, ANY LOAN PARTY, ANY ARRANGER, ANY CO-SYNDICATION AGENT, ANY CO-DOCUMENTATION AGENT OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM EXCEPT TO THE EXTENT OF DIRECT AND ACTUAL DAMAGES AS ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF THE APPLICABLE PARTIES; PROVIDED THAT NOTHING IN THIS SENTENCE SHALL LIMIT THE COMPANY’S INDEMNITY OBLIGATIONS TO ANY INDEMNITEE UNDER SECTION 9.03 IN RESPECT OF CLAIMS MADE BY THIRD PARTIES FOR ANY DIRECT OR INDIRECT SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES.

(d) Each Lender and each Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and each Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or such Issuing Bank's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(e) Each of the Lenders, the Issuing Banks and the Borrowers agree that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or any Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 8.03. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Company or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or



(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and the Arrangers, the Co-Syndication Agents, the Co-Documentation Agents or any of their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Company or any other Loan Party, that none of the Administrative Agent, or the Arrangers, the Co-Syndication Agents, the Co-Documentation Agents or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

(c) The Administrative Agent and each Arranger, Co-Syndication Agent and Co-Documentation Agent hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, commitment fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent fees or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

## ARTICLE IX

### Miscellaneous

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below) or as otherwise permitted pursuant to Section 5.01 or 5.02, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to any Borrower, to it c/o Hillenbrand, Inc., One Batesville Boulevard, Batesville, Indiana 47006 Attention of Theodore S. Haddad, Jr., Vice President and Treasurer (Telecopy No. 812-931-5209; Telephone No. 812-934-7251);

(ii) if to the Administrative Agent, (A) in the case of Borrowings denominated in Dollars other than Designated Loans, to JPMorgan Chase Bank, N.A., 10 South Dearborn Street, Chicago, Illinois 60603, Attention of Pastell Jenkins (Telecopy No. 888-292-9533), (B) in the case of Borrowings denominated in Foreign Currencies (other than Canadian Revolving Borrowings) and Designated Loans, to J.P. Morgan Europe Limited, 25 Bank Street, Canary Wharf, London E14 5JP, Attention of The Manager, Loan & Agency Services (Telecopy No. 44 207 777 2360) and (C) in the case of Canadian Revolving Borrowings, to JPMorgan Chase Bank, N.A., 10 South Dearborn Street, 9<sup>th</sup> Floor, Chicago, Illinois 60603, Attention of Patricia Barcelona-Schuldt (Telecopy No. 312-385-7101), and in each case with a copy to JPMorgan Chase Bank, N.A., 10 South Dearborn Street, 9<sup>th</sup> Floor, Chicago, Illinois 60603, Attention of Erik Barragan (Telecopy No. (877) 221-4010);

(iii) if to JPMorgan Chase Bank, N.A. in its capacity as an Issuing Bank, to it at JPMorgan Chase Bank, N.A., 10 South Dearborn Street, Chicago, Illinois 60603, Attention of Susan Moy (Telecopy No. 312-256-2608) or Cassandra Groves (Telecopy No. 312-256-2608);

(iv) if to the Swingline Lender, (A) in the case of Swing Line Loans denominated in Dollars other than Designated Loans, to JPMorgan Chase Bank, N.A., 10 South Dearborn Street, Chicago, Illinois 60603, Attention of Pastell Jenkins (Telecopy No. 888-292-9533), (B) in the case of Swing Line Loans denominated in Foreign Currencies (other than Canadian Swingline Loans) and Designated Loans, to J.P. Morgan Europe Limited, 25 Bank Street, Canary Wharf, London E14 5JP, Attention of The Manager, Loan & Agency Services (Telecopy No. 44 207 777 2360) and (C) in the case of Canadian Swingline Loans, to JPMorgan Chase Bank, N.A., 10 South Dearborn Street, 9<sup>th</sup> Floor, Chicago, Illinois 60603, Attention of Patricia Barcelona-Schuldt (Telecopy No. 312-385-7101); and

(v) if to any other Lender or Issuing Bank, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through Approved Electronic Platforms, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Except as otherwise permitted pursuant to Section 5.01 or 5.02, notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by using Approved Electronic Platforms pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Company may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(d) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in Section 2.20 (with respect to an Incremental Term Loan Amendment or an additional Commitment), or in Section 2.25 (with respect to the extension of any Applicable Maturity Date), or as provided in Section 2.14(a) or (b), neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or by the Borrowers and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender; (ii) reduce the principal amount of any Loan or LC Disbursement owed to a Lender (including, without limitation, reduce the principal amount of any Term Loan due on any Term Loan Installment Date) or reduce the rate of interest thereon, or reduce any fees payable to a Lender hereunder, without the written consent of such Lender; provided that (x) neither (1) any amendment to the financial covenants or financial covenant definitions in this Agreement or (2) any amendment entered into pursuant to the terms of Section 2.14(a) or (b) shall constitute a reduction in the rate of interest or fees for purposes of this clause (ii) even if the effect of such amendment would be to reduce the rate of interest on any Loan or any LC Disbursement or to reduce any fee payable hereunder and (y) that only the consent of the Required Lenders shall be necessary to reduce or waive any obligation of the Borrowers to pay interest or fees at the applicable default rate set forth in Section 2.13(e), (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement (including, without limitation, any Term Loan Installment Date) owed to a Lender, or any interest thereon, or any fees payable to a Lender hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment of a Lender, without the written consent of such Lender (other than with respect to the matters set forth in clauses (ii)(x) and (ii)(y) above), (iv) change Section 2.09(c) or Section 2.18(b) or (d) in a manner that would alter the ratable reduction of Commitments or the pro rata sharing of payments required thereby, without the written consent of each Lender (it being understood that, solely with the consent of the parties prescribed by Section 2.20 to be parties to an Incremental Term Loan Amendment, Incremental Term Loans may be included in Section 2.20 on substantially the same basis as the Revolving Loans are included immediately prior to such Incremental Term Loan Amendment), (v) (x) waive any condition set forth in Section 4.03 in respect of the making of a Revolving Loan without the written consent of the Required Revolving Lenders or (y) waive any condition set forth in Section 4.02 in respect of the making of a Term Loan without the written consent of the Required Term Lenders (it being understood and agreed that any amendment or waiver of, or any consent with respect to, any provision of this Agreement (other than any waiver expressly relating to Section 4.02 or Section 4.03, as applicable) or any other Loan Document, including any amendment of any affirmative or negative covenant set forth herein or in any other Loan Document or any waiver of a Default or an Event of Default, shall not be deemed to be a waiver of a condition set forth in Section 4.02 or Section 4.03, as applicable, for purposes of this Section 9.02), (vi) change any of the provisions of this Section or the definition of "Required Lenders", "Required Revolving Lenders", "Required Term Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender (or each Lender of such Class, as applicable) (it being understood that, solely with the consent of the parties prescribed by Section 2.20 to be parties to an Incremental Term Loan Amendment, Incremental Term Loans may be included in the determination of Required Lenders on substantially the same basis as the Commitments and the Loans are included immediately prior to such Incremental Term Loan Amendment), or (vii) release the Company from its obligations under Article X or, except as permitted by Section 9.14, all or substantially all of the Subsidiary Guarantors from their obligations under the Subsidiary Guaranty, in each case without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, any Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, such Issuing Bank or the Swingline Lender, as the case may be.

(c) Notwithstanding the foregoing, this Agreement and any other Loan Document may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrowers (x) to add one or more credit facilities (in addition to the Incremental Term Loans pursuant to an Incremental Term Loan Amendment) to this Agreement and to permit extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Loans, the initial Term Loans, Incremental Term Loans and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and Lenders.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender” or “such Lender,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a “Non-Consenting Lender”), then the Company may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Company and the Administrative Agent shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, (ii) each Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by such Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15, 2.17 and 2.17A, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender and (iii) such Non-Consenting Lender shall have received the outstanding principal amount of its Loans and participations in LC Disbursements. Each party hereto agrees that (i) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Company, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof.

(e) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrowers only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. (a) The Company shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (which, in the case of counsel, shall be limited to the reasonable fees, charges and disbursements of one primary counsel for the Administrative Agent and one local counsel in each applicable jurisdiction), in connection with the syndication and distribution (including, without limitation, via the internet or through a service such as Intralinks) of the credit facilities provided for herein, the preparation and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Banks in connection with the issuance, amendment or extension of any Letter of Credit or any demand for payment thereunder and (iii) all documented out-of-pocket expenses incurred by (x) the Administrative Agent, (y) any Issuing Bank or (z) after the occurrence and during the continuation of any Event of Default, any Lender (solely in the case of the foregoing clause (z) in connection with such Event of Default) (which, for purposes of this clause (iii), in the case of counsel, shall be limited to the reasonable fees, charges and disbursements of one primary counsel and one local counsel in each applicable jurisdiction for the Administrative Agent and one additional counsel for all Lenders other than the Administrative Agent and additional counsel in light of actual or potential conflicts of interest), in connection with the enforcement of its rights, or the Administrative Agent's protection of rights, in connection with this Agreement and any other Loan Document, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred by the Administrative Agent during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Company shall indemnify the Administrative Agent, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (which, in the case of counsel, shall be limited to the fees, charges and disbursements of (x) one primary counsel and one local counsel in each applicable jurisdiction for the Administrative Agent, (y) one additional counsel, and one additional local counsel in each applicable jurisdiction, for all Lenders other than the Administrative Agent and (z) additional counsel for affected Lenders in light of actual or potential conflicts of interest) incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) any Loan Document, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions, (ii) any Loan or Letter of Credit or the actual or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Company or any of its Subsidiaries, or any Environmental Liability related in any way to the Company or any of its Subsidiaries, or (iv) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether or not such claim, litigation, investigation or proceeding is brought by the Company or any other Loan Party or its or their respective equity holders, Affiliates, creditors or any other third Person, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from (x) the bad faith, gross negligence or willful misconduct of such Indemnitee or any of its Related Indemnified Parties, (y) the material breach by such Indemnitee or any of its Related Indemnified Parties of its express obligations under the applicable Loan Documents pursuant to a claim initiated by the Company or (z) any dispute solely among Indemnitees (not arising as a result of any act or omission by the Company or any of its Subsidiaries) other than claims against the Administrative Agent, any Issuing Bank, the Swingline Lender or any lead arranger or any bookrunner in its capacity as, or in fulfilling its role as, the Administrative Agent, an Issuing Bank, the Swingline Lender, a lead arranger, a bookrunner, an Issuing Bank or the Swingline Lender or any similar role under this Agreement. As used above, "Related Indemnified Party" of an Indemnitee means (1) any Controlling Person or Controlled Affiliate of such Indemnitee, (2) the respective directors, officers or employees of such Indemnitee or any of its Controlling Persons or Controlled Affiliates and (3) the respective agents, advisors and representatives of such Indemnitee or any of its Controlling Persons or Controlled Affiliates, in the case of this clause (3), acting on at the instructions of such Indemnitee, Controlling Person or such Controlled Affiliate; provided that each reference to a Controlling Person, Controlled Affiliate, director, officer or employee in this sentence pertains to a Controlling Person, Controlled Affiliate, director, officer or employee involved in the structuring, arrangement, negotiation or syndication of the credit facilities evidenced by this Agreement. This Section 9.03(b) shall not apply with respect to Taxes or UK Taxes other than any Taxes or UK Taxes that represent losses, claims or damages arising from any non-Tax or non-UK Tax claim.

(c) To the extent that the Company fails to pay any amount required to be paid by it to the Administrative Agent, any Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, and each Revolving Lender severally agrees to pay to such Issuing Bank or the Swingline Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount (it being understood that the Company's failure to pay any such amount shall not relieve the Company of any default in the payment thereof); provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, such Issuing Bank or the Swingline Lender in its capacity as such.

(d) To the extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet) other than damages that are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties. To the extent permitted by applicable law, no Indemnitee shall assert against any Loan Party and no Loan Party shall assert against any Indemnitee, and each Indemnitee and each Loan Party hereby waives, any claim on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; provided, that nothing contained in this sentence shall limit the Company's indemnity obligations under Section 9.03(b) to any Indemnitee in respect of claims made by third parties for any special, indirect, consequential or punitive damages.

(c) All amounts due under this Section shall be payable not later than thirty (30) days after written demand therefor.

SECTION 9.04. Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(A) (1) in the case of the Term Loan Commitments prior to the Term Loan Funding Date, the Company and (2) in the case of all other rights and obligations, the Company, provided, in the case of this clause (2), that (x) the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received written notice thereof and (y) no consent of the Company shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default under clause (a), (b), (h), (i) or (j) of Article VII has occurred and is continuing, any other assignee; and

(B) the Administrative Agent and if the assignee will have a Revolving Commitment, the Issuing Banks and the Swingline Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Company and the Administrative Agent otherwise consent, provided that no such consent of the Company shall be required if an Event of Default under clause (a), (b), (h), (i) or (j) of Article VII has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of \$3,500, such fee to be paid by either the assigning Lender or the assignee Lender or shared between such Lenders;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Company and its Affiliates and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including federal and state securities laws; and

(E) the prior written consent of each Swiss Borrower, if the assignee is not a Swiss Qualifying Bank (such consent not to be unreasonably withheld or delayed); provided, however, that the Swiss Borrowers are under no obligation whatsoever to consent to an assignment that would lead to a violation of the Swiss Non-Bank Rules; provided, further, that no consent of any Swiss Borrower shall be required for an assignment to an existing Lender or, if an Event of Default under clause (a), (b), (h), (i) or (j) of Article VII has occurred and is continuing, any other assignee.

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.



“Ineligible Institution” means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) the Company, any of its Subsidiaries or any of its Affiliates, or (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations (including, without limitation, the obligation to timely deliver the documentation described in Section 2.17(f) of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17, 2.17A and 9.03); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender’s having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of each Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive (absent manifest error), and the Borrowers, the Administrative Agent, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Company, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee’s completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(e) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of any Borrower, the Administrative Agent, the Issuing Banks or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant"), other than an Ineligible Institution, in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; (C) the Borrowers, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; and (D) each Participant shall be a Swiss Qualifying Bank or, if not, the prior written consent of each Swiss Borrower has been obtained (such consent not to be unreasonably withheld or delayed); provided that no Swiss Borrower shall consent to a participation that would be in violation of the Swiss Non-Bank Rules and provided, further, that no consent of any Swiss Borrower shall be required if an Event of Default under clause (a), (b), (h), (i) or (j) of Article VII has occurred and is continuing); provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 2.17A (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender and that the participating Lender shall ensure that the terms of the participation require the Participant to cooperate as required under Section 2.17A)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.15, 2.16, 2.17 or 2.17A, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Company's request and expense, to use reasonable efforts to cooperate with the Company to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(d) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under United States Treasury Regulations Section 5f.103-1(c) and Proposed Treasury Regulations Section 1.163-5(b) (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding (unless such Letter of Credit has been cash collateralized in an amount equal to 105% of the face amount of such Letter of Credit in the manner described in Section 2.06(j) or the applicable Borrower provides a backup letter of credit in such amount and otherwise in form and substance acceptable to the relevant Issuing Bank and the Administrative Agent in their discretion) and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17, 2.17A and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06. Counterparts; Integration; Electronic Execution; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and, except as provided in Section 1.05, supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, e-mailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent.

SECTION 9.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final and in whatever currency denominated) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Borrower or any Subsidiary Guarantor against any of and all of the Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured; provided that no amounts attributable to a Foreign Subsidiary shall be set off against, or in any way reduce, any obligation of the Company or any Domestic Subsidiary, and provided further, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the relevant Issuing Bank, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender shall notify the Company and the Administrative Agent of such set-off or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such set-off or application under this Section. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

(b) Each of the Lenders and the Administrative Agent hereby irrevocably and unconditionally agrees that, notwithstanding the governing law provisions of any applicable Loan Document, any claims brought against the Administrative Agent by any Lender relating to this Agreement, any other Loan Document or the consummation or administration of the transactions contemplated hereby or thereby shall be construed in accordance with and governed by the law of the State of New York.

(c) Each Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan), and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may (and any such claims, cross-claims or third party claims brought against the Administrative Agent or any of its Related Parties may only) be heard and determined in such Federal (to the extent permitted by law) or New York State court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(d) Each Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (c) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(e) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Each Subsidiary Borrower irrevocably designates and appoints the Company, as its authorized agent, to accept and acknowledge on its behalf, service of any and all process which may be served in any suit, action or proceeding of the nature referred to in Section 9.09(c) in any federal or New York State court sitting in New York City. The Company hereby represents, warrants and confirms that the Company has agreed to accept such appointment (and any similar appointment by a Subsidiary Guarantor which is a Foreign Subsidiary). Said designation and appointment shall be irrevocable by each such Subsidiary Borrower until all Loans, all reimbursement obligations, interest thereon and all other amounts payable by such Subsidiary Borrower hereunder and under the other Loan Documents shall have been paid in full in accordance with the provisions hereof and thereof and such Subsidiary Borrower shall have been terminated as a Borrower hereunder pursuant to Section 2.23. Each Subsidiary Borrower hereby consents to process being served in any suit, action or proceeding of the nature referred to in Section 9.09(c) in any federal or New York State court sitting in New York City by service of process upon the Company as provided in this Section 9.09(e); provided that, to the extent lawful and possible, notice of said service upon such agent shall be mailed by registered or certified air mail, postage prepaid, return receipt requested, to the Company and (if applicable to) such Subsidiary Borrower at its address set forth in the Borrowing Subsidiary Agreement to which it is a party or to any other address of which such Subsidiary Borrower shall have given written notice to the Administrative Agent (with a copy thereof to the Company). Each Subsidiary Borrower irrevocably waives, to the fullest extent permitted by law, all claim of error by reason of any such service in such manner and agrees that such service shall be deemed in every respect effective service of process upon such Subsidiary Borrower in any such suit, action or proceeding and shall, to the fullest extent permitted by law, be taken and held to be valid and personal service upon and personal delivery to such Subsidiary Borrower. To the extent any Subsidiary Borrower has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution of a judgment, execution or otherwise), each Subsidiary Borrower hereby irrevocably waives such immunity in respect of its obligations under the Loan Documents. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

**SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential) in connection with this Agreement and consummating the Transactions, (b) to the extent requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case the Administrative Agent, the Issuing Banks and the Lenders agree (except with respect to any audit or examination conducted by bank accountants or any self-regulatory authority or governmental or regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, rule or regulation, to inform the Company promptly thereof prior to the disclosure thereof), (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Borrower and its obligations, (g) with the prior written consent of the Company, (h) to the extent pertaining to this Agreement and routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry, to such data service providers or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis from a source other than the Company. For the purposes of this Section, "Information" means all information received from or on behalf of the Company or any Subsidiary relating to the Company or any Subsidiary or their respective businesses, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by the Company. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN THE IMMEDIATELY PRECEDING PARAGRAPH FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE COMPANY OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE COMPANY, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE COMPANY AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

SECTION 9.13. USA PATRIOT Act, etc. Each Lender that is subject to the requirements of the Patriot Act and the requirements of the Beneficial Ownership Regulation hereby notifies each Loan Party that pursuant to the requirements of the Patriot Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name, address and tax identification number of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Patriot Act and the Beneficial Ownership Regulation. Each Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable Canadian anti-money laundering, anti-terrorist financing, government sanction and “know your client” laws, the Lenders and the Administrative Agent may be required to obtain, verify and record information regarding such Borrower, its directors, authorized signing officers, direct or indirect shareholders or other Persons in Control of such Borrower, and the transactions contemplated hereby.

SECTION 9.14. Releases of Subsidiary Guarantors.

(a) A Subsidiary Guarantor shall automatically be released from its obligations under the Subsidiary Guaranty upon the consummation of any transaction permitted by this Agreement as a result of which such Subsidiary Guarantor ceases to be a Subsidiary; provided that, if so required by this Agreement, the Required Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise. In connection with any termination or release pursuant to this Section, the Administrative Agent shall (and is hereby irrevocably authorized by each Lender to) execute and deliver to any Loan Party, at such Loan Party’s expense, all documents that such Loan Party shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section shall be without recourse to or warranty by the Administrative Agent.

(b) Further, the Administrative Agent shall (and is hereby irrevocably authorized by each Lender to), upon the request of the Company, release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty if such Subsidiary Guarantor is not or is no longer a Material Domestic Subsidiary.

(c) At such time as the principal and interest on the Loans, all LC Disbursements, the fees, expenses and other amounts payable under the Loan Documents and the other Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank) shall have been paid in full in cash, the Commitments shall have been terminated and no Letters of Credit shall be outstanding (other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank) the Subsidiary Guaranty and all obligations (other than those expressly stated to survive such termination) of each Subsidiary Guarantor thereunder shall automatically terminate, all without delivery of any instrument or performance of any act by any Person.

SECTION 9.15. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.16. No Advisory or Fiduciary Responsibility. Each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that no Credit Party will have any obligations hereunder except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to such Borrower with respect to the Loan Documents and the transaction contemplated therein and not as a financial advisor or a fiduciary to, or an agent of, such Borrower or any other person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Borrower acknowledges and agrees that no Credit Party is advising such Borrower as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction. Each Borrower shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Credit Parties shall have no responsibility or liability to any Borrower with respect thereto.

Each Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, such Borrower, its Subsidiaries and other companies with which such Borrower or any of its Subsidiaries may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion.



In addition, each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which such Borrower or any of its Subsidiaries may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from the Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with the Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to such Borrower or any of its Subsidiaries, confidential information obtained from other companies.

SECTION 9.17. Several Liability. Notwithstanding anything to the contrary herein or in any other Loan Document, the Obligations of each Foreign Subsidiary Borrower are several and not joint and no Foreign Subsidiary Borrower shall be responsible for any other Borrower's failure to pay its Obligations hereunder.

SECTION 9.18. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 9.19. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

## ARTICLE X

### Company Guarantee

In order to induce the Lenders to extend credit to the Subsidiary Borrowers hereunder, but subject to the last sentence of this Article X, the Company hereby irrevocably and unconditionally guarantees, as a primary obligor and not merely as a surety, the payment when and as due of the Obligations. The Company further agrees that the due and punctual payment of such Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee hereunder notwithstanding any such extension or renewal of any such Obligation.

The Company waives presentment to, demand of payment from and protest to any Subsidiary of any of the Obligations, and also waives notice of acceptance of its obligations and notice of protest for nonpayment. The obligations of the Company under this Article X shall not be affected by (a) the failure of the Administrative Agent, any Issuing Bank or any Lender to assert any claim or demand or to enforce any right or remedy against any Subsidiary under the provisions of this Agreement, any other Loan Document or otherwise; (b) any extension or renewal of any of the Obligations; (c) any rescission, waiver, amendment or modification of, or release from, any of the terms or provisions of this Agreement, or any other Loan Document or agreement; (d) any default, failure or delay, willful or otherwise, in the performance of any of the Obligations; (e) the failure of the Administrative Agent to take any steps to perfect and maintain any security interest in, or to preserve any rights to, any security or collateral for the Obligations, if any; (f) any change in the corporate, partnership or other existence, structure or ownership of any Subsidiary or any other guarantor of any of the Obligations; (g) the enforceability or validity of the Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto or with respect to any collateral securing the Obligations or any part thereof, or any other invalidity or unenforceability relating to or against any Subsidiary or any other guarantor of any of the Obligations, for any reason related to this Agreement, any other Loan Document, or any provision of applicable law, decree, order or regulation of any jurisdiction purporting to prohibit the payment by such Borrower or any other guarantor of the Obligations, of any of the Obligations or otherwise affecting any term of any of the Obligations; or (h) any other act, omission or delay to do any other act which may or might in any manner or to any extent vary the risk of such Borrower or otherwise operate as a discharge of a guarantor as a matter of law or equity or which would impair or eliminate any right of such Borrower to subrogation.

The Company further agrees that its agreement under this Article X constitutes a guarantee of payment when due (whether or not any bankruptcy or similar proceeding shall have stayed the accrual or collection of any of the Obligations or operated as a discharge thereof) and not merely of collection, and waives any right to require that any resort be had by the Administrative Agent, any Issuing Bank or any Lender to any balance of any deposit account or credit on the books of the Administrative Agent, any Issuing Bank or any Lender in favor of any Subsidiary or any other Person.

The obligations of the Company under this Article X shall not be subject to any reduction, limitation, impairment or termination for any reason, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever, by reason of the invalidity, illegality or unenforceability of any of the Obligations, any impossibility in the performance of any of the Obligations or otherwise, in any such case, other than payment in full in case of the Obligations.

The Company further agrees that its obligations under this Article X shall constitute a continuing and irrevocable guarantee of all Obligations now or hereafter existing and shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation (including a payment effected through exercise of a right of setoff) is rescinded, or is or must otherwise be restored or returned by the Administrative Agent, any Issuing Bank or any Lender upon the insolvency, bankruptcy or reorganization of any Subsidiary or otherwise (including pursuant to any settlement entered into by a holder of Obligations in its discretion).

In furtherance of the foregoing and not in limitation of any other right which the Administrative Agent, any Issuing Bank or any Lender may have at law or in equity against any Subsidiary by virtue hereof, upon the failure of any Subsidiary to pay any Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, the Company hereby promises to and will, upon receipt of written demand by the Administrative Agent, any Issuing Bank or any Lender, forthwith pay, or cause to be paid, to the Administrative Agent, any Issuing Bank or any Lender in cash an amount equal to the unpaid principal amount of such Obligations then due, together with accrued and unpaid interest thereon. The Company further agrees that if payment in respect of any Obligation shall be due in a currency other than Dollars and/or at a place of payment other than New York, Chicago or any other Applicable Payment Office and if, by reason of any Change in Law, disruption of currency or foreign exchange markets, war or civil disturbance or other event, payment of such Obligation in such currency or at such place of payment shall be impossible or, in the reasonable judgment of the Administrative Agent, any Issuing Bank or any Lender, disadvantageous to the Administrative Agent, any Issuing Bank or any Lender in any material respect, then, at the election of the Administrative Agent, the Company shall make payment of such Obligation in Dollars (based upon the applicable Dollar Amount of such Obligation in effect on the date of payment) and/or in New York, Chicago or such other Applicable Payment Office as is designated by the Administrative Agent and, as a separate and independent obligation, shall indemnify the Administrative Agent, any Issuing Bank and any Lender against any losses or reasonable out-of-pocket expenses that it shall sustain as a result of such alternative payment.

Upon payment by the Company of any sums as provided above, all rights of the Company against any Subsidiary arising as a result thereof by way of right of subrogation or otherwise shall in all respects be subordinated and junior in right of payment to the prior indefeasible payment in full in cash of all the Obligations owed by such Subsidiary to the Administrative Agent, the Issuing Banks and the Lenders.

Nothing shall discharge or satisfy the liability of the Company under this Article X except the full performance and payment in cash of the Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank).

The Company hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under the Subsidiary Guaranty in respect of Specified Swap Obligations (provided, however, that the Company shall only be liable under this paragraph for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this paragraph or otherwise under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The Company intends that this paragraph constitute, and this paragraph shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each Subsidiary Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the day and year first above written.

HILLENBRAND, INC.,  
as the Company

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Vice President and Treasurer

HILLENBRAND LUXEMBOURG S.À R.L.,  
as a Subsidiary Borrower

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Category A Manager

COPERION K-TRON (SCHWEIZ) GMBH,  
as a Subsidiary Borrower

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Authorized Signatory

HILLENBRAND SWITZERLAND GMBH,  
as a Subsidiary Borrower

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Chairman of the Board of Managing Officers

BATESVILLE CANADA LTD.,  
as a Subsidiary Borrower

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Treasurer

Signature Page to Third Amended and Restated Credit Agreement  
Hillenbrand, Inc. *et al*

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JEFFREY RADER CANADA COMPANY,  
as a Subsidiary Borrower

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Assistant Treasurer

ROTEX EUROPE LTD,  
as a Subsidiary Borrower

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Authorized Signatory

COPERION GMBH,  
as a Subsidiary Borrower

By: /s/ Kimberly K. Ryan  
Name: Kimberly K. Ryan  
Title: Managing Director

HILLENBRAND GERMANY HOLDING GMBH,  
as a Subsidiary Borrower

By: /s/ Kimberly K. Ryan  
Name: Kimberly K. Ryan  
Title: Managing Director

Signature Page to Third Amended and Restated Credit Agreement  
Hillenbrand, Inc. *et al*

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JPMORGAN CHASE BANK, N.A.,  
individually as a Lender, as the Swingline Lender, as an Issuing Bank and as  
Administrative Agent

By: /s/ Lisa Whatley

Name: Lisa Whatley

Title: Managing Director

Jurisdiction of tax residence: USA

DTTP Scheme number: 013/M/0268710/DTTP

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
individually as a Lender, as an Issuing Bank and as a Co-Syndication Agent

By: /s/ James M. Stehlik

Name: James M. Stehlik

Title: Senior Vice President

Jurisdiction of tax residence: USA

DTTP Scheme number: 13/W/61173

CITIZENS BANK, N.A.,  
individually as a Lender, as an Issuing Bank and as a Co-Syndication Agent

By: /s/ Jonathan Gleit

Name: Jonathan Gleit

Title: Senior Vice President

Jurisdiction of tax residence: USA

DTTP Scheme number: 13/C/356159/DTTP

Signature Page to Third Amended and Restated Credit Agreement  
Hillenbrand, Inc. *et al*

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BMO HARRIS FINANCING, INC.,  
individually as a Lender, as an Issuing Bank and as a Co-Documentation Agent

By: /s/ Betsy Phillips  
Name: Betsy Phillips  
Title: Director

Jurisdiction of tax residence: USA  
DTTP Scheme number: 13/B/321430/DTTP

HSBC BANK USA, NATIONAL ASSOCIATION,  
individually as a Lender, as an Issuing Bank and as a Co-Documentation Agent

By: /s/ Graeme Robertson  
Name: Graeme Robertson  
Title: Managing Director

Jurisdiction of tax residence: USA  
DTTP Scheme number: 13/H/314375/DTTP

PNC BANK, NATIONAL ASSOCIATION,  
individually as a Lender, as an Issuing Bank and as a Co-Documentation Agent

By: /s/ Jeffrey L. Stein  
Name: Jeffrey L. Stein  
Title: Senior Vice President

Jurisdiction of tax residence: USA  
DTTP Scheme number: 13/P/63904/DTTP (UK)

Signature Page to Third Amended and Restated Credit Agreement  
Hillenbrand, Inc. *et al*

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U.S. BANK NATIONAL ASSOCIATION,  
individually as a Lender, as an Issuing Bank and as a Co-Documentation Agent

By: /s/ Kathleen D. Schurr  
Name: Kathleen D. Schurr  
Title: Vice President

Jurisdiction of tax residence: USA  
DTTP Scheme number: 13/U/62184

SUMITOMO MITSUI BANKING CORPORATION,  
individually as a Lender and as a Co-Documentation Agent

By: /s/ Michael Maguire  
Name: Michael Maguire  
Title: Executive Director

Jurisdiction of tax residence: Japan  
DTTP Scheme number: 43S274647

BRANCH BANKING AND TRUST COMPANY,  
as a Lender

By: /s/ Ryan T. Hamilton  
Name: Ryan T. Hamilton  
Title: Vice President

Jurisdiction of tax residence: USA  
DTTP Scheme number: 13/B/357522/DTTP

Signature Page to Third Amended and Restated Credit Agreement  
Hillenbrand, Inc. *et al*

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COMMERZBANK AG, NEW YORK BRANCH,  
as a Lender

By: /s/ Ignacio Campillo  
Name: Ignacio Campillo  
Title: Managing Director

By: /s/ John W. Deegan  
Name: John W. Deegan  
Title: Director

Jurisdiction of tax residence: Germany  
DTTP Scheme number: 7/C/25382/DTTP

FIFTH THIRD BANK,  
as a Lender

By: /s/ J. David IZARD  
Name: J. David IZARD  
Title: Senior Vice President

Jurisdiction of tax residence: USA  
DTTP Scheme number: 13/F/24267/DTTP

Signature Page to Third Amended and Restated Credit Agreement  
Hillenbrand, Inc. *et al*

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SCHEDULE 2.01

COMMITMENTS

<u>Lender</u>	<u>Revolving Commitment</u>	<u>Term Loan Commitment</u>
JPMORGAN CHASE BANK, N.A.	\$ 120,000,000.00	\$ 66,666,666.67
WELLS FARGO BANK, NATIONAL ASSOCIATION	\$ 120,000,000.00	\$ 66,666,666.67
CITIZENS BANK, N.A.	\$ 120,000,000.00	\$ 66,666,666.66
BMO HARRIS FINANCING, INC.	\$ 90,000,000.00	\$ 50,000,000.00
HSBC BANK USA, NATIONAL ASSOCIATION	\$ 90,000,000.00	\$ 25,000,000.00
PNC BANK, NATIONAL ASSOCIATION	\$ 90,000,000.00	\$ 50,000,000.00
U.S. BANK NATIONAL ASSOCIATION	\$ 90,000,000.00	\$ 50,000,000.00
SUMITOMO MITSUI BANKING CORPORATION	\$ 45,000,000.00	\$ 50,000,000.00
BRANCH BANKING AND TRUST COMPANY	\$ 45,000,000.00	\$ 25,000,000.00
COMMERZBANK AG, NEW YORK BRANCH	\$ 45,000,000.00	\$ 25,000,000.00
FIFTH THIRD BANK	\$ 45,000,000.00	\$ 25,000,000.00
<b>AGGREGATE REVOLVING COMMITMENTS</b>	<b>\$ 900,000,000.00</b>	<b>\$ 500,000,000.00</b>

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SCHEDULE 2.06

EXISTING LETTERS OF CREDIT

<u>Issuer</u>	<u>Beneficiary</u>	<u>LC #</u>	<u>Effective date</u>	<u>Termination date</u>	<u>\$</u>
JPMorgan NY	Discovery	S-857421	1/10/11	3/15/20	\$6,450,000.00
JPMorgan London	Lloyds Bank	4L4S-763522	7/10/14	8/7/20	GBP 33,000.00
JPMorgan London	Unicredit	4L4S-773233	10/6/15	10/1/18	EUR 544,402.93

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## SUBSIDIARIES

*All subsidiaries are wholly-owned Indiana entities, unless otherwise noted.*

*\*Indicates Material Domestic Subsidiary*

***BOLD** indicates Subsidiary Guarantor*

**Batesville Services, Inc.\***

**Process Equipment Group, Inc.\*, a New Jersey corporation**

Abel Equipos, S.A., a Spanish company

**Batesville Casket Company, Inc.\***

Batesville Interactive, Inc.

Batesville Logistics, Inc.

**Batesville Manufacturing, Inc.**

Batesville Casket de Mexico, S.A. de C.V., a Mexican corporation

Bengal Delaware Holding Corporation, a Delaware corporation

Acorn Development Group, Inc.

BCC JAWACDAH Holdings, LLC

BV Acquisition, Inc.

The Forethought Group, Inc.

MCP, Inc.

WCP, Inc.

Hillenbrand International Holding Corporation

NorthStar Industries, LLC

Coperion GmbH, a German company

Coperion de Mexico, S. De R.L. De C.V., a Mexican company

ABEL GmbH, a German company

Coperion International Trading (Shanghai) Co. Ltd., a Chinese company

Coperion K.K., a Japanese company

Coperion Ltd., a UK company

Coperion Machinery & Systems (Shanghai) Co. Ltd., a Chinese company

Coperion (Nanjing) Machinery Co., Ltd., a Chinese company

Coperion Pelletizing Technology GmbH, a German company

Coperion Pte. Ltd., a Singapore company

Coperion S.a.r.l., a French company

Coperion S.L., a Spanish company

Coperion S.r.l., an Italian company

OOO "Coperion", a Russian company

Coperion Ltda., a Brazilian company

Coperion N.V., a Belgium company

Coperion Capital GmbH, a German company

Hillenbrand Luxembourg S.à r.l., a Luxembourg company

Hillenbrand Germany Finance LLC & Co. KG, a German partnership

Hillenbrand Germany Holding GmbH, a German company

Coperion K-Tron (Schweiz) GmbH, a Swiss company  
Comercial TerraSource Global Limitada, a Chilean company  
TerraSource Global CIS Limited Liability Company, a Russian company  
Hillenbrand Asia, LLC, a Delaware limited liability company  
Hillenbrand Switzerland GmbH, a Swiss limited liability company  
Green Tree Manufacturing, LLC  
Modern Wood Products, LLC  
Batesville Canada, Ltd., a Canadian corporation  
Industrias Arga, S.A. de C.V., a Mexican corporation  
Global Products Co., S.A. de C.V., a Mexican corporation  
NADCO, S.A. de C.V., a Mexican corporation  
**Coperion Corporation\*, a Delaware corporation**  
Hillenbrand AP, LLC, a Delaware limited liability company  
**K-Tron Investment Co.\*, a Delaware corporation**  
K-Tron Technologies, Inc., a Delaware corporation  
**Rotex Global, LLC\*, a Delaware limited liability company**  
Abel Pumps, L.P., a Delaware limited partnership  
**Red Valve Company, Inc.\*, a Pennsylvania corporation**  
**Coperion K-Tron Pitman, Inc., a Delaware corporation**  
**TerraSource Global Corporation\*, a Delaware corporation**  
Coperion K-Tron Salina, Inc., a Delaware corporation  
BC Canada Company, ULC, a Nova Scotia Unlimited Liability Corporation  
TerraSource Global (Beijing) Co., Ltd., a Chinese company  
Hillenbrand Europe, LLC, a Delaware limited liability company  
Coperion K-Tron Asia Pte Ltd, a Singapore company  
K-Tron China Limited, a Hong Kong corporation  
Coperion K-Tron Deutschland GmbH, a German company  
Coperion K-Tron Great Britain Limited, a UK company  
Coperion K-Tron (Shanghai) Co Ltd, a Chinese FICE  
Rotex Global (Hong Kong) Ltd., a Hong Kong corporation  
Rotex Europe Ltd, a UK corporation  
Wuxi K-Tron Colormax Machinery Co., Ltd., a Chinese WFOE  
PEG (Wuxi) Manufacturing Co., Ltd., a Chinese company  
K-Tron Colormax Ltd, a UK corporation  
K-Tron PCS Ltd, a UK corporation  
Jeffrey Rader AB, a Swedish corporation  
Jeffrey Rader Canada Company, a Canadian company  
Rotex Japan Limited, a UK corporation  
PEG Process Equipment India LLP, an Indian partnership  
TerraSource Global Machinery Equipment (Beijing) Co., Ltd., a Chinese company  
BM&M Screening Solutions Ltd., a Canadian company

#### Joint Ventures

Coperion Ideal Ptd. Ltd., an Indian company - 51% owned by Coperion GmbH  
Coperion Middle East Co. Ltd., a Saudi Arabia company - 51% owned by Coperion GmbH

SCHEDULE 6.01

EXISTING LIENS

Restricted cash:

<i>Entity</i>	<i>Amount (USD equivalent)</i>	<i>Bank</i>	<i>Location</i>
Jeffrey Rader AB	\$0.7m	Handelsbanken	Sweden

SCHEDULE 6.03

EXISTING INDEBTEDNESS

<u>Description</u>	<u>Interest Rate</u>	<u>Maturity</u>	<u>Amount</u>
Senior Unsecured Notes, issued pursuant to the Indenture between Hillenbrand, Inc. and U.S. Bank National Association as trustee, dated as of July 9, 2010 and that certain Supplemental Indenture, dated as of January 10, 2013 by and among Hillenbrand, Inc, Batesville Casket Company, Inc., Batesville Manufacturing, Inc., Batesville Services, Inc., Coperion Corporation, K-Tron Investment Co., Terrasource Global Corporation, Process Equipment Group, Inc., Rotex Global, LLC, and U.S. Bank National Association, as trustee and that certain Supplemental Indenture No. 2, dated as of April 16, 2016, by and among Hillenbrand, Inc., Red Valve Company, Inc. and U.S. Bank National Association, as trustee.	5.50% (coupon)	7/15/20	\$150,000,000 (face value)

**Other Agreements:**

The Series A Senior Notes up to a maximum principal amount of \$200,000,000 and related indebtedness issued pursuant to that certain Private Shelf Agreement dated as of December 6, 2012, by and among Hillenbrand, Inc. and PGIM, Inc. (f/k/a Prudential Investment Management, Inc.), as amended, restated, amended and restated, supplemented or otherwise modified from time to time, including the \$100,000,000 4.6% Series A Senior Notes issued December 15, 2014 thereunder.

Indebtedness incurred pursuant to the Syndicated L/G Facility Agreement dated as of March 8, 2018, by and among Hillenbrand, Inc., and certain of its subsidiaries, and Commerzbank Aktiengesellschaft, as arranger and lender, and various other lenders named therein, as amended, restated, amended and restated, supplemented or otherwise modified, from time to time.



EXHIBIT A

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between *[Insert name of Assignor]* (the "Assignor") and *[Insert name of Assignee]* (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
[and is an Affiliate/Approved Fund of [identify Lender]<sup>1</sup>]
3. Borrowers: Hillenbrand, Inc. and certain Subsidiary Borrowers
4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement
5. Credit Agreement: The Third Amended and Restated Credit Agreement dated August 28, 2019, among Hillenbrand, Inc., the Subsidiary Borrowers from time to time parties thereto, the Lenders parties thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, and the other agents parties thereto

<sup>1</sup> Select as applicable.

6. Assigned Interest:

Facility Assigned <sup>2</sup>	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans <sup>3</sup>
	\$	\$	%
	\$	\$	%
	\$	\$	%

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrowers, the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including federal and state securities laws.

The Assignee confirms by checking the relevant box that the person beneficially entitled to interest payable to that Assignee in respect of an advance under a Loan Document is:

- not a Qualifying Lender;
- a Qualifying Lender (other than a Treaty Lender); or
- a Treaty Lender;

and, if applicable, is:

- a company resident in the United Kingdom for United Kingdom tax purposes; or
- a partnership each member of which is:
  - (i) a company so resident in the United Kingdom; or
  - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which is required to bring into account in computing its chargeable profits (for the purposes of section 19 of the Corporation Tax Act 2009) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the Corporation Tax Act 2009; or
- a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of an advance under a Loan Document in computing the chargeable profits (for the purposes of section 19 of the Corporation Tax Act 2009) of that company;

<sup>2</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g., "Revolving Commitment", "Term Loan Commitment", etc.).

<sup>3</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

and, if applicable, is:

a Swiss Qualifying Bank; or

not a Swiss Qualifying Bank.

[The Assignee confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]), that it is tax resident in [ <sup>4</sup> ] and that it wishes that scheme to apply to the Agreement.]<sup>5</sup>

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title:

Consented to and Accepted:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent[, as an Issuing Bank and as Swingline Lender]<sup>6</sup>

By: \_\_\_\_\_  
Title:

[OTHER ISSUING BANKS]<sup>7</sup>

<sup>4</sup> Insert jurisdiction of tax residence.

<sup>5</sup> Include if Assignee holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

<sup>6</sup> To be added only if the consent of the Issuing Banks and the Swingline Lender is required by the terms of the Credit Agreement.

<sup>7</sup> To be added only if the consent of the Issuing Banks is required by the terms of the Credit Agreement.

[Consented to:]<sup>8</sup>

HILLENBRAND, INC.

By: \_\_\_\_\_  
Title:

[Consented to:]<sup>9</sup>

[Swiss Borrower]

By: \_\_\_\_\_  
Title:

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<sup>8</sup> To be added only if the consent of the Company is required by the terms of the Credit Agreement.

<sup>9</sup> To be added only if the consent of the Swiss Borrower is required by the terms of the Credit Agreement.

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Company, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, (iv) any requirements under applicable law for the Assignee to become a lender under the Credit Agreement or to charge interest at the rate set forth therein from time to time or (v) the performance or observance by the Company, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement and under applicable law that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent, any Arranger, the Assignor or any other Lender or any of their respective Related Parties, and (vi) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, any Arranger, the Assignor or any other Lender or any of their respective Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

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3 . General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and the Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Approved Electronic Platform shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT B-1

FORM OF BORROWING REQUEST

JPMorgan Chase Bank, N.A.,  
as Administrative Agent  
for the Lenders referred to below

[10 South Dearborn  
Chicago, Illinois 60603  
Attention: Pastell Jenkins  
Facsimile: (888) 292-9533]<sup>10</sup>

With a copy to:

10 South Dearborn, 9<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attention: Erik Barragan  
Facsimile: (877) 221-4010

Re: Hillenbrand, Inc.

[Date]

Ladies and Gentlemen:

Reference is hereby made to the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Hillenbrand, Inc. (the "Company"), the Subsidiary Borrowers from time to time party thereto, the Lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement. The [undersigned Borrower][Company, on behalf of [Subsidiary Borrower],] hereby gives you notice pursuant to Section 2.03 of the Credit Agreement that it requests a [Term Loan] [Revolving] Borrowing under the Credit Agreement, and in that connection the [undersigned Borrower][Company, on behalf of [Subsidiary Borrower],] specifies the following information with respect to such [Term Loan] [Revolving] Borrowing requested hereby:

1. Name of Borrower: \_\_\_\_\_
2. The requested Borrowing is in respect of the [Term Loan][Revolving] Commitment
3. Aggregate principal amount of Borrowing:<sup>11</sup> \$ \_\_\_\_\_
4. Date of Borrowing (which shall be a Business Day): \_\_\_\_\_
5. Type of Borrowing (ABR or Eurocurrency or, in the case of a Canadian Revolving Borrowing, BA Equivalent): \_\_\_\_\_

<sup>10</sup> If request is in respect of Revolving Loans in a Foreign Currency (other than a Canadian Revolving Loan) or a Designated Loan, replace this address with the London address from Section 9.01(a)(ii), and if request is in respect of Canadian Revolving Loans, replace this address with the Toronto address from Section 9.01(a)(ii).

<sup>11</sup> Not less than applicable amounts specified in Section 2.02(c).

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6. Interest Period and the last day thereof (if a Eurocurrency Borrowing or a BA Equivalent Borrowing)<sup>12</sup> \_\_\_\_\_

7. Agreed Currency: \_\_\_\_\_

8. Location and number of the applicable Borrower's account or any other account agreed upon by the Administrative Agent and such Borrower to which proceeds of Borrowing are to be disbursed: \_\_\_\_\_

<sup>12</sup> Which must comply with the definition of "Interest Period" and end not later than the Maturity Date.

[Signature Page Follows]



The Borrower hereby represents and warrants that the conditions to lending specified in Section[s] [4.01 and] <sup>1</sup> [4.02] 4.03 of the Credit Agreement are satisfied as of the date hereof.

Very truly yours,

[HILLENBRAND, INC.][SUBSIDIARY BORROWER],  
as a Borrower

By: \_\_\_\_\_  
Name:  
Title:

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<sup>1</sup> To be included only for Borrowings on the Effective Date.

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EXHIBIT B-2

FORM OF INTEREST ELECTION REQUEST

JPMorgan Chase Bank, N.A.,  
as Administrative Agent  
for the Lenders referred to below

[10 South Dearborn  
Chicago, Illinois 60603  
Attention: Pastell Jenkins  
Facsimile: (888) 292-9533]<sup>1</sup>

Re: Hillenbrand, Inc.

[Date]

Ladies and Gentlemen:

Reference is hereby made to the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Hillenbrand, Inc. (the "Company"), the Subsidiary Borrowers party thereto from time to time, the financial institutions party thereto from time to time as Lenders (the "Lenders"), and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent") for the Lenders. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement. The [undersigned Borrower] [Company, on behalf of [Subsidiary Borrower],] hereby gives you notice pursuant to Section 2.08 of the Credit Agreement that it requests to [convert][continue] an existing [Term Loan][Revolving] Borrowing under the Credit Agreement, and in that connection the [undersigned Borrower][Company, on behalf of [Subsidiary Borrower],] specifies the following information with respect to such [conversion][continuation] requested hereby:

1. List Borrower, date, Type, Class, principal amount, Agreed Currency and Interest Period (if applicable) of existing Borrowing: \_\_\_\_\_
2. Aggregate principal amount of resulting Borrowing: \_\_\_\_\_
3. Effective date of interest election (which shall be a Business Day): \_\_\_\_\_
4. Type of Borrowing (ABR or Eurocurrency or, in the case of a Canadian Revolving Borrowing, BA Equivalent): \_\_\_\_\_

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<sup>1</sup> If request is in respect of Revolving Loans in a Foreign Currency (other than a Canadian Revolving Loan) or a Designated Loan, replace this address with the London address from Section 9.01(a)(ii), and if request is in respect of Canadian Revolving Loans, replace this address with the Toronto address from Section 9.01(a)(ii).

---

5. Interest Period and the last day thereof (if a Eurocurrency Borrowing or a BA Equivalent Borrowing)<sup>2</sup> \_\_\_\_\_

6. Agreed Currency: \_\_\_\_\_

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<sup>2</sup> Which must comply with the definition of "Interest Period" and end not later than the Maturity Date.

[Signature Page Follows]

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Very truly yours,

[HILLENBRAND, INC.][SUBSIDIARY BORROWER],  
as a Borrower

By: \_\_\_\_\_  
Name:  
Title:

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EXHIBIT C

FORM OF INCREASING LENDER SUPPLEMENT

INCREASING LENDER SUPPLEMENT, dated \_\_\_\_\_, 20\_\_ (this "Supplement"), by and among each of the signatories hereto, supplements the Third Amended and Restated Credit Agreement dated as of August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Hillenbrand, Inc. (the "Company"), the Subsidiary Borrowers from time to time party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

WITNESSETH

WHEREAS, pursuant to Section 2.20 of the Credit Agreement, the Company has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the aggregate Revolving Commitments and/or enter into one or more tranches of Incremental Term Loans under the Credit Agreement by requesting one or more Lenders to increase the amount of its Revolving Commitment and/or to participate in such a tranche;

WHEREAS, the Company has given notice to the Administrative Agent of its intention to [increase the aggregate Revolving Commitments] [and] [enter into a tranche of Incremental Term Loans] pursuant to such Section 2.20; and

WHEREAS, pursuant to Section 2.20 of the Credit Agreement, the undersigned Increasing Lender now desires to [increase the amount of its Revolving Commitment] [and] [participate in a tranche of Incremental Term Loans] under the Credit Agreement by executing and delivering to the Company and the Administrative Agent this Supplement;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Increasing Lender agrees, subject to the terms and conditions of the Credit Agreement, that on the date of this Supplement it shall [have its Revolving Commitment increased by \$[\_\_\_\_\_], thereby making the aggregate amount of its total Revolving Commitments equal to \$[\_\_\_\_\_]] [and] [participate in a tranche of Incremental Term Loans with a commitment amount equal to \$[\_\_\_\_\_]] with respect thereto].

2. The Company hereby represents and warrants that no Default or Event of Default has occurred and is continuing on and as of the date hereof.

3. Capitalized terms used but not defined herein but defined in the Credit Agreement shall have their defined meanings when used herein.

4. This Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

5. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document. Delivery of an executed counterpart of a signature page of this Supplement by facsimile or other electronic imaging shall be effective as delivery of a manually executed counterpart of this Supplement.

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IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF INCREASING LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first written above:

HILLENBRAND, INC.

By: \_\_\_\_\_  
Name:  
Title:

[ALL OTHER BORROWERS]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged as of the date first written above:

JPMORGAN CHASE BANK, N.A.  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT D

FORM OF AUGMENTING LENDER SUPPLEMENT

This AUGMENTING LENDER SUPPLEMENT, dated \_\_\_\_\_, 20\_\_ (this "Supplement"), by and among the signatories hereto, supplements the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Hillenbrand, Inc. (the "Company"), the Subsidiary Borrowers from time to time party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

WITNESSETH

WHEREAS, the Credit Agreement provides in Section 2.20 thereof that any bank, financial institution or other entities may [extend Revolving Commitments] [and] [participate in tranches of Incremental Term Loans] under the Credit Agreement subject to the approval of the Company and the Administrative Agent, by executing and delivering to the Company and the Administrative Agent a supplement to the Credit Agreement in substantially the form of this Supplement; and

WHEREAS, the undersigned Augmenting Lender was not an original party to the Credit Agreement but now desires to become a party thereto;

NOW, THEREFORE, each of the parties hereto hereby agrees as follows:

1. The undersigned Augmenting Lender agrees to be bound by the provisions of the Credit Agreement and agrees that it shall, on the date of this Supplement, become a Lender for all purposes of the Credit Agreement to the same extent as if originally a party thereto, with a [Revolving Commitment of \$[\_\_\_\_\_]] [and] [a commitment with respect to Incremental Term Loans of \$[\_\_\_\_\_]].

2. The undersigned Augmenting Lender (a) represents and warrants that it is legally authorized to enter into this Supplement and to consummate the transactions contemplated hereby and to become a Lender under this Credit Agreement; (b) confirms that it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and has reviewed such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Supplement; (c) agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement or any other instrument or document furnished pursuant hereto or thereto; (d) appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under the Credit Agreement or any other instrument or document furnished pursuant hereto or thereto as are delegated to the Administrative Agent by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Credit Agreement and will perform in accordance with its terms all the obligations which by the terms of the Credit Agreement are required to be performed by it as a Lender.

3. The undersigned's address for notices for the purposes of the Credit Agreement is as follows:

[\_\_\_\_\_]

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4. The Company hereby represents and warrants that no Default or Event of Default has occurred and is continuing on and as of the date hereof.

5. The Augmenting Lender (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Augmenting Lender Supplement and to consummate the transactions contemplated hereby, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to become a Lender, (iii) from and after the date hereof, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Augmenting Lender Supplement on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Augmenting Lender Supplement is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Augmenting Lender; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

6. The Augmenting Lender confirms by checking the relevant box that the person beneficially entitled to interest payable to that Assignee in respect of an advance under a Loan Document is:

- not a Qualifying Lender;
- a Qualifying Lender (other than a Treaty Lender); or
- a Treaty Lender;

and, if applicable, is:

- a company resident in the United Kingdom for United Kingdom tax purposes; or
- a partnership each member of which is:
  - (i) a company so resident in the United Kingdom; or
  - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which is required to bring into account in computing its chargeable profits (for the purposes of section 19 of the Corporation Tax Act 2009) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the Corporation Tax Act 2009; or
- a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of an advance under a Loan Document in computing the chargeable profits (for the purposes of section 19 of the Corporation Tax Act 2009) of that company.



[7. The Augmenting Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]), that it is tax resident in [ ]<sup>16</sup> and that it wishes that scheme to apply to the Agreement.]<sup>17</sup>

8. Capitalized terms used but not defined here but defined in the Credit Agreement shall have their defined meanings when used herein.

9. This Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

10. This Supplement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document. Delivery of an executed counterpart of a signature page of this Supplement by facsimile or other electronic imaging shall be effective as delivery of a manually executed counterpart of this Supplement.

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<sup>16</sup> Insert jurisdiction of tax residence.

<sup>17</sup> Include if Assignee holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be executed and delivered by a duly authorized officer on the date first above written.

[INSERT NAME OF AUGMENTING LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to as of the date first written above:

HILLENBRAND, INC.

By: \_\_\_\_\_  
Name:  
Title:

[ALL OTHER BORROWERS]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged as of the date first written above:

JPMORGAN CHASE BANK, N.A.  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT E

LIST OF CLOSING DOCUMENTS

**HILLENBRAND, INC.  
CERTAIN SUBSIDIARY BORROWERS**

**CREDIT FACILITIES**

August 28, 2019

LIST OF CLOSING DOCUMENTS<sup>1</sup>

A. **LOAN DOCUMENTS**

1. Third Amended and Restated Credit Agreement (the "Credit Agreement") by and among Hillenbrand, Inc., an Indiana corporation (the "Company"), the Subsidiary Borrowers from time to time party thereto (collectively with the Company, the "Borrowers"), the institutions from time to time party thereto as lenders (the "Lenders") and JPMorgan Chase Bank, N.A., in its capacity as administrative agent for itself and the other Lenders (the "Administrative Agent"), evidencing a revolving credit facility to the Borrowers from the Revolving Lenders in an aggregate principal amount of \$900,000,000 and a term loan facility to the Company from the Term Lenders in an aggregate principal amount of \$500,000,000.

SCHEDULES

<i>Schedule 2.01</i>	--	<i>Commitments</i>
<i>Schedule 2.06</i>	--	<i>Existing Letters of Credit</i>
<i>Schedule 3.01</i>	--	<i>Subsidiaries</i>
<i>Schedule 6.01</i>	--	<i>Existing Liens</i>
<i>Schedule 6.03</i>	--	<i>Existing Indebtedness</i>

EXHIBITS

Exhibit A	--	Form of Assignment and Assumption
Exhibit B-1	--	Form of Borrowing Request
Exhibit B-2	--	Form of Interest Election Request
Exhibit C	--	Form of Increasing Lender Supplement
Exhibit D	--	Form of Augmenting Lender Supplement
Exhibit E	--	List of Closing Documents
Exhibit F-1	--	Form of Borrowing Subsidiary Agreement
Exhibit F-2	--	Form of Borrowing Subsidiary Termination
Exhibit G	--	Form of Subsidiary Guaranty
Exhibit H-1	--	Form of U.S. Tax Certificate (Foreign Lenders That Are Not Partnerships)
Exhibit H-2	--	Form of U.S. Tax Certificate (Foreign Participants That Are Not Partnerships)
Exhibit H-3	--	Form of U.S. Tax Certificate (Foreign Participants That Are Partnerships)

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<sup>1</sup> Each capitalized term used herein and not defined herein shall have the meaning assigned to such term in the Credit Agreement. Items appearing in **bold** and *italics* shall be prepared and/or provided by the Company and/or Company's counsel.

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Exhibit H-4	--	Form of U.S. Tax Certificate (Foreign Lenders That Are Partnerships)
Exhibit I-1	--	Form of Revolving Loan Note
Exhibit I-2	--	Form of Term Loan Note
Exhibit J	--	Form of Solvency Certificate

2. Notes executed by the Borrowers in favor of each of the Lenders, if any, which has requested a note pursuant to Section 2.10(e) of the Credit Agreement.
3. Second Amended and Restated Guaranty executed by the initial Subsidiary Guarantors (collectively with the Borrowers, the "Loan Parties") in favor of the Administrative Agent.

#### B. CORPORATE DOCUMENTS

4. *Certificate of the Secretary or an Assistant Secretary or any other authorized signatory of each Loan Party certifying (i) that there have been no changes in the Certificate of Incorporation or other charter document of such Loan Party, as attached thereto and as certified as of a recent date by the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization, since the date of the certification thereof by such governmental entity (or any corresponding certification customary in the applicable jurisdiction for such Loan Party), (ii) the By-Laws or other applicable organizational document, as attached thereto, of such Loan Party as in effect on the date of such certification, (iii) resolutions of the Board of Directors or other governing body of such Loan Party authorizing the execution, delivery and performance of each Loan Document to which it is a party, (iv) in respect of each Loan Party incorporated under the laws of Luxembourg, (A) an excerpt (extrait) issued by the Luxembourg Trade and Companies Register and dated no earlier than one (1) Business Day prior to the Effective Date, (B) a non-registration certificate (certificat de non-enregistrement d'une décision judiciaire) issued by the Luxembourg Trade and Companies Register and dated no earlier than one (1) Business Day prior to the Effective Date and (C) a domiciliation certificate issued by the domiciliation agent of such Loan Party, and (v) the names and true signatures of the incumbent officers of each Loan Party authorized to sign the Loan Documents to which it is a party, and (in the case of each Borrower) authorized to request a Borrowing or the issuance of a Letter of Credit under the Credit Agreement and (v) in respect of each Loan Party incorporated under the laws of Germany, (A) an electronic commercial register excerpt of recent date (Handelsregisterauszug), (B) the articles of association (Gesellschaftsvertrag), a list of its shareholders (Gesellschafterliste) and, if applicable, any by-laws.*
5. *Good Standing Certificate (or analogous documentation if applicable) for each Loan Party from the Secretary of State (or analogous governmental entity) of the jurisdiction of its organization, to the extent generally available in such jurisdiction.*

#### C. OPINIONS

6. *Opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Loan Parties.*
7. *Opinion of Faegre Baker Daniels LLP, special Indiana counsel for the Loan Parties.*
8. *Opinion of Baker & McKenzie, Luxembourg counsel for the Loan Parties.*

9. *Opinion of Baker & McKenzie Zurich, Swiss counsel for the Loan Parties.*
10. *Opinion of Osler Hoskin & Harcourt LLP, Canadian counsel for the Loan Parties.*
11. *Opinion of McInnes Cooper, Nova Scotia counsel for the Loan Parties.*
12. *Opinion of Skadden, Arps, Slate, Meagher & Flom (UK) LLP, UK counsel for the Loan Parties.*
13. *Opinion of Skadden, Arps, Slate, Meagher & Flom LLP, German counsel for the Loan Parties.*

**D. CLOSING CERTIFICATES AND MISCELLANEOUS FOR EFFECTIVE DATE**

14. *A Certificate, dated as of the Effective Date and signed by the President, a Vice President or a Financial Officer of the Company, certifying the following (in such officer's capacity as an officer and not in any individual capacity): (i) all of the representations and warranties of the Company set forth in the Credit Agreement are true and correct in all material respects (provided that any representation or warranty qualified by materiality or Material Adverse effect is true and correct in all respects), except that to the extent that such representation or warranty expressly relates to an earlier date, such representation or warranty is true and correct as of such earlier date and (ii) no Default or Event of Default has occurred and is then continuing.*

**E. CLOSING CERTIFICATES AND MISCELLANEOUS FOR TERM LOAN FUNDING DATE**

15. *A Certificate, dated as of the Term Loan Funding Date and signed by the President, a Vice President or a Financial Officer of the Company, certifying the following (in such officer's capacity as an officer and not in any individual capacity, based on such officer's review of the Credit Agreement and based on such officer's opinion that such officer has made, or has caused to be made under such officer's supervision, such examination or investigation as is reasonably necessary to enable such officer to certify as to the matters below):*
  - (i) the Bengal Acquisition shall, substantially concurrently with the funding of the Term Loans under the Credit Agreement, be consummated pursuant to the Bengal Acquisition Agreement, and attached to such certificate is the Bengal Acquisition Agreement and any amendments, modifications, supplements or waivers or consents thereto;*
  - (ii) the Bengal Refinancing has been consummated or will be consummated substantially concurrently with the funding of the Term Loans;*
  - (iii) the Bengal Acquisition Agreement Representations and the Specified Representations are true and correct in all material respects on and as of the Term Loan Funding Date (provided that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such date); and*
  - (iv) since July 12, 2019, there has not occurred any effect, change, development, event, circumstance, occurrence, condition, fact or state of facts that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on Bengal (it being understood and agreed that for purposes of this clause (iv), the term "Material Adverse Effect" shall be defined in the same manner as the definition of "Material Adverse Effect" set forth in the Bengal Acquisition Agreement).*

16. *A Solvency Certificate, dated as of the Term Loan Funding Date and signed by the chief financial officer of the Company, substantially in the form of Exhibit J to the Credit Agreement.*
17. *The following financial statements: (i) audited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of (A) the Company and its Subsidiaries for the three most recently completed fiscal years ended at least 90 days before the Term Loan Funding Date and (B) Bengal and its subsidiaries for the most recently completed fiscal year ended at least 90 days before the Term Loan Funding Date and (ii) unaudited consolidated balance sheets and related statements of income, stockholders' equity and cash flows of each of the Company and its Subsidiaries and Bengal and its subsidiaries, for each subsequent fiscal quarter ended at least 60 days before the Term Loan Funding Date and the corresponding period of the prior fiscal year; provided that (x) filing of the required financial statements on form 10-K and/or form 10-Q, as applicable, by the Company or Bengal, respectively will satisfy the foregoing applicable requirements and (y) the required financial statements on form 10-K and/or form 10-Q, as applicable, that have been filed on or prior to the date hereof by (1) the Company has satisfied the foregoing applicable requirements with respect to (I) the fiscal years ended September 31, 2016, September 31, 2017 and September 31, 2018 and (II) the fiscal quarters ended December 31, 2018, March 31, 2019 and June 30, 2019 and (2) Bengal has satisfied the foregoing applicable requirements with respect to (I) the fiscal year ended December 31, 2018 and (II) the fiscal quarters ended March 31, 2019 and June 30, 2019.*
18. *A pro forma consolidated balance sheet and related pro forma consolidated statement of income of the Company and its Subsidiaries as of and for the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period ended at least 45 days prior to the Term Loan Funding Date (or 90 days prior to the Term Loan Funding Date in case such four fiscal quarter period is the end of the Company's fiscal year), prepared after giving effect to the Bengal Transactions (including the acquisition of Bengal) as if the Bengal Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such statement of income).*

EXHIBIT F-1

[FORM OF]

BORROWING SUBSIDIARY AGREEMENT

This BORROWING SUBSIDIARY AGREEMENT dated as of [\_\_\_\_], is entered into by Hillenbrand, Inc., an Indiana corporation (the "Company"), [Name of Subsidiary Borrower], a [\_\_\_\_\_] (the "New Borrowing Subsidiary"), and JPMorgan Chase Bank, N.A. as Administrative Agent (the "Administrative Agent").

Reference is hereby made to the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Company, the Subsidiary Borrowers from time to time party thereto, the Lenders from time to time party thereto and JPMorgan Chase Bank, N.A. as Administrative Agent. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. Under the Credit Agreement, the Lenders have agreed, upon the terms and subject to the conditions therein set forth, to make Loans to certain Subsidiary Borrowers (collectively with the Company, the "Borrowers"), and the Company and the New Borrowing Subsidiary desire that the New Borrowing Subsidiary become a Subsidiary Borrower. In addition, the New Borrowing Subsidiary hereby authorizes the Company to act on its behalf as and to the extent provided for in Article II of the Credit Agreement.

Each of the Company and the New Borrowing Subsidiary represents and warrants that the representations and warranties of the Company in the Credit Agreement relating to the New Borrowing Subsidiary and this Agreement are true and correct in all material respects (provided that any representation or warranty qualified by materiality or Material Adverse Effect shall be true and correct in all respects) on and as of the date hereof (except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date). [The Company and the New Borrowing Subsidiary further represent and warrant that the execution, delivery and performance by the New Borrowing Subsidiary of the transactions contemplated under this Agreement and the use of any of the proceeds raised in connection with this Agreement will not contravene or conflict with, or otherwise constitute unlawful financial assistance under, Sections 677 to 683 (inclusive) of the United Kingdom Companies Act 2006 of England and Wales (as amended).]<sup>1</sup>

The Company agrees that the Guarantee of the Company contained in the Credit Agreement will apply to the Obligations of the New Borrowing Subsidiary. Upon execution of this Agreement by each of the Company, the New Borrowing Subsidiary and the Administrative Agent, the New Borrowing Subsidiary shall be, until the execution of a Borrowing Subsidiary Termination with respect to the New Borrowing Subsidiary, a party to the Credit Agreement and shall constitute a "Subsidiary Borrower" for all purposes thereof, and the New Borrowing Subsidiary hereby agrees to be bound by all provisions of the Credit Agreement.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

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<sup>1</sup> To be included only if a New Borrowing Subsidiary will be a Borrower organized under the laws of England and Wales.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers as of the date first appearing above.

HILLENBRAND, INC.

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF NEW BORROWING SUBSIDIARY]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged as of the date first written above:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

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BORROWING SUBSIDIARY TERMINATION

JPMorgan Chase Bank, N.A.  
as Administrative Agent  
for the Lenders referred to below  
[10 South Dearborn Street]  
[Chicago, Illinois 60603]  
Attention: [\_\_\_\_\_]

[Date]

Ladies and Gentlemen:

The undersigned, Hillenbrand, Inc. (the "Company"), refers to the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Company, the Subsidiary Borrowers from time to time party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent and the other agents party thereto. Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

The Company hereby terminates the status of [\_\_\_\_\_] (the "Terminated Borrowing Subsidiary") as a Subsidiary Borrower under the Credit Agreement. [The Company represents and warrants that no Loans made to the Terminated Borrowing Subsidiary are outstanding as of the date hereof and that all amounts due and payable by the Terminated Borrowing Subsidiary in respect of interest and/or fees (and, to the extent notified by the Administrative Agent or any Lender, any other amounts payable under the Credit Agreement) pursuant to the Credit Agreement have been paid in full on or prior to the date hereof.] [The Company acknowledges that the Terminated Borrowing Subsidiary shall continue to be a Borrower until such time as all Loans made to the Terminated Borrowing Subsidiary shall have been prepaid and all amounts due and payable by the Terminated Borrowing Subsidiary in respect of interest and/or fees (and, to the extent notified by the Administrative Agent or any Lender, any other amounts payable under the Credit Agreement) pursuant to the Credit Agreement shall have been paid in full, provided that the Terminated Borrowing Subsidiary shall not have the right to make further Borrowings under the Credit Agreement.]

[Signature Page Follows]

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This instrument shall be construed in accordance with and governed by the laws of the State of New York.

Very truly yours,

HILLENBRAND, INC.

By: \_\_\_\_\_  
Name:  
Title:

Copy to: JPMorgan Chase Bank, N.A.  
[10 South Dearborn Street]  
[Chicago, Illinois 60603]

EXHIBIT G

[FORM OF]

SUBSIDIARY GUARANTY

SECOND AMENDED AND RESTATED GUARANTY

THIS SECOND AMENDED AND RESTATED GUARANTY (this "Guaranty") is made as of August 28, 2019, by and among each of the undersigned (the "Initial Guarantors") and along with any additional Material Domestic Subsidiaries (other than Excluded Subsidiaries) of the Company which become parties to this Guaranty by executing a supplement hereto in the form attached as Annex I, the "Guarantors") in favor of the Administrative Agent, for the ratable benefit of the Holders of Guaranteed Obligations (as defined below), under the Credit Agreement referred to below.

WITNESSETH

WHEREAS, Hillenbrand, Inc., an Indiana corporation (the "Company"), the subsidiary borrowers parties thereto (the "Subsidiary Borrowers") and, together with the Company, the "Borrowers"), the institutions from time to time parties thereto as lenders (the "Lenders"), and JPMorgan Chase Bank, N.A., as administrative agent (the "Administrative Agent") have entered into a certain Third Amended and Restated Credit Agreement dated as of August 28, 2019 (as the same may be amended, modified, supplemented and/or restated, and as in effect from time to time, the "Credit Agreement"), which Credit Agreement amends and restates in its entirety the Existing Credit Agreement (as defined in the Credit Agreement), providing, subject to the terms and conditions thereof, for extensions of credit and other financial accommodations to be made by the Lenders to the Borrowers;

WHEREAS, the Credit Agreement, among other things, re-evidences the Borrowers' outstanding obligations under the Existing Credit Agreement and provides, subject to the terms thereof, for future extensions from time to time of credit and other financial accommodations by the Lenders to the Borrowers;

WHEREAS, certain of the Initial Guarantors guaranteed the payment of the Borrowers' obligations under the Existing Credit Agreement pursuant to the Amended and Restated Guaranty dated as of December 8, 2017 (the "Existing Guaranty");

WHEREAS, each Initial Guarantor party to the Existing Guaranty wishes to affirm its obligations under the terms of the Existing Guaranty with respect to amounts owing by the Borrowers under the Credit Agreement and wishes to amend and restate the terms of the Existing Guaranty;

WHEREAS, it is a condition precedent to the extensions of credit by the Lenders under the Credit Agreement that each of the Guarantors execute and deliver this Guaranty, whereby each of the Guarantors shall guarantee the payment when due of all Obligations; and

WHEREAS, in consideration of the direct and indirect financial and other support that the Borrowers have provided, and such direct and indirect financial and other support as the Borrowers may in the future provide, to the Guarantors, and in order to induce the Lenders and the Administrative Agent to enter into the Credit Agreement, each of the Guarantors is willing to guarantee the Obligations of the Borrowers;

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NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions. Terms used herein but not defined herein have, as used herein, the respective meanings given such terms in the Credit Agreement.

SECTION 2. Representations, Warranties and Covenants. Each of the Guarantors represents and warrants that:

(A) It is a corporation, partnership or limited liability company duly and properly incorporated or organized, as the case may be, validly existing and (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation, organization or formation and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except to the extent that the failure to have such authority would not reasonably be expected to have a Material Adverse Effect.

(B) It (to the extent applicable) has the requisite power and authority to execute and deliver this Guaranty and to perform its obligations hereunder. The execution and delivery by each Guarantor of this Guaranty and the performance by it of each of its obligations hereunder have been duly authorized by proper proceedings, and this Guaranty constitutes a legal, valid and binding obligation of such Guarantor, respectively, enforceable against such Guarantor, respectively, in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles regardless of whether considered in a proceeding in equity or at law.

(C) Neither the execution and delivery by such Guarantor of this Guaranty, nor the consummation by such Guarantor of the transactions herein contemplated, nor compliance by such Guarantor with the provisions hereof will: (a) require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) violate the charter, by-laws or other organizational documents of such Guarantor, (c) violate any applicable material law or regulation or any order of any Governmental Authority, (d) violate or result in a default under any indenture, agreement or other instrument binding upon such Guarantor or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by such Guarantor, except for any such violation or right which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, or (e) result in the creation or imposition of any Lien on any asset of such Guarantor.

In addition to the foregoing, subject to Section 25 of this Guaranty, each of the Guarantors covenants that, so long as any Lender has any Commitment outstanding under the Credit Agreement or any amount payable under the Credit Agreement or any other Guaranteed Obligations (as defined below) shall remain unpaid, it will fully comply with those covenants and agreements of such Borrower applicable to such Guarantor set forth in the Credit Agreement.

SECTION 3. Reaffirmation and Guaranty. Each Initial Guarantor party to the Existing Guaranty affirms its obligations under and the terms and conditions of the Existing Guaranty and agrees that such obligations remain in full force and effect and are hereby ratified, reaffirmed and confirmed. Each Initial Guarantor party to the Existing Guaranty acknowledges and agrees with the Administrative Agent that the Existing Guaranty is amended and restated in its entirety pursuant to the terms hereof. Furthermore, each of the Guarantors hereby unconditionally guarantees, jointly with the other Guarantors and severally, the full and punctual payment and performance when due (whether at stated maturity, upon acceleration or otherwise) of the Obligations, including, without limitation, (i) the principal of and interest on each Loan made to any Borrower pursuant to the Credit Agreement, (ii) any obligations of any Borrower to reimburse LC Disbursements ("Reimbursement Obligations"), (iii) all other amounts payable by any Borrower or any of its Subsidiaries under the Credit Agreement and the other Loan Documents, and (iv) the punctual and faithful performance, keeping, observance, and fulfillment by any Borrower of all of the agreements, conditions, covenants, and obligations of such Borrower contained in the Loan Documents (all of the foregoing being referred to collectively as the "Guaranteed Obligations" (provided, however, that the definition of "Guaranteed Obligations" shall not create any guarantee by any Guarantor of any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor), and the Lenders, Issuing Banks, and Administrative Agent being referred to collectively as the "Holders of Guaranteed Obligations"). Upon the occurrence and during the continuance of any Event of Default under the Credit Agreement, each of the Guarantors agrees that it shall forthwith on demand by the Administrative Agent pay such amount or perform such obligation at the place and in the manner specified in the Credit Agreement or the relevant Loan Document, as the case may be. Each of the Guarantors hereby agrees that this Guaranty is an irrevocable guaranty of payment and is not a guaranty of collection.

SECTION 4. Guaranty Unconditional. The obligations of each of the Guarantors hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by, and each Guarantor hereby waives any defenses it may have (now or in the future) by reason of:

- (A) (i) any extension, renewal, settlement, indulgence, compromise, waiver or release of the Guaranteed Obligations, any part thereof, any agreement relating thereto (including this Guaranty), or any obligation of any other Guarantor, whether (in any such case) by operation of law or otherwise other than as a result of the indefeasible payment in full in cash of the Guaranteed Obligations; or (ii) any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations, any part thereof, any agreement relating thereto (including this Guaranty), or any obligation of any other Guarantor;
- (B) any modification or amendment of or supplement to the Credit Agreement or any other Loan Document, including, without limitation, any such amendment which may increase the amount of, or the interest rates applicable to, any of the Guaranteed Obligations;
- (C) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of (i) any collateral securing the Guaranteed Obligations or any part thereof, (ii) any other guaranties with respect to the Guaranteed Obligations or any part thereof, or (iii) any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof;
- (D) (i) any change in the corporate, partnership or other existence, structure or ownership of any Borrower or any Guarantor, (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting such Borrower or Guarantor, or any of their respective assets or any resulting release or discharge of any obligation of such Borrower or Guarantor;

(E) the existence of any claim, setoff or other rights which any Guarantor may have at any time against any Borrower, any other Guarantor, or the Holders of Guaranteed Obligations, whether in connection herewith or in connection with any unrelated transactions; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(F) (i) the enforceability or validity of the Guaranteed Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto or with respect to any collateral securing the Guaranteed Obligations or any part thereof, (ii) any other invalidity or unenforceability relating to or against any Borrower or any other Guarantor of any of the Guaranteed Obligations, for any reason, related to the Credit Agreement or any other Loan Document, or (iii) any provision of applicable law decree, order or regulation of any jurisdiction purporting to prohibit the payment by any Borrower or any Guarantor, or otherwise affecting any term of any of the Guaranteed Obligations;

(G) the election by, or on behalf of, any one or more of the Holders of Guaranteed Obligations, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code;

(H) the failure of any other Guarantor to sign or become party to this Guaranty or any amendment, change, or reaffirmation hereof; or

(I) any other act or omission to act or delay of any kind by any Borrower, any Guarantor or any Holders of Guaranteed Obligations, or any other circumstance whatsoever which might, but for the provisions of this Section 4, constitute a legal or equitable discharge of any Guarantor's obligations hereunder except as provided in Section 5.

SECTION 5. Continuing Guarantee; Discharge Only Upon Payment In Full; Reinstatement In Certain Circumstances Subject to Section 25 of this Guaranty, each of the Guarantors' obligations hereunder shall constitute a continuing and irrevocable guarantee of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until all Guaranteed Obligations shall have been paid in full in cash and the Commitments and all Letters of Credit issued under the Credit Agreement shall have terminated or expired (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank). If at any time any payment of the principal of or interest on any Loan, any Reimbursement Obligation or any other amount payable by any Borrower or any other party under the Credit Agreement or any other Loan Document (including a payment effected through exercise of a right of setoff) is rescinded, or is or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of any Borrower or otherwise (including pursuant to a settlement entered into by a Credit Party in its discretion), each of the Guarantors' obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time. The parties hereto acknowledge and agree that each of the Guaranteed Obligations shall be due and payable in the same currency as such Guaranteed Obligation is denominated but if currency control or exchange regulations are imposed in the country which issues such currency with the result that such currency (the "Original Currency") no longer exists or the relevant Guarantor is not able to make payment in such Original Currency, then all payments to be made by such Guarantor hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Amount (as of the date of payment) of such payment due, it being the intention of the parties hereto that each Guarantor takes all risks of the imposition of any such currency control or exchange regulations.

SECTION 6. General Waivers; Additional Waivers.

(A) General Waivers. Each of the Guarantors irrevocably waives notice of acceptance hereof, presentment, demand for performance, notice of protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Borrower, any other guarantor of the Guaranteed Obligations, or this Guaranty (except if such notice is specifically required to be given to such Guarantor hereunder or under the Loan Documents).

(B) Additional Waivers. Notwithstanding anything herein to the contrary, each of the Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives:

(i) any right it may have to revoke this Guaranty as to future indebtedness;

(ii) (a) notice of any loans or other financial accommodations made or extended under the Loan Documents or the creation or existence of any Guaranteed Obligations; (b) notice of the amount of the Guaranteed Obligations, subject, however, to each Guarantor's right to make inquiry of the Holders of Guaranteed Obligations to ascertain the amount of the Guaranteed Obligations at any reasonable time; (c) notice of any adverse change in the financial condition of any Borrower or of any other fact that might increase such Guarantor's risk hereunder; (d) notice of any Default or Event of Default;

(iii) its right, if any, to require the Holders of Guaranteed Obligations to institute suit against, or to exhaust any rights and remedies which the Holders of Guaranteed Obligations have or may have against, the other Guarantors or any third party; and each Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and paid) of the other Guarantors or by reason of the cessation from any cause whatsoever of the liability of the other Guarantors in respect thereof;

(iv) (a) any rights to assert against the Administrative Agent and the other Holders of Guaranteed Obligations any defense (legal or equitable), set-off, counterclaim, or claim which such Guarantor may now or at any time hereafter have against the other Guarantors or any other party liable to the Administrative Agent and the other Holders of Guaranteed Obligations with respect to the Guaranteed Obligations; (b) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Guaranteed Obligations or any security therefor; and (c) any defense such Guarantor has to performance hereunder, and any right such Guarantor has to be exonerated, arising by reason of: the impairment or suspension of the Administrative Agent's and the other Holders of Guaranteed Obligations' rights or remedies against the other Guarantors; the alteration by the Administrative Agent and the other Holders of Guaranteed Obligations of the Guaranteed Obligations; any discharge of the other Guarantors' obligations to the Administrative Agent and the other Holders of Guaranteed Obligations by operation of law as a result of the Administrative Agent's and the other Holders of Guaranteed Obligations' intervention or omission; or the acceptance by the Administrative Agent and the other Holders of Guaranteed Obligations of anything in partial satisfaction of the Guaranteed Obligations; and

(v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Administrative Agent and the other Holders of Guaranteed Obligations; or (b) any election by the Administrative Agent and the other Holders of Guaranteed Obligations under Section 1111(b) of Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect (or any successor statute), to limit the amount of, or any collateral securing, its claim against the Guarantors.

SECTION 7. Subordination of Subrogation; Subordination of Intercompany Indebtedness.

(A) Subordination of Subrogation. Until the Guaranteed Obligations have been fully and finally performed and paid in full in cash (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank), the Guarantors (i) shall have no right of subrogation with respect to such Guaranteed Obligations, (ii) waive any right to enforce any remedy which the Holders of Guaranteed Obligations now have or may hereafter have against any Borrower or any Guarantor of all or any part of the Guaranteed Obligations, and (iii) waive any benefit of, and any right to participate in, any security or collateral given to the Holders of Guaranteed Obligations to secure the payment or performance of all or any part of the Guaranteed Obligations or any other liability of any Borrower to the Holders of Guaranteed Obligations. Should any Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights, each Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off with respect to the Guaranteed Obligations that such Guarantor may have to the payment in full in cash of the Guaranteed Obligations and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until the Guaranteed Obligations are paid in full in cash (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank). Each Guarantor acknowledges and agrees that this subordination is intended to benefit the Holders of Guaranteed Obligations and shall not limit or otherwise affect such Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Holders of Guaranteed Obligations and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 7(A).



(B) Subordination of Intercompany Indebtedness. Each Guarantor agrees that any and all claims of such Guarantor against any Borrower or any other Guarantor hereunder (each an “Obligor”) with respect to any Intercompany Indebtedness (as hereinafter defined) shall be subordinate and subject in right of payment to the prior payment, in full and in cash, of all Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank); provided that, unless otherwise prohibited as otherwise set forth below, such Guarantor may receive payments of principal and interest from any Obligor with respect to Intercompany Indebtedness. Upon acceleration of the Loans pursuant to Article VII of the Credit Agreement, notwithstanding any right of any Guarantor to ask, demand, sue for, take or receive any payment from any Obligor, all rights, liens and security interests of such Guarantor, whether now or hereafter arising and howsoever existing, in any assets of any other Obligor shall be and are subordinated to the rights of the Holders of Guaranteed Obligations in those assets. Upon acceleration of the Loans pursuant to Article VII of the Credit Agreement, no Guarantor shall have any right to possession of any such asset or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until all of the Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank) shall have been fully paid and satisfied (in cash) and all financing arrangements pursuant to any Loan Document have been terminated. Upon acceleration of the Loans pursuant to Article VII of the Credit Agreement, (a) if all or any part of the assets of such Obligor, or the proceeds thereof, are subject to any distribution, division or application to the creditors of such Obligor, whether partial or complete, voluntary or involuntary, in each case by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other similar action or proceeding with respect to such Obligor (all of the foregoing referred to as an “Insolvency Proceeding”) or (b) if the business of any such Obligor is dissolved or if substantially all of the assets of any such Obligor are sold, in each case pursuant to an Insolvency Proceeding with respect to such Obligor, then, and in any such event (such events being herein referred to as an “Insolvency Event”), any payment or distribution of any kind or character, either in cash, securities or other property, which shall be payable or deliverable upon or with respect to any indebtedness of such Obligor to any Guarantor (“Intercompany Indebtedness”), shall be paid or delivered directly to the Administrative Agent for application on any of the Guaranteed Obligations, due or to become due, until such Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank) shall have first been fully paid and satisfied (in cash). Upon acceleration of the Loans pursuant to Article VII of the Credit Agreement, should any payment, distribution, security or instrument or proceeds thereof be received by the applicable Guarantor upon or with respect to such Intercompany Indebtedness after any such Insolvency Event and prior to the satisfaction of all of the Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank) and the termination of all financing arrangements pursuant to any Loan Document, such Guarantor shall receive and hold the same in trust, as trustee, for the benefit of the Holders of Guaranteed Obligations and shall forthwith deliver the same to the Administrative Agent, for the benefit of the Holders of Guaranteed Obligations, in precisely the form received (except for the endorsement or assignment of the Guarantor where necessary), for application to any of the Guaranteed Obligations, due or not due, and, until so delivered, the same shall be held in trust by the Guarantor as the property of the Holders of Guaranteed Obligations. If any such Guarantor fails to make any such endorsement or assignment to the Administrative Agent, the Administrative Agent or any of its officers or employees is irrevocably authorized to make the same. Upon acceleration of the Loans pursuant to Article VII of the Credit Agreement, each Guarantor agrees that until the Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank) have been paid in full (in cash) and satisfied and all financing arrangements pursuant to any Loan Document among any Borrower and the Holders of Guaranteed Obligations have been terminated, no Guarantor will assign or transfer to any Person (other than the Administrative Agent) any claim any such Guarantor has or may have against any Obligor.

SECTION 8. Contribution with Respect to Guaranteed Obligations.

(A) To the extent that any Guarantor shall make a payment under this Guaranty (a “Guarantor Payment”) which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Guarantor’s Allocable Amount (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors (as determined immediately prior to the making of such Guarantor Payment), then, following payment in full in cash of the Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made, and other than Letters of Credit that have been cash collateralized in accordance with the provisions of the Credit Agreement or with respect to which other arrangements have been made that are satisfactory to the applicable Issuing Bank) and termination of the Credit Agreement, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(B) As of any date of determination, the “Allocable Amount” of any Guarantor shall be equal to the excess of the fair saleable value of the property of such Guarantor over the total liabilities of such Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Guarantors as of such date in a manner to maximize the amount of such contributions.

(C) This Section 8 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 8 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Guaranty.

(D) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

SECTION 9. Limitation of Guaranty. Notwithstanding any other provision of this Guaranty, the amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law. In determining the limitations, if any, on the amount of any Guarantor’s obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Guarantor may have under this Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10. Stay of Acceleration. If acceleration of the time for payment of any amount payable by any Borrower under the Credit Agreement or any other Loan Document is stayed upon the insolvency, bankruptcy or reorganization of such Borrower, all such amounts otherwise subject to acceleration under the terms of the Credit Agreement or any other Loan Document shall nonetheless be payable by each of the Guarantors hereunder forthwith on demand by the Administrative Agent.

SECTION 11. Notices. All notices, requests and other communications to any party hereunder shall be given in the manner prescribed in Section 9.01 of the Credit Agreement with respect to the Administrative Agent at its notice address therein and with respect to any Guarantor, in care of the Company at the address of the Company set forth in the Credit Agreement or such other address or telecopy number as such party may hereafter specify for such purpose by notice to the Administrative Agent in accordance with the provisions of such Section 9.01.

SECTION 12. No Waivers. No failure or delay by the Administrative Agent or any other Holder of Guaranteed Obligations in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Guaranty, the Credit Agreement and the other Loan Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 13. Successors and Assigns. This Guaranty (a) shall be enforceable by the Administrative Agent and its successors and assigns and not by any other Holder of Guaranteed Obligations and (b) is for the benefit of the Holders of Guaranteed Obligations and their respective successors and permitted assigns; it being understood and agreed that in the event that the Holders of Guaranteed Obligations assign or transfer all or a portion of their respective rights and obligations under Section 9.04 of the Credit Agreement, then the rights hereunder, to the extent applicable to the rights and obligations so assigned, may be transferred with such rights and obligations. This Guaranty shall be binding upon each of the Guarantors and their respective successors and assigns; provided, that no Guarantor shall have any right to assign its rights or obligations hereunder without the consent of all of the Lenders, except as otherwise permitted pursuant to the Credit Agreement, and any such assignment in violation of this Section 13 shall be null and void.

SECTION 14. Changes in Writing. Other than in connection with the addition of additional Guarantors, which become parties hereto by executing a supplement hereto in the form attached as Annex I, neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by each of the Guarantors and the Administrative Agent.

SECTION 15. GOVERNING LAW. THIS GUARANTY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

**SECTION 16. CONSENT TO JURISDICTION; SERVICE OF PROCESS; JURY TRIAL; IMMUNITY.**

**(A) EACH GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN (OR IF SUCH COURT LACKS SUBJECT MATTER JURISDICTION, THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN), AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY (AND ANY SUCH CLAIMS, CROSS-CLAIMS OR THIRD PARTY CLAIMS BROUGHT AGAINST THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES MAY ONLY) BE HEARD AND DETERMINED IN SUCH FEDERAL (TO THE EXTENT PERMITTED BY LAW) OR NEW YORK STATE COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS GUARANTY OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

(B) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 17. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guaranty.

SECTION 18. Taxes, Expenses of Enforcement, etc.

(A) Taxes. Sections 2.17 and 2.17A of the Credit Agreement shall be applicable, *mutatis mutandis*, to all payments required to be made by any Guarantor under this Guaranty.

(B) Expenses of Enforcement, Etc. The Guarantors agree to reimburse the Administrative Agent for all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, in accordance with Section 9.03 of the Credit Agreement.

SECTION 19. Setoff. At any time after all or any part of the Guaranteed Obligations have become due and payable (by acceleration or otherwise), each Holder of Guaranteed Obligations may, without notice to any Guarantor and regardless of the acceptance of any security or collateral for the payment hereof, appropriate and apply in accordance with the terms of the Credit Agreement toward the payment of all or any part of the Guaranteed Obligations: (i) any indebtedness due from such Holder of Guaranteed Obligations to any Guarantor, and (ii) any moneys, credits or other property belonging to any Guarantor, at any time held by or coming into the possession of such Holder of Guaranteed Obligations or any of their respective Affiliates.

SECTION 20. Financial Information. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of each of the Obligors, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, that diligent inquiry would reveal, and each Guarantor hereby agrees that none of the Holders of Guaranteed Obligations shall have any duty to advise such Guarantor of information known to any of them regarding such condition or any such circumstances. In the event any Holder of Guaranteed Obligations, in its sole discretion, undertakes at any time or from time to time to provide any such information to a Guarantor, such Holder of Guaranteed Obligations shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which such Holder of Guaranteed Obligations, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to such Guarantor.

SECTION 21. Severability. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 22. Merger. This Guaranty represents the final agreement of each of the Guarantors with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Guarantor and any Holder of Guaranteed Obligations (including the Administrative Agent).

SECTION 23. Headings. Section headings in this Guaranty are for convenience of reference only and shall not govern the interpretation of any provision of this Guaranty.

SECTION 24. Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from any Guarantor hereunder in the currency expressed to be payable herein (the “specified currency”) into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent’s main New York City office on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of each Guarantor in respect of any sum due hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by any Holder of Guaranteed Obligations, as the case may be, of any sum adjudged to be so due in such other currency such Holder of Guaranteed Obligations, as the case may be, may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Holder of Guaranteed Obligations in the specified currency, each Guarantor agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Holder of Guaranteed Obligations against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to any Holder of Guaranteed Obligations in the specified currency and (b) amounts shared with other Holders of Guaranteed Obligations as a result of allocations of such excess as a disproportionate payment to such other Holder of Guaranteed Obligations under Section 2.18 of the Credit Agreement, such Holder of Guaranteed Obligations, as the case may be, agrees, by accepting the benefits hereof, to remit such excess to such Guarantor.

SECTION 25. Termination of Guaranty. The obligations of any Guarantor under this Guaranty shall automatically terminate, and any Guarantor may be released from this Guaranty, in each case in accordance with Section 9.14 of the Credit Agreement.

SECTION 26. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor to honor all of its obligations under this Guaranty in respect of Specified Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 26 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 26 or otherwise under this Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 26 shall remain in full force and effect until a discharge of such Qualified ECP Guarantor's Guaranteed Obligations in accordance with the terms hereof and the other Loan Documents. Each Qualified ECP Guarantor intends that this Section 26 constitute, and this Section 26 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act. As used herein, "Qualified ECP Guarantor" means, in respect of any Specified Swap Obligation, each Guarantor that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes or would become effective with respect to such Specified Swap Obligation or such other Person as constitutes an ECP and can cause another Person to qualify as an ECP at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Remainder of Page Intentionally Blank.

IN WITNESS WHEREOF, each of the Initial Guarantors has caused this Guaranty to be duly executed by its authorized officer as of the day and year first above written.

[GUARANTORS]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Agreed  
as of the date first written above:

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:



ANNEX I TO GUARANTY

Reference is hereby made to the Second Amended and Restated Guaranty, made as of August 28, 2019 (as amended, amended and restated, renewed, extended, supplemented or otherwise modified from time to time, the "Guaranty"), by and among the Initial Guarantors, the additional Guarantors party thereto from time to time in favor of the Administrative Agent, for the ratable benefit of the Holders of Guaranteed Obligations, under the Credit Agreement. Capitalized terms used herein and not defined herein shall have the meanings given to them in the Guaranty. By its execution below, the undersigned [NAME OF NEW GUARANTOR], a [state of organization] [corporation] [partnership] [limited liability company] (the "New Guarantor"), agrees to become, and does hereby become, a Guarantor under the Guaranty and agrees to be bound by such Guaranty as if originally a party thereto. By its execution below, the undersigned represents and warrants as to itself that all of the representations and warranties contained in Section 2 of the Guaranty are true and correct in all respects as of the date hereof.

IN WITNESS WHEREOF, New Guarantor has executed and delivered this Annex I counterpart to the Guaranty as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[NAME OF NEW GUARANTOR]

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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EXHIBIT H-1

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Hillenbrand, Inc. (the "Company"), the Subsidiary Borrowers from time to time party thereto, the Lenders from time to time party thereto (collectively with the Company, the "Borrowers") and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Sections 881(c)(3)(B) and 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrowers with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrowers and the Administrative Agent and (2) the undersigned shall have at all times furnished the Borrowers and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

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EXHIBIT H-2

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Hillenbrand, Inc. (the "Company"), the Subsidiary Borrowers from time to time party thereto, the Lenders from time to time party thereto (collectively with the Company, the "Borrowers") and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Sections 881(c)(3)(B) and 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

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EXHIBIT H-3

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Hillenbrand, Inc. (the "Company"), the Subsidiary Borrowers from time to time party thereto, the Lenders from time to time party thereto (collectively with the Company, the "Borrowers") and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation and (iii) with respect to such participation, the undersigned is not a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code. Furthermore, the undersigned hereby certifies that each of its direct or indirect partners/members is described in one of the following: (1) such partner/member is (a) not a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (b) not a ten percent shareholder of the Borrower within the meaning of Sections 881(c)(3)(B) and 871(h)(3)(B) of the Code and (c) not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code; (2) such partner/member is claiming that income is effectively connected with the conduct of a trade or business within the United States on IRS Form W-8ECI; (3) such partner/member is claiming eligibility for the benefits of an income tax treaty to which the United States is a party on IRS Form W-8BEN or IRS Form W-8BEN-E; or (4) such partner/member is able to certify that such partner/member is exempt from U.S. federal backup withholding tax on IRS Form W-9.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. The undersigned has also furnished its participating Lender with an applicable IRS Form W-8 or W-9 for each of its partners/members that is not claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

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EXHIBIT H-4

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Hillenbrand, Inc. (the "Company"), the Subsidiary Borrowers from time to time party thereto, the Lenders from time to time party thereto (collectively with the Company, the "Borrowers") and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent").

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) and (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, the undersigned is not a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code. Furthermore, the undersigned hereby certifies that each of its direct or indirect partners/members is described in one of the following: (1) such partner/member is (a) not a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (b) not a ten percent shareholder of the Borrower within the meaning of Sections 881(c)(3)(B) and 871(h)(3)(B) of the Code and (c) not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code; (2) such partner/member is claiming that income is effectively connected with the conduct of a trade or business within the United States on IRS Form W-8ECI; (3) such partner/member is claiming eligibility for the benefits of an income tax treaty to which the United States is a party on IRS Form W-8BEN or IRS Form W-8BEN-E; or (4) such partner/member is able to certify that such partner/member is exempt from U.S. federal backup withholding tax on IRS Form W-9.

The undersigned has furnished the Administrative Agent and the Company with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. The undersigned has also furnished the Administrative Agent and the Company with an applicable IRS Form W-8 or W-9 for each of its partners/members that is not claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Company and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Company and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 20[ ]

---

EXHIBIT I-1

[FORM OF] REVOLVING LOAN NOTE

[\_\_\_\_], 2019

FOR VALUE RECEIVED, the undersigned, [HILLENBRAND, INC., an Indiana corporation][[SUBSIDIARY BORROWER], a [\_\_\_\_]] (the "Borrower"), HEREBY UNCONDITIONALLY PROMISES TO PAY to [LENDER] and its registered assigns (the "Lender") the aggregate unpaid Dollar Amount of all Revolving Loans made by the Lender to the Borrower pursuant to the "Credit Agreement" (as defined below) on the Maturity Date or on such earlier date as may be required by the terms of the Credit Agreement. Capitalized terms used herein and not otherwise defined herein are as defined in the Credit Agreement.

The Borrower promises to pay interest on the unpaid principal amount of each Revolving Loan made to it from the date of such Revolving Loan until such principal amount is paid in full at a rate or rates per annum determined in accordance with the terms of the Credit Agreement. Interest hereunder is due and payable at such times and on such dates as set forth in the Credit Agreement.

At the time of each Revolving Loan, and upon each payment or prepayment of principal of each Revolving Loan, the Lender shall make a notation either on the schedule attached hereto and made a part hereof, or in the Lender's own books and records, in each case specifying the amount of such Revolving Loan, the respective Interest Period thereof (in the case of Eurocurrency Revolving Loans) or the amount of principal paid or prepaid with respect to such Revolving Loan, as applicable; provided that the failure of the Lender to make any such recordation or notation shall not affect the Obligations of the Borrower hereunder or under the Credit Agreement.

This Note is one of the promissory notes referred to in, and is entitled to the benefits of, that certain Third Amended and Restated Credit Agreement dated August 28, 2019 by and among [the Borrower, the][Hillenbrand, Inc., the Borrower, the other] Subsidiary Borrowers from time to time parties thereto, the financial institutions from time to time parties thereto as Lenders and JPMorgan Chase Bank, N.A., as Administrative Agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). The Credit Agreement, among other things, (i) provides for the making of Revolving Loans by the Lender to the Borrower from time to time in an aggregate amount not to exceed at any time outstanding the Dollar Amount of such Lender's Revolving Commitment, the indebtedness of the Borrower resulting from each such Revolving Loan to it being evidenced by this Note, and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments of the principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

Demand, presentment, protest and notice of nonpayment and protest are hereby waived by the Borrower.

Whenever in this Note reference is made to the Administrative Agent, the Lender or the Borrower, such reference shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Note shall be binding upon and shall inure to the benefit of said successors and assigns. The Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for the Borrower.

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This Note shall be construed in accordance with and governed by the law of the State of New York.

[HILLENBRAND, INC.]  
[SUBSIDIARY BORROWER]

By: \_\_\_\_\_  
Name:  
Title:

Revolving Loan Note

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EXHIBIT I-2

[FORM OF] TERM LOAN NOTE

[\_\_\_\_], 2019

FOR VALUE RECEIVED, the undersigned, HILLENBRAND, INC., an Indiana corporation (the "Borrower"), HEREBY UNCONDITIONALLY PROMISES TO PAY to [LENDER] and its registered assigns (the "Lender") the aggregate unpaid amount of all Term Loans made by the Lender to the Borrower pursuant to the "Credit Agreement" (as defined below) on the Maturity Date or on such earlier date as may be required by the terms of the Credit Agreement. Capitalized terms used herein and not otherwise defined herein are as defined in the Credit Agreement.

The Borrower promises to pay interest on the unpaid principal amount of each Term Loan made to it from the date of such Term Loan until such principal amount is paid in full at a rate or rates per annum determined in accordance with the terms of the Credit Agreement. Interest hereunder is due and payable at such times and on such dates as set forth in the Credit Agreement.

At the time of each Term Loan, and upon each payment or prepayment of principal of each Term Loan, the Lender shall make a notation either on the schedule attached hereto and made a part hereof, or in the Lender's own books and records, in each case specifying the amount of such Term Loan, the respective Interest Period thereof (in the case of Eurocurrency Term Loans) or the amount of principal paid or prepaid with respect to such Term Loan, as applicable; provided that the failure of the Lender to make any such recordation or notation shall not affect the Obligations of the Borrower hereunder or under the Credit Agreement.

This Note is one of the promissory notes referred to in, and is entitled to the benefits of, that certain Third Amended and Restated Credit Agreement dated August 28, 2019 by and among [the Borrower, the][Hillenbrand, Inc., the Borrower, the other] Subsidiary Borrowers from time to time parties thereto, the financial institutions from time to time parties thereto as Lenders and JPMorgan Chase Bank, N.A., as Administrative Agent (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). The Credit Agreement, among other things, (i) provides for the making of a Term Loan by the Lender to the Borrower on the Term Loan Funding Date in an aggregate amount not to exceed at any time outstanding the Dollar Amount of such Lender's Term Loan Commitment, the indebtedness of the Borrower resulting from each such Term Loan to it being evidenced by this Note, and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments of the principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

Demand, presentment, protest and notice of nonpayment and protest are hereby waived by the Borrower.

Whenever in this Note reference is made to the Administrative Agent, the Lender or the Borrower, such reference shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Note shall be binding upon and shall inure to the benefit of said successors and assigns. The Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for the Borrower.

\*\*\*\*\*

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This Note shall be construed in accordance with and governed by the law of the State of New York.

HILLENBRAND, INC.

By: \_\_\_\_\_  
Name:  
Title:

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EXHIBIT J

[FORM OF] SOLVENCY CERTIFICATE

I, the undersigned, the Chief Financial Officer of the Company (as defined below) **DO HEREBY CERTIFY** on behalf of the Company that:

This Solvency Certificate is being executed and delivered pursuant to Section 4.02(g) of the Third Amended and Restated Credit Agreement dated August 28, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Hillenbrand, Inc. (the "Company"), the Subsidiary Borrowers from time to time party thereto, the Lenders from time to time party thereto (collectively with the Company, the "Borrowers") and JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "Administrative Agent"). Terms defined in the Credit Agreement are used herein with the same meanings.

I, [\_\_\_\_\_], the chief financial officer of the Company, solely in such capacity and not in an individual capacity, hereby certify that I am the chief financial officer of the Company and that I am generally familiar with the businesses and assets of the Company and its Subsidiaries (taken as a whole), I have made such other investigations and inquiries as I have deemed appropriate and I am duly authorized to execute this Solvency Certificate on behalf of the Company pursuant to the Credit Agreement.

I further certify, solely in my capacity as chief financial officer of the Company, and not in my individual capacity, as of the date hereof, and after giving effect to the Bengal Transactions and the incurrence of the indebtedness and obligations being incurred in connection with the Credit Agreement and the Bengal Transactions on the date hereof, that, with respect to the Company and its Subsidiaries on a consolidated basis, (a) the sum of the liabilities of the Company and its Subsidiaries, taken as a whole, does not exceed the present fair saleable value of the assets of the Company and its Subsidiaries, taken as a whole; (b) the capital of the Company and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Company and its Subsidiaries, taken as a whole, contemplated on the date hereof and (c) the Company and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

[Signature Page Follows]

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IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

HILLENBRAND, INC.,  
as the Company

By: \_\_\_\_\_  
Name:  
Title: Chief Financial Officer

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September 4, 2019

Hillenbrand, Inc.  
One Batesville Boulevard  
Batesville, IN 47006

**Re: Amendment No. 5 to Private Shelf Agreement**

Ladies and Gentlemen:

Reference is made to the Private Shelf Agreement, dated as of December 6, 2012 (as amended by Amendment No. 1 dated as of December 15, 2014, Amendment No. 2 dated as of December 19, 2014, Amendment No. 3 dated as of March 24, 2016 and Amendment No. 4 dated as of December 8, 2017, the “**Note Agreement**”), by and among Hillenbrand, Inc., an Indiana corporation (the “**Company**”), PGIM, Inc. (f/k/a Prudential Investment Management, Inc.) (“**Prudential**”) and each Prudential Affiliate (as therein defined) that has become or becomes bound thereby. Capitalized terms used herein that are not otherwise defined herein shall have the meaning specified in the Note Agreement.

The Company has requested that the Required Holders agree to amend the Note Agreement, as more particularly described below. Subject to the terms and conditions hereof, the Required Holders are willing to agree to such request.

Accordingly, in accordance with the provisions of Section 18.1 of the Note Agreement, and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. Amendments to the Note Agreement.** Effective upon the Effective Date (as defined below), the Note Agreement is hereby amended to be in the form of Exhibit A attached hereto.

**SECTION 2. Representations and Warranties.** Each of the Company and each Guarantor represents and warrants that (a) the execution and delivery of this letter has been duly authorized by all requisite corporate action on behalf of the Company and such Guarantor, this letter has been duly executed and delivered by an authorized officer of the Company and such Guarantor, and the Company and such Guarantor has obtained all authorizations, consents, and approvals necessary for the execution, delivery and performance of this letter and such authorizations, consents and approvals are in full force and effect, (b) each representation and warranty set forth in Section 5 of the Note Agreement and the other Transaction Documents is true and correct in all material respects as of the date of execution and delivery of this letter by the Company and such Guarantor with the same effect as if made on such date (except to the extent such representations and warranties expressly refer to an earlier date, in which case they were true and correct in all material respects as of such earlier date), (c) after giving effect to the amendments in Section 1, no Event of Default or Default exists and (d) concurrently with the effectiveness of this letter, the amendments to Section 6.01(a) of and the definition of “Consolidated EBITDA” contained in the Primary Credit Facility that are conditioned on amendments to the Note Agreement and the “LG Facility” will be effective.

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**SECTION 3. Conditions to Effectiveness.** The amendments described in Section 1 above shall become effective on the date (the “**Effective Date**”) when each of the following conditions has been satisfied:

3.1 **Documents.** Each holder of a Note shall have received original counterparts or, if reasonably satisfactory to the Required Holders, certified or other copies of all of the following, each duly executed and delivered by the party or parties thereto, in form and substance reasonably satisfactory to the Required Holders, dated the date hereof unless otherwise indicated, and on the date hereof in full force and effect:

(i) counterparts of this letter executed by the Company, the Guarantors and the Required Holders;

(ii) an Officer’s Certificate of the Company, in form and substance reasonably satisfactory to the Required Holders, attaching a true and complete copy of (a) the Third Amended and Restated Credit Agreement, executed by the Company, the subsidiary borrowers party thereto, the guarantors party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the financial institutions party thereto as lenders and (b) the amendment to the “LG Facility Agreement” (as defined in the Company’s most recent filings with the SEC).

3.2 **Proceedings.** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated by this letter shall be reasonably satisfactory to the Required Holder(s), and the holders of Notes shall have received all such counterpart originals or certified or other copies of such documents as it may reasonably request.

**SECTION 4. Reference to and Effect on Note Agreement and Notes; Ratification of Transaction Documents.** Upon the effectiveness of the amendments in Section 1 of this letter, each reference to the Note Agreement in any other Transaction Document shall mean and be a reference to the Note Agreement, as modified by this letter. Except as specifically set forth in Section 1 hereof, the Note Agreement, the Notes and each other Transaction Document shall remain in full force and effect and are hereby ratified and confirmed in all respects. Except as specifically stated in this letter, the execution, delivery and effectiveness of this letter shall not (a) amend the Note Agreement, any Note or any other Transaction Document, (b) operate as a waiver of any right, power or remedy of Prudential or any holder of the Notes, or (c) constitute a waiver of, or consent to any departure from, any provision of the Note Agreement, any Note or any other Transaction Document at any time. The execution, delivery and effectiveness of this letter shall not be construed as a course of dealing or other implication that Prudential or any holder of the Notes has agreed to or is prepared to grant any consents or agree to any amendment to the Note Agreement in the future, whether or not under similar circumstances.

**SECTION 5. Reaffirmation.** Each Guarantor hereby consents to the foregoing amendments to the Note Agreement and hereby ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the Guaranty Agreement and each other Transaction Document, after giving effect to such amendments. Each Guarantor hereby acknowledges that, notwithstanding the foregoing amendments, that the Guaranty Agreement and each other Transaction Document remains in full force and effect and is hereby ratified and confirmed. Without limiting the generality of the foregoing, each Guarantor agrees and confirms that the Guaranty Agreement continues to guaranty the Guaranteed Obligations (as defined in the Guaranty Agreement) arising under or in connection with the Note Agreement, as amended by this letter agreement, or any of the Notes.

**SECTION 6. Expenses.** The Company hereby confirms its obligations under Section 16.1 of the Note Agreement in connection with the transactions hereby contemplated, whether or not such transactions are consummated.

**SECTION 7. Governing Law. THIS LETTER SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE OF LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD PERMIT THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE.**

**SECTION 8. Counterparts; Section Titles.** This letter may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this letter by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart of this letter. The section titles contained in this letter are and shall be without substance, meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

*[signature page follows]*



Very truly yours,

**PGIM, INC.**

By: /s/ Joshua Shipley  
Vice President

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**

By: /s/ Joshua Shipley  
Vice President

**THE GIBRALTAR LIFE INSURANCE CO., LTD.**

By: Prudential Investment Management Japan Co., Ltd.  
(as Investment Manager)

By: PGIM, Inc.  
(as Sub-Adviser)

By: /s/ Joshua Shipley  
Vice President

**PAR U HARTFORD LIFE & ANNUITY COMFORT TRUST**

By: Prudential Arizona Reinsurance Universal Company  
(as Grantor)

By: PGIM, Inc.  
(as Investment Manager)

By: /s/ Joshua Shipley  
Vice President

Amendment No. 5 to Private Shelf Agreement

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**THE LINCOLN NATIONAL LIFE INSURANCE COMPANY  
FARMERS INSURANCE EXCHANGE  
MID CENTURY INSURANCE COMPANY  
THE INDEPENDENT ORDER OF FORESTERS**

By: Prudential Private Placement Investors, L.P.  
(as Investment Advisor)

By: Prudential Private Placement Investors, Inc.  
(as its General Partner)

By: /s/ Joshua Shipley  
Vice President

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Amendment No. 5 to Private Shelf Agreement

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The foregoing letter is hereby accepted as of the date first above written:

**HILLENBRAND, INC.**

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Vice President and Treasurer

Amendment No. 5 to Private Shelf Agreement

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**BATESVILLE CASKET COMPANY, INC.**  
**BATESVILLE MANUFACTURING, INC.**  
**BATESVILLE SERVICES, INC.**

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Vice President and Treasurer

**COPERION K-TRON PITMAN, INC.**  
**ROTEX GLOBAL, LLC**  
**K-TRON INVESTMENT CO.**  
**TERRASOURCE GLOBAL CORPORATION**  
**RED VALVE COMPANY, INC.**

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Assistant Treasurer

**COPERION CORPORATION**

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Vice President and Assistant Treasurer

**PROCESS EQUIPMENT GROUP, INC.**

By: /s/ Theodore S. Haddad, Jr.  
Name: Theodore S. Haddad, Jr.  
Title: Treasurer

Amendment No. 5 to Private Shelf Agreement

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**Exhibit A**  
**Note Purchase Agreement**  
**(see attached)**

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**HILLENBRAND, INC.**

**Private Shelf Facility**

—————  
**PRIVATE SHELF AGREEMENT**  
—————

**Dated December 6, 2012**

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## TABLE OF CONTENTS

	<b>Page</b>
1. AUTHORIZATION OF NOTES	1
Section 1.1	1
2. SALE AND PURCHASE OF NOTES	2
Section 2.1. Shelf Facility and Shelf Notes	2
3. CLOSING	6
Section 3.1. Facility Closings	6
Section 3.2. Rescheduled Facility Closings	7
4. CONDITIONS	7
Section 4.1. Representations and Warranties	7
Section 4.2. Performance; No Default	7
Section 4.3. Compliance Certificates	7
Section 4.4. Opinions of Counsel	8
Section 4.5. Guaranty Agreements and Confirmations	8
Section 4.6. Purchase Permitted By Applicable Law, Etc.	9
Section 4.7. Payment of Fees	9
Section 4.8. Private Placement Number	9
5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY	10
Section 5.1. Organization; Power and Authority	10
Section 5.2. Authorization, Etc.	10
Section 5.3. Disclosure	10
Section 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliates	11
Section 5.7. Governmental Authorizations, Etc.	12
Section 5.8. Litigation	12
Section 5.9. Taxes	13
Section 5.11. Licenses, Permits, Etc.	13
Section 5.12. Compliance with ERISA; Non-U.S. Plans	13
Section 5.13. Private Offering by the Company	15
Section 5.14. Use of Proceeds; Margin Regulations	15
Section 5.15. Existing Indebtedness; Future Liens	15
Section 5.16. Foreign Assets Control Regulations, Etc.	16
Section 5.17. Status under Certain Statutes	17
Section 5.18. Environmental Matters	17
6. REPRESENTATIONS OF THE PURCHASERS	17
Section 6.1. Purchase for Investment	17
Section 6.2. Source of Funds	18

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
7. [RESERVED]	20
8. PAYMENT AND PREPAYMENT OF THE NOTES	20
Section 8.2. Optional Prepayments with Make-Whole Amount	20
Section 8.3. [RESERVED]	20
Section 8.4. Allocation of Partial Prepayments	20
Section 8.5. Maturity; Surrender, Etc.	21
Section 8.6. Purchase of Notes	21
Section 8.7. Make-Whole Amount	21
9. AFFIRMATIVE COVENANTS	25
Section 9.1 Financial Statements and Other Information	25
Section 9.2 Notices of Material Events	26
Section 9.3 Existence; Conduct of Business	27
Section 9.4 Payment of Tax Obligations	27
Section 9.5 Maintenance of Properties; Insurance	27
Section 9.6 Books and Records; Inspection Rights	28
Section 9.7 Compliance with Laws	28
Section 9.8. Subsequent Guarantors	28
10. NEGATIVE COVENANTS	30
Section 10.1. Liens	30
Section 10.2 Acquisitions	33
Section 10.3 Indebtedness	33
Section 10.4 Fundamental Changes	36
Section 10.5 Restricted Payments	37
Section 10.6 Change in Nature of Business	37
Section 10.7 Transactions with Affiliates	38
Section 10.8 Burdensome Agreements	38
Section 10.9 Financial Covenants	40
Section 10.10. Terrorism Sanctions Regulations	41
Section 10.11. Most Favored Lender Status	41
11. EVENTS OF DEFAULT	42
12. REMEDIES ON DEFAULT, ETC.	45
Section 12.1. Acceleration	45
Section 12.2. Other Remedies	45
Section 12.3. Rescission	46
Section 12.4. No Waivers or Election of Remedies, Expenses, Etc.	46



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
14. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES	46
Section 14.1. Registration of Notes	46
Section 14.2. Transfer and Exchange of Notes	47
Section 14.3. Replacement of Notes	47
15. PAYMENTS ON NOTES	48
Section 15.1. Place of Payment	48
Section 15.2. Home Office Payment	48
16. EXPENSES, ETC.	49
Section 16.1. Transaction Expenses	49
Section 16.2. Survival	49
17. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT	49
18. AMENDMENT AND WAIVER	50
Section 18.1. Requirements	50
Section 18.2. Solicitation of Holders of Notes	50
Section 18.3. Binding Effect, Etc.	51
Section 18.4. Notes Held by the Company, Etc.	51
19. NOTICES; ENGLISH LANGUAGE	51
20. REPRODUCTION OF DOCUMENTS	52
21. CONFIDENTIAL INFORMATION	53
22. SUBSTITUTION OF PURCHASER	54
23. MISCELLANEOUS	54
Section 23.1. Successors and Assigns	54
Section 23.2. Payments Due on Non-Business Days	54
Section 23.3. Accounting Terms	55
Section 23.4. Divisions	56
Section 23.5. Certain Calculations	56
Section 23.6. Severability	56
Section 23.7. Construction, Etc.	57
Section 23.8. Counterparts	57
Section 23.9. Governing Law	57
Section 23.10. Jurisdiction and Process; Waiver of Jury Trial	57
Section 23.11. Obligation to Make Payment in the Applicable Currency	58
Section 23.12. Determinations Involving Different Currencies	59
Section 23.13. Transaction References	59

Information Schedule – Authorized Officers

Schedule A	—	Information Relating to Prudential
Schedule B	—	Defined Terms
Exhibit 1	—	Form of Note
Exhibit 2	—	Form of Request for Purchase
Exhibit 3	—	Form of Confirmation of Acceptance
Exhibit 4.4(a)	—	Matters to be covered by Opinion of U.S. Special Counsel for the Transaction Parties
Exhibit 4.4(b)	—	Matters to be Covered by Opinion of Special Counsel for the Purchasers
Exhibit 4.5(b)	—	Form of Guaranty Agreement
Exhibit 4.5(c)	—	Form of Confirmation of Guaranty Agreement
Exhibit 21	—	Form of Agreement Regarding Confidentiality
Schedule 5.4	—	Subsidiaries of the Company and Ownership of Subsidiary Stock
Schedule 10.1	—	Existing Liens
Schedule 10.3	—	Existing Indebtedness

HILLENBRAND, INC.  
One Batesville Boulevard  
Batesville, IN 47006

Private Shelf Facility (this “**Agreement**”)

December 6, 2012

To PGIM, Inc. (“**Prudential**”)

To each other prudential affiliate which becomes bound by this agreement as hereinafter provided (each, a “**Purchaser**” and collectively, the “**Purchasers**”):

Ladies and Gentlemen:

Hillenbrand, Inc., an Indiana corporation (the “**Company**”) agrees with Prudential and each of the Purchasers as follows:

**1. AUTHORIZATION OF NOTES.**

**Section 1.1.**

The Company will authorize the issue and sale of its senior promissory notes (as amended, restated, supplemented or otherwise modified from time to time, the “**Notes**”, such term to include any such notes issued in substitution thereof pursuant to Section 14) in the aggregate principal amount of up to \$200,000,000 (including the equivalent in the Available Currencies), to be dated the date of issue thereof, to mature, in the case of each Note so issued, no more than 12 years after the date of original issuance thereof, to have an average life, in the case of each Note so issued, of no more than 12 years after the date of the original issuance thereof, to bear interest on the unpaid balance thereof from the date thereof at the rate per annum, and to have such other particular terms, as shall be set forth, in the case of each Note so issued, in the Confirmation of Acceptance with respect to such Note delivered pursuant to Section 2.2(e), and to be substantially in the form of Exhibit 1 attached hereto. The terms “**Note**” and “**Notes**” as used herein shall include each Note delivered pursuant to any provision of this Agreement and each Note delivered in substitution or exchange for any such Note pursuant to any such provision. Notes which have (i) the same final maturity, (ii) the same principal prepayment dates, (iii) the same principal prepayment amounts (as a percentage of the original principal amount of each Note), (iv) the same interest rate, (v) the same interest payment periods, (vi) the same currency specification and (vii) the same date of issuance (which, in the case of a Note issued in exchange for another Note, shall be deemed for these purposes the date on which such Note’s ultimate predecessor Note was issued), are herein called a “**Series**” of Notes. Certain capitalized and other terms used in this Agreement are defined in Schedule A; and references to a “**Schedule**” or an “**Exhibit**” are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement.

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2. SALE AND PURCHASE OF NOTES.

Section 2.1. Shelf Facility and Shelf Notes.

(a) **Facility.** Prudential is willing to consider, in its sole discretion and within limits which may be authorized for purchase by Prudential Affiliates from time to time, the purchase of Notes pursuant to this Agreement. The willingness of Prudential to consider such purchase of Notes is herein called the “**Facility**”. At any time, the aggregate principal amount of Notes stated in Section 1.1, minus the aggregate principal amount of Notes purchased and sold pursuant to this Agreement prior to such time, minus the aggregate principal amount of Accepted Notes (as hereinafter defined) which have not yet been purchased and sold hereunder prior to such time, is herein called the “**Available Facility Amount**” at such time. For purposes of the preceding sentence, all aggregate principal amounts of Notes and Accepted Notes shall be calculated in Dollars; with respect to any Notes denominated or Accepted Notes to be denominated in any Available Currency other than Dollars, the Dollar Equivalent of such Notes or Accepted Notes shall be used for such calculation. **NOTWITHSTANDING THE WILLINGNESS OF PRUDENTIAL TO CONSIDER PURCHASES OF NOTES BY PRUDENTIAL AFFILIATES, THIS AGREEMENT IS ENTERED INTO ON THE EXPRESS UNDERSTANDING THAT NEITHER PRUDENTIAL NOR ANY PRUDENTIAL AFFILIATE SHALL BE OBLIGATED TO MAKE OR ACCEPT OFFERS TO PURCHASE NOTES, OR TO QUOTE RATES, SPREADS OR OTHER TERMS WITH RESPECT TO SPECIFIC PURCHASES OF NOTES, AND THE FACILITY SHALL IN NO WAY BE CONSTRUED AS A COMMITMENT BY PRUDENTIAL OR ANY PRUDENTIAL AFFILIATE.**

(b) **Issuance Period.** Notes may be issued and sold pursuant to this Agreement until the earlier of (i) March 24, 2019 (or if such date is not a New York Business Day, the New York Business Day next preceding such date) and (ii) the thirtieth day after Prudential shall have given to the Company, or the Company shall have given to Prudential, a written notice stating that it elects to terminate the issuance and sale of Notes pursuant to this Agreement (or if such thirtieth day is not a New York Business Day, the New York Business Day next preceding such thirtieth day). The period during which Notes may be issued and sold pursuant to this Agreement is herein called the “**Issuance Period**”.

(c) **Request for Purchase.** The Company may from time to time during the Issuance Period make requests for purchases of Notes (each such request being herein called a “**Request for Purchase**”). Each Request for Purchase shall be made to Prudential by telecopier or overnight delivery service, and shall (i) specify the currency (which shall be an Available Currency) of the Notes covered thereby, (ii) specify the aggregate principal amount of Notes covered thereby, which shall not be less than \$10,000,000 (or its equivalent in another Available Currency) and not be greater than the Available Facility Amount at the time such Request for Purchase is made, (iii) specify the principal amounts, final maturities, principal prepayment dates and amounts and interest payment periods (quarterly or semi-annually in arrears) of the Notes covered thereby, (iv) specify the use of proceeds of such Notes, (v) specify the proposed day for the closing of the purchase and sale of such Notes, which shall be a Business Day during the Issuance Period not less than 10 days and not more than 42 days after the making of such Request for Purchase, (vi) specify the number of the account and the name and address of the depository institution to which the purchase prices of such Notes are to be transferred on the Closing Day for such purchase and sale, (vii) certify that the representations and warranties contained in Section 5 are true on and as of the date of such Request for Purchase and that there exists on the date of such Request for Purchase no Event of Default or Default, and (viii) be substantially in the form of Exhibit 2 attached hereto. Each Request for Purchase shall be in writing signed by the Company and shall be deemed made when received by Prudential.

(d) **Rate Quotes.** Not later than five Business Days after the Company shall have given Prudential a Request for Purchase pursuant to Section 2.2(c), Prudential may, but shall be under no obligation to, provide to the Company by telephone or telecopier, in each case between 9:30 A.M. and 1:30 P.M. New York City local time (or such later time as Prudential may elect) interest rate quotes for the several currencies, principal amounts, maturities, principal prepayment schedules, and interest payment periods of Notes specified in such Request for Purchase (each such interest rate quote provided in response to a Request for Purchase herein called a “**Quotation**”). Each Quotation shall represent the interest rate per annum payable on the outstanding principal balance of such Notes at which Prudential or a Prudential Affiliate would be willing to purchase such Notes at 100% of the principal amount thereof.

(e) **Acceptance.** Within the Acceptance Window, an Authorized Officer of the Company may, subject to Section 2.1(f), elect to accept on behalf of the Company the Quotation provided in response to the related Request for Purchase as to the aggregate principal amount of the Notes specified in the related Request for Purchase (each such Note being herein called an “**Accepted Note**” and such acceptance being herein called an “**Acceptance**”). The day the Company notifies Prudential of an Acceptance with respect to such Accepted Notes is herein called the “**Acceptance Day**” for such Accepted Notes. Any Quotation as to which Prudential does not receive an Acceptance within the Acceptance Window shall expire, and no purchase or sale of Notes hereunder shall be made based on any such expired Quotation. Subject to Section 2.1(f) and the other terms and conditions hereof, the Company agrees to sell to a Prudential Affiliate, and Prudential agrees to cause the purchase by a Prudential Affiliate of, such Accepted Notes at 100% of the principal amount of such Notes, which purchase price shall be paid in the currency in which such Notes are denominated. As soon as practicable following the Acceptance Day, the Company, Prudential and each Prudential Affiliate which is to purchase any such Accepted Notes will execute a confirmation of such Acceptance substantially in the form of Exhibit 3 attached hereto (herein called a “**Confirmation of Acceptance**”). If the Company should fail to execute and return to Prudential within three Business Days following the Company’s receipt thereof a Confirmation of Acceptance with respect to any Accepted Notes, Prudential may at its election at any time prior to Prudential’s receipt thereof cancel the closing with respect to such Accepted Notes by so notifying the Company in writing.

(f) **Market Disruption.** Notwithstanding the provisions of Section 2.1(e), any Quotation provided pursuant to Section 2.1(d) shall expire if prior to the time an Acceptance with respect to such Quotation shall have been notified to Prudential in accordance with Section 2.1(e): (i) in the case of any Notes, the domestic market for U.S. Treasury securities or derivatives shall have closed or there shall have occurred a general suspension, material limitation, or significant disruption of trading in securities generally on the New York Stock Exchange or in the domestic market for U.S. Treasury securities or derivatives, or (ii) in the case of Notes to be denominated in a currency other than Dollars, the markets for the relevant government securities (which in the case of the Euro, shall be the German Bund) or the spot and forward currency market, the financial futures market or the interest rate swap market shall have closed or there shall have occurred a general suspension, material limitation, or significant disruption of trading. No purchase or sale of Notes hereunder shall be made based on such expired Quotation. If the Company thereafter notifies Prudential of the Acceptance of any such Quotation, such Acceptance shall be ineffective for all purposes of this Agreement, and Prudential shall promptly notify the Company that the provisions of this Section 2.1(f) are applicable with respect to such Acceptance.

(g) **Fees.**

( i ) **Structuring Fee.** In consideration for the time, effort and expense involved in the preparation, negotiation and execution of this Agreement, the Company will pay to Prudential in immediately available funds fees (herein called the “**Structuring Fees**”), as follows: (A) a non-refundable, fully earned, Structuring Fee in the amount of \$25,000 on the date of this Agreement, and (B) a further Structuring Fee in the amount of \$25,000 (the “**Second Structuring Fee Installment**”) on June 6, 2013 (the “**Six-Month Anniversary Date**”); provided that if Notes in an aggregate principal amount of at least \$50,000,000 (or the Dollar Equivalent thereof in the case of Notes denominated in any Available Currency other than Dollars), are issued on or before the Six-Month Anniversary Date, then payment of the Second Structuring Fee Installment is waived.

(ii) **Issuance Fee.** The Company will pay to each Purchaser in immediately available funds a fee (herein called the “**Issuance Fee**”) on each Closing Day in an amount equal to 0.10% of the Dollar equivalent of the aggregate principal amount of Notes sold to such Purchaser on such Closing Day. Such fee shall be payable in Dollars.

(iii) **Delayed Delivery Fee.** If the closing of the purchase and sale of any Accepted Note is delayed for any reason beyond the original Closing Day for such Accepted Note (other than as provided in Section 2.1(g)(v)), the Company will pay to each Purchaser which shall have agreed to purchase such Accepted Note on the Cancellation Date or Rescheduled Closing Day (as defined in Section 3.3) of such purchase and sale, an amount (herein called the “**Delayed Delivery Fee**”) equal to:

(A) in the case of an Accepted Note denominated in Dollars, the product of (1) the amount determined by Prudential to be the amount by which the bond equivalent yield per annum of such Accepted Note exceeds the investment rate per annum on an alternative highest quality commercial paper Dollar investment selected by Prudential and having a maturity date or dates the same as, or approximately the same as, the Rescheduled Closing Day from time to time fixed for the delayed delivery of such Accepted Note, (2) the principal amount of such Accepted Note, and (3) a fraction, the numerator of which is equal to the number of actual days elapsed from and including the original Closing Day for such Accepted Note to but excluding the date of payment of the Delayed Delivery Fee, and the denominator of which is 360; and

(B) in the case of an Accepted Note denominated in a currency other than Dollars, the sum of (1) the product of (x) the amount by which the bond equivalent yield per annum of such Accepted Note exceeds the arithmetic average of the Overnight Interest Rates on each day from and including the original Closing Day for such Accepted Note, (y) the principal amount of such Accepted Note, and (z) a fraction, the numerator of which is equal to the number of actual days elapsed from and including the original Closing Day for such Accepted Note to but excluding the date of payment of the Delayed Delivery Fee, and the denominator of which is 360 (in case of any Accepted Note denominated in other than British Pounds or Canadian Dollars) or 365 (in the case of any Accepted Note denominated in British Pounds or Canadian Dollars) and (2) the costs and expenses (if any) incurred by such Purchaser or its affiliates with respect to any interest rate or currency exchange agreement entered into by such Purchaser or any such affiliate in connection with the delayed closing of such Accepted Notes.

In no case shall the Delayed Delivery Fee, if applicable, be less than zero. The Delayed Delivery Fee described in clause (B) above shall be paid in the currency in which the Accepted Notes are denominated. Nothing contained herein shall obligate any Purchaser to purchase any Accepted Note on any day other than the Closing Day for such Accepted Note, as the same may be rescheduled from time to time in compliance with Section 3.2.

(iv) **Cancellation Fee.** If the Company at any time notifies Prudential in writing that the Company is canceling the closing of the purchase and sale of any Accepted Note, or if Prudential notifies the Company of Accepted Note in writing under the circumstances set forth in the last sentence of Section 2.1(e) or the penultimate sentence of Section 3.2 that the closing of the purchase and sale of such Accepted Note is to be canceled, or if the closing of the purchase and sale of such Accepted Note is not consummated on or prior to the last day of the Issuance Period (the date of any such notification, or the last day of the Issuance Period, as the case may be, being herein called the “**Cancellation Date**”), the Company will pay to each Purchaser which shall have agreed to purchase such Accepted Note no later than one day after the Cancellation Date in immediately available funds an amount (the “**Cancellation Fee**”) equal to:

(A) the product of (1) the principal amount of such Accepted Note and (2) the quotient (expressed in decimals) obtained by dividing (y) the excess of the ask price (as determined by Prudential) of the Hedge Treasury Note(s) on the Cancellation Date over the bid price (as determined by Prudential) of the Hedge Treasury Note(s) on the Acceptance Day for such Accepted Note by (z) such bid price, with the foregoing bid and ask prices as reported on the Bridge\Telerate Service, or if such information ceases to be available on the Bridge\Telerate Service, any publicly available source of such market data selected by Prudential, and rounded to the second decimal place; and

(B) in the case of an Accepted Note denominated in a currency other than Dollars, the aggregate of all unwinding costs incurred by such Purchaser or its affiliates on positions executed by or on behalf of such Purchaser or such affiliates in connection with the proposed lending in such currency and setting the coupon in such currency, including replacement positions entered into for purposes of achieving short form hedge account treatment under FAS133, provided, however, that any gain realized upon the unwinding of any such positions shall be offset against any such unwinding costs. Such positions include (without limitation) currency and interest rate swaps, futures and forwards, government bond (including U.S. Treasury bond) hedges and currency exchange contracts, all of which may be subject to substantial price volatility. Such costs may also include (without limitation) losses incurred by such Purchaser or its affiliates as a result of fluctuations in exchange rates. All unwinding costs incurred by such Purchaser shall be determined by Prudential or its affiliate in accordance with generally accepted financial practice.

In no case shall the Cancellation Fee, if applicable, be less than zero.

(v) **Invalidation of Delayed Delivery Fee and Cancellation Fee** If all conditions to a closing of the purchase and sale of any Accepted Note set forth in Section 4 hereof have been satisfied on the original Closing Day for any Accepted Notes (other than Section 4.6, unless the Company shall have failed to comply with the request of any Purchaser pursuant to the last sentence of such Section, and other than Section 4.4(b), unless the Company shall have failed to comply with any reasonable request of the Purchasers or their special counsel to provide information necessary for the Purchaser's special counsel to deliver the opinion required by such Section 4.4(b)) and a Purchaser fails to purchase such Accepted Notes, then the Company shall have no obligation to pay any Delayed Delivery Fee or Cancellation Fee that might have otherwise been applicable.

### 3. CLOSING.

**Section 3.1. Facility Closings.** Not later than 11:30 A.M. (New York City local time) on the Closing Day for any Accepted Notes, the Company will deliver to each Purchaser listed in the Confirmation of Acceptance relating thereto at the offices of Prudential Capital Group, Two Prudential Plaza, Suite 5600, Chicago, Illinois 60601, Attention: Law Department or at such other place pursuant to the directions of Prudential, the Accepted Notes to be purchased by such Purchaser in the form of one or more Notes in authorized denominations as such Purchaser may request for each Series of Accepted Notes to be purchased on the Closing Day, dated the Closing Day and registered in such Purchaser's name (or in the name of its nominee), against payment of the purchase price thereof by transfer of immediately available funds for credit to the Company's account specified in the Request for Purchase of such Notes.



**Section 3.2. Rescheduled Facility Closings.** If the Company fails to tender to any Purchaser the Accepted Notes to be purchased by such Purchaser on the scheduled Closing Day for such Accepted Notes as provided above in Section 3.1, or any of the conditions specified in Section 4 shall not have been fulfilled by the time required on such scheduled Closing Day, the Company shall, prior to 1:00 P.M., New York City local time, on such scheduled Closing Day notify Prudential (which notification shall be deemed received by each Purchaser) in writing whether (i) such closing is to be rescheduled (such rescheduled date to be a Business Day during the Issuance Period not less than one Business Day and not more than 10 Business Days after such scheduled Closing Day (the “**Rescheduled Closing Day**”)) and certify to Prudential (which certification shall be for the benefit of each Purchaser) that the Company reasonably believes that it will be able to comply with the conditions set forth in Section 4 on such Rescheduled Closing Day and that the Company will pay the Delayed Delivery Fee in accordance with Section 2.1(g)(iii) or (ii) such closing is to be canceled. If a Rescheduled Closing Day is established in respect of Notes denominated in a currency other than Dollars, such Notes shall have the same maturity date, principal prepayment dates and amounts and interest payment dates as originally scheduled. In the event that the Company shall fail to give such notice referred to in the second preceding sentence, Prudential (on behalf of each Purchaser) may at its election, at any time after 1:00 P.M., New York City local time, on such scheduled Closing Day, notify the Company in writing that such closing is to be canceled. Notwithstanding anything to the contrary appearing in this Agreement, the Company may not elect to reschedule a closing with respect to any given Accepted Notes on more than one occasion, unless Prudential shall have otherwise consented in writing.

#### **4. CONDITIONS.**

Each Purchaser’s obligation to purchase and pay for the Notes to be sold to such Purchaser at the Closing for such Notes is subject to the fulfillment, prior to or at such Closing, of the following conditions:

##### **Section 4.1. Representations and Warranties.**

The representations and warranties of the Company and each other Transaction Party in this Agreement and each other Transaction Document shall be correct on the date of this Agreement and at the time of the applicable Closing Day (except to the extent of changes caused by the transactions herein contemplated).

##### **Section 4.2. Performance; No Default.**

The Company and each other Transaction Party shall have performed and complied with all agreements and conditions contained in this Agreement and each other Transaction Document required to be performed or complied with by it prior to or at such Closing and no Default or Event of Default shall have occurred and be continuing after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by Section 5.14).

##### **Section 4.3. Compliance Certificates.**

(a) Officer’s Certificates. The Company and each other Transaction Party delivering any Transaction Document for such Closing shall have delivered to such Purchaser an Officer’s Certificate, dated the date of such Closing, certifying that the conditions specified in Sections 4.1 and 4.2 have been fulfilled.

(b) Secretary's Certificates. The Company and each other Transaction Party delivering any Transaction Document for such Closing shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of such Closing, certifying as to (i) its attached formation document, certified by the Secretary of State of the State of its formation, (ii) its attached by-laws or operating agreement, (iii) the resolutions attached thereto and other corporate proceedings relating to the authorization, execution and delivery of this Agreement, the Notes and the other Transaction Document being delivered for such Closing, (iv) an attached certificate of good standing as of a recent date, (v) the incumbency and specimen signatures of the officers executing this Agreement, such Notes and such other Transaction Documents and (vi) such other matters relating to the execution, delivery and approval of this Agreement, such Notes and other Transaction Documents as such Purchasers shall reasonably request; provided, however, if none of the matters described in clauses (i), (ii) or (iii) certified by the Company or any other Transaction Party in a certificate previously delivered pursuant to this Section 4.3(b) have changed (and, in the case of the resolutions referred to in clause (iii), such resolutions authorize the execution, delivery and performance of such Notes and other Transaction Documents) then the Company or such Transaction Party may, in lieu of certifying to such matters, certify that there have been no changes to such matters as certified by the Company or such other Transaction Party in such prior certificate.

**Section 4.4. Opinions of Counsel.**

Such Purchaser shall have received opinions in form and substance reasonably satisfactory to such Purchaser, dated the date of such Closing (a) from such law firms reasonably acceptable to Prudential, as U.S. counsel for the Transaction Parties covering the matters set forth in Exhibits 4.4(a) and covering such matters as such Purchaser may reasonably request (and the Company hereby instructs such counsel to deliver such opinions to the Purchasers) and (b) from Schiff Hardin LLP, the Purchasers' special counsel in connection with such transactions, covering the matters set forth in Exhibit 4.4(b) and covering such other matters incident to such transactions as such Purchaser may reasonably request.

**Section 4.5. Guaranty Agreements and Confirmations.**

(a) On the date of the Closing of the initial Series of Notes, the Company shall have delivered to Prudential a certificate, dated the date of the Closing of the initial Series of Notes, providing a complete and accurate list of each Domestic Subsidiary which is a borrower or co-borrower under the Primary Credit Facility as of the date of the Closing of the initial Series of Notes and each Subsidiary which is liable under a Guarantee with respect to any Indebtedness of the Company or any Domestic Subsidiary under the Primary Credit Facility as of the date of the Closing of the initial Series of Notes.

(b) Each Domestic Subsidiary which is a borrower or co-borrower under the Primary Credit Facility as of the date of the Closing of the initial Series of Notes, and each Subsidiary which is liable under a Guarantee with respect to any Indebtedness of the Company or any Domestic Subsidiary under the Primary Credit Facility as of the date of the Closing of the initial Series of Notes, shall have delivered to Prudential a Guaranty Agreement in the form of Exhibit 4.5(b) hereto (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "**Guaranty Agreement**").

(c) On each Closing Day after the date of the Closing of the initial Series of Notes, each Guarantor which is a party to a Guaranty Agreement shall have delivered to such Purchaser a Confirmation of Guaranty Agreement, dated such Closing Day, in the form of Exhibit 4.5(c) attached hereto (each as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, a “**Confirmation of Guaranty Agreement**”) and each other Person which is required to execute a Guaranty Agreement with respect to such Notes pursuant to Section 9.8 shall have executed and delivered such Guaranty Agreement.

**Section 4.6. Purchase Permitted By Applicable Law, Etc.**

On the date of each Closing, each Purchaser’s purchase of Notes shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including, without limitation, Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject such Purchaser to any tax (excluding taxes on the revenue and net income of such Purchaser), penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the date hereof. If requested by such Purchaser, such Purchaser shall have received an Officer’s Certificate of the Company certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

**Section 4.7. Payment of Fees.**

(a) Without limiting the provisions of Section 16.1, the Company shall have paid to Prudential and each Purchaser on or before such Closing any fees due it pursuant to or in connection with this Agreement, including any Structuring Fee due pursuant to Section 2.1(g)(i), any Issuance Fee due pursuant to Section 2.1(g)(ii) and any Delayed Delivery Fee due pursuant to Section 2.1(g)(iii).

(b) Without limiting the provisions of Section 16.1, the Company shall have paid on or before such Closing the reasonable and documented fees, charges and disbursements of the Purchasers’ one special counsel referred to in Section 4.4 to the extent reflected in a statement of such counsel rendered to the Company at least three Business Days prior to such Closing.

**Section 4.8. Private Placement Number.**

A Private Placement Number issued by Standard & Poor’s CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for such Notes.

**5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.**

The Company for itself on behalf of itself and its Subsidiaries, represents and warrants to each Purchaser that:

**Section 5.1. Organization; Power and Authority.**

The Company is a corporation duly organized, validly existing and, where legally applicable, in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and, where legally applicable, is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company has the corporate power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to perform the provisions hereof and thereof.

**Section 5.2. Authorization, Etc.**

This Agreement, the Notes and the other Transaction Documents have been duly authorized by all necessary corporate action on the part of the Transaction Parties party thereto, and this Agreement constitutes, and upon execution and delivery thereof each Note and each other Transaction Document delivered to the Purchasers will constitute, a legal, valid and binding obligation of the Transaction Parties party thereto enforceable against the Transaction Parties party thereto in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Section 5.3. Disclosure.**

This Agreement and the documents, certificates or other writings (including the financial statements described in Section 5.5 and the financial statements provided pursuant to the terms hereof) delivered to the Purchasers by or on behalf of the Transaction Parties in connection with the transactions contemplated hereby (this Agreement and such documents, certificates or other writings and financial statements delivered to each Purchaser in connection with entering into this Agreement (in the case of the making of this representation upon the signing of this Agreement), or delivered to such Purchaser in connection with this Agreement or such Purchaser's purchase of Notes prior to the day the Quotation for any Series of Notes was provided by Prudential (in the case of the making of this representation in connection with the issuance of such Series of Notes) being referred to, collectively, as the "**Disclosure Documents**"), taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. Except as disclosed in the Disclosure Documents, since September 30, 2011, in the case of the making of this representation at the time of the signing of this Agreement, and since the end of the most recent fiscal year for which audited financial statements have been furnished prior to the time Prudential provided the Quotation to the Company pursuant to Section 2.1(d) with respect to any Series of Notes for which this representation is being made, in the case of the making of this representation in connection with the Request for Purchase with respect to such Series of Notes and the issuance of such Series of Notes, there has been no change in the financial condition, operations or business of the Company and its Subsidiaries, taken as a whole, except changes that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

#### **Section 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliates.**

(a) Schedule 5.4 contains (except as noted therein) complete and correct lists (i) of the Company's Subsidiaries, showing, as to each Subsidiary, the correct name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by the Company and each other Subsidiary, (ii) of the Company's Affiliates, other than Subsidiaries, and (iii) of the Company's directors and senior officers, in each case as of the date of this Agreement. As of the date of this Agreement, except as disclosed in Schedule 5.4, no Subsidiary is liable under a Guarantee with respect to any Indebtedness of the Company or any Domestic Subsidiary under the Primary Credit Facility and no Domestic Subsidiary is a borrower or co-borrower under the Primary Credit Facility.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary owned by the Company and its Subsidiaries have been validly issued, are fully paid and nonassessable, as applicable, and are owned by the Company or another Subsidiary free and clear of any Lien that is prohibited by this Agreement.

(c) Each Subsidiary is a corporation or other legal entity duly organized, validly existing and, where legally applicable, in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and, where legally applicable, is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver the Transaction Documents to which it is a party and to perform the provisions thereof.

#### **Section 5.5. Financial Statements.**

The Company has delivered to each Purchaser of any Accepted Notes the following financial statements of the Company: (a) a consolidated balance sheet of the Company and its Subsidiaries as at September 30 in each of the three fiscal years of the Company most recently completed prior to the date as of which this representation is made or repeated to such Purchaser (other than fiscal years completed within 100 days prior to such date for which audited financial statements have not been released) and consolidated statements of income, cash flows and shareholders' equity of the Company and its Subsidiaries for each such year, all reported on by PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing and (b) a consolidated balance sheet of the Company and its Subsidiaries as at the end of the quarterly period (if any) most recently completed prior to such date and after the end of such fiscal year (other than quarterly periods completed within 55 days prior to such date for which financial statements have not been released) and the comparable quarterly period in the preceding fiscal year and consolidated statements of income, cash flows and shareholders' equity for the periods from the beginning of the fiscal years in which such quarterly periods are included to the end of such quarterly periods, prepared by the Company. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods indicated and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

Documents required to be delivered pursuant to this Section 5.5 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which the Company gives notice to Prudential and each Purchaser that such documents are (i) posted and the Company provides a link thereto on <http://www.hillenbrand.com>; or (ii) posted on the Company's behalf on an Internet or intranet website, if any, to which the Purchasers have access (whether a commercial, third-party website or whether sponsored by Prudential).

**Section 5.6. No Conflicts; Compliance with Laws.** The execution, delivery and performance by the Company and the other Transaction Parties of this Agreement, the Notes and the other Transaction Documents will not (a) contravene, result in any breach of, or constitute a default under any indenture, agreement or other instrument to which the Company or any Subsidiary is bound or by which any of their respective properties may be affected, except for such violation which, individually and in the aggregate, would not be reasonably expected to have a Material Adverse Effect, (b) violate the charter, by-laws or other organization documents of the Transaction Parties, (c) violate any applicable material law or regulation or any order of any Governmental Authority or (d) result in the creation of any Lien in respect of any property of the Company or any Subsidiary.

**Section 5.7. Governmental Authorizations, Etc.**

No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Company or any other Transaction Party of this Agreement, the Notes or the other Transaction Documents to which the Company or such Transaction Party is a party, except such as have been obtained or made and are in full force and effect.

**Section 5.8. Litigation.**

(a) There are no actions, suits, investigations or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company or any Subsidiary or any property of the Company or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(b) Each of the Company and its Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. Except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, neither the Company nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) is party to any administrative or judicial proceeding relating to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any facts or conditions that are reasonably expected to give rise to any Environmental Liability.

**Section 5.9. Taxes.**

The Company and its Subsidiaries have filed all income tax returns and all other tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except, in each case, (i) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Company or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP.

**Section 5.10. Title to Property.**

The Company and its Subsidiaries have good and sufficient title to, or a valid leasehold interest in, their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in Section 5.5 or purported to have been acquired by the Company or any Subsidiary after said date (except as sold or otherwise disposed of in the ordinary course of business).

**Section 5.11. Licenses, Permits, Etc.**

(a) The Company and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others.

(b) To the best knowledge of the Company, no product of the Company or any of its Subsidiaries infringes in any material respect any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned by any other Person.

(c) To the best knowledge of the Company, there is no Material violation by any Person of any right of the Company or any of its Subsidiaries with respect to any patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by the Company or any of its Subsidiaries.

**Section 5.12. Compliance with ERISA; Non-U.S. Plans.**

(a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and would not reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans) that is subject to Part 4 of Title I of ERISA, determined as of the last day of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. For purposes of the preceding sentence, the term "benefit liabilities" has the meaning specified in section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in section 3 of ERISA. The present value of the accrued benefit liabilities (whether or not vested) under each Non-U.S. Plan that is funded, determined as of the last day of the Company's most recently ended fiscal year in accordance with GAAP, did not exceed the current value of the assets of such Non-U.S. Plan allocable to such benefit liabilities.

(c) The Company and its ERISA Affiliates have not incurred (i) withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material or (ii) any obligation in connection with the termination of or withdrawal from any Non-U.S. Plan.

(d) The expected postretirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with ACS 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company and its Subsidiaries did not exceed \$11,000,000. The pension obligation for the nonqualified U.S. pension plan under GAAP did not exceed \$30,000,000.

(e) The execution and delivery of this Agreement and the other Transaction Documents and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by the Company to each Purchaser in the first sentence of this Section 5.12(e) is made in reliance upon and subject to the accuracy of such Purchaser's representation in Section 6.2 as to the sources of the funds used to pay the purchase price of the Notes to be purchased by such Purchaser.

(f) All Non-U.S. Plans have been established, operated, administered and maintained in compliance with all laws, regulations and orders applicable thereto, except where failure so to comply would not be reasonably expected to have a Material Adverse Effect. All premiums, contributions and any other amounts required by applicable Non-U.S. Plan documents or applicable laws to be paid or accrued by the Company and its Subsidiaries have been paid or accrued as required, except where failure so to pay or accrue would not be reasonably expected to have a Material Adverse Effect.



**Section 5.13. Private Offering by the Company.**

Neither the Company nor anyone acting on its behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any person other than the Purchasers and other Institutional Investors, each of which has been offered the Notes at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act or to the registration requirements of any securities or blue sky laws of any applicable jurisdiction.

**Section 5.14. Use of Proceeds; Margin Regulations.**

The Company will apply the proceeds of the sale of such Notes as set forth in the applicable Request for Purchase. None of the proceeds of the sale of any Notes will be used to finance a Hostile Tender Offer. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock (excluding Treasury Stock) does not constitute more than 25% of the value of the consolidated assets of the Company and its Subsidiaries and the Company does not have any present intention that margin stock (excluding Treasury Stock) will constitute more than 25% of the value of such assets. As used in this Section, the terms "margin stock" and "purpose of buying or carrying" shall have the meanings assigned to them in said Regulation U.

**Section 5.15. Existing Indebtedness; Future Liens.**

Neither the Company nor any of its Subsidiaries has outstanding any Indebtedness except as permitted by Section 10.3. Neither the Company nor any Subsidiary is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Company or such Subsidiary and no event or condition exists on the date of this Agreement (with respect to the making of this representation at the time of the signing of this Agreement) or on the Closing Day with respect to the issuance of any Notes (in the case of the making of this representation on such Closing Day) with respect to any Indebtedness of the Company or any Subsidiary the outstanding principal amount of which (a) individually exceeds \$10,000,000, or (b) in the aggregate exceeds \$40,000,000 that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment (other than (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (ii) any Indebtedness that becomes due as a result of a refinancing thereof permitted by Section 10.1, (iii) any reimbursement obligation in respect of a letter of credit as a result of a drawing thereunder by a beneficiary thereunder in accordance with its terms, (iv) any such Indebtedness that is mandatorily prepayable prior to the scheduled maturity thereof with the proceeds of the issuance of capital stock, the incurrence of other Indebtedness or the sale or other disposition of any assets, and (v) any redemption, conversion or settlement of any such Indebtedness that is convertible into Equity Interests (and cash in lieu of fractional shares) and/or cash (in lieu of such Equity Interests in an amount determined by reference to the price of the common stock of the Company at the time of such conversion or settlement) in the Company pursuant to its terms unless such redemption, conversion or settlement results from a default thereunder or an event of a type that constitutes an Event of Default, so long as, in any case described in clauses (i) through (v), the Company is not in default with respect to its obligations to make payment of such Indebtedness or reimbursement obligation when due (within any applicable grace period) and such event shall not have otherwise resulted in an event of default with respect to such Indebtedness, or reimbursement obligation).

**Section 5.16. Foreign Assets Control Regulations, Etc.**

(a) Neither the Company nor any Controlled Entity is (i) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control, U.S. Department of Treasury (“**OFAC**”) (an “**OFAC Listed Person**”) or (ii) a department, agency or instrumentality of, or is otherwise controlled by or acting on behalf of, directly or indirectly, (x) any OFAC Listed Person or (y) any Person, entity, organization, foreign country or regime that is subject to any OFAC Sanctions Program (each OFAC Listed Person and each other Person, entity, organization and government of a country described in clause (ii), a “**Blocked Person**”).

(b) No part of the proceeds from the sale of the Notes hereunder constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used, directly by the Company or indirectly through any Controlled Entity, in connection with any investment in, or any transactions or dealings with, any Blocked Person.

(c) To the Company’s actual knowledge after making due inquiry, neither the Company nor any Controlled Entity (i) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes under any applicable law (collectively, “**Anti-Money Laundering Laws**”), (ii) has been assessed civil penalties under any Anti-Money Laundering Laws or (iii) has had any of its funds seized or forfeited in an action under any Anti- Money Laundering Laws.

(d) No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for any improper payments to any governmental official or employee, political party, official of a political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage in violation of the United States Foreign Corrupt Practice Act of 1977, as amended, or any other applicable law.

**Section 5.17. Status under Certain Statutes.**

Neither the Company nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, as amended, the ICC Termination Act of 1995, as amended, or the Federal Power Act, as amended.

**Section 5.18. Environmental Matters.**

(a) Neither the Company nor any Subsidiary has knowledge of any claim or has received any notice of any claim, and no proceeding has been instituted raising any claim against the Company or any of its Subsidiaries or any of their respective real properties now or formerly owned, leased or operated by any of them or other assets, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as would not reasonably be expected to result in a Material Adverse Effect.

(b) Neither the Company nor any Subsidiary has knowledge of any facts which are reasonably likely to give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as would not reasonably be expected to result in a Material Adverse Effect.

(c) Neither the Company nor any Subsidiary has stored any Hazardous Materials on real properties now or, to the knowledge of the Company, formerly owned, leased or operated by any of them and has not disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in each case in any manner that would reasonably be expected to result in a Material Adverse Effect; and

(d) All buildings on all real properties now owned, leased or operated by the Company or any Subsidiary are in compliance with applicable Environmental Laws, except where failure to comply would not reasonably be expected to result in a Material Adverse Effect.

**6. REPRESENTATIONS OF THE PURCHASERS.**

**Section 6.1. Purchase for Investment.**

Each Purchaser severally represents that it is purchasing the Notes purchased by it hereunder for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, provided that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control. Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

## Section 6.2. Source of Funds.

Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a“**Source**”) to be used by such Purchaser to pay the purchase price of the Notes to be purchased by it hereunder:

(a) the Source is an “insurance company general account” (as the term is defined in the United States Department of Labor’s Prohibited Transaction Exemption (“**PTE**”) 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the “**NAIC Annual Statement**”)) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser’s state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser’s fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an “investment fund” (within the meaning of Part VI of PTE 84-14 (the“**QPAM Exemption**”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan’s assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be “related” within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Company of such Notes in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a “plan(s)” (within the meaning of Part IV(h) of PTE 96-23 (the “**INHAM Exemption**”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Section I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Section IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Company of such Notes and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company of such Notes in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 6.2, the terms “employee benefit plan,” “governmental plan,” and “separate account” shall have the respective meanings assigned to such terms in section 3 of ERISA.

**Section 6.3** Each Purchaser further represents and warrants that such Purchaser (a) will not sell, transfer or otherwise dispose of the Notes or any interest therein except in a transaction exempt from or not subject to the registration requirements of the Securities Act and (b) was given the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the Company possesses or can acquire without unreasonable effort or expense. Each Purchaser acknowledges that the Notes will bear a restrictive legend in the form set forth on the form of Note attached as Exhibit 1 to the Private Shelf Agreement. Nothing contained in this Section 6.3 shall limit the ability of any Purchaser to rely upon the representations and warranties of the Transaction Parties in the Transaction Documents without additional inquiry or investigation.

**Section 6.4** Each Purchaser represents that it is an Institutional Accredited Investor acting for its own account (and not for the account of others) or as a fiduciary or agent for others (which others are also Institutional Accredited Investors).

**Section 6.5** The purchase of Notes by such Purchaser has not been solicited by or through anyone other than the Company, its agents or representatives, Prudential, or a holder of a Note.

7. [RESERVED].

8. **PAYMENT AND PREPAYMENT OF THE NOTES.**

**Section 8.1. Required Prepayments of the Notes** Each Series of Notes shall be subject to required prepayments, if any, set forth in the Notes of such Series.

**Section 8.2. Optional Prepayments with Make-Whole Amount.**

The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, any Series of Notes (in the case of each partial prepayment, in a minimum aggregate principal amount of \$1,000,000 and in integral multiples of \$500,000 in the case of Notes denominated in Dollars, in a minimum aggregate principal amount of €1,000,000 and in integral multiples of €500,000 in the case of Notes denominated in Euros, in a minimum aggregate principal amount of £1,000,000 and in integral multiples of £500,000 in the case of Notes denominated in British Pounds, in a minimum aggregate principal amount of C\$1,000,000 and in integral multiples of C\$500,000 in the case of Notes denominated in Canadian Dollars, and in a minimum aggregate principal amount of FR1,000,000 and in integral multiples of FR500,000 in the case of Notes denominated in Swiss Francs), at 100% of the principal amount so prepaid, and the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of any Series of Notes to be prepaid written notice of each optional prepayment under this Section 8.2 not less than 10 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the Series of Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid (determined in accordance with Section 8.4), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer of the Company as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder of such Series of Notes to be prepaid a certificate of a Senior Financial Officer of the Company specifying the calculation of such Make-Whole Amount as of the specified prepayment date. Any partial prepayment of the Notes of any Series pursuant to this Section 8.2 shall be applied to the required prepayments and payments of the Notes of such Series under Section 8.1 (including the payment due on the maturity date thereof) in the inverse order of the dates when such prepayments and payments are due.

**Section 8.3. [RESERVED].**

**Section 8.4. Allocation of Partial Prepayments.**

In the case of each partial prepayment of the Notes of any Series pursuant to Section 8.1 or 8.2, the principal amount of the Notes of such Series to be prepaid shall be allocated among all of the Notes of such Series at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

**Section 8.5. Maturity; Surrender, Etc.**

In the case of each prepayment of Notes of any Series pursuant to this Section 8, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment (which shall be a Business Day), together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

**Section 8.6. Purchase of Notes.**

The Company will not, and will not permit any of its Affiliates to, purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except (i) upon the payment or prepayment of the Notes in accordance with the terms of this Agreement and the Notes or (ii) pursuant to a written offer to purchase any outstanding Notes of any Series made by the Company or an Affiliate pro rata to the holders of all Notes of such Series at the time outstanding upon the same terms and conditions. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment or prepayment of Notes pursuant to any provision of this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

**Section 8.7. Make-Whole Amount.**

The term **"Make-Whole Amount"** means, with respect to any Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, provided that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

**"Applicable Percentage"** means 0.50% (50 basis points).

**"Called Principal"** means, with respect to any Note, the principal of such Note that is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1.

**"Discounted Value"** means, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes is payable) equal to the Reinvestment Yield with respect to such Called Principal.

**“Implied Rate British Pound Yield”** means, with respect to the Called Principal of any Note denominated in British Pounds, the yield to maturity implied by (i) the ask-side yields reported, as of 10:00 A.M. (New York time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated “Page PXUK” on Bloomberg Financial Markets (or such other display as may replace “Page PXUK” on Bloomberg Financial Markets) for actively traded gilt-edged securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported are not ascertainable, the average of the ask-side yields as determined by Recognized British Government Bond Market Makers. Such implied yield will be determined, if necessary, by (a) converting quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the actively traded gilt-edged security with the maturity closest to and greater than the Remaining Average Life of such Called Principal and (2) the actively traded gilt-edged security with the maturity closest to and less than the Remaining Average Life of such Called Principal.

**“Implied Rate Canadian Dollar Yield”** means, with respect to the Called Principal of any Note denominated in Canadian Dollars, the yield to maturity implied by (i) the ask-side yields reported, as of 10:00 a.m. (New York time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PXCA” on Bloomberg Financial Markets (or such other display as may replace “Page PXCA” on Bloomberg Financial Markets) for actively traded benchmark Canadian government bonds having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported are not ascertainable, the average of the ask-side yields for such securities as determined by Recognized Canadian Government Bond Market Makers. Such implied yield will be determined, if necessary, by (a) converting quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the actively traded benchmark Canadian government bonds with the maturity closest to and greater than the Remaining Average Life of such Called Principal and (2) the actively traded benchmark Canadian government bonds with the maturity closest to and less than the Remaining Average Life of such Called Principal.

**“Implied Rate Dollar Yield”** means, with respect to the Called Principal of any Note denominated in Dollars, the yield to maturity implied by (i) the ask-side yields reported as of 10:00 A.M. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on the run U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable (including by way of interpolation), the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. In the case of each determination under clause (i) or clause (ii), as the case may be, of the preceding paragraph, such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the applicable U.S. Treasury security with the maturity closest to and greater than such Remaining Average Life and (2) the applicable U.S. Treasury security with the maturity closest to and less than such Remaining Average Life.



**“Implied Rate Euro Yield”** means, with respect to the Called Principal of any Note denominated in Euros, the yield to maturity implied by (i) the ask-side yields reported, as of 10:00 A.M. (New York time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PXGE” on Bloomberg Financial Markets (or such other display as may replace “Page PXGE” on Bloomberg Financial Markets) for the benchmark German Bund having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported are not ascertainable, the average of the ask-side yields as determined by Recognized German Bund Market Makers. Such implied yield will be determined, if necessary, by (a) converting quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the benchmark German Bund with the maturity closest to and greater than the Remaining Average Life of such Called Principal and (2) the benchmark German Bund with the maturity closest to and less than the Remaining Average Life of such Called Principal.

**“Implied Rate Swiss Franc Yield”** means, with respect to the Called Principal of any Note denominated in Swiss Francs, the yield to maturity implied by (i) the ask-side yields reported, as of 10:00 a.m. (New York time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page O#CHBMK=” on Reuters (or such other display as may replace “Page O#CHBMK=” on Reuters) for the actively traded benchmark Swiss government bonds having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported are not ascertainable, the average of the ask-side yields for such securities as determined by Recognized Swiss Government Bond Market Makers. Such implied yield will be determined, if necessary, by (a) converting quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the actively traded benchmark Swiss government bonds with the maturity closest to and greater than the Remaining Average Life of such Called Principal and (2) the actively traded benchmark Swiss government bonds with the maturity closest to and less than the Remaining Average Life of such Called Principal.

**“Recognized British Government Bond Market Makers”** means two internationally recognized dealers of gilt edged securities reasonably selected by Prudential.

**“Recognized Canadian Government Bond Market Makers”** shall mean two internationally recognized dealers of Canadian government bonds reasonably selected by Prudential.

**“Recognized German Bund Market Makers”** means two internationally recognized dealers of German Bunds reasonably selected by Prudential.

**“Recognized Swiss Government Bond Market Makers”** means two internationally recognized dealers of Swiss government bonds reasonably selected by Prudential.

**“Reinvestment Yield”** means, with respect to the Called Principal of any Note denominated in (i) Dollars, the Applicable Percentage plus the Implied Rate Dollar Yield, (ii) Euros, the Applicable Percentage plus the Implied Rate Euro Yield, (iii) British Pounds, the Applicable Percentage plus the Implied Rate British Pound Yield, (iv) Canadian Dollars, the Applicable Percentage plus the Implied Rate Canadian Dollar Yield and (v) Swiss Francs, the Applicable Percentage plus the Implied Rate Swiss Franc Yield. The Reinvestment Yield will be rounded to that number of decimals as appears in the coupon for the applicable Note.

**“Remaining Average Life”** means, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

**“Remaining Scheduled Payments”** means, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date; provided that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Notes, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.2 or 12.1.

**“Settlement Date”** means, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.2 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

**9. AFFIRMATIVE COVENANTS.**

The Company covenants that during the Issuance Period and so long thereafter as any of the Notes are outstanding:

**Section 9.1 Financial Statements and Other Information.**

The Company will deliver to Prudential and each holder of Notes that is an Institutional Investor:

(a) within one hundred (100) days after the end of each fiscal year of the Company (or, if earlier, within five (5) days after the date that the Annual Report on Form 10-K of the Company for such fiscal year would be required to be filed under the rules and regulations of the SEC, giving effect to any automatic extension available thereunder for the filing of such form), its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing (without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within fifty-five (55) days after the end of each of the first three fiscal quarters of each fiscal year of the Company (or, if earlier, by the date that the Quarterly Report on Form 10-Q of the Company for such fiscal quarter would be required to be filed under the rules and regulations of the SEC, giving effect to any automatic extension available thereunder for the filing of such form), its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Senior Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Senior Financial Officer of the Company (i) certifying as to whether a Default or Event of Default has occurred and is continuing and, if a Default or Event of Default has occurred that is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 10.9 and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the Company's audited financial statements for the fiscal year ended September 30, 2011 or the Company's quarterly financial statements for the fiscal quarter ended December 31, 2011, March 31, 2012 or September 30, 2012 referred to in Section 5.5 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Company or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Company to its shareholders generally, as the case may be; and

(e) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Company or any Subsidiary, or compliance with the terms of this Agreement, as a holder of Notes may reasonably request.

Documents required to be delivered pursuant to clauses (a), (b) and (d) of this Section 9.1 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are (i) filed for public availability on the SEC's Electronic Data Gathering and Retrieval System; (ii) posted or the Company provides a link thereto on <http://www.hillenbrand.com>; or (iii) posted on the Company's behalf on an Internet or intranet website, if any, to which Prudential and the holders of Notes have access (whether a commercial, third-party website or whether sponsored by the Company).

#### **Section 9.2 Notices of Material Events.**

The Company will furnish to Prudential and each holder of Notes who is an Institutional Investor written notice of the following, promptly upon a Responsible Officer of the Company having actual knowledge thereof:

(a) the occurrence of any Default or Event of Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Company or any Subsidiary thereof that would reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect; and

(d) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Senior Financial Officer or other executive officer of the Company setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Information required to be delivered pursuant to clause (b), (c) and (d) of this Section shall be deemed to have been delivered if such information, or one or more annual or quarterly or other periodic reports containing such information is (i) filed for public availability on the SEC's Electronic Data Gathering and Retrieval System, (ii) posted or the Company provides a link thereto on <http://www.hillenbrand.com>; or (iii) posted on the Company's behalf on an Internet or intranet website, if any, to which Prudential and the holders of Notes have access (whether a commercial, third-party website or whether sponsored by the Company). Information required to be delivered pursuant to this Section may also be delivered by electronic communications pursuant to procedures approved by the Required Holders.

**Section 9.3 Existence; Conduct of Business.**

The Company will, and will cause each of its Material Subsidiaries to, do or cause to be done (i) all things necessary to preserve, renew and keep in full force and effect its legal existence and (ii) take, or cause to be taken, all reasonable actions to preserve, renew and keep in full force and effect the rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted (except, for purposes of this clause (ii), to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect); provided that (x) the foregoing shall not prohibit any merger, consolidation, amalgamation, disposition, liquidation or dissolution permitted under Section 10.4 and (y) neither the Company nor any of its Subsidiaries shall be required to preserve any right, qualification, license, permit, privilege, franchise, governmental authorization, intellectual property right or authority to conduct its business if the Company or such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of business of the Company or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to the Company, such Subsidiary, or the holders of the Notes.

**Section 9.4 Payment of Tax Obligations.**

The Company will, and will cause each of its Subsidiaries to, pay its Tax liabilities, that, if not paid, would reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Company or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest would not reasonably be expected to result in a Material Adverse Effect.

**Section 9.5 Maintenance of Properties; Insurance.**

The Company will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of the business of the Company and its Subsidiaries (taken as a whole) in good working order and condition, ordinary wear and tear excepted, and (b) maintain, with financially sound and reputable insurance companies or with a captive insurance company that is an Affiliate of the Company, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

#### **Section 9.6 Books and Records; Inspection Rights.**

The Company will, and will cause each of its Subsidiaries to, keep proper books of record and account in which entries true and correct in all material respects are made of all material financial dealings and transactions in relation to its business and activities and, subject to Section 9.1, in a form permitting financial statements in accordance with GAAP to be derived therefrom. The Company will, and will cause each of its Subsidiaries to, permit any representatives designated by any holder of the Notes that is an Institutional Investor, at reasonable times and upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and, provided that the Company or such Subsidiary is afforded the opportunity to participate in such discussions, its independent accountants, all at such reasonable times and as often as reasonably requested; provided, however, in no event shall such visitations, inspections or examinations occur more frequently than once per calendar year so long as no Event of Default has occurred and is continuing. The Company acknowledges that any holder of the Notes, after exercising its rights of inspection, may, subject to Section 21, prepare and distribute to other holders of Notes certain reports pertaining to the Company and its Subsidiaries' assets for internal use by each holder of the Notes. Notwithstanding anything to the contrary in this Section 9.6, neither the Company nor any of its Subsidiaries will be required to disclose, permit the inspection, examination or making of extracts, or discussion of, any documents, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to a holder of the Notes that is an Institutional Investor (or any designated representative) is then prohibited by law or any agreement binding on the Company or any of its Subsidiaries or (iii) is subject to attorney-client or similar privilege constitutes attorney work-product.

#### **Section 9.7 Compliance with Laws.**

The Company will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including without limitation Environmental Laws), in each case except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

#### **Section 9.8. Subsequent Guarantors.**

(a) The Company covenants that if at any time after the issuance of the initial Series of Notes any Subsidiary becomes liable under a Guarantee with respect to any Indebtedness under the Primary Credit Facility (other than a Foreign Subsidiary which is solely liable under a Guarantee with respect to Indebtedness owing by one or more other Foreign Subsidiaries under the Primary Credit Facility) or any Domestic Subsidiary becomes a borrower or co-borrower under the Primary Credit Facility, then concurrently therewith the Company will cause such Subsidiary to execute and deliver to the holders of the Notes a joinder to the Guaranty Agreement in the form of the exhibit thereto.

(b) Each joinder to the Guaranty Agreement delivered by a Subsidiary pursuant to Section 9.8(a) shall be accompanied by a certificate of the Secretary or Assistant Secretary of such Subsidiary certifying such Subsidiary's charter and by-laws (or comparable governing documents), resolutions of the board of directors (or comparable governing body) of such Subsidiary authorizing the execution and delivery of such joinder and incumbency and specimen signatures of the officers of such Subsidiary executing such documents, certificates with respect to such Subsidiary of the type described in Section 4.3, a certificate of good standing or comparable certificate for such Subsidiary in its jurisdiction of organization (if available), and an opinion of counsel for such Subsidiary with respect to such joinder of the type described in Section 4.4.

(d) If at any time any Guarantor ceases to be or is no longer liable under a Guarantee and ceases to be or is no longer a borrower or co-borrower as described in clause (a) in this Section 9.8, and if all of the following conditions are satisfied: (i) no Default or Event of Default exists immediately before or after the release by Prudential and the holders of the Notes of such Guarantor contemplated below, and (ii) if any fees or other consideration has been given to any party to the Primary Credit Facility to obtain the release of such Guarantor from being liable under any Guarantee or as a borrower or co-borrower, the holders of the Notes shall have received such fees or other consideration in a proportionate amount based upon the relative outstanding principal amount of the Notes and of the Indebtedness outstanding under the Primary Credit Facility with respect to which such Guarantor is liable under a Guarantee or as a borrower or co-borrower, then, such Guarantor shall be automatically released from its obligations under the Guaranty Agreement and upon the request and at the expense of the Company, Prudential and the holders of the Notes shall execute and deliver to such Guarantor a release of its obligations under the Guaranty Agreement.

**Section 9.9. Maintenance of Ratings.** At any time when any of the Company's senior unsecured indebtedness, or, if no rating exists with respect to the Company's senior unsecured indebtedness, the Company, has a Below Investment Grade Rating, the Company shall cause at least three nationally recognized rating agencies (which shall be Moody's, S&P, Fitch or such other nationally recognized rating agency as is reasonably satisfactory to the Required Holders) to maintain a public rating of the Company's senior unsecured indebtedness, or, if no rating exists with respect to the Company's senior unsecured indebtedness, the Company. For the avoidance of doubt, the Company shall not be required to cause or maintain any ratings if there is no Below Investment Grade Rating on any of the Company's senior unsecured indebtedness, or, if no rating exists with respect to the Company's senior unsecured indebtedness, on the Company.

**Section 9.10. Excess Leverage Fee.** Without limiting the Company's obligations under Section 10.9(a) hereof, if the Company's Leverage Ratio is greater than 3.50 to 1.00 as of the last day of any fiscal quarter as reflected on the compliance certificate for such fiscal quarter (or, in the case of the fourth fiscal quarter of a fiscal year, such fiscal year) required by Section 9.1(c) during a Leverage Holiday Period, then, in addition to the interest accruing on the Notes, the Company agrees to pay to each holder of a Note a fee (an "**Excess Leverage Fee**") computed on the daily average outstanding principal amount of such Notes during the fiscal quarter immediately succeeding such fiscal quarter (such succeeding fiscal quarter, an "**Applicable Quarter**") at a rate of 0.75% per annum; provided that, for the avoidance of doubt, no Excess Leverage Fee will accrue during any fiscal quarter to the extent the Company's Leverage Ratio as of the last day of the immediately preceding fiscal quarter is less than or equal to 3.50 to 1.00. The Excess Leverage Fee with respect to each Note for any period during which such fee accrues shall be calculated on the same basis as interest on such Note is calculated and shall be paid in arrears within three Business Days after the last day of the Applicable Quarter. The payment and acceptance of any Excess Leverage Fee shall not constitute a waiver of any Default or Event of Default. If for any reason the Company fails, after a notice of a Significant Acquisition Election is delivered by the Company, to deliver the financial statements required by Section 9.1(a) or 9.1(b) hereof or the related compliance certificate required by Section 9.1(c) hereof for a succeeding fiscal quarter or fiscal year during a Leverage Holiday Period by the date such financial statements and compliance certificate are required to be delivered, then the Company shall be deemed to have a Leverage Ratio as of the end of such fiscal quarter or fiscal year of greater than 3.50 to 1.00 solely for the purposes of this Section 9.10.

## 10. NEGATIVE COVENANTS.

The Company covenants that during the Issuance Period and so long thereafter as any of the Notes are outstanding:

### Section 10.1. Liens.

The Company will not, and will not permit any Subsidiary to, create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign any right to receive income other than:

(a) Liens pursuant to any Transaction Document;

(b) Liens existing on the Amendment No. 5 Effective Date that (i) do not exceed \$1,000,000 or (ii) are listed on Schedule 10.1 and any renewals or extensions thereof; provided that the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by Section 10.3(b);

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings in the circumstances, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than sixty (60) days or which are being contested in good faith and by appropriate proceedings in the circumstances, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (including, but not limited to, section 8a of the German Semi-retirement Act (*Altersteilzeitgesetz*) and section 7d of the German Social Law Act No. 4 (*Sozialgesetzbuch*) but other than any Lien imposed by ERISA), including cash collateral for obligations in respect of letters of credit, guarantee obligations or similar instruments related to the foregoing, and deposits securing liability insurance carriers under insurance or self-insurance arrangements in the ordinary course of business;

(f) pledges or deposits (including cash collateral for obligations in respect of letters of credit and bank guarantees) to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property and other minor defects or irregularities in title and other similar encumbrances including the reservations, limitations, provisos and conditions, which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property of the Company and its Subsidiaries taken as a whole or materially interfere with the ordinary conduct of the business of the applicable Person;



(h) Liens securing Indebtedness permitted under Section 10.3(d); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(i) Liens securing Indebtedness permitted under Section 10.3(r);

(j) statutory rights of set-off arising in the ordinary course of business;

(k) Liens existing on property at the time of acquisition thereof by the Company or any Subsidiary and not created in contemplation thereof;

(l) Liens existing on property of a Subsidiary at the time such Subsidiary is merged, consolidated or amalgamated with or into, or acquired by, the Company or any Subsidiary or becomes a Subsidiary and not created in contemplation thereof;

(m) Liens in favor of banks which arise under Article 4 of the Uniform Commercial Code on items in collection and documents relating thereto and the proceeds thereof or which arise under banks' standard terms and conditions;

(n) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 11(k) or Liens securing appeal or surety bonds related to such judgments;

(o) any interest or title of a landlord, lessor or sublessor under any lease of real estate or any Lien affecting solely the interest of the landlord, lessor or sublessor;

(p) leases, licenses, subleases or sublicenses granted (i) to others not interfering in any material respect with the business of the Company and its Subsidiaries, taken as a whole, or (ii) between or among any of the Transaction Parties or any of their Subsidiaries;

(q) purported Liens evidenced by the filing of precautionary UCC financing statements, PPSA financing statements or similar filings relating to operating leases of personal property entered into by the Company or any of its Subsidiaries in the ordinary course of business;

(r) any interest or title of a licensor under any license or sublicense entered into by the Company or any Subsidiary as a licensee or sublicensee (i) existing on the Amendment No. 5 Effective Date or (ii) in the ordinary course of its business;

(s) with respect to any real property, immaterial title defects or irregularities that do not, individually or in the aggregate, materially impair the use of such real property;

- goods;
- (t) Liens on any cash earnest money deposits or other escrow arrangements made in connection with any letter of intent or purchase agreement;
  - (u) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
  - (v) Liens arising out of sale and leaseback transactions;
  - (w) customary rights of first refusal, “tag along” and “drag along” rights, and put and call arrangements under joint venture agreements;
  - (x) Liens on Treasury Stock of the Company;
  - (y) Liens (x) in favor of collecting or payor banks having a right of setoff, revocation, refund or chargeback with respect to money or instruments on deposit with or in possession of such bank, (y) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or (z) in favor of banking institutions arising as a matter of law or standard business terms and conditions encumbering deposits (including the right of setoff) and which are within the general parameters customary in the banking industry;
  - (z) Liens securing obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under any Swap Agreement;
  - (aa) other Liens securing liabilities or assignments of rights to receive income in an aggregate amount not to exceed the greater of (i) \$150,000,000 and (ii) 15% of Consolidated Tangible Assets (calculated as of the end of the immediately preceding fiscal quarter for which the Company’s financial statements were most recently delivered pursuant to Section 9.1(a) or (b) or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 9.1(a) or (b), the most recent financial statements referred to in Section 5.5 at any time outstanding; provided that, for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred if, at the time of the creation, incurrence, assumption or initial existence thereof, such Liens were permitted to be incurred pursuant to this clause (aa) notwithstanding a decrease after such time in the basket amount permitted under this clause (aa) as a result of a decrease in Consolidated Tangible Assets;
  - (bb) Liens on property or assets deposited with a trustee or paying agent or otherwise segregated or held in trust or under an escrow or other funding arrangement with respect to the Specified Senior Notes Indebtedness prior to the consummation of the Bengal Acquisition (until the date that is 90 days after the termination of the Bengal Acquisition Agreement); and
  - (cc) Liens on property or assets deposited with a trustee or paying agent or otherwise segregated or held in trust or under an escrow or other funding arrangement for the sole purpose of repurchasing, redeeming, defeasing, repaying, satisfying and discharging or otherwise acquiring or retiring Indebtedness.

Notwithstanding the foregoing, the Company will not, and will not permit any Subsidiary to, create or suffer to exist any Lien on or with respect to any of properties, whether now owned or hereafter acquired, or assign any right to receive income, to secure any obligation under the Primary Credit Facility (other than (i) cash collateral with respect to letters of credit and defaulting lender obligations, (A) in an aggregate amount up to and including \$50,000,000 and (B) in an amount in excess of \$50 million, if such cash collateral is outstanding for less than 90 days, (ii) in an aggregate amount up to and including \$300,000,000 upon the termination of the Primary Credit Facility, cash collateral for letter of credit obligations with respect to letters of credit issued under the Primary Credit Facility that remain outstanding after such termination and (iii) set-off rights, in each case provided for under the Primary Credit Facility) unless and until the Notes (and any Guaranty Agreement) shall be concurrently secured equally and ratably with such Primary Credit Facility pursuant to documentation (including an intercreditor agreement) reasonably acceptable to the Required Holders. The allowance of Liens pursuant to clauses (i), (ii) and (iii) in the foregoing parenthetical shall not prejudice any right of Prudential or any holder of a Note with respect to its reasonable requirements for the provisions of any such intercreditor agreement.

**Section 10.2 Acquisitions.**

The Company will not, and will not permit any Subsidiary to, acquire (in one or a series of transactions) all of the capital stock or equity interests or all or substantially all of the assets of any Person, unless (i) immediately before and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom and (ii) if the aggregate amount invested (including assumed debt) is greater than \$375,000,000, relevant financial information, statements and projections reasonably requested by the Required Holders in respect of the Company and its Subsidiaries as of the end of the most recent fiscal quarter for the four fiscal quarters most recently ended giving effect to the acquisition of the company or business pursuant to this Section 10.2 are delivered to Prudential and the holders of Notes that are Institutional Investors not less than five (5) Business Days prior to the consummation of any such acquisition or series of acquisitions, together with a certificate of a Responsible Officer of the Company demonstrating pro forma compliance with Section 10.9 after giving effect to such acquisition or series of acquisitions; provided that notwithstanding anything to the contrary set forth in this Section 10.2, it is hereby understood and agreed that the Bengal Acquisition is permitted under this Section 10.2 and is not subject to the requirements set forth in the foregoing clauses (i) and (ii); provided further that, to the extent the Bengal Acquisition is financed in part with Term Loans under (and as defined) in the Primary Credit Facility, the Company shall provide copies of the items referenced in Section 4.02(i) of the Primary Credit Facility to each holder of Notes.

**Section 10.3 Indebtedness.**

The Company will not, and will not permit any Subsidiary to, create, incur, assume or suffer to exist, any Indebtedness, except:

(a) Indebtedness under the Transaction Documents and, subject to compliance with the provisions of Section 9.8 and the last paragraph of this Section 10.3, under the Primary Credit Facility;

(b) Indebtedness that (i) is outstanding on the Amendment No. 5 Effective Date that is less than \$2,000,000 individually or \$15,000,000 in the aggregate or (ii) arises or is incurred under agreements listed on Schedule 10.3, and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(c) obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under any Swap Agreement; provided that such obligations are (or were) entered into in the ordinary course of business, and not for purposes of speculation;

(d) Indebtedness in respect of capital leases and purchase money obligations for fixed or capital assets and any refinancings, refundings, renewals or extensions thereof; provided further that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder; provided that the only property subject to such capital leases and purchase money obligations is the property so acquired;

(e) Indebtedness that may be deemed to exist pursuant to surety bonds, appeal bonds, supersedeas bonds or similar obligations incurred in the ordinary course of business;

(f) so long as no Default or Event of Default has occurred and is continuing or would result therefrom at the time of incurrence, (1) the Specified Senior Notes Indebtedness and (2) any other unsecured Indebtedness of (x) the Company or any Guarantor and (y) any Foreign Subsidiary Borrower (other than, for the avoidance of doubt, any Indebtedness of a Foreign Subsidiary under the Primary Credit Facility), in the case of clause (y), in an aggregate outstanding principal amount not to exceed the lesser of (A) the Foreign Subsidiary Debt Limit and (B) the greater of (i) \$200,000,000 and (ii) 20% of Consolidated Tangible Assets (calculated as of the end of the immediately preceding fiscal quarter for which the Company's financial statements were most recently delivered pursuant to Section 9.1(a) or (b)); provided that, in each case, such Indebtedness is not senior in right of payment to the payment of the Indebtedness arising under this Agreement, the Notes, and the Transaction Documents;

(g) Indebtedness of a Subsidiary of the Company to the Company or any of the Company's other Subsidiaries or Indebtedness of the Company to any Subsidiary of the Company in connection with loans or advances; provided that each item of intercompany debt shall be unsecured and such Indebtedness shall only be permitted under this clause (g) to the extent it will be eliminated for purposes of the consolidated financial statements of the Company in accordance with GAAP;

(h) Indebtedness arising as a result of the endorsement in the ordinary course of business of negotiable instruments in the course of collection;

(i) Indebtedness incurred in connection with the acquisition of all or a portion of Hill-Rom Company, Inc.'s interest in the real and personal property described in the Farm Agreement;

(j) Guarantees by the Company of Indebtedness of any Subsidiary of the Company and by any Subsidiary of the Company of Indebtedness of the Company or any other Subsidiary of the Company; provided that the Indebtedness so Guaranteed is permitted by this Section 10.3;

(k) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty, liability or other insurance to the Company or any Subsidiary of the Company, including pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(l) customary contingent indemnification obligations to purchasers in connection with any disposition;

(m) Indebtedness of any Person that becomes a Subsidiary after the Amendment No. 5 Effective Date; provided that (i) such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation thereof and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(n) Indebtedness in respect of netting services, cash management obligations, overdraft protections and otherwise in connection with deposit accounts and Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business;

(o) Indebtedness with respect to the deferred purchase price of property acquired and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(p) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards or purchase cards (including so-called "procurement cards" or "P-cards"), in each case, incurred in the ordinary course of business;

(q) contingent liabilities in respect of any indemnification obligations, adjustment of purchase price, non-compete, or similar obligations (other than Guarantees of any Indebtedness for borrowed money) of the Company or any Subsidiary of the Company incurred in connection with the consummation of one or more acquisitions;

(r) other Indebtedness (exclusive of Indebtedness permitted under clauses (a) through (q) above) in an aggregate principal amount not to exceed the greater of (i) \$150,000,000 and (ii) 15% of Consolidated Tangible Assets (calculated as of the end of the immediately preceding fiscal quarter for which the Company's financial statements were most recently delivered pursuant to Section 9.1(a) or (b) or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Section 9.1(a) or (b), the most recent financial statements referred to in Section 5.5 at any time outstanding; provided that, for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred if, at the time of the creation, incurrence, assumption or initial existence thereof, such Indebtedness was permitted to be incurred pursuant to this clause (r) notwithstanding a decrease after such time in the basket amount permitted under this clause (r) as a result of a decrease in Consolidated Tangible Assets.

Notwithstanding the foregoing, the Company will not permit any Foreign Subsidiary to create, incur, assume or suffer to exist any Indebtedness under the Primary Credit Facility to the extent that the sum of (i) the aggregate outstanding principal amount of the Indebtedness of all Foreign Subsidiaries outstanding under the Primary Credit Facility plus (ii) the aggregate outstanding principal amount of Indebtedness of Foreign Subsidiary Borrowers outstanding pursuant to clause (f)(y) above would at any time be in excess of \$400,000,000 (such amount, the "**Foreign Subsidiary Debt Limit**") except to the extent that the amount of Indebtedness created, incurred, assumed or suffered to exist by any Foreign Subsidiary under the Primary Credit Facility in excess of the Foreign Subsidiary Debt Limit is permitted under clause (r) of this Section 10.3 (and such Indebtedness in excess of the Foreign Subsidiary Debt Limit shall not be permitted under clause (a) through (q) of this Section 10.3).

#### **Section 10.4 Fundamental Changes.**

The Company will not, and will not permit any of its Subsidiaries to, merge, dissolve, liquidate, consolidate or amalgamate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default or Event of Default exists or would result therefrom:

(a) any Subsidiary may (i) merge or consolidate with or into the Company, provided that the Company shall be the continuing or surviving Person or (ii) merge, consolidate or amalgamate with any one or more other Subsidiaries, provided that when any Wholly-Owned Subsidiary is merging or amalgamating with another Subsidiary, the Wholly-Owned Subsidiary shall be the continuing or surviving Person (or the continuing corporation resulting from such amalgamation shall be a Wholly-Owned Subsidiary);

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Company or to another Subsidiary; provided that if the transferor in such a transaction is a Wholly-Owned Subsidiary, then the transferee must either be the Company or a Wholly-Owned Subsidiary;

(c) the Company or any Subsidiary may merge (or, in the case of a Subsidiary, amalgamate) with any Person in a transaction that would be an acquisition or a Disposition that is permitted under this Agreement; provided that in the case of an acquisition (i) if the Company is a party to such merger, it shall be the continuing or surviving Person, or (ii) if any Guarantor is a party to such merger or amalgamation, such Guarantor shall be the continuing or surviving Person (or the continuing corporation resulting from such amalgamation shall be a Guarantor, and shall have executed and delivered to Prudential and the holders of the Notes a confirmation to that effect reasonably satisfactory to Prudential and the Required Holders); and

(d) the Company may Dispose of its Treasury Stock.

#### **Section 10.5 Restricted Payments.**

The Company will not, and will not permit any of its Subsidiaries to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may make Restricted Payments to the Company and to other Subsidiaries (and, in the case of a Restricted Payment by a non-Wholly-Owned Subsidiary, such Restricted Payment may be made to each other owner of capital stock or other equity interests of such Subsidiary on a pro rata basis based on their relative ownership interests);

(b) the Company and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common equity interests of such Person;

(c) the Company and each Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other common equity interests or warrants or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common equity interests;

(d) the Company and each Subsidiary may make distributions to current and former employees, officers, or directors of the Company and its Subsidiaries (or any spouses, ex-spouses, or estates of any of the foregoing) on account of purchases, redemptions or other acquisitions of Equity Interests of the Company or its Subsidiaries held by such Persons; and

(e) the Company may declare and pay cash dividends to its stockholders and purchase, redeem or otherwise acquire shares of its capital stock or warrants, rights or options to acquire any such shares for cash; provided that immediately after giving effect to such proposed action, no Event of Default would exist.

#### **Section 10.6 Change in Nature of Business.**

The Company will not, and will not permit any of its Subsidiaries to, enter into any material line of business if, after giving effect thereto, the business of the Company and its Subsidiaries, taken as a whole, would be substantially different from the business in which the Company and its Subsidiaries, taken as a whole, are presently engaged, provided, that this Section 10.6 shall not prohibit the Company or its Subsidiaries from entering into (x) any line of business that is reasonably related, incidental, ancillary or complementary to, or any reasonable extension, development or expansion of, the business in which the Company and its Subsidiaries, taken as a whole, are presently engaged, or (y) any other non-core incidental businesses acquired in connection with any acquisition or investment not prohibited hereunder.

**Section 10.7 [Reserved].**

**Section 10.8 Burdensome Agreements.**

The Company will not, and will not permit any of its Subsidiaries to, enter into any Contractual Obligation that: limits the ability (a) of any Subsidiary to make Restricted Payments to the Company; (b) of any Subsidiary to Guarantee the Indebtedness of the Company under the Transaction Documents or (c) of the Company or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person to secure the obligations of the Transaction Parties under the Transaction Documents, other than, in each case limitations and restrictions:

- (a) set forth in this Agreement and any other Transaction Document;
- (b) on subletting or assignment of any leases or licenses of the Company or any Subsidiary or on the assignment of a Contractual Obligation or any rights thereunder or any other customary non-assignment provisions, in each case entered into in the ordinary course of business;
- (c) set forth in Contractual Obligations for the disposition of assets (including any Equity Interests in any Subsidiary) of the Company or any Subsidiary of the Company; provided such restrictions and conditions apply only to the assets or Subsidiary that is to be sold;
- (d) set forth in the Farm Agreement, the Airport Access and Use Agreement or the Joint Ownership Agreements;
- (e) set forth in any Contractual Obligation governing Indebtedness permitted under Section 10.3(b), (d), (f), (j), (m), (o) and (r);
- (f) with respect to cash or other deposits (including escrowed funds) received by Company or any Subsidiary in the ordinary course of business and assets subject to Liens permitted by Section 10.1(b), (e), (f), (h), (j), (k), (l), (n), (t), (v) and (z);
- (g) set forth in joint venture agreements and other similar agreements concerning joint ventures and applicable solely to such joint venture;
- (h) set forth in any Contractual Obligation relating to an asset being acquired existing at the time of acquisition or a Subsidiary existing at the time such Subsidiary is merged, consolidated or amalgamated with or into, or acquired by, the Company or any Subsidiary or becomes a Subsidiary and, in each case, not in contemplation thereof;



(i) contained in any trading, netting, operating, construction, service, supply, purchase, credit card, credit card processing service, debit card, stored value card, purchase card (including a so-called "procurement card" or "P-card") or other agreement to which the Company or any of its Subsidiaries is a party and entered into in the ordinary course of business; provided that such agreement prohibits the encumbrance of solely the property or assets of the Company or such Subsidiary that are the subject of such agreement, the payment rights arising thereunder, the accounts associated with such agreement, or the proceeds thereof and does not extend to any other asset or property of the Company or such Subsidiary or the assets or property of any other Subsidiary;

(j) (1) existing by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of the Company or any Material Subsidiary not otherwise prohibited by this Agreement (so long as such limitation or restriction applies only to the property or assets subject to such transfer, agreement to transfer, option, right or Lien), (2) contained in mortgages, pledges or other security agreements securing Indebtedness of a Subsidiary to the extent restricting the transfer of the property or assets subject thereto, (3) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Company or any Subsidiary, (4) pursuant to customary provisions in any swap or derivative transactions (including any Swap Agreement), (5) pursuant to customary provisions in leases or licenses of intellectual property (or in other contracts governing intellectual property rights) and other similar agreements entered into in the ordinary course of business, (6) pursuant to customary net worth provisions contained in real property leases entered into by Subsidiaries, so long as the Company has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of Company and its Subsidiaries to meet their ongoing obligations or (7) on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;

(k) customary restrictions and conditions contained in the document relating to Liens permitted under this Agreement, so long as (1) such restrictions or conditions relate only to the specific asset subject to such Lien, and (2) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 10.8; or

(l) customary restrictions required by, or arising by operation of law under, applicable law, rule or regulation to the extent contained in a document relating to the Equity Interests or governance of any Foreign Subsidiary that is not a Foreign Subsidiary Borrower.

## Section 10.9 Financial Covenants.

(a) **Maximum Leverage Ratio.** The Company will not permit the ratio (the "**Leverage Ratio**"), determined as of the last day of each of its fiscal quarters ending on and after September 30, 2019, of (i) (x) Consolidated Indebtedness minus (y) the Liquidity Amount, in each case as of the last day of such fiscal quarter to (ii) Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ending with the last day of such fiscal quarter, all calculated for the Company and its Subsidiaries on a consolidated basis, to be greater than 3.50 to 1.00; provided, however, that if at any time following the consummation of a Significant Acquisition permitted by Section 10.2 occurring after September 30, 2014, upon the written election of the Company delivered in a compliance certificate pursuant to Section 9.1(c) with respect to the fiscal quarter in which such a Significant Acquisition is consummated or with respect to either of the two immediately succeeding fiscal quarters (a "**Significant Acquisition Election**"), and subject to compliance by the Company with the other terms of this Agreement, the Leverage Ratio permitted pursuant to this Section 10.9(a) shall be deemed to be set at not greater than 4.00 to 1.00 for the fiscal quarter in which such Significant Acquisition was consummated and the two immediately succeeding fiscal quarters (such three consecutive fiscal quarter period, a "**Leverage Holiday Period**"). The Company shall only be permitted to make two Significant Acquisition Elections during the term of this Agreement and once the Company makes such a Significant Acquisition Election permitted under this Section 10.9(a), it shall be in effect for the Leverage Holiday Period and shall not be revocable; provided, that in the event the Company makes a Significant Acquisition Election, it shall not be permitted to make a second Significant Acquisition Election until it has maintained a Leverage Ratio of 3.50 to 1.00 or less for four consecutive fiscal quarters following the end of the initial Leverage Holiday Period. For purposes of calculations under this Section 10.9(a), Consolidated Indebtedness shall not include 75% of the principal amount of any mandatorily convertible unsecured bonds, debentures, preferred stock or similar instruments in a principal amount not to exceed \$500,000,000 in the aggregate during the term of this Agreement which are payable in no more than three years (whether by redemption, call option or otherwise) solely in common stock or other common equity interests.

For purposes of calculations under this Section 10.9(a), prior to the consummation of the Bengal Acquisition (or during the period from the Amendment No. 5 Effective Date until the date that is 90 days after the termination of the Bengal Acquisition Agreement), Consolidated Indebtedness shall not include Specified Senior Notes Indebtedness; provided, that (a) the release of the proceeds of the Specified Senior Note Indebtedness to the Company and its Subsidiaries is contingent upon the consummation of the Bengal Acquisition and, pending such release, such proceeds are held in escrow (and, if the Bengal Acquisition Agreement is terminated prior to the consummation of the Bengal Acquisition or if the Bengal Acquisition is otherwise not consummated by the date specified in the Specified Senior Notes Indenture, such proceeds shall be promptly applied to satisfy and discharge all obligations of the Company and its Subsidiaries in respect of the Specified Senior Notes Indebtedness) or (b) the Specified Senior Notes Indenture contains a "special mandatory redemption" provision (or other similar provision) or otherwise permits the Specified Senior Notes Indebtedness to be redeemed or prepaid if the Bengal Acquisition is not consummated by the date specified in the Specified Senior Notes Indenture (and if the Bengal Acquisition Agreement is terminated in accordance with its terms prior to the consummation of the Bengal Acquisition or the Bengal Acquisition is otherwise not consummated by the date specified in the Specified Senior Notes Indenture, the Specified Senior Notes Indebtedness is so redeemed or prepaid within 90 days of such termination or such specified date, as the case may be).

As used in this Section 10.9(a),

"**Acquisition**" means any transaction, or any series of related transactions, by which the Company and/or any of its Subsidiaries acquires all or substantially all of the issued and outstanding capital stock or equity interests or all or substantially all of the assets of any Person.

“**Significant Acquisition**” means an Acquisition with an aggregate purchase price equal to or greater than \$75,000,000 (including, without limitation, the Bengal Acquisition).

(b) **Minimum Interest Coverage Ratio.** The Company will not permit the ratio (the “**Interest Coverage Ratio**”), determined as of the last day of each of its fiscal quarters ending on and after September 30, 2019, of (i) Consolidated EBITDA to (ii) Consolidated Interest Expense, in each case for the period of four (4) consecutive fiscal quarters ending with the last day of such fiscal quarter, all calculated for the Company and its Subsidiaries on a consolidated basis, to be less than 3.00 to 1.00.

**Section 10.10. Terrorism Sanctions Regulations.**

The Company agrees that it will not and will not permit any Controlled Entity to (a) become a Blocked Person or (b) have any investments in or engage in any dealings or transactions with any Blocked Person if such investments, dealings or transactions would cause any holder of a Note to be in violation of any laws or regulations that are applicable to such holder.

**Section 10.11. Most Favored Lender Status.**

(a) If after the date of this Agreement (i) the Company enters into, assumes or otherwise becomes bound or obligated under one or more new Financial Covenants or Sale of Assets Covenants in the Primary Credit Facility or the Company amends any Financial Covenant or Sale of Asset Covenant in the Primary Credit Facility to become more restrictive as to the Company or its Subsidiaries than the Financial Covenants or Sale of Assets Covenant in this Agreement or (ii) any Foreign Subsidiary Borrower enters into, assumes or otherwise becomes bound or obligated under one or more new Financial Covenants or Sale of Assets Covenants in any Material Foreign Credit Facility or any Financial Covenant or Sale of Asset Covenant contained in any Material Foreign Credit Facility is amended to become more restrictive as to the Company or its Subsidiaries than the Financial Covenants or Sale of Assets Covenant in this Agreement, then, in each case of clause (i) and clause (ii) above, the Company will promptly, and in any event within 10 days thereafter, notify the holders of the Notes of such new or amended Financial Covenant or Sale of Asset Covenant and the terms of this Agreement shall, whether or not the Company provides such notice and without any further action on the part of the Company or any of the holders of the Notes, be deemed to be amended automatically to include each new or amended Financial Covenant or Sale of Asset Covenant. The Company further covenants to promptly execute and deliver at its expense (including without limitation, the reasonable fees and expenses of counsel for the holders of the Notes), an amendment to this Agreement to evidence the inclusion of such new or amended Financial Covenant or Sale of Asset Covenant, provided that the execution and delivery of such amendment shall not be a precondition to the effectiveness of such amendment as provided for in this Section 10.11(a), but shall merely be for the convenience of the parties hereto.

(b) If after the time this Agreement is amended pursuant to Section 10.11(a) to include in this Agreement any new or amended Financial Covenant or Sale of Asset Covenant (an **“Incorporated Covenant”**), (x) such Incorporated Covenant ceases to be in effect under or is deleted from the Primary Credit Facility or applicable Material Foreign Credit Facility, as applicable, or is amended or modified for the purposes of the Primary Credit Facility or applicable Material Foreign Credit Facility, as applicable, so as to become less restrictive with respect to the Company and its Subsidiaries or (y) the applicable Material Foreign Credit Facility shall cease to constitute a Material Foreign Credit Facility, then, upon the request of the Company, the holders of the Notes will amend this Agreement to delete or similarly amend or modify, as the case may be, such Incorporated Covenant as in effect in this Agreement, provided that (i) no Default or Event of Default shall be in existence immediately before or after such deletion, amendment or modification, and (ii) if any fees or other remuneration were paid to any lender under the Primary Credit Facility or applicable Material Foreign Credit Facility, as applicable, with respect to causing such Incorporated Covenant to cease to be in effect or be deleted or to be so amended or modified, then the Company shall have paid to the holders of the Notes the same fees or other remuneration on a pro rata basis in proportion to the relative outstanding principal amounts of the Notes and the principal amount of the Indebtedness outstanding under the Primary Credit Facility or applicable Material Foreign Credit Facility, as applicable; provided, further, that if the principal amount outstanding or available and committed for borrowing of any Foreign Credit Facility is increased such that such Foreign Credit Facility shall become a Material Credit Facility, then such Foreign Credit Facility shall be treated as a new Material Foreign Credit Facility for the purposes of Section 10.11(a)(ii) above. Notwithstanding the foregoing, no amendment to this Agreement pursuant to this Section 10.11(b) as the result of any Incorporated Covenant ceasing to be in effect or being deleted, amended or otherwise modified shall cause any Financial Covenant or Sale of Assets Covenant in this Agreement to be less restrictive as to the Company or its Subsidiaries than such Financial Covenant or Sale of Assets Covenant as contained in this Agreement as in effect on the date hereof, and as amended other than as the result of the application of Section 10.11(a) originally caused by such Incorporated Covenant.

## 11. EVENTS OF DEFAULT.

An **“Event of Default”** shall exist if any of the following conditions or events shall occur:

- (a) the Company shall fail to pay any principal of or any Make-Whole Amount due with respect to any Note, in each case when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for repayment thereof or otherwise;
- (b) the Company shall fail to pay any interest on any Note, any Excess Leverage Fee or any other fee or any other amount (other than an amount referred to in clause (a) of this Section 11) payable under this Agreement, the Notes or any other Transaction Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;
- (c) any representation or warranty made or deemed made by or on behalf of any Subsidiary in this Agreement, the Notes, or any other Transaction Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, the Notes, or any other Transaction Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Company shall fail to observe or perform any covenant, condition or agreement contained in Section 9.2, 9.3 (with respect to the Company's existence), or 9.8, in Section 10;

(e) the Company or any other Transaction Party, as applicable, shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article), the Notes, or any other Transaction Document, and such failure shall continue unremedied for a period of thirty (30) days after notice thereof from Prudential or any holder of Notes to the Company;

(f) the Company or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable, which is not cured within any applicable grace period therefor;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits, after the expiration of any applicable grace period, and delivery of any applicable required notice, provided in the applicable agreement or instrument under which such Indebtedness was created, the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to (i) secured Material Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, (ii) any Material Indebtedness that becomes due as a result of a refinancing thereof permitted by Section 10.1, (iii) any reimbursement obligation in respect of a letter of credit as a result of a drawing thereunder by a beneficiary thereunder in accordance with its terms, (iv) any such Material Indebtedness that is mandatorily prepayable prior to the scheduled maturity thereof with the proceeds of the issuance of capital stock, the incurrence of other Indebtedness or the sale or other disposition of any assets, so long as such Material Indebtedness that has become due is so prepaid in full with such net proceeds required to be used to prepay such Material Indebtedness when due (or within any applicable grace period) and such event shall not have otherwise resulted in an event of default with respect to such Material Indebtedness, (v) any redemption, conversion or settlement of any such Material Indebtedness that is convertible into Equity Interests (and cash in lieu of fractional shares) and/or cash (in lieu of such Equity Interests in an amount determined by reference to the price of the common stock of the Company at the time of such conversion or settlement) in the Company pursuant to its terms unless such redemption, conversion or settlement results from a default thereunder or an event of a type that constitutes an Event of Default and (vi) prepayments required by the terms of Indebtedness as a result of customary provisions in respect of illegality, replacement of lenders and gross-up provisions for taxes, increased costs, capital adequacy and other similar customary requirements and (vii) any voluntary prepayment, redemption or other satisfaction of Indebtedness that becomes mandatory in accordance with the terms of such Indebtedness solely as the result of the Company or any Subsidiary delivering a prepayment, redemption or similar notice with respect to such prepayment, redemption or other satisfaction;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Company or any Material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect (including, without limitation, any applicable provisions or any corporations legislation) or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Company or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect (including, without limitation, any applicable provisions or any corporations legislation), (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Company or any Material Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) judgments or orders for the payment of money in excess of \$75,000,000 in the aggregate (net of any amounts that are covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and as to which such insurer, which shall be rated at least "A" by A.M. Best Company, has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order) shall be rendered against the Company or any of its Subsidiaries and remain undischarged or unpaid and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 60 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect;

(m) a Change in Control shall occur; or

(n) any material provision of any Guaranty Agreement for any reason (other than the release of any Guarantor permitted under this Agreement) ceases to be valid, binding and enforceable in accordance with its terms (or any Guarantor shall challenge the enforceability of the Guaranty Agreement to which it is a party or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of the Guaranty Agreement to which it is a party has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms).

## **12. REMEDIES ON DEFAULT, ETC.**

### **Section 12.1. Acceleration.**

(a) If an Event of Default with respect to the Company described in Section 11(h) or (i) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in Section 11(a) or (b) has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon (including, without limitation, interest accrued thereon at the Default Rate) and (y) the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

### **Section 12.2. Other Remedies.**

If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note or any other Transaction Document, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

**Section 12.3. Rescission.**

At any time after any Notes have been declared due and payable pursuant to Section 12.1(b) or (c), the Required Holders, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on such Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the Default Rate, (b) neither the Company nor any other Person shall have paid any amounts that have become due solely by reason of such declaration, (c) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 18, and (d) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

**Section 12.4. No Waivers or Election of Remedies, Expenses, Etc.**

No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement, by any Note or by any other Transaction Document upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 16, the Company agrees to pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

**13. [RESERVED]**

**14. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.**

**Section 14.1. Registration of Notes.**

The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company agrees that it shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.



**Section 14.2. Transfer and Exchange of Notes.**

Upon surrender of any Note to the Company, at the address and to the attention of the designated officer (all as specified in Section 19) for registration of transfer or exchange (and in the case of a surrender for registration of transfer accompanied by a written instrument of transfer duly executed by the registered holder of such Note or such holder's attorney duly authorized in writing and accompanied by the relevant name, address and other details for notices of each transferee of such Note or part thereof) within ten Business Days thereafter the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) of the same Series as such surrendered Note in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than \$100,000, in the case of Notes denominated in Dollars, €100,000, in the case of Notes denominated in Euros, £100,000, in the case of Notes denominated in British Pounds, C\$100,000, in the case of Notes denominated in Canadian Dollars, or FR100,000, in the case of Notes denominated in Swiss Francs, provided that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than the foregoing applicable minimum amount. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6.2.

**Section 14.3. Replacement of Notes.**

Upon receipt by the Company, at the address and to the attention of the designated officer (all as specified in Section 19(iii)) of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it provided that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least \$250,000,000 or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

within ten Business Days thereafter the Company at its own expense shall execute and deliver, in lieu thereof, a new Note of the same Series as such lost, stolen, destroyed or mutilated Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

## **15. PAYMENTS ON NOTES.**

### **Section 15.1. Place of Payment.**

Subject to Section 15.2, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in (a) with respect to Notes denominated in Dollars, New York, New York, at the principal office of JPMorgan Chase Bank, N.A. in such jurisdiction, (b) with respect to Notes denominated in Euros, London, England, at the principal office of JPMorgan Chase Bank, N.A. in such jurisdiction, (c) with respect to Notes denominated in British Pounds, London, England, at the principal office of JPMorgan Chase Bank, N.A. in such jurisdiction, (d) with respect to Notes denominated in Canadian Dollars, Toronto, Ontario at the principal office of JPMorgan Chase Bank, N.A. in such jurisdiction, and (e) with respect to Notes denominated in Swiss Francs, London, England at the principal office of JPMorgan Chase Bank, N.A. in such jurisdiction. The Company may at any time, by notice to each holder of a Note to be paid, change the place of payment of such Notes so long as such place of payment shall be either the principal office of the Company or any of its Subsidiaries in the applicable jurisdiction specified above or the principal office of a bank or trust company in such jurisdiction.

### **Section 15.2. Home Office Payment.**

So long as any Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in Section 15.1 or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, and interest and all other amounts by the method and at the address specified in such Purchaser's Confirmation of Acceptance, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company, at the Company's principal executive office or at the place of payment most recently designated by the Company pursuant to Section 15.1. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee, such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes pursuant to Section 14.2. The Company will afford the benefits of this Section 15.2 to any Institutional Investor that is the direct or indirect transferee of any Note purchased by a Purchaser under this Agreement and that has made the same agreement relating to such Note as the Purchasers have made in this Section 15.2.

**16. EXPENSES, ETC.**

**Section 16.1 Transaction Expenses.**

Whether or not the transactions contemplated hereby are consummated, the Company agrees to pay (a) all reasonable attorneys' fees of special counsel (one acting on behalf of all the Purchasers and the holders of the Notes unless there is a conflict preventing one counsel from representing all the Purchasers and such holders) and, if reasonably required by the Required Holders, local counsel for each applicable jurisdiction (one for each applicable jurisdiction acting on behalf of all Purchasers and the holders of the Notes unless there is a conflict preventing one counsel from representing all the Purchasers and such holders ) incurred by the Purchasers and each other holder of a Note in connection with the transactions described in clauses (b)(i) through (v) below and (b) (i) the other reasonable costs and expenses in connection with the preparation, negotiation, execution and delivery of this Agreement, the Notes and the other Transaction Documents and any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated); (ii) if a Default or an Event of Default occurs, the other costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, the Notes or any other Transaction Document; (iii) the other costs and expenses incurred in connection with in responding to any subpoena or other legal process or informal investigative demand issued (A) in connection with this Agreement, the Notes or any other Transaction Documents, or (B) by reason of being a holder of any Note; (iv) the costs and expenses, including financial advisors fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes; and (v) the other costs and expenses incurred in connection with the initial filing of this Agreement and all related documents and financial information with the SVO, provided that such costs and expenses under this clause (v) shall not exceed \$500 for the initial Series of Notes and \$500 for each additional Series of Notes. The Company agrees to pay, and to save each Purchaser and each other holder of a Note harmless from, all claims in respect of any fees, costs or expenses, if any, of brokers and finders (other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Notes).

**Section 16.2. Survival.**

The obligations of the Company under this Section 16 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement, the Notes or any other Transaction Document, and the termination of this Agreement or any other Transaction Document.

**17. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.**

All representations and warranties contained herein shall survive the execution and delivery of this Agreement, the Notes and the other Transaction Documents, the purchase or transfer by any Purchaser of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of any Transaction Party pursuant to this Agreement shall be deemed representations and warranties of such Transaction Party under this Agreement. Subject to the preceding sentence, this Agreement, the Notes and the other Transaction Documents embody the entire agreement and understanding between each Purchaser and the Transaction Parties and supersede all prior agreements and understandings relating to the subject matter hereof.

## 18. AMENDMENT AND WAIVER.

### Section 18.1. Requirements.

This Agreement, the Notes and the other Transaction Documents may be amended, and the observance of any term hereof or of the Notes or the other Transaction Documents may be waived (either retroactively or prospectively), with the written consent of the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 3, 4, 5, 6 or 22, or any defined term (as it is used in such section), will be effective as to any Purchaser unless consented to by such Purchaser in writing, (b) (i) with the written consent of Prudential (and without the consent of any other holder of Notes), the provisions of Section 1 or 2.1 may be amended or waived (except insofar as any such amendment or waiver would affect any rights or obligations with respect to the purchase and sale of Notes which shall have become Accepted Notes prior to such amendment or waiver), and (ii) with the written consent of all of the Purchasers which shall have become obligated to purchase Accepted Notes of any Series (and not without the written consent of all such Purchasers), any of the provisions of Sections 2.1 and 4 may be amended or waived insofar as such amendment or waiver would affect only rights or obligations with respect to the purchase and sale of the Accepted Notes of such Series or the terms and provisions of such Accepted Notes and (c) no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver, or (iii) amend Section 8, 11(a), 11(b), 12, 18, 21 or 23.11.

### Section 18.2. Solicitation of Holders of Notes.

(a) Solicitation. The Company will provide each holder of the Notes (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes, unless such proposed amendment, waiver or consent relates only to a specific Series of Accepted Notes which have not yet been purchased, in which case such information will only be required to be delivered to the Purchasers which shall have become obligated to purchase Accepted Notes of such Series. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 18 to each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) Payment. The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security or provide other credit support, to any holder of Notes as consideration for or as an inducement to the entering into by any holder of Notes of any waiver or amendment of any of the terms and provisions hereof or of any Note or any other Transaction Document unless such remuneration is concurrently paid, or security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each holder of Notes then outstanding even if such holder did not consent to such waiver or amendment.

**Section 18.3. Binding Effect, Etc.**

Any amendment or waiver consented to as provided in this Section 18 applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Transaction Parties without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between any Transaction Party and the holder of any Note nor any delay in exercising any rights hereunder or under any Note or any other Transaction Document shall operate as a waiver of any rights of any holder of such Note. As used herein, the term "this Agreement" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

**Section 18.4. Notes Held by the Company, Etc.**

Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement, the Notes or any other Transaction Document, or have directed the taking of any action provided herein or in the Notes or any other Transaction Document to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

**19. NOTICES; ENGLISH LANGUAGE.**

All notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by an overnight commercial delivery service (charges prepaid), or (b) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

- (i) if to Prudential, to Prudential at the address specified for such communications in Schedule A, or at such other address as Prudential shall have specified to the Company in writing,
- (ii) if to a Purchaser or its nominee, to such Purchaser or nominee at the address specified for such communications by such Purchaser in its Confirmation of Acceptance, or at such other address as such Purchaser or nominee shall have specified to the Company in writing,
- (iii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or

(iv) if to the Company, at the Company's address set forth at the beginning hereof to the attention of the Treasurer, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this Section 19 will be deemed given only when actually received.

Each document, instrument, financial statement, report, notice or other communication delivered in connection with this Agreement shall be in English or accompanied by an English translation thereof.

This Agreement, the Notes and the other Transaction Documents have been prepared and signed in English and the parties hereto agree that the English version hereof and thereof (to the maximum extent permitted by applicable law) shall be the only version valid for the purpose of the interpretation and construction hereof and thereof notwithstanding the preparation of any translation into another language hereof or thereof, whether official or otherwise or whether prepared in relation to any proceedings which may be brought in any jurisdiction in respect hereof or thereof.

Notwithstanding anything to the contrary in this Section 19, any communication pursuant to Section 2.1 shall be made by the method specified for such communication in Section 2.1, and shall be effective to create any rights or obligations under this Agreement only if, in the case of a telephone communication, an Authorized Officer of the party conveying the information and of the party receiving the information are parties to the telephone call, and in the case of a telecopier communication, the communication is signed by an Authorized Officer of the party conveying the information, addressed to the attention of an Authorized Officer of the party receiving the information, and in fact received at the telecopier terminal the number of which is listed for the party receiving the communication in the Information Schedule or at such other telecopier terminal as the party receiving the information shall have specified in writing to the party sending such information. In the case of holders of Notes which have the same address for delivery of notices and other communications, the Company shall not be required to deliver more than one copy of any notice or other communication to such holders.

## **20. REPRODUCTION OF DOCUMENTS.**

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at any Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, electronic, digital or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 20 shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

## 21. CONFIDENTIAL INFORMATION.

For the purposes of this Section 21, "Confidential Information" means information delivered to any Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Company or such Subsidiary, provided that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure (otherwise than (to such Purchaser's knowledge) by reason of any breach of these provisions), (b) subsequently becomes publicly known through no act or omission by such Purchaser (including any breach of these provisions by such Purchaser) or any person acting on such Purchaser's behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary and other than (to such Purchaser's knowledge) by reason of any breach of these provisions or (d) constitutes financial statements delivered to such Purchaser under Section 7.1 that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, provided that such Purchaser may deliver or disclose Confidential Information to (i) its directors, trustees, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by its Notes), provided that any such directors, trustees, officers, employees, agents, attorneys and affiliates will be notified of the confidentiality requirements set forth in this Section 21, (ii) its financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 21, (iii) any other holder of any Note, (iv) any Institutional Investor to which it sells or offers to sell such Note or any part thereof or any participation therein (if such Person (x) has executed an Agreement Regarding Confidentially substantially in the form of Exhibit 21 attached hereto prior to its receipt of such Confidential Information, a copy of which will be provided to the Company promptly after the execution thereof by all parties thereto, and (y) is not a Competitor), (v) any Person from which it offers to purchase any security of the Company in a private transaction (if such Person (x) has executed an Agreement Regarding Confidentially substantially in the form of Exhibit 21 attached hereto prior to its receipt of such Confidential Information, a copy of which will be provided to the Company promptly after the execution thereof by all parties thereto, and (y) is not a Competitor), (vi) federal or state regulatory authority having jurisdiction over such Purchaser to the extent delivery is required or requested by such regulatory authority, (vii) the NAIC or the SVO or, in each case, any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser's investment portfolio, (viii) upon notice to the Company prior to the disclosure thereof, to the extent practicable and not prohibited by applicable law, rule or regulation, any other Person to which such delivery or disclosure may be necessary to effect compliance with any law, rule, regulation or order applicable to such Purchaser, or in response to any subpoena or other legal process, or (ix)(y) upon notice to the Company, to the extent practicable and not prohibited by applicable law, rule or regulation, in connection with any litigation to which such Purchaser is a party, to the extent such Purchaser may reasonably determine such delivery or disclosure to be necessary or appropriate in connection with such litigation, or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser's Notes, this Agreement or any other Transaction Document. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 21 as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying the provisions of this Section 21.

In the event that as a condition to receiving access to information relating to the Company or its Subsidiaries in connection with the transactions contemplated by or otherwise pursuant to this Agreement or any other Transaction Document, any Purchaser is required to agree to a confidentiality undertaking (whether through Intralinks or otherwise) which is different from the terms of this Section 21, the terms of this Section 21 shall, as between such Purchaser and the Company, supersede the terms of any such other confidentiality undertaking.

**22. SUBSTITUTION OF PURCHASER.**

Each Purchaser shall have the right to substitute any one of its Affiliates as the purchaser of the Notes that it has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Affiliate, shall contain such Affiliate's agreement to be bound by this Agreement and shall contain a confirmation by such Affiliate of the accuracy with respect to it of the representations set forth in Section 6. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this Section 22), shall be deemed to refer to such Affiliate in lieu of such original Purchaser. In the event that such Affiliate is so substituted as a Purchaser hereunder and such Affiliate thereafter transfers to such original Purchaser all of the Notes then held by such Affiliate, upon receipt by the Company of notice of such transfer, any reference to such Affiliate as a "Purchaser" in this Agreement (other than in this Section 22), shall no longer be deemed to refer to such Affiliate, but shall refer to such original Purchaser, and such original Purchaser shall again have all the rights of an original holder of the Notes under this Agreement.

**23. MISCELLANEOUS.**

**Section 23.1. Successors and Assigns.**

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not.

**Section 23.2. Payments Due on Non-Business Days.**

Anything in this Agreement or the Notes to the contrary notwithstanding (but without limiting the requirement in Section 8.5 that notice of any optional prepayment specify a Business Day as the date fixed for such prepayment), any payment of principal of or Make-Whole Amount or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; provided that if the maturity date or any scheduled principal repayment date, of any Note is a date other than a Business Day, the payment otherwise due on such maturity date or scheduled principal repayment date shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.



### Section 23.3. Accounting Terms.

All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Except as otherwise specifically provided herein, all computations made pursuant to this Agreement shall be made in accordance with GAAP, and all financial statements shall be prepared in accordance with GAAP. Notwithstanding the foregoing, if the Company notifies Prudential and the holders of the Notes that the Company requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if Prudential or the Required Holders notify the Company that it or they request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Notwithstanding anything to the contrary herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, (x) without giving effect to any election by the Company or any Subsidiary to measure any portion of a financial liability at fair value (as permitted by Accounting Standards Codification 825-10-25, formerly known as statement of Financial Accounting Standards No. 159, or any similar accounting standard) and such determination shall be made as if such election had not been made and (y) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof, net of discounts and premiums and (ii) any obligations relating to a lease that was accounted for by such Person as an operating lease as of the date of this Agreement and any similar lease entered into after the date of this Agreement by such Person shall be accounted for as obligations relating to an operating lease and not as obligations relating to a capital lease; provided however, that the Company may elect, with notice to Prudential and the holders of the Notes, to treat operating leases as capital leases in accordance with GAAP as in effect from time to time and, upon such election, and upon any subsequent change to GAAP therefor, the parties will enter into negotiations in good faith in an effort to preserve the original intent of the financial covenants set forth herein (it being understood and agreed that the treatment of operating leases be interpreted on the basis of GAAP as in effect on the date of this Agreement until such election shall have been withdrawn or such provision amended in accordance herewith).

All pro forma computations required to be made hereunder giving effect to any acquisition or disposition or issuance, incurrence, assumption or repayment of Indebtedness, or other transaction shall in each case be calculated giving pro forma effect thereto (and, in the case of any pro forma computation made hereunder to determine whether such acquisition or disposition, or issuance, incurrence, assumption or repayment of Indebtedness, or other transaction is permitted to be consummated hereunder, to any other such transaction consummated since the first day of the period covered by any component of such pro forma computation and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive fiscal quarters ending with the most recent fiscal quarter for which financial statements shall have been delivered pursuant to Section 9.1(a) or 9.1(b) (or, prior to the delivery of any such financial statements, ending with the last fiscal quarter included in the financial statements referred to in Section 5.5), and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of (but without giving effect to any synergies or cost savings unless permitted by Article 11 of Regulation S-X) and any related incurrence or reduction of Indebtedness, all in accordance with Article 11 of Regulation S-X under the Securities Act. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Agreement pertaining to interest rates applicable to such Indebtedness).

**Section 23.4. Divisions.**

For all purposes under the Transaction Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its equity interests at such time.

**Section 23.5. Certain Calculations.**

No Default or Event of Default shall arise as a result of any limitation or threshold set forth in Dollars in Sections 9 and 10 under this Agreement being exceeded solely as a result of changes in currency exchange rates from those rates applicable on the last day of the fiscal quarter of the Company immediately preceding the fiscal quarter of the Company in which the applicable transaction or occurrence requiring a determination occurs.

**Section 23.6. Severability.**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 23.7. Construction, Etc.**

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

For the avoidance of doubt, all Schedules and Exhibits attached to this Agreement shall be deemed to be a part hereof.

**Section 23.8. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

**Section 23.9. Governing Law.**

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

**Section 23.10. Jurisdiction and Process; Waiver of Jury Trial.**

(a) The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement or the Notes. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company agrees, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in Section 23.10(a) brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States of America or the State of New York (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

(c) The Company consents to process being served by or on behalf of any holder of a Note in any suit, action or proceeding of the nature referred to in Section 23.10(a) by mailing a copy thereof by registered or certified mail, postage prepaid, return receipt requested to the address of the Company specified in Section 19. The Company agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(d) Nothing in this Section 23.10 shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

**(e) THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, THE NOTES OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH.**

**Section 23.11. Obligation to Make Payment in the Applicable Currency.**

Any payment on account of an amount that is payable hereunder or under the Notes in the Applicable Currency which is made to or for the account of any holder of Notes in any other currency, whether as a result of any judgment or order or the enforcement thereof or the realization of any security or the liquidation of any Transaction Party, shall constitute a discharge of the obligation of such Transaction Party under this Agreement, the Notes or any other Transaction Party only to the extent of the amount of the Applicable Currency which such holder could purchase in the foreign exchange markets in London, England, with the amount of such other currency in accordance with normal banking procedures at the rate of exchange prevailing on the London Banking Day following receipt of the payment first referred to above. If the amount of the Applicable Currency that could be so purchased is less than the amount of the Applicable Currency originally due to such holder, the Company agrees to the fullest extent permitted by law, to indemnify and save harmless such holder from and against all loss or damage arising out of or as a result of such deficiency. This indemnity shall, to the fullest extent permitted by law, constitute an obligation separate and independent from the other obligations contained in this Agreement, the Notes or any other Transaction Document, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by such holder from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due hereunder or under the Notes or under any judgment or order. As used herein the term "London Banking Day" shall mean any day other than Saturday or Sunday or a day on which commercial banks are required or authorized by law to be closed in London, England.

**Section 23.12. Determinations Involving Different Currencies.**

In the event of any determination of the requisite percentage or the principal amount of any Notes of more than one currency, all Notes which are issued in a currency other than Dollars shall, for purposes of determining any such percentage or requisite principal amount, be deemed to have been converted into Dollars at the time that such determination is made at the exchange rate published in the Financial Times one Business Day prior to the date of determination.

**Section 23.13. Transaction References.**

The Company agrees that Prudential Capital Group may (a) refer to its role in establishing the Facility, as well as the identity of the Company and the maximum aggregate principal amount of the Notes and the date on which the Facility was established, on its internet site or in marketing materials, press releases, published "tombstone" announcements or any other print or electronic medium and (b) display the Company's corporate logo in conjunction with any such reference.

\* \* \* \* \*

If you are in agreement with the foregoing, please sign the form of agreement on a counterpart of this Agreement and return it to the Company, whereupon this Agreement shall become a binding agreement between you and the Company.

Very truly yours,

**Hillenbrand, Inc.**

By: \_\_\_\_\_  
[Title]

This Agreement is hereby accepted and agreed to as of the date thereof.

**PGIM, INC.**

By: \_\_\_\_\_  
Vice President

**PURCHASER SCHEDULE**

**PGIM, INC.**

- (1) All payments to Prudential shall be made by wire transfer of immediately available funds for credit to:

JPMorgan Chase Bank  
New York, New York  
ABA No.: 021-000-021  
Account No.: 304232491  
Account Name: PIM Inc. - PCG

- (2) Address for all notices relating to payments:

PGIM, Inc.  
c/o The Prudential Insurance Company of America  
Investment Operations Group  
Gateway Center Two, 10th Floor  
100 Mulberry Street  
Newark, New Jersey 07102-4077

Attention: Manager

- (3) Address for all other communications and notices:

PGIM, Inc.  
c/o Prudential Capital Group  
Two Prudential Plaza, Suite 5600  
Chicago, Illinois 60601

Attention: Managing Director

- (4) Recipient of telephonic prepayment notices:

Manager, Trade Management Group  
Telephone: (973) 367-3141  
Facsimile: (800) 224-2278

- (5) Tax Identification No.: 22-2540245



**INFORMATION SCHEDULE**

**AUTHORIZED OFFICERS FOR PRUDENTIAL**

P. Scott von Fischer  
Managing Director  
Prudential Capital Group  
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Telephone: (312) 540-4225  
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Managing Director  
Central Credit  
Prudential Capital Group  
Four Gateway Center  
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Marie L. Fioramonti  
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Vice President  
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David Quackenbush  
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Anthony Coletta  
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**AUTHORIZED OFFICERS FOR THE COMPANY**

**Ted Haddad**  
Vice President and Treasurer  
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Ph: 812-934-7251  
Fax: 812-931-5209

**John Zerkle**  
Senior Vice President,  
General Counsel and  
Secretary  
One Batesville Boulevard  
Batesville, IN 47006

Ph: 812-931-3832  
Fax: 812-931-1344

**Cynthia L. Lucchese**  
Chief Financial Officer  
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Fax: 812-931-5190

## SCHEDULE B

### DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

“**Acceptance**” is defined in Section 2.1(e).

“**Acceptance Day**” is defined in Section 2.1(e).

“**Acceptance Window**” means, with respect to any Quotation, the time period designated by Prudential during which the Company may elect to accept such Quotation. If no such time period is designated by Prudential with respect to any such Quotation, then the Acceptance Window for such Quotation will be 2 minutes after the time Prudential shall have provided such Quotation.

“**Accepted Note**” is defined in Section 2.1(e).

“**Acquisition**” is defined in Section 10.9(a).

“**Affiliate**” means, at any time, (a) with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified and (b) with respect to Prudential, shall include any managed account, investment fund or other vehicle for which Prudential or any Prudential Affiliate acts as investment advisor or portfolio manager. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Company.

“**Airport Access and Use Agreement**” means that certain Airport Access and Use Agreement dated on or about March 21, 2008 by and between Hill-Rom Company, Inc. (“Hill-Rom”), an Indiana corporation, and Batesville Services, Inc. (“Batesville Services”), an Indiana corporation.

“**Amendment No. 4**” means that certain Amendment No. 4 to Private Shelf Agreement dated as of December 8, 2017.

“**Amendment No. 4 Effective Date**” means the “Effective Date” as defined in Amendment No. 4.

“**Amendment No. 5**” means that certain Amendment No. 5 to Private Shelf Agreement dated as of September 4, 2019.

“**Amendment No. 5 Effective Date**” means the “Effective Date” as defined in Amendment No. 5.

“**Anti-Money Laundering Laws**” is defined in Section 5.16(c).

“**Applicable Currency**” means (i) with respect to any Notes denominated in Dollars, Dollars, (ii) with respect to any Notes denominated in Euros, Euros, (iii) with respect to any Notes denominated in British Pounds, British Pounds, (iv) with respect to any Notes denominated in Canadian Dollars, Canadian Dollars, and (v) with respect to any Notes denominated in Swiss Francs, Swiss Francs.

“**Applicable Quarter**” is defined in Section 9.10.

“**Attributable Indebtedness**” means, on any date, in respect of any capital lease of any Person, the capitalized amount thereof that would appear on the balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Authorized Officer**” means (i) in the case of the Company, its chief executive officer, its chief financial officer, any other Person authorized to act on behalf of the Company and designated as an “Authorized Officer” in the Information Schedule attached hereto or any other Person authorized by the Company to act on behalf of the Company and designated as an “Authorized Officer” of the Company for the purpose of this Agreement in an Officer’s Certificate executed by the Company’s chief executive officer or chief financial officer and delivered to Prudential, and (ii) in the case of Prudential, any officer of Prudential designated as its “Authorized Officer” in the Information Schedule or any officer of Prudential designated as its “Authorized Officer” for the purpose of this Agreement in a certificate executed by one of its Authorized Officers or a lawyer in its law department. Any action taken under this Agreement on behalf the Company by any individual who on or after the date of this Agreement shall have been an Authorized Officer of the Company and whom Prudential in good faith believes to be an Authorized Officer of the Company at the time of such action shall be binding on the Company even though such individual shall have ceased to be an Authorized Officer, and any action taken under this Agreement on behalf of Prudential by any individual who on or after the date of this Agreement shall have been an Authorized Officer of Prudential and whom the Company in good faith believes to be an Authorized Officer of Prudential at the time of such action shall be binding on Prudential even though such individual shall have ceased to be an Authorized Officer of Prudential.

“**Available Currencies**” means Dollars, Euros, British Pounds, Canadian Dollars and Swiss Francs.

“**Available Facility Amount**” is defined in Section 2.1(a).

“**Below Investment Grade Rating**” in respect of any Person means, at any time of determination, there exists an Active Rating of less than: (i) “BBB-” by Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, or any successor thereof (“**S&P**”), (ii) “BBB-” by Fitch Ratings, Ltd., or any successor thereof (“**Fitch**”), (iii) “Baa3” by Moody’s Investors Service, Inc., or any successor thereof (“**Moody’s**”) or (iv) an equivalent Solicited rating by any other nationally recognized statistical rating agency. For purposes of this definition, (1) “**Active Rating**” means any rating other than a rating that both (a) has not been determined or refreshed by the applicable statistical rating agency within the last 12 months and (b) the Company has formally requested that the applicable statistical rating agency terminate such rating; and (2) “**Solicited**” means any rating that has been requested by or paid for by the Company.

“**Bengal**” means Milacron Holdings Corp., a Delaware corporation.

“**Bengal Acquisition**” means the acquisition of all of the outstanding equity interests of Bengal by the Company (through the merger of its Subsidiary Bengal Holding and Bengal, with Bengal as the surviving corporation) pursuant to the Bengal Acquisition Agreement.

“**Bengal Acquisition Agreement**” means the Agreement and Plan of Merger, dated as of July 12, 2019 (together with all exhibits, schedules and disclosure letters thereto), by and among Bengal, the Company and Bengal Holding, as in effect on July 12, 2019.

“**Bengal Holding**” means Bengal Delaware Holding Corporation, a Delaware corporation.

“**Blocked Person**” is defined in Section 5.16(a).

“**British Pound**” and “**£**” means the lawful currency of Great Britain.

“**Business Day**” means (i) other than as provided in clauses (ii) and (iii) below, any day other than a Saturday, a Sunday or a day on which commercial banks in New York City or with respect to Swiss Francs only, in Zurich, Switzerland, or, with respect to Canadian Dollars only, in Toronto, Canada, or with respect to British Pounds only, in London, England, are authorized or required to be closed or, with respect to Euros only, a day which is not a TARGET Settlement Day, (ii) for purposes of Section 2.1(c) only, any day which is both a New York Business Day and a day on which Prudential is open for business and (iii) for purposes of Section 8.7, (a) if with respect to Notes denominated in Dollars, a New York Business Day, (b) if with respect to Notes denominated in British Pounds, any day which is both a New York Business Day and a day on which commercial banks are not required or authorized to be closed in London, (c) if with respect to Notes denominated in Euros, any day which is both a New York Business Day and a TARGET Settlement Day, (d) if with respect to Notes denominated in Canadian Dollars, any day which is both a New York Business Day and a day on which commercial banks are not required or authorized to be closed in Toronto, Canada, and (e) if with respect to Notes denominated in Swiss Francs, any day which is both a New York Business Day and a day on which commercial banks are not required or authorized to be closed in Zurich, Switzerland.

“**Canadian Dollar**” and “**CS**” means the lawful currency of Canada.

“**Cancellation Date**” is defined in Section 2.1(g)(iv).

“**Cancellation Fee**” is defined in Section 2.1(g)(iv).

**“Change in Control”** means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) other than any member or members of the Hillenbrand Family Group, of Equity Interests representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Company by Persons who were neither (i) nominated by the board of directors of the Company nor (ii) appointed by directors so nominated.

**“Closing Day”** means, with respect to any Accepted Note, the Business Day specified for the closing of the purchase and sale of such Accepted Note in the Confirmation of Acceptance for such Accepted Note, provided that (i) if the Company and the Purchaser which is obligated to purchase such Accepted Note agree on an earlier Business Day for such closing, the **“Closing Day”** for such Accepted Note shall be such earlier Business Day, and (ii) if the closing of the purchase and sale of such Accepted Note is rescheduled pursuant to Section 3.2, the Closing Day for such Accepted Note, for all purposes of this Agreement except references to **“original Closing Day”** in Section 2.1(g)(iii), shall mean the Rescheduled Closing Day with respect to such Accepted Note. A **“Closing Day”** is sometimes herein referred to as a **“Closing”**.

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

**“Company”** means Hillenbrand, Inc., an Indiana corporation.

**“Competitor”** means any Person (other than any Purchaser or any Person described in clause (c) of the definition of Institutional Investor) who is substantially engaged in any of the principal lines of business of the Company or any of its Subsidiaries, subject to compliance with Section 10.6, *provided* that the provision of investment advisory services by a Person to a Plan or Non U.S. Plan which is owned or controlled by a Person which would otherwise be a Competitor shall not of itself cause the Person providing such services to be deemed to be a Competitor if such Person has established procedures which will prevent confidential information supplied to such Person by the Company or any of its Subsidiaries from being transmitted or otherwise made available to such Plan or Non U.S. Plan or Person owning or controlling such Plan or Non U.S. Plan.

**“Confidential Information”** is defined in Section 21.

**“Confirmation of Acceptance”** is defined in Section 2.1(e).

**“Confirmation of Guaranty Agreement”** is defined in Section 4.5(c).

**“Consolidated EBITDA”** means, with reference to any period, Consolidated Net Income for such period plus, without duplication, and to the extent deducted from revenues in determining Consolidated Net Income for such period, (i) interest expense, (ii) income tax expense, (iii) depreciation expense, (iv) amortization expense, (v) all non-cash expenses, charges or losses, (vi) losses attributable to the early extinguishment of Indebtedness, (vii)(A) cash fees, costs, expenses, premiums, penalties or other losses incurred in connection with any acquisition, any asset sale or other disposition, any recapitalization, any investment, any issuance of equity interests by the Company or any issuance, incurrence or repayment of any Indebtedness by the Company or its Subsidiaries, the amortization of any deferred financing charges, and/or any refinancing transaction or modification or amendment of any debt instrument (including any transaction undertaken but not completed) and (B) non-recurring or unusual expenses, in an aggregate amount for clauses (A) and (B) not to exceed ten percent (10%) of Consolidated EBITDA for any Reference Period (as calculated without giving effect to the add-back of any item pursuant to this clause (vii)) and (viii) M&A, legal and other out-of-pocket transaction fees and expenses of the Company and Bengal relating to the Bengal Acquisition and any financing related thereto (including, without limitation, any issuance, incurrence or repayment of any Indebtedness by the Company, Bengal or their respective Subsidiaries, the amortization of any deferred financing charges, and/or any refinancing transaction or modification or amendment of any debt instrument (including any transaction undertaken but not completed) related thereto) minus, to the extent included in Consolidated Net Income, (1) interest income, (2) income tax benefits (to the extent not netted from tax expense), (3) any cash payments made during such period in respect of items described in clause (v) above subsequent to the fiscal quarter in which the relevant non-cash expense, charge or loss were incurred and (4) gains attributable to the early extinguishment of Indebtedness, all calculated for the Company and its Subsidiaries in accordance with GAAP on a consolidated basis. For the purposes of calculating Consolidated EBITDA for any period of four consecutive fiscal quarters (each such period, a **“Reference Period”**), (i) if at any time during such Reference Period the Company or any Subsidiary shall have made any Material Disposition, the Consolidated EBITDA for such Reference Period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Material Disposition for such Reference Period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such Reference Period, and (ii) if during such Reference Period the Company or any Subsidiary shall have made a Material Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving effect thereto on a pro forma basis as if such Material Acquisition occurred on the first day of such Reference Period. As used herein, **“Material Acquisition”** means any acquisition of property or series of related acquisitions of property that (a) constitutes (i) assets comprising all or substantially all or any significant portion of a business or operating unit of a business, or (ii) all or substantially all of the common stock or other Equity Interests of a Person, and (b) involves the payment of consideration by the Company and its Subsidiaries in excess of \$10,000,000; and **“Material Disposition”** means any sale, transfer or disposition of property or series of related sales, transfers, or dispositions of property that (a) constitutes (i) assets comprising all or substantially all or any significant portion of a business or operating unit of a business, or (ii) all or substantially all of the common stock or other Equity Interests of a Person, and (b) involves gross proceeds to the Company or any of its Subsidiaries in excess of \$10,000,000.

**“Consolidated Indebtedness”** means at any time the aggregate Indebtedness of the Company and its Subsidiaries calculated on a consolidated basis as of such time in accordance with GAAP.

**“Consolidated Interest Expense”** means, with reference to any period, the interest payable on, and amortization of debt discount in respect of, all Indebtedness of the Company and its Subsidiaries calculated on a consolidated basis for such period in accordance with GAAP. In the event that the Company or any Subsidiary shall have completed a Material Acquisition or a Material Disposition since the beginning of the relevant period, Consolidated Interest Expense shall be determined for such period on a pro forma basis as if such acquisition or disposition, and any related incurrence or repayment of Indebtedness, had occurred at the beginning of such period.

**“Consolidated Net Income”** means, with reference to any period, the net income (or loss) of the Company and its Subsidiaries calculated in accordance with GAAP on a consolidated basis (without duplication) for such period.

**“Consolidated Revenues”** means, with reference to any period, total revenues of the Company and its Subsidiaries calculated in accordance with GAAP on a consolidated basis as of such date.

**“Consolidated Tangible Assets”** means, as of any date of determination thereof, Consolidated Total Assets minus the Intangible Assets of the Company and its Subsidiaries on such date.

**“Consolidated Total Assets”** means, as of the date of any determination thereof, total assets of the Company and its Subsidiaries calculated in accordance with GAAP on a consolidated basis as of such date.

**“Contractual Obligation”** means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms **“Controlling”** and **“Controlled”** shall have meanings correlative thereto.

**“Controlled Entity”** means any of the Subsidiaries of the Company and any of their or the Company’s respective Controlled Affiliates.

**“Default”** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**“Default Rate”** with respect to any Note, has the meaning given in such Note.

**“Delayed Delivery Fee”** is defined in Section 2.1(g)(iii).

**“Disposition”** or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback transaction) of any property by any Person, including any sale, assignment (excluding any Lien), transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

**“Dollars”** or **“\$”** means lawful money of the United States of America.



“**Dollar Equivalent**” means, with respect to any Notes or Accepted Notes denominated or to be denominated in any Available Currency other than Dollars (“**Non-Dollar Notes**”), the Dollar equivalent of the principal amount of such Non-Dollar Notes, in each case as set forth in the records of Prudential.

“**Domestic Foreign Holdco Subsidiary**” means a Subsidiary organized under the laws of a jurisdiction located in the United States of America (excluding any possession or territory thereof), substantially all of the assets of which consist of the Equity Interests (including Equity Interests held through entities disregarded from their owner for U.S. federal income tax purposes) of (and/or receivables or other amounts due from) one or more Foreign Subsidiaries that are “controlled foreign corporations” within the meaning of section 957 of the Code, so long as such Domestic Subsidiary (i) does not conduct any business or other activities other than the ownership of such Equity Interests and/or receivables and (ii) does not incur, and is not otherwise liable for, any Indebtedness (other than intercompany indebtedness permitted by Section 10.3(g)), in each case, other than immaterial assets and activities reasonably related or ancillary thereto.

“**Domestic Subsidiary**” means a Subsidiary organized under the laws of a jurisdiction located in the United States of America (excluding any possession or territory thereof) other than any Domestic Foreign Holdco Subsidiary.

“**Environmental Laws**” means all laws, rules, regulations, codes, ordinances, or binding orders, decrees, judgments or injunctions, issued, promulgated or entered into by any Governmental Authority, relating to pollution or protection of the environment, preservation or reclamation of natural resources or the management, release or threatened release of or governing exposure to any Hazardous Material.

“**Environmental Liability**” means any liability (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**EONIA**” means (i) the applicable overnight rate calculated by the Banking Federation of the European Union for the relevant Business Day, displayed on the EONIA Screen of Reuters, or such other display as may replace page 247 on the EONIA Screen of Reuters, displaying the appropriate rate or (ii) if no such rate is displayed on such EONIA Screen or other display, the arithmetic mean of the rates (rounded upwards to four decimal places) as quoted by Citibank N.A. to leading banks in the European interbank market, at or about 7.00 p.m. Central European time on such day for the offering of deposits in euro for the period from one Business Day to the immediately following Business Day and, in relation to a day that is not a Business Day, EONIA for the immediately preceding Business Day.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

“**Equity Interests**” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other similar rights entitling the holder thereof to purchase or acquire any of the foregoing; provided that “Equity Interests” shall not include Indebtedness that is convertible into Equity Interests.

“**ERISA Event**” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which any notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Company or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Company or any ERISA Affiliate from the PBGC or a plan administrator of any written notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Company or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of the Company or any of its ERISA Affiliates from any Plan or Multiemployer Plan; or (g) the receipt by the Company or any ERISA Affiliate of any written notice, or the receipt by any Multiemployer Plan from the Company or any ERISA Affiliate of any written notice, concerning the imposition upon the Company or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in critical or endangered status, within the meaning of ERISA.

“**Euro**” or “**€**” means the unit of single currency of the Participating Member States.

“**Event of Default**” is defined in Section 11.

“**Excess Leverage Fee**” is defined in Section 9.10.

“**Facility**” is defined in Section 2.1(a).

“**Farm Agreement**” means that certain Tenants in Common Agreement dated on or about March 21, 2008 between Hill-Rom Company, Inc., an Indiana corporation, and BCC JAWACDAH Holdings, LLC, an Indiana limited liability company.

“**Financial Covenant**” means any covenant related to a numerical measure of a balance sheet condition, the results of operations or cash flow, or other financial condition, including, without limitation, any provision involving a measurement of the Company’s leverage, ability to cover expenses, earnings, net income, fixed charges, interest expense, net worth or other component of the Company’s or a Foreign Subsidiary’s consolidated financial position, results of operations, shareholders’ equity, assets or liability (however expressed and whether stated as a ratio, as a fixed threshold, as an event of default or otherwise).

**“Foreign Credit Facility”** means, as to any Foreign Subsidiary Borrower, any credit agreement, loan agreement, note purchase agreement or similar agreement evidencing a credit facility, and any amendments thereto, creating or evidencing indebtedness for borrowed money of such Foreign Subsidiary Borrower.

**“Foreign Subsidiary”** means any Subsidiary which is not a Domestic Subsidiary.

**“Foreign Subsidiary Borrower”** means any “Foreign Subsidiary Borrower” under, and as defined in, the Primary Credit Facility.

**“Foreign Subsidiary Debt Limit”** is defined in Section 10.3.

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

**“Governmental Authority”** means

(a) the government of

(i) the United States of America or the jurisdiction of organization of the Company or any State or other political subdivision of either thereof,  
or

(ii) any other jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

**“Guarantee”** of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the lesser of (a) the stated or determinable amount of the primary payment obligation in respect of which such Guarantee is made and (b) the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee, unless such primary payment obligation and the maximum amount for which such guaranteeing Person may be liable are not stated or determinable, in which case the amount of the Guarantee shall be such guaranteeing Person’s maximum reasonably possible liability in respect thereof as reasonably determined by the Company in good faith.

**“Guarantor”** means any party to a Guaranty Agreement.

**“Guaranty Agreement”** is defined in Section 4.5(b).

**“Hazardous Material”** means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants and contaminants listed, defined, designated, regulated or classified under applicable Environmental Laws as hazardous, toxic, radioactive, dangerous, a pollutant, a contaminant, petroleum, oil or words of similar meaning or effect, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes.

**“Hedge Treasury Note(s)”** means, with respect to any Accepted Note, the United States Treasury Note or Notes whose duration (as determined by Prudential) most closely matches the duration of such Accepted Note.

**“Hillenbrand Family Group”** means the descendants of John A. Hillenbrand and members of such descendants’ families and trusts for the benefit of such Persons.

**“holder”** means, with respect to any Note the Person in whose name such Note is registered in the register maintained by the Company pursuant to Section 14.1.

**“Hostile Tender Offer”** shall mean, with respect to the use of proceeds of any Note, any offer to purchase, or any purchase of, shares of capital stock of any corporation or equity interests in any other entity, or securities convertible into or representing the beneficial ownership of, or rights to acquire, any such shares or equity interests, if such shares, equity interests, securities or rights are of a class which is publicly traded on any securities exchange or in any over-the-counter market, other than purchases of such shares, equity interests, securities or rights representing less than 5% of the equity interests or beneficial ownership of such corporation or other entity for portfolio investment purposes, and such offer or purchase has not been duly approved by the board of directors of such corporation or the equivalent governing body of such other entity prior to the date on which the Company makes the Request for Purchase of such Note.

**“Indebtedness”** means, as to any Person at a particular time, without duplication, all of the following, but only to the extent included as indebtedness or liabilities in accordance with GAAP: (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (other than accounts payable incurred in the ordinary course of business or any earn-out obligations), (d) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, (e) all obligations of such Person for unreimbursed payments made under letters of credit (including standby and commercial), bankers’ acceptances and bank guarantees, (f) all obligations in respect of capital leases of such Person, (g) (only for purposes of calculating Consolidated Indebtedness) net obligations of such Person under any Swap Agreement pertaining to interest rates and (h) all Guarantees of such Person in respect of any of the foregoing. For purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation, limited liability company or other limited liability entity) in which such person is a general partner or a joint venture, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

Indebtedness of any Person shall include all obligations of such Person of the character described in clauses (a) through (g) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP.

Upon the defeasance or satisfaction and discharge of Indebtedness in accordance with the terms of the documents governing such Indebtedness, such Indebtedness will cease to be "Indebtedness" hereunder (upon the giving or mailing of a notice of redemption and redemption funds being deposited with a trustee or paying agent or otherwise segregated or held in trust or under an escrow or other funding arrangement for the sole purpose of repurchasing, redeeming, defeasing, repaying, satisfying and discharging, or otherwise acquiring or retiring such Indebtedness, or other substantially comparable processes).

**"Institutional Accredited Investor"** means an institutional accredited investor as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

**"Institutional Investor"** means (a) any Purchaser of a Note, (b) any holder of a Note holding (together with one or more of its affiliates) more than 5% of the aggregate principal amount of the Notes then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form, and (d) any Related Fund of any holder of any Note.

**"Intangible Assets"** means the aggregate amount, for the Company and its Subsidiaries on a consolidated basis, of all assets classified as intangible assets under GAAP, including, without limitation, customer lists, acquired technology, goodwill, computer software, trademarks, patents, copyrights, organization expenses, franchises, licenses, trade names, brand names, mailing lists, catalogs, unamortized debt discount and capitalized research and development costs.

**"Interest Coverage Ratio"** is defined in Section 10.9(b).

**"Issuance Fee"** is defined in Section 2.1(g)(ii).

**"Issuance Period"** is defined in Section 2.1(b).

**"Joint Ownership Agreements"** means the four (4) Joint Ownership Agreements with respect to the joint ownership of the aircraft described therein, dated on or about March 21, 2008 by and among Hill-Rom and Batesville Services.

“**Leverage Holiday Period**” is defined in Section 10.9(a).

“**Leverage Ratio**” is defined in Section 10.9(a).

“**Lien**” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“**Liquidity Amount**” means, as of any date of determination, the lesser of (i) the sum of (a) 100% of the unrestricted and unencumbered cash and cash equivalents maintained by the Company and its Subsidiaries in the United States as of such date, plus (b) 70% of the unrestricted and unencumbered cash and cash equivalents maintained by the Company and its Subsidiaries outside of the United States as of such date and (ii) \$100,000,000; provided, however, that amounts calculated under this definition shall exclude any amounts that would not be considered “cash” or “cash equivalents” as recorded on the books of the Company or the applicable Subsidiary.

“**Make-Whole Amount**” is defined in Section 8.7.

“**Material**” means material in relation to the business, operations, affairs, financial condition, assets, properties or prospects of the Company and its Subsidiaries taken as a whole.

“**Material Acquisition**” is defined in the definition of “Consolidated EBITDA”.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, operations or financial condition of the Company and the Subsidiaries taken as a whole, (b) the ability of the Transaction Parties to perform their material obligations under the Transaction Documents or (c) the material rights or remedies of any holder of a Note under the Transaction Documents.

“**Material Disposition**” is defined in the definition of “Consolidated EBITDA”.

“**Material Foreign Credit Facility**” means any Foreign Credit Facility entered into on or after the Amendment No. 4 Effective Date by a Foreign Subsidiary Borrower in a principal amount outstanding or available and committed for borrowing greater than \$200,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency); provided for the avoidance of doubt “Material Foreign Credit Facility” shall not include (i) the Primary Credit Facility or (ii) any agreements evidencing Indebtedness incurred pursuant to Section 10.3(n); provided further that any such Foreign Credit Facility shall only be a Material Foreign Credit Facility for so long as such principal amount outstanding or available and committed for borrowing is greater than \$200,000,000.

**“Material Indebtedness”** means, as of any date, Indebtedness (other than the Indebtedness under the Notes), or the net obligations in respect of one or more Swap Agreements, of any one or more of the Company and its Subsidiaries in an aggregate principal amount exceeding \$75,000,000 as of such date. For purposes of determining Material Indebtedness, the “principal amount” of the net obligations of the Company or any Subsidiary in respect of any Swap Agreement at any time shall be deemed to be the Swap Termination Value thereof as of such date.

**“Material Subsidiary”** means, as of any date of determination, each Subsidiary either (i) having (together with its subsidiaries) assets that constitute five percent (5%) or more of the Consolidated Total Assets of the Company and its Subsidiaries or (b) having (together with its Subsidiaries) revenues that constitute five percent (5%) or more of the Consolidated Revenues of the Company and its Subsidiaries, in each case as of the last day of the immediately preceding fiscal year of the Company for which annual financial statements are available.

**“Multiemployer Plan”** means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

**“NAIC”** means the National Association of Insurance Commissioners or any successor thereto.

**“New York Business Day”** means any day other than a Saturday, a Sunday or a day on which commercial banks in New York are required or authorized to be closed.

**“Non-U.S. Plan”** means any plan, fund or other similar program that (a) is established or maintained outside the United States of America by the Company or any Subsidiary primarily for the benefit of employees of the Company or one or more Subsidiaries residing outside the United States of America, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and (b) is not subject to ERISA or the Code.

**“Notes”** is defined in Section 1.1.

**“OFAC”** is defined in Section 5.16(a).

**“OFAC Listed Person”** is defined in Section 5.16(a).

**“OFAC Sanctions Program”** means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at <http://www.ustreas.gov/offices/enforcement/ofac/programs/>.

**“Officer’s Certificate”** means a certificate of a Senior Financial Officer of the Company or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

**“Overnight Interest Rate”** means with respect to an Accepted Note denominated in a currency other than Dollars, the actual rate of interest, if any, received by the Purchaser which intends to purchase such Accepted Note on the overnight deposit of the funds intended to be used for the purchase of such Accepted Note, it being understood that reasonable efforts will be made by or on behalf of the Purchaser to make any such deposit in an interest bearing account.

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

**“PBGC”** means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

**“Person”** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

**“Plan”** means an “employee benefit plan” (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

**“PPSA”** means the Personal Property Security Act or other personal property security legislation of the applicable Canadian province or provinces in respect of any Transaction Party or any Subsidiary (including the Civil Code of the Province of Quebec) as all such legislation now exists or may from time to time to hereafter be amended, modified, recodified, supplemented or replaced, together with all rules, regulations and interpretations thereunder or related thereto.

**“Primary Credit Facility”** means the Third Amended and Restated Credit Agreement, dated as of August 28, 2019, among the Company, the subsidiary borrowers party thereto, the subsidiary guarantors party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent, as amended, restated, amended and restated, refinanced or replaced from time to time.

**“property”** or **“properties”** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

**“Prudential”** is defined in the addressee line to this Agreement.

**“Prudential Affiliate”** means any Affiliate of Prudential.

**“PTE”** is defined in Section 6.2.

**“Purchaser”** is defined in the addressee line to this Agreement.



**“Qualified Institutional Buyer”** means any Person who is a “qualified institutional buyer” within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

**“Quotation”** shall have the meaning provided in paragraph 2.1(d).

**“Related Fund”** means, with respect to any holder of any Note, any fund or entity that (a) invests in securities or bank loans, and (b) is advised or managed by such holder, the same investment advisor as such holder or by an affiliate of such holder or such investment advisor.

**“Request for Purchase”** is defined in Section 2.1(c).

**“Required Holders”** means, at any time, the holders of more than 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates). At any time that there are no Notes outstanding the “Required Holders” shall mean Prudential.

**“Rescheduled Closing Day”** is defined in Section 3.2.

**“Responsible Officer”** means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

**“Restricted Payment”** means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Company or any Subsidiary or any option, warrant or other right to acquire any such Equity Interests in the Company or any Subsidiary.

**“Sale and Leaseback Transaction”** means any sale or other transfer of any property or asset by any Person with the intent to lease such property or asset as lessee.

**“Sale of Assets Covenant”** means any restriction or limitation on the sale, transfer or other disposition of property (however expressed and whether stated as a ratio, a fixed threshold, as an event of default or otherwise).

**“SEC”** means the United States Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

**“Securities Act”** means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

**“Senior Financial Officer”** means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

“**Series**” is defined in Section 1.1.

“**Significant Acquisition**” is defined in Section 10.9(a).

“**Significant Acquisition Election**” is defined in Section 10.9(a).

“**Specified Senior Notes**” means one or more series of senior unsecured debt securities of the Company issued to finance the Bengal Acquisition and other transactions related thereto.

“**Specified Senior Notes Indebtedness**” means Indebtedness in respect of the Specified Senior Notes.

“**Specified Senior Notes Indenture**” means that certain indenture and/or supplemental indenture pursuant to which the Specified Senior Notes will be issued.

“**Structuring Fees**” is defined in Section 2.1(g)(i).

“**subsidiary**” means, with respect to any Person (the “**parent**”) at any date, (i) with respect to any financial statements and financial covenant calculations (including the defined terms used therein), any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, and (ii) for all other purposes of the Transaction Documents, a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the equity securities or other ownership interests having ordinary voting power for the election of directors or other governing body (other than equity securities or other ownership interests having such power only by reason of the happening of a contingency) are at the time beneficially owned (or, in the case of a Person which is treated as a consolidated subsidiary for accounting purposes, the management of which is otherwise controlled) directly, or indirectly through one or more intermediaries, or both, by such Person.

“**Subsidiary**” means any subsidiary of the Company.

“**SVO**” means the Securities Valuation Office of the NAIC or any successor to such Office.

“**Swap Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or the Subsidiaries shall be a Swap Agreement.

**“Swap Termination Value”** means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in subsection (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements.

**“TARGET Settlement Day”** means a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system (or any successor thereto) is open for the settlement of payments in Euro.

**“Tax”** means any tax (whether income, documentary, sales, stamp, registration, issue, capital, property, excise or otherwise), duty, assessment, levy, impost, fee, compulsory loan, charge or withholding.

**“Transaction Documents”** means this Agreement, the Notes and the Guaranty Agreements.

**“Transaction Parties”** means the Company and the Guarantors.

**“Treasury Stock”** means capital stock of the Company owned by the Company and held in treasury.

**“USA Patriot Act”** means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

**“Wholly-Owned Subsidiary”** means, at any time, any Subsidiary all of the equity interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company’s other Wholly-Owned Subsidiaries at such time.

[Form of Note]

THIS NOTE HAS BEEN ACQUIRED FOR INVESTMENT AND WITHOUT A VIEW TO DISTRIBUTION AND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT"), OR UNDER STATE SECURITIES LAWS. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THIS NOTE OR ANY INTEREST OR PARTICIPATION THEREIN MAY BE MADE EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS.

Hillenbrand, Inc.

[ ]% Series \_\_\_ Senior Note Due [\_\_\_\_\_, \_\_\_]

No. [ ] [Date]

PPN[\_\_\_\_\_]

ORIGINAL PRINCIPAL AMOUNT:

ORIGINAL ISSUE DATE:

INTEREST RATE:

INTEREST PAYMENT DATES:

FINAL MATURITY DATE:

PRINCIPAL PREPAYMENT DATES AND AMOUNTS:

For Value Received, the undersigned, HILLENBRAND, INC. (herein called the "Company"), a corporation organized and existing under the laws of Indiana, hereby promises to pay to [ ] the principal sum of [ ] [DOLLARS] [EUROS] [BRITISH POUNDS] [CANADIAN DOLLARS] [SWISS FRANCS] [on the Final Maturity Date specified above (or so much thereof as shall not have been prepaid)], payable on the Principal Prepayment Dates and in the amounts specified above, and on the Final Maturity Date specified above in an amount equal to the unpaid balance of the principal hereof, with interest (computed on the basis of [a 360-day year of twelve 30-day months] [FOR NOTES DENOMINATED IN DOLLARS, EUROS, OR SWISS FRANCS] [the actual number of days elapsed and a 365-day year] [FOR NOTES DENOMINATED IN BRITISH POUNDS] [the actual number of days in such year] [FOR NOTES DENOMINATED IN CANADIAN DOLLARS]) (a) on the unpaid balance hereof at the Interest Rate per annum specified above, payable on each Interest Payment Date specified above and on the Final Maturity Date specified above, commencing with the Interest Payment Date next succeeding the date hereof, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, on any overdue payment of interest and, during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum (the "Default Rate") from time to time equal to the greater of (i) 2% over the Interest Rate specified above or (ii) 2% over [FOR DOLLAR, BRITISH POUND DENOMINATED NOTES, CANADIAN DOLLAR OR SWISS FRANCS] [the rate of interest publicly announced by JPMorgan Chase Bank, N.A., from time to time in New York, New York as its "base" or "prime" rate] [FOR EURO DENOMINATED NOTES USE] [EONIA], payable on each Interest Payment Date as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in [lawful money of the [United States of America][United Kingdom][Canada][Switzerland]][the single currency of the European Union] at [ ] or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Private Shelf Agreement referred to below.

This Note is one of a series of Senior Notes (herein called the “Notes”) issued pursuant to the Private Shelf Agreement, dated as of December 6, 2012 (as from time to time amended, the “Private Shelf Agreement”), between the Company, on one hand, and PGIM, Inc. and each Prudential Affiliate which becomes a party thereto, on the other hand, and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (i) agreed to the confidentiality provisions set forth in Section 21 of the Private Shelf Agreement and (ii) made the representation set forth in Section 6.2 of the Private Shelf Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Private Shelf Agreement.

This Note is a registered Note and, as provided in the Private Shelf Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

[The Company will make required prepayments of principal on the dates and in the amounts specified above and in the Private Shelf Agreement.] This Note is [also] subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Private Shelf Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Private Shelf Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Note shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

Any transferee of this Note or any interest therein, by its acceptance thereof, shall be deemed to have made the representations set forth in Section 6 of the Private Shelf Agreement. The Company shall not be required to register the transfer of any Note to any Person unless the Company receives from the proposed transferee a written instrument in form and substance reasonably satisfactory to the Company in which such transferee makes the representations and warranties set forth in Section 6 of the Private Shelf Agreement.

**Hillenbrand, Inc.**

By: \_\_\_\_\_  
[Title]

[FORM OF REQUEST FOR PURCHASE]

Hillenbrand, Inc.

Reference is made to the Private Shelf Agreement (the "Agreement"), dated as of December 6, 2012, among Hillenbrand, Inc. (the "Company"), on one hand, and PGIM, Inc. ("Prudential") and each Prudential Affiliate which becomes party thereto, on the other hand. Capitalized terms used and not otherwise defined herein shall have the respective meanings specified in the Agreement.

Pursuant to Section 2.1(c) of the Agreement, the undersigned Hillenbrand, Inc. (the "Company"), hereby makes the following Request for Purchase:

- 1. Currency: [Dollars/Euros/British Pounds/Canadian Dollars/Swiss Francs]
- 2. Aggregate principal amount of the Notes covered hereby (the "Notes") ..... [[\$][£][€][CS][FR]\_\_\_\_\_]<sup>1</sup>
- 3. Interest Payment Period: [quarterly or semiannually in arrears]
- 4. Individual specifications of the Notes:

Final Principal Amount	Prepayment Maturity Date	Principal Interest Dates and Amounts	Payment Period
			[ ] in arrears

- 5. Use of proceeds of the Notes:
- 6. Proposed day for the closing of the purchase and sale of the Notes:
- 7. The purchase price of the Notes is to be transferred to:

Name and Address and ABA Routing Number of Bank	Number of Account

<sup>1</sup>Minimum principal amount of \$10,000,000 (or its equivalent in the Available Currency).

- 8. The Company certifies that (a) the representations and warranties contained in Section 5 of the Agreement are true on and as of the date of this Request for Purchase and (b) that there exists on the date of this Request for Purchase no Event of Default or Default.
- 10. The Issuance Fee to be paid pursuant to the Agreement will be paid by the Company on the closing date.

Dated: \_\_\_\_\_ [ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Authorized Officer

**[FORM OF CONFIRMATION OF ACCEPTANCE]**

Reference is made to the Private Shelf Agreement (the "Agreement"), dated as of December 6, 2012 between Hillenbrand, Inc., (the "Company"), on one hand, and, on the other hand, PGIM, Inc. ("Prudential") and each Prudential Affiliate which becomes party thereto. All terms used herein that are defined in the Agreement have the respective meanings specified in the Agreement.

Prudential or the Prudential Affiliate which is named below as a Purchaser of Notes hereby confirms the representations as to such Notes set forth in Section 6 of the Agreement, and agrees to be bound by the provisions of the Agreement applicable to the Purchasers or holders of the Notes.

Pursuant to Section 2.1(e) of the Agreement, an Acceptance with respect to the following Accepted Notes is hereby confirmed:

I. Accepted Notes:

Aggregate principal amount: [\$][Euros][British Pounds][Canadian Dollars][Swiss Francs] \_\_\_\_\_

- (A) (a) Name of Purchaser:
- (b) Principal amount:
- (c) Final maturity date:
- (d) Principal prepayment dates and amounts:
- (e) Interest rate:
- (f) Interest payment period: [\_\_\_\_\_] in arrears
- (g) Payment and notice instructions: As set forth on attached Purchaser Schedule
  
- (B) (a) Name of Purchaser:
- (b) Principal amount:
- (c) Final maturity date:
- (d) Principal prepayment dates and amounts:
- (e) Interest rate:
- (f) Interest payment period: [\_\_\_\_\_] in arrears
- (g) Payment and notice instructions: As set forth on attached Purchaser Schedule

[(C), (D).... same information as above.]



II. Closing Day:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**PGIM, Inc.**

By: \_\_\_\_\_

Vice President

**[Prudential Affiliate]**

By: \_\_\_\_\_

Vice President

[ATTACH PURCHASER SCHEDULES]

**MATTERS TO BE COVERED BY  
OPINIONS OF SPECIAL COUNSEL  
TO THE TRANSACTION PARTIES**

The following matters are to be covered in opinions provided by United States, New York and Indiana counsel for the Transaction Parties, allocated between such counsel as appropriate, subject to customary assumptions, limitations and qualifications. All capitalized terms used herein without definition shall have the meanings ascribed thereto in the Private Shelf Agreement.

- Due organization and valid existence of each Transaction Party
- Power and authority of each Transaction Party to execute and deliver the Transaction Documents to which such Transaction Party is a party and to perform such Transaction Party's obligations thereunder
- Due authorization, execution and delivery of the Transaction Documents and enforceability of Transaction Documents against the Transaction Parties party thereto
- No governmental approvals required in connection with the Transaction Documents
- No registration required to issue the Notes under Securities Act of 1933 or Trust Indenture Act of 1939
- No conflicts of any Transaction Document with contracts, judgments of governmental authorities or law
- No Transaction Party is an Investment Company under the Investment Company Act of 1940
- No violation of Regulations T, U or X of the Board of Governors of the United States Federal Reserve System, 12 CFR, Part 220, Part 221 and Part 224, respectively

EXHIBIT 4.4(a)

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**MATTERS TO BE COVERED IN  
OPINION OF SPECIAL COUNSEL  
TO THE PURCHASERS**

The closing opinion of Schiff Hardin LLP, special counsel to the Purchasers, called for by Section 4.4(b) of the Agreement, shall be dated the date of the Closing and addressed to the Purchasers, shall be satisfactory in form and substance to the Purchasers and shall be to the effect that:

1. The Company is a corporation validly existing and in good standing under the laws of the State of Indiana.
2. Each Transaction Party other than the Company executing and delivering Transaction Documents at such Closing is validly existing as a corporation or limited liability company and is in good standing under the laws of its state of incorporation or formation.
3. The Company and each other Transaction Party executing and delivering Transaction Documents at such Closing has the corporate or limited liability company power and authority to execute, deliver and perform its obligations under the Agreement and the other Transaction Documents being executed or delivered at such Closing. The execution, delivery and performance thereof by the Company and each such other Transaction Party has been duly authorized by all necessary corporate or limited liability company action on the part of the Company and each such other Transaction Party, as the case may be, and the Agreement and such other Transaction Documents being executed or delivered at such Closing have been duly executed and delivered by the Company and each such other Transaction Party.
4. The Agreement and the other Transaction Documents being executed or delivered at such Closing constitute the legal, valid and binding obligations of the Company and each other Transaction Party thereto enforceable against such Person in accordance with its terms.
5. In view of the circumstances surrounding the sale and delivery of the Notes being issued at such Closing and on the basis of the representations made by the Company in Section 5.13 of the Agreement and by you in Section 6.1 of the Agreement, it is not necessary in connection with the offering, issuance and delivery of such Notes under the circumstance contemplated by the Agreement to register such Notes under the Securities Act or to qualify and indenture in respect of such Notes under the Trust Indenture Act of 1939, as amended and now in effect.

The opinion of Schiff Hardin LLP shall also state that the opinions of counsel to the Transaction Parties being delivered pursuant to Section 4.4(a) of the Agreement are satisfactory in scope and form to Schiff Hardin LLP and that, in their opinion, the Purchasers are justified in relying thereon.

EXHIBIT 4.4(b)

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In rendering the opinion set forth in paragraphs 1 and 2 above, Schiff Hardin LLP may rely, as to matters referred to in paragraphs 1 and 2, solely upon an examination of certificates of government officials, in each case as of a recent date prior to the date hereof. The opinions set forth in paragraph 3 above may only cover entities formed in Delaware, Illinois, or New York and in rendering such opinions, Schiff Hardin LLP may rely upon the opinions of counsel to the Transaction Parties being delivered pursuant to Section 4.4(a) of the Agreement. The opinion of Schiff Hardin LLP is limited to the General Corporation Law of the State of Delaware, the Limited Liability Company Act of the State of Delaware, the laws of the State of New York and the federal laws of the United States of America.

With respect to matters of fact upon which such opinion is based, Schiff Hardin LLP may rely on appropriate certificates of public officials and officers of the Transaction Parties and upon representations of the Transaction Parties and the Purchasers delivered in connection with the issuance and sale of the Notes.

[FORM OF]

## GUARANTY

THIS GUARANTY (this “**Guaranty**”) is made as of [\_\_\_\_\_, \_\_, \_\_\_\_] by and among each of the undersigned (the “**Initial Guarantors**”) and along with any additional Subsidiaries of the Company which become parties to this Guaranty by executing a joinder in the form attached as Annex I (a “**Joinder**”), the “**Guarantors**”) in favor of the Holders of Guaranteed Obligations (as defined below).

## WITNESSETH

WHEREAS, Hillenbrand, Inc., an Indiana corporation (the “**Company**”), on the one hand, PGIM, Inc. (“**Prudential**”), and each Prudential Affiliate which becomes party thereto, on the other hand, have entered into a certain Private Shelf Agreement dated as of December 6, 2012 (as the same may be amended, modified, supplemented and/or restated, and as in effect from time to time, the “**Private Shelf Agreement**”), providing, subject to the terms and conditions thereof, for the Company to sell its senior promissory notes from time to time (as amended, restated, supplemented or otherwise modified from time to time, the “**Notes**”, such term to include any such notes issued in substitution thereof pursuant to Section 14 of the Private Shelf Agreement); and

WHEREAS, it is a condition precedent to the purchase of any Notes by the Purchasers under the Private Shelf Agreement that each of the Guarantors shall have executed and delivered this Guaranty, whereby each of the Guarantors shall guarantee the payment when due of all of the Guaranteed Obligations (as defined below); and

WHEREAS, in consideration of the direct and indirect financial and other support that the Company has provided, and such direct and indirect financial and other support as the Company may in the future provide, to the Guarantors, and in order to induce the Purchasers to purchase the Notes, each of the Guarantors is willing to guarantee the Guaranteed Obligations.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions. Terms used herein but not defined herein have, as used herein, the respective meanings given such terms in the Private Shelf Agreement.

SECTION 2. Representations, Warranties and Covenants. Each of the Guarantors represents and warrants that:

(A) It is a corporation, partnership or limited liability company duly and properly incorporated or organized, as the case may be, validly existing and (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation, organization or formation and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted, except to the extent that the failure to have such authority would not reasonably be expected to have a Material Adverse Effect.

EXHIBIT 4.5(b)

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(B) It (to the extent applicable) has the requisite power and authority to execute and deliver this Guaranty and to perform its obligations hereunder. The execution and delivery by each Guarantor of this Guaranty and the performance by each of its obligations hereunder have been duly authorized by proper proceedings, and this Guaranty constitutes a legal, valid and binding obligation of such Guarantor, respectively, enforceable against such Guarantor, respectively, in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles regardless of whether considered in a proceeding in equity or at law.

(C) Neither the execution and delivery by such Guarantor of this Guaranty, nor the consummation by such Guarantor of the transactions herein contemplated, nor compliance by such Guarantor with the provisions hereof will: (a) require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) violate the charter, by-laws or other organizational documents of such Guarantor, (c) violate any applicable material law or regulation or any order of any Governmental Authority, (d) violate or result in a default under any indenture, agreement or other instrument binding upon such Guarantor or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by such Guarantor, except for any such violation or right which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, or (e) result in the creation or imposition of any Lien on any asset of such Guarantor.

In addition to the foregoing, subject to Section 25, each of the Guarantors covenants that, from the date such Guarantor becomes a party hereto and so long thereafter as any Guaranteed Obligations (as defined below) shall remain unpaid, it will fully comply with those covenants and agreements of the Company applicable to such Guarantor set forth in the Private Shelf Agreement.

SECTION 3. The Guaranty. Each of the Guarantors hereby unconditionally guarantees, jointly with the other Guarantors and severally, the full and punctual payment and performance when due (whether at stated maturity, or by required or optional prepayment or by acceleration or otherwise) of (i) the principal of, Make-Whole Amount, if any, with respect to, interest (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) on, and any other amounts due under the Notes, (ii) all other amounts payable by the Company under the Private Shelf Agreement and the other Transaction Documents, and (iii) the punctual and faithful performance, keeping, observance, and fulfillment by the Company of all of the agreements, conditions, covenants, and obligations of the Company contained in the Transaction Documents (all of the foregoing being referred to collectively as the "Guaranteed Obligations," and the holders of the Notes and Prudential being referred to collectively as the "Holders of Guaranteed Obligations"). Upon the occurrence and during the continuance of any Event of Default under the Private Shelf Agreement, each of the Guarantors agrees that it shall forthwith on demand by the holders entitled thereto pay such amount or perform such obligation at the place and in the manner specified in the Private Shelf Agreement, the Notes, or the relevant Transaction Document, as the case may be. Each of the Guarantors hereby agrees that this Guaranty is an irrevocable guaranty of payment and is not a guaranty of collection.

SECTION 4. Guaranty Unconditional. The obligations of each of the Guarantors hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by, and each Guarantor hereby waives any defenses it may have (now or in the future) by reason of:

(A) (i) any extension, renewal, settlement, indulgence, compromise, waiver or release of the Guaranteed Obligations, any part thereof, any agreement relating thereto (including this Guaranty), or any obligation of any other Guarantor, whether (in any such case) by operation of law or otherwise other than as a result of the indefeasible payment in full in cash of the Guaranteed Obligations; or (ii) any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations, any part thereof, any agreement relating thereto (including this Guaranty), or any obligation of any other Guarantor;

(B) any modification or amendment of or supplement to the Private Shelf Agreement, the Notes, or any other Transaction Document, including, without limitation, any such amendment which may increase the amount of, or the interest rates applicable to, any of the Guaranteed Obligations or the issuance from time to time of Notes;

(C) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of (i) any collateral securing the Guaranteed Obligations or any part thereof, (ii) any other guaranties with respect to the Guaranteed Obligations or any part thereof, or (iii) any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof;

(D) (i) any change in the corporate, partnership or other existence, structure or ownership of the Company or any Guarantor, (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Company or any Guarantor, or any of their respective assets or any resulting release or discharge of any obligation of the Company or such Guarantor;

(E) the existence of any claim, setoff or other rights which any Guarantor may have at any time against the Company, any other Guarantor, or the Holders of Guaranteed Obligations, whether in connection herewith or in connection with any unrelated transactions; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(F) (i) the enforceability or validity of the Guaranteed Obligations or any part thereof or the genuineness, enforceability or validity of any agreement relating thereto or with respect to any collateral securing the Guaranteed Obligations or any part thereof, (ii) any other invalidity or unenforceability relating to or against the Company or any other Guarantor of any of the Guaranteed Obligations, for any reason, related to the Private Shelf Agreement or any other Transaction Document, or (iii) any provision of applicable law decree, order or regulation of any jurisdiction purporting to prohibit the payment by the Company or any Guarantor, or otherwise affecting any term of any of the Guaranteed Obligations;

(G) the election by, or on behalf of, any one or more of the Holders of Guaranteed Obligations, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. 101 et seq.) (the “Bankruptcy Code”), of the application of Section 1111(b)(2) of the Bankruptcy Code;

(H) the failure of any other Guarantor to sign or become party to this Guaranty or any amendment, change, or reaffirmation hereof; or

(I) any other act or omission to act or delay of any kind by the Company, any Guarantor or any Holders of Guaranteed Obligations, or any other circumstance whatsoever which might, but for the provisions of this Section 4, constitute a legal or equitable discharge of any Guarantor’s obligations hereunder except as provided in Section 5.

SECTION 5. Discharge Only Upon Payment In Full: Reinstatement In Certain Circumstances Subject to Section 25, each of the Guarantors’ obligations hereunder shall remain in full force and effect until all Guaranteed Obligations shall have been paid in full in cash and the Issuance Period shall have terminated or expired (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made). If at any time any payment of the principal of or interest on any Note or any other amount payable by the Company or any other party under the Private Shelf Agreement or any other Transaction Document (including a payment effected through exercise of a right of setoff) is rescinded, or is or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Company or otherwise (including pursuant to a settlement entered into by a Transaction Party in its discretion), each of the Guarantors’ obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

SECTION 6. General Waivers: Additional Waivers.

(A) General Waivers. Each of the Guarantors irrevocably waives notice of acceptance hereof, presentment, demand for performance, notice of protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against the Company, any other guarantor of the Guaranteed Obligations, or this Guaranty (except if such notice is specifically required to be given to such Guarantor hereunder or under the Transaction Documents).

(B) Additional Waivers. Notwithstanding anything herein to the contrary, each of the Guarantors hereby absolutely, unconditionally, knowingly, and expressly waives:

(i) any right it may have to revoke this Guaranty as to future indebtedness;

(ii) (a) notice of any Notes issued or other financial accommodations made or extended under the Transaction Documents or the creation or existence of any Guaranteed Obligations; (b) notice of the amount of the Guaranteed Obligations, subject, however, to each Guarantor’s right to make inquiry of the Holders of Guaranteed Obligations to ascertain the amount of the Guaranteed Obligations at any reasonable time; (c) notice of any adverse change in the financial condition of the Company or of any other fact that might increase such Guarantor’s risk hereunder; (d) notice of any Default or Event of Default;



(iii) its right, if any, to require the Holders of Guaranteed Obligations to institute suit against, or to exhaust any rights and remedies which the Holders of Guaranteed Obligations have or may have against, the other Guarantors or any third party; and each Guarantor further waives any defense arising by reason of any disability or other defense (other than the defense that the Guaranteed Obligations shall have been fully and finally performed and paid) of the other Guarantors or by reason of the cessation from any cause whatsoever of the liability of the other Guarantors in respect thereof;

(iv) (a) any rights to assert against the Holders of Guaranteed Obligations any defense (legal or equitable), set-off, counterclaim, or claim which such Guarantor may now or at any time hereafter have against the other Guarantors or any other party liable to the Holders of Guaranteed Obligations with respect to the Guaranteed Obligations; (b) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Guaranteed Obligations or any security therefor; and (c) any defense such Guarantor has to performance hereunder, and any right such Guarantor has to be exonerated, arising by reason of: the impairment or suspension of the Holders of Guaranteed Obligations' rights or remedies against the other Guarantors; the alteration by the Holders of Guaranteed Obligations of the Guaranteed Obligations; any discharge of the other Guarantors' obligations to the Holders of Guaranteed Obligations by operation of law as a result of the Holders of Guaranteed Obligations' intervention or omission; or the acceptance by the Holders of Guaranteed Obligations of anything in partial satisfaction of the Guaranteed Obligations; and

(v) any defense arising by reason of or deriving from (a) any claim or defense based upon an election of remedies by the Holders of Guaranteed Obligations; or (b) any election by the Holders of Guaranteed Obligations under Section 1111(b) of Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect (or any successor statute), to limit the amount of, or any collateral securing, its claim against the Guarantors.

SECTION 7. Subordination of Subrogation; Subordination of Intercompany Indebtedness.

(A) Subordination of Subrogation. Until the Guaranteed Obligations have been fully and finally performed and paid in full in cash, the Guarantors (i) shall have no right of subrogation with respect to such Guaranteed Obligations, (ii) waive any right to enforce any remedy which the Holders of Guaranteed Obligations now have or may hereafter have against the Company or any Guarantor of all or any part of the Guaranteed Obligations, and (iii) waive any benefit of, and any right to participate in, any security or collateral given to the Holders of Guaranteed Obligations to secure the payment or performance of all or any part of the Guaranteed Obligations or any other liability of the Company to the Holders of Guaranteed Obligations. Should any Guarantor have the right, notwithstanding the foregoing, to exercise its subrogation rights, each Guarantor hereby expressly and irrevocably (A) subordinates any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off with respect to the Guaranteed Obligations that such Guarantor may have to the payment in full in cash of the Guaranteed Obligations and (B) waives any and all defenses available to a surety, guarantor or accommodation co-obligor until the Guaranteed Obligations are paid in full in cash. Each Guarantor acknowledges and agrees that this subordination is intended to benefit the Holders of Guaranteed Obligations and shall not limit or otherwise affect such Guarantor's liability hereunder or the enforceability of this Guaranty, and that the Holders of Guaranteed Obligations and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 7(A).

(B) Subordination of Intercompany Indebtedness. Each Guarantor agrees that any and all claims of such Guarantor against the Company or any other Guarantor hereunder (each an “Obligor”) with respect to any Intercompany Indebtedness (as hereinafter defined) shall be subordinate and subject in right of payment to the prior payment, in full and in cash, of all Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made); provided that, unless otherwise prohibited as otherwise set forth below, such Guarantor may receive payments of principal and interest from any Obligor with respect to any indebtedness of such Obligor to any Guarantor (“Intercompany Indebtedness”). Upon acceleration of the Notes pursuant to Section 12.1 of the Private Shelf Agreement, notwithstanding any right of any Guarantor to ask, demand, sue for, take or receive any payment from any Obligor, all rights, liens and security interests of such Guarantor, whether now or hereafter arising and howsoever existing, in any assets of any other Obligor shall be and are subordinated to the rights of the Holders of Guaranteed Obligations in those assets. Upon acceleration of the Notes pursuant to Section 12.1 of the Private Shelf Agreement, no Guarantor shall have any right to possession of any such asset or to foreclose upon any such asset, whether by judicial action or otherwise, unless and until all of the Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made) shall have been fully paid and satisfied (in cash) and the Issuance Period have been terminated. Upon acceleration of the Notes pursuant to Section 12.1 of the Private Shelf Agreement, each Guarantor agrees that until the Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made) have been paid in full (in cash) and satisfied and the Issuance Period has been terminated, no Guarantor will assign or transfer to any Person (other than the Holders of Guaranteed Obligations) any claim any such Guarantor has or may have against any Obligor.

SECTION 8. Contribution with Respect to Guaranteed Obligations

(A) To the extent that any Guarantor shall make a payment under this Guaranty (a “Guarantor Payment”) which, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount which otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Guarantor’s Allocable Amount (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors (as determined immediately prior to the making of such Guarantor Payment), then, following payment in full in cash of the Guaranteed Obligations (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made) and termination of the Facility, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(B) As of any date of determination, the “Allocable Amount” of any Guarantor shall be equal to the excess of the fair saleable value of the property of such Guarantor over the total liabilities of such Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Guarantors as of such date in a manner to maximize the amount of such contributions.

(C) This Section 8 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 8 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Guaranty.

(D) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

SECTION 9. Limitation of Guaranty. Notwithstanding any other provision of this Guaranty, the amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law. In determining the limitations, if any, on the amount of any Guarantor’s obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution which such Guarantor may have under this Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10. Stay of Acceleration. If acceleration of the time for payment of any amount payable by the Company under the Private Shelf Agreement, the Notes, or any other Transaction Document is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration under the terms of the Private Shelf Agreement, the Notes, or any other Transaction Document shall nonetheless be payable by each of the Guarantors hereunder forthwith on demand by any holder or holders of Notes at the time outstanding, to the extent such amount is payable to such holder.

SECTION 11. Notices. All notices, requests and other communications to any party hereunder shall be given in the manner prescribed in Section 19 of the Private Shelf Agreement with respect to Prudential, at its notice address therein, with respect to any holder of any Note, at the address specified therein, and with respect to any Guarantor, in care of the Company at the address of the Company set forth in the Private Shelf Agreement or such other address or teletype number as such party may hereafter specify to the Company in writing.

SECTION 12. No Waivers. No failure or delay by any Holder of Guaranteed Obligations in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided in this Guaranty, the Private Shelf Agreement and the other Transaction Documents shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 13. Successors and Assigns. This Guaranty shall be enforceable by and is for the benefit of the Holders of Guaranteed Obligations and their respective successors and permitted assigns; it being understood and agreed that in the event that the Holders of Guaranteed Obligations assign or transfer all or a portion of their respective rights and obligations under Section 23.1 of the Private Shelf Agreement, then the rights hereunder, to the extent applicable to the rights and obligations so assigned, may be transferred with such rights and obligations. This Guaranty shall be binding upon each of the Guarantors and their respective successors and assigns; provided, that no Guarantor shall have any right to assign its rights or obligations hereunder without the consent of all of the Required Holders, except as otherwise permitted pursuant to the Private Shelf Agreement, and any such assignment in violation of this Section 13 shall be null and void.

SECTION 14. Changes in Writing. Other than in connection with the addition of additional Guarantors, which become parties hereto by executing a Joinder, neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated orally, but only in writing signed by each of the Guarantors and the Required Holders.

SECTION 15. GOVERNING LAW. THIS GUARANTY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

SECTION 16. CONSENT TO JURISDICTION; SERVICE OF PROCESS; JURY TRIAL; IMMUNITY.

(A) EACH GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY TRANSACTION DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS GUARANTY OR ANY OTHER TRANSACTION DOCUMENT SHALL AFFECT ANY RIGHT THAT PRUDENTIAL, ANY PURCHASER OR ANY HOLDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY OR ANY OTHER TRANSACTION DOCUMENT AGAINST ANY TRANSACTION PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(B) EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 17. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Guaranty.

SECTION 18. Taxes, Expenses of Enforcement, etc.

(A) Taxes. Any and all payments by or on account of any obligation of any Guarantor under this Guaranty shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the applicable Guarantor) requires the deduction or withholding of any Tax from any such payment by such Guarantor, then the applicable Guarantor shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(B) Expenses of Enforcement, Etc. The Guarantors agree to reimburse each Holder of Guaranteed Obligations for all reasonable and documented out-of-pocket expenses incurred by each such Holder of Guaranteed Obligations, in accordance with Section 16.1 of the Private Shelf Agreement.

SECTION 19. Setoff. At any time after all or any part of the Guaranteed Obligations have become due and payable (by acceleration or otherwise), each Holder of Guaranteed Obligations may, without notice to any Guarantor and regardless of the acceptance of any security or collateral for the payment hereof, appropriate and apply in accordance with the terms of the Private Shelf Agreement toward the payment of all or any part of the Guaranteed Obligations: (i) any indebtedness due from such Holder of Guaranteed Obligations to any Guarantor, and (ii) any moneys, credits or other property belonging to any Guarantor, at any time held by or coming into the possession of such Holder of Guaranteed Obligations or any of their respective affiliates.

SECTION 20. Financial Information. Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of the Company, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations, or any part thereof, that diligent inquiry would reveal, and each Guarantor hereby agrees that none of the Holders of Guaranteed Obligations shall have any duty to advise such Guarantor of information known to any of them regarding such condition or any such circumstances. In the event any Holder of Guaranteed Obligations, in its sole discretion, undertakes at any time or from time to time to provide any such information to a Guarantor, such Holder of Guaranteed Obligations shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which such Holder of Guaranteed Obligations, pursuant to accepted or reasonable commercial finance or banking practices, wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to such Guarantor.

SECTION 21. Severability. Wherever possible, each provision of this Guaranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.

SECTION 22. Merger. This Guaranty represents the final agreement of each of the Guarantors with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Guarantor and any Holder of Guaranteed Obligations.

SECTION 23. Headings. Section headings in this Guaranty are for convenience of reference only and shall not govern the interpretation of any provision of this Guaranty.

SECTION 24. Obligation to Make Payment in the Applicable Currency. Any payment on account of an amount that is payable hereunder or under the Private Shelf Agreement or the Notes in the Applicable Currency which is made to or for the account of any Holder of the Guaranteed Obligations in any other currency, whether as a result of any judgment or order or the enforcement thereof or the realization of any security or the liquidation of any Guarantor, shall constitute a discharge of the obligation of such Guarantor under this Guaranty only to the extent of the amount of the Applicable Currency which such Holder of the Guaranteed Obligations could purchase in the foreign exchange markets in London, England, with the amount of such other currency in accordance with normal banking procedures at the rate of exchange prevailing on the London Banking Day following receipt of the payment first referred to above. If the amount of the Applicable Currency that could be so purchased is less than the amount of the Applicable Currency originally due to such Holder of the Guaranteed Obligations, each Guarantor agrees to the fullest extent permitted by law, to indemnify and save harmless such Holder of the Guaranteed Obligations from and against all loss or damage arising out of or as a result of such deficiency. This indemnity shall, to the fullest extent permitted by law, constitute an obligation separate and independent from the other obligations contained in this Guaranty, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by such Holder of the Guaranteed Obligations from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due hereunder or under the Notes or under any judgment or order. As used herein the term "London Banking Day" shall mean any day other than Saturday or Sunday or a day on which commercial banks are required or authorized by law to be closed in London, England.

SECTION 25. Termination of Guaranty. The obligations of any Guarantor under this Guaranty shall terminate in accordance with Section 9.8(d) of the Private Shelf Agreement.

Remainder of Page Intentionally Blank.

IN WITNESS WHEREOF, each of the Initial Guarantors has caused this Guaranty to be duly executed by its authorized officer as of the day and year first above written.

[GUARANTORS]

By: \_\_\_\_\_

Name:

Title:



ANNEX I TO GUARANTY

Reference is hereby made to the Guaranty, made as of [\_\_\_\_\_, \_\_\_\_], (as amended, amended and restated, renewed, extended, supplemented or otherwise modified from time to time, the "Guaranty"), by and among the Initial Guarantors and the additional Guarantors party thereto from time to time in favor of the Holders of Guaranteed Obligations. Capitalized terms used herein and not defined herein shall have the meanings given to them in the Guaranty. By its execution below, the undersigned [NAME OF NEW GUARANTOR], a [state of organization] [corporation] [partnership] [limited liability company] (the "New Guarantor"), agrees to become, and does hereby become, a Guarantor under the Guaranty and agrees to be bound by such Guaranty as if originally a party thereto. By its execution below, the undersigned represents and warrants as to itself that all of the representations and warranties contained in Section 2 of the Guaranty are true and correct in all respects as of the date hereof.

IN WITNESS WHEREOF, New Guarantor has executed and delivered this Joinder to the Guaranty as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[NAME OF NEW GUARANTOR]

By: \_\_\_\_\_

[FORM OF]

## CONFIRMATION OF GUARANTY AGREEMENT

THIS CONFIRMATION OF GUARANTY AGREEMENT (this "**Confirmation**") is entered into by each of the undersigned (which parties are hereinafter each referred to individually as a "**Guarantor**" and collectively as the "**Guarantors**") in favor of the Series \_\_\_ Purchasers (as defined below) and the other Holders of the Guaranteed Obligations.

WHEREAS, Hillenbrand, Inc., an Indiana corporation (the "**Company**"), on the one hand, and PGIM, Inc. ("**Prudential**") and each Prudential Affiliate which becomes party thereto, on the other hand, have entered into that certain Private Shelf Agreement dated as of December 6, 2012 (as the same may be amended, modified, supplemented and/or restated, and as in effect from time to time, the "**Private Shelf Agreement**"), providing, subject to the terms and conditions thereof, for the Company to sell its senior promissory notes from time to time (as amended, restated, supplemented or otherwise modified from time to time, the "**Notes**," such term to include any such notes issued in substitution thereof pursuant to Section 14 of the Private Shelf Agreement); and

WHEREAS, the Guarantors have guaranteed the obligations of the Company under the Private Shelf Agreement and the Notes pursuant to that certain Guaranty, dated as of \_\_\_\_\_, \_\_\_\_\_ (as amended, supplemented, restated or otherwise modified from time to time, the "**Guaranty**"; capitalized terms used herein and not otherwise defined shall have the meanings given therein), made by the Guarantors in favor of the Holders of the Guaranteed Obligations; and

WHEREAS, pursuant to that certain Request for Purchase dated as of \_\_\_\_\_ and that certain Confirmation of Acceptance dated as of \_\_\_\_\_, the Company will issue and certain Prudential Affiliates (the "**Series \_\_\_ Purchasers**") will purchase, as a Series of the Notes, the Company's \_\_\_\_\_% Series \_\_\_\_\_ Senior Notes Due \_\_\_\_\_ (the "**Series \_\_\_ Notes**"); and

WHEREAS, the Private Shelf Agreement requires as a condition to the effectiveness of the Series \_\_\_ Purchasers' obligation to purchase the Series \_\_\_ Notes that each of the Guarantors execute and deliver this Confirmation and reaffirm that the Guaranty secures and guarantees the liabilities and obligations of the Company under the Series \_\_\_ Notes.

NOW, THEREFORE, in order to induce, and in consideration of, the purchase of the Series \_\_\_ Notes by the Series \_\_\_ Purchasers, each Guarantor hereby covenants and agrees with, and represents and warrants to, each of the Series \_\_\_ Purchasers and each holder from time to time as follows:

EXHIBIT 4.5(c)

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1. Confirmation. Each Guarantor hereby ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the Guaranty, and confirms and agrees that each reference in the Guaranty to the Guaranteed Obligations is construed to hereafter include all indebtedness, obligations and liabilities of the Company in connection with or pursuant to the Series \_\_\_\_ Notes. Each Guarantor acknowledges, confirms and agrees that the Guaranty remains in full force and effect and is hereby ratified and confirmed in all respects. Each Guarantor acknowledges and confirms, as of the date hereof, all waivers in the Guaranty. Without limiting the generality of the foregoing, each Guarantor hereby acknowledges and confirms that it intends that the Guaranty will continue to guarantee, to the fullest extent provided thereby, the payment and performance of all Guaranteed Obligations, including, without limitation, the payment and performance of the Series \_\_\_\_ Notes.

2. Successors and Assigns. All covenants and other agreements contained in this Confirmation by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder) whether so expressed or not; provided, that no Guarantor shall have any right to assign its rights or obligations hereunder without the consent of all of the Required Holders, except as otherwise permitted pursuant to the Private Shelf Agreement, and any such assignment in violation of this Section 2 shall be null and void.

3. No Waiver. The execution of this Confirmation shall not operate as a novation, waiver of any right, power or remedy of any holder, nor constitute a waiver of any provision of the Private Shelf Agreement or any Note.

4. Governing Law. This Confirmation shall be construed in accordance with and governed by the law of the State of New York.

5. Severability. Wherever possible, each provision of this Confirmation shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Confirmation shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Confirmation.

6. Counterparts: Facsimile Signatures. This Confirmation may be executed in any number of counterparts (or counterpart signature pages), each of which counterparts shall be an original, but all of which together shall constitute one instrument. Delivery of an executed counterpart of a signature page to this Confirmation by facsimile or electronic transmission shall be effective as delivery of a manually executed counterpart of this Confirmation.

7. Headings. Section headings in this Confirmation are for convenience of reference only and shall not govern the interpretation of any provision of this Confirmation.

8. Authorization. Each Guarantor is duly authorized to execute and deliver this Confirmation, and to perform its obligations under the Guaranty.

**IN WITNESS WHEREOF**, this Confirmation has been duly executed and delivered as of the date first above written.

**[Insert Guarantors]**

By:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Form of]

**Agreement Regarding Confidentiality**

[Date]

Reference is made to that certain Private Shelf Agreement dated as of December 6, 2012 (the "Private Shelf Agreement") between Hillenbrand, Inc., on one hand, and PGIM, Inc. and each Prudential Affiliate which becomes a party thereto, on the other hand. In accordance with Section 21 of the Private Shelf Agreement, a copy of which is attached hereto, the undersigned agrees to be bound by the provisions of such Section 21 of the Private Shelf Agreement to the same extent and with the same effect as if the undersigned were an original signatory thereto. The Company is hereby made an express third party beneficiary of this letter agreement and the Company may enforce the terms of this letter agreement and Section 21 of the Private Shelf Agreement against the undersigned as if the Company were a party to this letter agreement. Please acknowledge your agreement with the foregoing by signing in the space provided below.

Very truly yours,

[Prudential Entity]

By: \_\_\_\_\_  
Vice President

Agreed and Acknowledged:

Name of Company: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT 21

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## Subsidiaries of the Company and Ownership of Subsidiary Stock

*All subsidiaries are wholly-owned Indiana entities, unless otherwise noted.*

Batesville Services, Inc.  
Process Equipment Group, Inc., a New Jersey corporation  
Batesville Casket Company, Inc.  
Batesville Interactive, Inc.  
Batesville Logistics, Inc.  
Batesville Manufacturing, Inc.  
Batesville Casket de Mexico, S.A. de C.V., a Mexican corporation  
Acorn Development Group, Inc.  
BCC JAWACDAH Holdings, LLC  
BV Acquisition, Inc.  
HMIS, Inc., a New Hampshire corporation  
The Forethought Group, Inc.  
MCP, Inc.  
WCP, Inc.  
Hillenbrand International Holding Corporation  
NorthStar Industries, LLC  
Hillenbrand Luxembourg S.à.r.l., a Luxembourg company  
Batesville Holding UK, Ltd, a United Kingdom corporation  
Hillenbrand Switzerland GmbH, a Swiss limited liability company  
Green Tree Manufacturing, LLC  
Modern Wood Products, LLC  
K-Tron (Schweiz) GmbH, a Swiss limited liability company  
Batesville Canada, Ltd., a Canadian corporation  
Batesville Casket UK, Ltd., a United Kingdom corporation  
Industrias Arga, S.A. de C.V., a Mexican corporation  
Global Products Co., S.A. de C.V., a Mexican corporation  
NADCO, S.A. de C.V., a Mexican corporation  
K-Tron Investment Co., a Delaware corporation  
K-Tron Technologies, Inc., a Delaware corporation  
Rotex Global, LLC, a Delaware limited liability company  
Gundlach Equipment Corporation, a Delaware corporation  
K-Tron America, Inc., a Delaware corporation  
Pennsylvania Crusher Corporation, a Delaware corporation  
Premier Pneumatics, Inc., a Delaware corporation  
BC Canada Company, ULC, a Nova Scotia Unlimited Liability Corporation  
HIE Heavy Industrial Equipment (Beijing) Co., Ltd., a Chinese FICE  
K-Tron Asia PTE Ltd, a Singapore corporation  
K-Tron China Limited, a Hong Kong corporation  
K-Tron Deutschland GmbH, a German limited liability company  
K-Tron Great Britain Ltd, a UK corporation  
K-Tron (Shanghai) Co Ltd, a Chinese FICE  
K-Tron France S.à.r.l., a French company  
PEG Process Equipment India, LLP, an Indian Partnership

SCHEDULE 5.4

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Rotex Global (Hong Kong) Ltd., a Hong Kong corporation  
Rotex Europe Ltd., a UK corporation  
Wuxi K-Tron Colormax Machinery Co., Ltd., a Chinese WFOE  
WUXI Process Equipment Manufacturing Co., Ltd., a Chinese WFOE  
K-Tron Colormax Ltd, a UK corporation  
K-Tron PCS Ltd, a UK corporation  
Jeffrey Rader Corporation, a Delaware corporation  
Jeffrey Rader AB, a Swedish corporation  
RC II Inc., a Georgia corporation  
Jeffrey Rader Canada Company, a Canadian company  
Rotex Japan Limited, a UK corporation

Coperion Corporation, a Delaware corporation  
Hillenbrand Europe, LLC, a Delaware Limited Liability Company  
Hillenbrand Germany Finance LLC & Co. KG, a German partnership  
Hillenbrand Germany Holding GmbH, a German limited liability company  
Coperion Capital GmbH, a German limited liability company  
Coperion GmbH, a German limited liability company  
Coperion N.V., a Belgium company  
Coperion AB., a Swedish company  
Coperion Ltd., a UK company  
Coperion S.a.r.l., a French company  
000 "Coperion", a Russian company  
Coperion S.L., a Spanish company  
Coperion Ltda., a Brazilian company  
Coperion Pte, a Singapore company  
Coperion Machinery & Systems (Shanghai) Co. Ltd., a Chinese company  
Coperion International Trading (Shanghai) Co. Ltd., a Chinese company  
Coperion (Nanjing) Machinery Co., Ltd., a Chinese company  
Coperion K.K., a Japanese company  
Coperion S.r.l., an Italian company

#### Joint Ventures

Coperion Ideal Pte. Ltd., New Delhi, India – 51% owned by Coperion GmbH

Coperion Middle East Co. Ltd., Jubail, Saudia Arabia; 51% owned by Coperion GmbH

PELL-TEC, Pelletizing Technology GmbH, Niedernberg, Germany – 51% owned by Coperion GmbH

## Directors and Senior Officers

### Directors

Kenneth A. Camp  
Edward B. Cloues, II  
Helen W. Cornell  
Mark C. DeLuzio  
James A. Henderson  
W August Hillenbrand  
Ray J. Hillenbrand  
Thomas H. Johnson  
F. Joseph Loughrey  
Eduardo R. Menascé  
Neil S. Novich  
Stuart A. Taylor, II

### Senior officers

Kenneth A. Camp, President and Chief Executive Officer  
Cynthia L. Lucchese, Senior Vice President and Chief Financial Officer  
Joe A. Raver, Senior Vice President  
Elizabeth E. Dreyer, Vice President, Controller and Chief Accounting Officer  
Kimberly K. Dennis, Senior Vice President  
Paul Douglas Wilson, Senior Vice President, Chief Administrative Officer  
John R. Zerkle, Senior Vice President, General Counsel and Secretary  
Diane R. Bohman, Vice President, Corporate Strategy  
Scott P. George, Senior Vice President, New Business Development  
Jan M. Santerre, Vice President, Lean Business

### Subsidiary Guarantors under Primary Credit Facility

Batesville Services, Inc.  
Process Equipment Group, Inc.  
Batesville Casket Company, Inc.  
Batesville Manufacturing, Inc.  
Gundlach Equipment Corporation  
K-Tron America, Inc.  
Pennsylvania Crusher Corporation  
K-Tron Investment Co.  
Rotex Global, LLC



Existing Liens

Restricted cash:

<i>Entity</i>	<i>Amount (USD equivalent)</i>	<i>Bank</i>	<i>Location</i>
Jeffrey Rader AB	\$0.7m	Handelsbanken	Sweden

SCHEDULE 10.1

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**SCHEDULE 10.3**

<b>Description</b>	<b>Existing Indebtedness</b>		
	<b>Interest Rate</b>	<b>Maturity</b>	<b>Amount</b>
Senior Unsecured Notes, issued pursuant to the Indenture between Hillenbrand, Inc. and U.S. Bank National Association as trustee, dated as of July 9, 2010 and that certain Supplemental Indenture, dated as of January 10, 2013 by and among Hillenbrand, Inc, Batesville Casket Company, Inc., Batesville Manufacturing, Inc., Batesville Services, Inc., Coperion Corporation, K-Tron Investment Co., Terrasource Global Corporation, Process Equipment Group, Inc., Rotex Global, LLC, and U.S. Bank National Association, as trustee and that certain Supplemental Indenture No. 2, dated as of April 16, 2016, by and among Hillenbrand, Inc., Red Valve Company, Inc. and U.S. Bank National Association, as trustee.	5.50% (coupon)	7/15/20	\$150,000,000 (face value)

**Other Agreements:**

Indebtedness incurred pursuant to the Syndicated L/G Facility Agreement dated as of March 8, 2018, by and among Hillenbrand, Inc., and certain of its subsidiaries, and Commerzbank Aktiengesellschaft, as arranger and lender, and various other lenders named therein, as amended, restated, amended and restated, supplemented or otherwise modified, from time to time.

SCHEDULE 10.3

Dated 4 September 2019

in respect of the

**SYNDICATED L/G FACILITY AGREEMENT**

**EUR 150,000,000**

originally dated 8 March 2018

**HILLENBRAND, INC. AND CERTAIN OF ITS SUBSIDIARIES**

arranged by

**COMMERZBANK AKTIENGESELLSCHAFT**  
(as Arranger)

with

**COMMERZBANK FINANCE & COVERED BOND S.A.**  
(as Agent)

---

**AMENDMENT AND RESTATEMENT AGREEMENT**

---

**LATHAM & WATKINS** LLP

Die Welle  
Reuterweg 20  
60323 Frankfurt am Main  
Tel: +49.69.6062.6000  
[www.lw.com](http://www.lw.com)

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**CONTENTS**

<b>Clause</b>	<b>Page</b>
1. <b>Definitions and Interpretation</b>	<b>1</b>
2. <b>Amendment and Restatement of Existing Facility Agreement</b>	<b>2</b>
3. <b>Confirmation of Guarantee</b>	<b>2</b>
4. <b>Representations and Warranties</b>	<b>2</b>
5. <b>Costs and Expenses</b>	<b>2</b>
6. <b>Miscellaneous</b>	<b>2</b>
7. <b>Governing Law</b>	<b>3</b>
<b>Schedule 1</b>	<b>4</b>
<b>The Parties</b>	
<b>Schedule 2</b>	<b>7</b>
<b>The Amended and Restated Facility Agreement</b>	

**This Amendment and Restatement Agreement** (this "**Agreement**") is made between the following parties:

- (1) **HILLENBRAND, INC.** (the "**Company**");
- (2) **THE SUBSIDIARIES** of the Company listed in Part 1 (*The Obligors*) of Schedule 1 (*The Parties*) as borrowers (together with the Company the "**Borrowers**");
- (3) **THE SUBSIDIARIES** of the Company listed in Part 1 (*The Obligors*) of Schedule 1 (*The Parties*) as guarantors (together with the Company the "**Guarantors**");
- (4) **COMMERZBANK AKTIENGESELLSCHAFT** as coordinator, mandated lead arranger and bookrunner (the "**Arranger**");
- (5) **THE FINANCIAL INSTITUTIONS** listed in Part 2 (*The Lenders*) of Schedule 1 (*The Parties*) as lenders (the "**Lenders**") and as issuing banks; and
- (6) **COMMERZBANK FINANCE & COVERED BOND S.A.** as agent of the other Finance Parties (the "**Agent**").

**Whereas:**

- (A) This Agreement is supplemental to and amends and restates, with effect from the Effective Date (as defined below), the syndicated L/G facility agreement originally dated 8 March 2018 between the Company, the Borrowers, the Guarantors, the Arranger, the Lenders and the Agent (the "**Existing Facility Agreement**").
- (B) The parties wish to amend and restate the Existing Facility Agreement, with effect from the Effective Date (as defined below), as at the date hereof on the terms and subject to the conditions set out in this Agreement.

**It is agreed** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

Unless a contrary indication appears, a term defined in the Amended and Restated Facility Agreement (as defined below) has the same meaning in this Agreement. In addition:

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

"**Effective Date**" means the date of this Agreement.

### **1.2 Construction**

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires or otherwise indicated, a reference to a Clause of or a Schedule to this Agreement.

The principles of construction set out clause 1.2 (*Construction*) of the Existing Facility Agreement shall be incorporated into this Agreement, *mutatis mutandis*, as if such clause was set out in full save that references in the Existing Facility Agreement to "**this Agreement**" shall be construed as references to the Amended and Restated Facility Agreement.

### 1.3 Designation

In accordance with the Existing Facility Agreement, each of the Company and the Agent designate this Agreement as a Finance Document.

## 2. AMENDMENT AND RESTATEMENT OF EXISTING FACILITY AGREEMENT

With effect from and subject to the occurrence of, the Effective Date, the Existing Facility Agreement shall be amended and restated so that it shall be read and be construed for all purposes as set out in Schedule 2 (*Amended and Restated Facility Agreement*).

## 3. CONFIRMATION OF GUARANTEE

Each Guarantor confirms in relation to its obligations thereunder that the provisions of the guarantee and indemnity contained in Clause 17 (*Guarantee and Indemnity*) of the Existing Facility Agreement shall:

- (a) remain in full force and effect on and after the date of this Agreement and will not be affected, discharged or varied by the execution of this Agreement or the transactions contemplated by this Agreement; and
- (b) with effect from the Effective Date, extend to the liabilities and obligations of the Obligors under the Finance Documents as amended by this Agreement.

## 4. REPRESENTATIONS AND WARRANTIES

- (a) Each Obligor on the date of this Agreement and the Effective Date makes the Repeated Representations:
  - (i) as if each reference in those representations to "this Agreement" or "the Finance Documents" includes a reference to (i) this Agreement and (ii) the Amended and Restated Facility Agreement and (iii) the definition of Finance Document as amended in the Amended and Restated Facility Agreement; and
  - (ii) by reference to the facts and circumstances existing on the Effective Date, respectively.
- (b) Each Obligor on the Effective Date represents and warrants that no Event of Default has occurred and is continuing or would occur as a consequence of this Agreement.

## 5. COSTS AND EXPENSES

All external costs and expenses reasonably incurred in connection with this Agreement, including, but not limited to, the preparation and execution of this Agreement, shall be borne by the Company in accordance with Clause 16 (*Costs and Expenses*) of the Amended and Restated Facility Agreement.

## 6. MISCELLANEOUS

### 6.1 Counterparts

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

## 6.2 Partial Invalidity; Remedies and Waivers

The provisions of Clause 32 (*Partial Invalidity*) and Clause 33 (*Remedies and Waivers*) of the Existing Facility Agreement are hereby incorporated by reference into this Agreement and shall apply herein mutatis mutandis.

## 7. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement are governed by German law and the Company submits to the jurisdiction of the courts of Frankfurt am Main, Germany in the terms set out in clause 40 (*Enforcement*) of the Existing Facility Agreement (as if references in that clause 40 (*Enforcement*) to "this Agreement" were references to this Agreement).

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

**SCHEDULE 1**

**THE PARTIES**

**Part 1**

**The Obligors**

<b>Name of Borrower</b>	<b>Registration number (or equivalent, if any)</b>
Hillenbrand, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #2007110100396
Coperion GmbH	HRB 23976 (Local Court of Stuttgart) Theodorstraße 10, 70469 Stuttgart
Coperion K-Tron (Schweiz) GmbH	CHE-105.883.566 Lenzhardweg 43/45 CH-5702 Niederlenz, Switzerland
Rotex Europe Ltd	04307924 (Registered with Companies House) Ashton Lane North Whitehouse Vale Runcorn, Cheshire WA7 3FA, England
Abel GmbH	HRB 102566 (Local Court of Frankfurt am Main) Abel-Twiete 1 21514 Büchen
<b>Name of Guarantor</b>	<b>Registration number (or equivalent, if any)</b>
Hillenbrand, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #2007110100396
Batesville Manufacturing, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #1998090618
Batesville Casket Company, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #2008022200482
Batesville Services, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #192822-024
Process Equipment Group, Inc.	28 West State Street Trenton, New Jersey 08608 New Jersey Secretary of State #5278301800
K-Tron Investment Co.	103 Foulk Road, Suite 202 Wilmington, Delaware 19802 Delaware Secretary of State #2250493
Coperion K-Tron Pitman, Inc.	1209 Orange Street Wilmington, Delaware 19801 Delaware Secretary of State #0853369



<b>Name of Guarantor</b>	<b>Registration number (or equivalent, if any)</b>
TerraSource Global Corporation	1209 Orange Street Wilmington, Delaware 19801 Delaware Secretary of State #2105312
Rotex Global, LLC	1209 Orange Street Wilmington, Delaware 19801 Delaware Secretary of State #4312111
Coperion Corporation	2711 Centerville Road, Suite 400 Wilmington, Delaware 19808 Delaware Secretary of State #0780901
Red Valve Company, Inc.	600 North Bell Avenue Building II, Second Floor Carnegie, Pennsylvania 15106 # 300220

**Part 2**

**The Lenders**

<b>Name of Lender</b>	<b>Commitment in EUR</b>	<b>Treaty Passport Scheme reference number and jurisdiction of tax residence (if applicable)</b>
Commerzbank Aktiengesellschaft	75,000,000.00	7/C/25382/DTTP
HSBC Trinkaus & Burkhardt AG	35,000,000.00	7/H/275147/DTTP
Skandinaviska Enskilda Banken AB (publ) Frankfurt Branch	30,000,000.00	73/S/42621/DTTP
Sumitomo Mitsui Banking Corporation	10,000,000.00	43/S/274647/DTTP
<b>TOTAL</b>	<b>150,000,000.00</b>	

**SCHEDULE 2**

**THE AMENDED AND RESTATED FACILITY AGREEMENT**

**HILLENBRAND, INC. AND CERTAIN OF ITS SUBSIDIARIES**

arranged by

**COMMERZBANK AKTIENGESELLSCHAFT**  
(as Arranger)

with

**COMMERZBANK FINANCE & COVERED BOND S.A.**  
(as Agent)

---

**SYNDICATED L/G FACILITY AGREEMENT**

**EUR 150,000,000**

(as amended and restated)

---

**LATHAM & WATKINS**

Die Welle  
Reuterweg 20  
60323 Frankfurt am Main, Germany  
Tel: +49.69.6062.6000  
[www.lw.com](http://www.lw.com)

Contact: Sibylle Münch

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## CONTENTS

	Page
1. DEFINITIONS AND INTERPRETATION	1
2. THE FACILITY	25
3. PURPOSE	29
4. CONDITIONS OF UTILISATION	30
5. UTILISATION	30
6. REBASING	37
7. L/GS	37
8. REPAYMENT	39
9. PREPAYMENT AND CANCELLATION	40
10. CASH COVER	43
11. FEES	44
12. TAX GROSS UP AND INDEMNITIES	46
13. INCREASED COSTS	59
14. OTHER INDEMNITIES	60
15. MITIGATION BY THE LENDERS	62
16. COSTS AND EXPENSES	62
17. GUARANTEE AND INDEMNITY	63
18. REPRESENTATIONS	66
19. INFORMATION UNDERTAKINGS	71
20. FINANCIAL COVENANTS	75
21. GENERAL UNDERTAKINGS	79
22. EVENTS OF DEFAULT	93
23. CHANGES TO THE LENDERS	99
24. CHANGES TO THE OBLIGORS	103
25. ROLE OF THE AGENT AND THE ARRANGER	105
26. CONDUCT OF BUSINESS BY THE FINANCE PARTIES	112
27. SHARING AMONG THE FINANCE PARTIES	112
28. PAYMENT MECHANICS	116
29. SET-OFF	118
30. NOTICES	119
31. CALCULATIONS AND CERTIFICATES	121
32. PARTIAL INVALIDITY	121
33. REMEDIES AND WAIVERS	122
34. AMENDMENTS AND WAIVERS	122
35. CONFIDENTIALITY	125
36. USA PATRIOT ACT	128

37.	INTEREST RATE LIMITATION	128
38.	BORROWING FOR OWN BENEFIT	129
39.	GOVERNING LAW	129
40.	ENFORCEMENT	129
41.	WAIVER OF JURY TRIAL	130
42.	CONCLUSION OF THIS AGREEMENT ( <i>VERTRAGSSCHLUSS</i> )	130
SCHEDULE 1		131
THE ORIGINAL PARTIES		131
SCHEDULE 2		134
CONDITIONS PRECEDENT		134
SCHEDULE 3		139
UTILISATION REQUEST		139
SCHEDULE 4		141
FORM OF ADDITIONAL COMMITMENT REQUEST		141
SCHEDULE 5		142
FORM OF INCREASE CONFIRMATION		142
SCHEDULE 6		145
FORM OF TRANSFER CERTIFICATE		145
SCHEDULE 7		148
FORM OF ACCESSION LETTER		148
SCHEDULE 8		149
FORM OF RESIGNATION LETTER		149
SCHEDULE 9		150
FORM OF COMPLIANCE CERTIFICATE		150
SCHEDULE 10		151
LMA FORM OF CONFIDENTIALITY UNDERTAKING		151
SCHEDULE 11		155
TIMETABLES		155
SCHEDULE 12		156
FORM OF PROCESS AGENT APPOINTMENT LETTER		156
SCHEDULE 13		157
COGS CONDITIONS		157
SCHEDULE 14		166
LIST OF INITIAL MATERIAL SUBSIDIARIES		166
SCHEDULE 15		167
FORM OF BANK GUARANTEE		167
SCHEDULE 16		170
LIST OF EXISTING L/GS		170
SCHEDULE 17		171
LIST OF EXISTING FINANCIAL INDEBTEDNESS AND EXISTING SECURITY		171

THIS AGREEMENT is dated 8 March 2018 as amended and restated on the Effective Date (the "**Agreement**") and made between:

HILLENBRAND, INC. (the "**Company**");

THE SUBSIDIARIES of the Company listed in Part 1 (*The Original Obligors*) of Schedule 1 (*The Original Parties*) as original borrowers (together with the Company the "**Original Borrowers**");

THE SUBSIDIARIES of the Company listed in Part 1 (*The Original Obligors*) of Schedule 1 (*The Original Parties*) as original guarantors (together with the Company the "**Original Guarantors**");

COMMERZBANK AKTIENGESELLSCHAFT as coordinator, mandated lead arranger and bookrunner (the "**Arranger**");

THE FINANCIAL INSTITUTIONS listed in Part 2 (*The Original Lenders*) of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**") and as issuing banks; and

COMMERZBANK FINANCE & COVERED BOND S.A. as agent of the other Finance Parties (the "**Agent**").

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

"**Acceptable Bank**" means a bank or financial institution with a rating for its long-term unsecured and non credit-enhanced debt obligations assigned by Moody's Investor Services, Inc., Standard & Poor's Corporation or any other reputable rating agency, such rating and agency to be reasonably acceptable to the relevant Issuing Bank.

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

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

"**Additional Commitment Request**" means a notice substantially in the form set out in Schedule 4 (*Form of Additional Commitment Request*).

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

"**Additional Obligor**" means an Additional Borrower or an Additional Guarantor.

"**Adjusted Covenant Period**" has the meaning given to that term in Clause 20.2 (*Financial condition*).

"**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.

"**Affiliate Borrower**" has the meaning given to that term in Clause 5.8 (Affiliate of a Borrower).

"**Agency Fee Letter**" means the letter dated 1 March 2018 between the Agent and the Company setting out any of the fees referred to in Clause 11.4 (*Agency Fee*).

"**Agent's Spot Rate of Exchange**" means:

- (a) the rate displayed in and used for calculations made by COGS on a particular day; and
- (b) if COGS is not available, the Agent's spot rate of exchange for the purchase of the relevant currency with the Base Currency in the London foreign exchange market at or about 11:00 a.m. on a particular day.

"**Amendment and Restatement Agreement**" means the amendment agreement in relation to this Agreement dated September 2019 between the Parties.

"**Anti-Corruption Laws**" means all laws, rules, and regulations of any jurisdiction applicable to the Company or its Subsidiaries from time to time concerning or relating to bribery or corruption.

"**Applicable GAAP**" means, in the case of the consolidated financial statements of the Company (or the Group), U.S. GAAP, and in the case of the unconsolidated financial statements of any Obligor or the consolidated financial statements of any Obligor other than the Company, the accounting principles generally accepted in its jurisdiction of incorporation from time to time.

"**Approved Fund**" means any person (other than a natural person) that is regularly engaged in investing in L/G facilities and issuing L/Gs in the ordinary course of its business and that is administered or managed by:

- (a) a Lender;
- (b) an Affiliate of a Lender; or
- (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Approved Jurisdiction**" means the U.S., United Kingdom, any member state of the European Union, Switzerland and any other jurisdiction in which an Obligor is incorporated.

"**Attributable Indebtedness**" means, on any date, in respect of any capital lease of any person, the capitalized amount thereof that would appear on the balance sheet of such person prepared as of such date in accordance with U.S. GAAP.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration of a Governmental Authority.

"**Availability Period**" means the period from and including the date of this Agreement to and including the Termination Date.

"**Available Commitment**" means a Lender's Commitment minus:

- (a) the Base Currency Amount of its participation in any outstanding L/Gs under the Facility; and
- (b) in relation to any proposed Utilisation, the Base Currency Amount of its participation in any L/Gs that are due to be issued on or before the proposed Utilisation Date,



**provided that**, in relation to any proposed Utilisation, that Lender's participation in any L/Gs that are due to expire, be repaid or prepaid on or before the proposed Utilisation Date shall not be deducted from a Lender's Commitment under the Facility.

**"Available Facility"** means the aggregate for the time being of each Lender's Available Commitment in respect of the Facility.

**"Bank Levy"** means (i) any amount payable by any Finance Party or any of its Affiliates on the basis of, or in relation to, its balance sheet or capital base or any part of it or its liabilities or minimum regulatory capital or any combination thereof (including the German bank levy as set out in the German Restructuring Fund Act 2010 (*Restrukturierungsfondsgesetz*)) and (ii) any other levy or tax in any jurisdiction levied on a similar basis or for a similar purpose, in each case only if and to the extent it has been enacted at the signing date of this Agreement or (if applicable) as at the date that Finance Party accedes to this Agreement.

**"Base Currency"** means EUR.

**"Base Currency Amount"** means, if COGS is available, the amount specified in the Utilisation Request (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange as determined by COGS on the date on which the Issuing Bank approves the issuance of the L/G) or, if COGS is not available, specified in the Utilisation Request delivered by a Borrower to the Agent (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the date the Agent receives the Utilisation Request in accordance with the terms of this Agreement) and as adjusted under Clause 6 (*Rebasing*) and to reflect any repayment or prepayment of an L/G.

**"Bengal"** means Milacron Holdings Corp., a Delaware corporation.

**"Bengal Acquisition"** means the acquisition of all of the outstanding equity interests of Bengal by the Company (through the merger of its Subsidiary Bengal Holding and Bengal, with Bengal as the surviving corporation) pursuant to the Bengal Acquisition Agreement.

**"Bengal Acquisition Agreement"** means the agreement and plan of merger, dated as of 12 July 2019 (together with all exhibits, schedules and disclosure letters thereto), by and among Bengal, the Company and Bengal Holding, as in effect on 12 July 2019.

**"Bengal Holding"** means Bengal Delaware Holding Corporation, a Delaware corporation.

**"Bengal Refinancing"** means the consummation of the refinancing of Bengal's outstanding existing indebtedness under (i) the fourth amended and restated credit and guaranty agreement, dated as of 30 April 2012, as amended and restated as of 28 March 2013, as further amended and restated as of 17 October 2014, as further amended and restated as of 14 May 2015, as further amended as of 22 March 2016, as further amended as of 28 December 2016, as further amended as of 28 February 2017, as further amended and restated as of 27 April 2018, and as further amended, restated, supplemented or otherwise modified from time to time, by and among Bengal, as holdings, Milacron LLC, as lead borrower, the other subsidiaries of Bengal party thereto as borrowers and guarantors from time to time, the lenders party thereto and Bank of America, N.A., as administrative agent and (ii) the term loan agreement, dated as of 14 May 2015, as amended as of 15 February 2017, as further amended as of 8 November 2017, and as further amended, restated, supplemented or otherwise modified from time to time, by and among Bengal, as holdings, Milacron LLC, as the borrower, the subsidiaries of Milacron LLC party thereto as guarantors from time to time, the lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent.

**"Bengal Transactions"** means (i) the consummation of the Bengal Acquisition and the other transactions contemplated by the Bengal Acquisition Agreement, (ii) the Bengal Refinancing and the consummation of the refinancing of any other outstanding existing indebtedness of Bengal and its subsidiaries and (iii) the payment of the fees, costs and expenses incurred by the Company, Bengal or any of their respective Subsidiaries in connection with any of the foregoing.

**"Borrower"** means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 24 (*Changes to the Obligors*) and, in respect of an Ancillary Facility only, any Affiliate of a Borrower that becomes a borrower of that Ancillary Facility with the approval of the relevant Lender pursuant to Clause 5.8 (*Affiliate of a Borrower*).

**"Budget"** means the budget for the financial year 2017/2018 plus the 3 year forecast of the Company (each on an annual consolidated basis) including a balance sheet, profit and loss statement and cash flow calculation (the profit and loss statement also including a break down on business segments).

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in New York City, Luxembourg and Frankfurt am Main and in relation to any Utilisation by way of issuance, or any reduction or rebasing or repayment of an L/G on which banks are open for general business at the place of the Agent and the Facility Office of the Issuing Bank.

**"Cash Cover"** means the cash collateral for an L/G referred to in Clause 10 (*Cash Cover*).

**"Change of Control"** means any person or group of persons acting in concert (other than a member of the Hillenbrand Family Group) gains control of the Company and/or Coperion GmbH ceases to be a wholly-owned (direct or indirect) Subsidiary of the Company.

For the purpose of this definition **"control"** means: (a) the ownership, directly or indirectly, beneficially or of record of the lower of (i) shares of capital stock having voting rights representing more than 50% of the aggregate outstanding shares of capital stock of the Company having voting rights or (ii) Equity Interests representing more than 40% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company; or (b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Company by persons who were neither (y) nominated by the board of directors of the Company nor (z) appointed by directors so nominated; and

**"a group of persons acting in concert"** means two or more persons acting as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer or shares of capital stock in a corporation.

**"Code"** means, at any date, the US Internal Revenue Code of 1986 (or any successor legislation thereto) and the regulations promulgated and the judicial and administrative decisions rendered under it, all as the same may be in effect at such date.

**"COGS"** means the Commerzbank Online Guarantee System, accessible through the COGS Website.

**"COGS Conditions"** means the Commerzbank Online Guarantee System Conditions of Use as amended from time to time and available for downloading from the COGS Website, the current version thereof being attached hereto as Schedule 13 (*COGS Conditions*).

**"COGS Website"** means the internet domain [www.cogs.commerzbank.de](http://www.cogs.commerzbank.de).

"**Commercial Lifetime**" means, in respect of any L/G which does not provide for a specific expiration date, the period from the date of issuance of that L/G until the expected maturity of that L/G as indicated by the Borrower in the relevant Utilisation Request determined on the basis of the lifetime of the underlying obligations.

"**Commitment**" means:

- (a) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading "Commitment in EUR" in Part 2 of Schedule 1 *The Original Parties*) and the amount in the Base Currency of any Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 *(Increase)*; and
- (b) in relation to any other Lender, the amount in the Base Currency of a Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 *(Increase)*,

in each case, for the avoidance of doubt, as reduced due to any cancellation in accordance with the terms of this Agreement.

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

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

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

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 35 *(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 paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

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

"**Consolidated EBITDA**" has the meaning given to that term in Clause 20.1 (*Financial Definitions*).

"**Consolidated Indebtedness**" has the meaning given to that term in Clause 20.1 (*Financial Definitions*).

"**Consolidated Revenues**" has the meaning given to that term in Clause 20.1 (*Financial Definitions*).

"**Consolidated Total Assets**" has the meaning given to that term in Clause 20.1 (*Financial Definitions*).

"**Contractual Obligation**" means, as to any person, any provision of any security issued by such person or of any agreement, instrument or other undertaking to which such person is a party or by which it or any of its property is bound.

"**Counter Guarantee**" means a guarantee (or similar instrument acceptable to the relevant Issuing Bank) issued by an Acceptable Bank for the benefit of the Issuing Bank and being either substantially in the form agreed between the Company and each of the Issuing Banks prior to the date of this Agreement as attached in Schedule 15 (*Form of Bank Guarantee*) or otherwise in a form and substance reasonably satisfactory to that Issuing Bank and the Company.

"**CTA**" means the United Kingdom Corporation Tax Act 2009.

"**Default**" means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulting Lender**" means any Lender:

- (a) which has failed to issue an L/G or has notified the Agent that it will not issue an L/G in accordance with Clause 5.3 (*Issue of L/Gs*) or which has failed to pay a claim or has notified the Agent or the Company that it will not pay a claim in accordance with Clause 7.1 (*Claims under an L/G*);
- (b) which has otherwise rescinded or repudiated a Finance Document;
- (c) which has failed, within five Business Days after request by the Agent, acting reasonably, to confirm in writing that it will comply with its obligations to issue L/Gs under this Agreement **provided that** such Lender shall cease to be a Defaulting Lender pursuant to this paragraph (c) upon the Agent receiving such confirmation in form and substance satisfactory to it; or
- (d) with respect to which an Insolvency Event has occurred and is continuing,

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

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

"**Disposal**" means the sale, transfer, license, lease or other disposal (including any sale and leaseback transaction) of any property by a person, including any sale, assignment (excluding any Security), transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and "**Dispose**" shall be construed accordingly.

"**Disruption Event**" means either or both of:

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

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

"**Domestic Foreign Holdco Subsidiary**" means a Subsidiary organised under the laws of any jurisdiction within the United States (excluding any possession or territory thereof), substantially all of the assets of which consist of the Equity Interests (including Equity Interests held through entities disregarded from their owner for U.S. Federal income tax purposes) of (and/or receivables or other amounts due from) one or more Foreign Subsidiaries that are "controlled foreign corporations" within the meaning of section 957 of the Code, so long as such Domestic Subsidiary (i) does not conduct any business or other activities other than the ownership of such Equity Interests and/or receivables and (ii) does not incur, and is not otherwise liable for, any Financial Indebtedness (other than intercompany indebtedness permitted pursuant to paragraph (b)(vii) of Clause 21.14 (*Financial Indebtedness*)), in each case, other than immaterial assets and activities reasonably related or ancillary thereto.

"**Domestic Subsidiary**" means any Subsidiary organised under the laws of any jurisdiction within the United States (excluding any possession or territory thereof) other than any Domestic Foreign Holdco Subsidiary.

"**Effective Date**" means the "Effective Date" as defined in the Amendment and Restatement Agreement.

"**Employee Plan**" means an employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV or Section 303 of ERISA, or Section 412 of the Code and in respect of which an Obligor or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"**Environmental Laws**" means all laws, rules, regulations, codes, ordinances, or binding orders, decrees, judgments or injunctions, issued, promulgated or entered into by any Governmental Authority, relating to pollution or protection of the environment, preservation or reclamation of natural resources, the management, release or threatened release of or governing exposure to any Hazardous Material.

**"Environmental Licence"** means any permit, license or other approval required at any time under Environmental Laws.

**"Equity Interests"** means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership in a person and any warrants, options or other similar rights entitling the holder thereof to, purchase or acquire any of the foregoing **provided that** "Equity Interests" shall not include Financial Indebtedness that is convertible into Equity Interests.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

**"ERISA Affiliate"** means any trade or business (whether or not incorporated) that, together with the Company, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

**"ERISA Event"** means:

- (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to an Employee Plan (other than an event for which any notice period is waived);
- (b) the failure to satisfy the "minimum funding standard" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived;
- (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Employee Plan;
- (d) the incurrence by the Company or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Employee Plan;
- (e) the receipt by the Company or any ERISA Affiliate from the PBGC or a plan administrator of any written notice relating to an intention to terminate any Employee Plan or Employee Plans or to appoint a trustee to administer any Employee Plan;
- (f) the incurrence by the Company or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal of the Company or any of its ERISA Affiliates from any Employee Plan or Multiemployer Plan; or
- (g) the receipt by the Company or any ERISA Affiliate of any written notice, or the receipt by any Multiemployer Plan from the Company or any ERISA Affiliate of any written notice, concerning the imposition upon the Company or any of its ERISA Affiliates of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in critical or endangered status, within the meaning of ERISA.

**"Event of Default"** means any event or circumstance specified as such in Clause 22 (*Events of Default*).

**"Excluded Subsidiary"** means:

- (a) any Domestic Foreign Holdco Subsidiary; and
- (b) any Domestic Subsidiary of the Company, so long as:

- (i) its acting as a Guarantor under this Agreement would violate any law, rule or regulation applicable to such Domestic Subsidiary or would be prohibited by any contractual restriction or obligation applicable to such Domestic Subsidiary; and
- (ii) the Agent shall have received a certificate of a Financial Officer of the Company to the effect that, based on advice of outside counsel, such Domestic Subsidiary acting as a Guarantor under this Agreement would cause such a violation or would be so prohibited as described in the foregoing paragraph (i).

**"Existing L/G"** means any standby, commercial or trade letter of credit (*Akkreditive*), surety (*Bürgschaft*) or guarantee (*Garantie*) excluding any surety or guarantee serving as collateral for any credit obligations (*Kreditbesicherungsavale*) issued under the Existing Syndicated L/G Facility Agreement entered into by a Borrower or an Affiliate of a Borrower with a Lender as listed in Schedule 16 (*List of Existing L/Gs*).

**"Existing Syndicated L/G Facility Agreement"** means the EUR 150,000,000 syndicated multicurrency L/G facility agreement originally dated 3 June 2013 originally among, *inter alios*, Hillenbrand, Inc. as the Company (as defined therein), the borrowers from time to time party thereto and guarantors from time to time party thereto, Commerzbank Aktiengesellschaft as mandated lead arranger and bookrunner, the lenders and issuing banks from time to time party thereto and Commerzbank International S.A. (now Commerzbank Finance & Covered Bond S.A.) as Agent of the other Finance Parties (each as defined therein) as amended from time to time.

**"Existing US Facility Agreement"** means that certain third amended and restated credit agreement, dated as of 28 August 2019, among the Company, the borrowers from time to time party thereto, JPMorgan Chase Bank, N.A., as administrative agent, and the lenders from time to time party thereto.

**"Face Amount"** means the principal face amount of an L/G in the Base Currency or, as the case may be, any Optional Currency in which such L/G has been issued, such amount representing the maximum liability of the Issuing Bank under such L/G.

**"Facility"** means the letter of credit facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

**"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.

**"Farm Agreement"** means the certain tenants in common agreement dated on or about 21 March 2008 between Hill-Rom Company, Inc., an Indiana corporation, and BCC JAWACDAH Holdings, LLC, an Indiana limited liability company.

**"FATCA"** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in 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.

**"Finance Document"** means this Agreement, the Mandate Letter, the Agency Fee Letter, any Accession Letter, any Increase Confirmation, any Compliance Certificate, any Utilisation Request and any other document designated as such by the Agent and the Company.

**"Finance Party"** means the Agent, the Arranger or a Lender.

**"Financial Indebtedness"** means any Indebtedness as defined in Clause 20.1 (*Financial Definitions*) of this Agreement.

**"Financial Officer"** means the chief financial officer, principal accounting officer, treasurer, assistant treasurer or controller of the Company.

**"Financial Quarter"** means each period of three months ending on 31 March, 30 June, 30 September or 31 December.

**"Foreign Lender"** means (a) if the applicable Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if the applicable Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

**"Foreign Subsidiary"** means any Subsidiary which is not a Domestic Subsidiary.

**"Financial Year"** means the financial year of the Company ending on 30 September as at the date of this Agreement.

**"Governmental Authority"** means any government of any nation or political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.



"Group" means the Company and its Subsidiaries from time to time.

"Group Structure Chart" means the group structure chart in the agreed form.

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

"Guidelines" means, together, the guidelines S-02.123 in relation to inter bank transactions of 22 September 1986 as issued by the Swiss Federal Tax Administration (*Merkblatt S-02.123 vom 22 September 1986 betreffend Zinsen von Bankguthaben, deren Gläubiger Banken sind (Interbankguthaben)*), S-02.130.1 in relation to money market instruments and book claims of April 1999 (*Merkblatt S-02.130.1 vom April 1999 "Geldmarktpapiere und Buchforderungen inländischer Schuldner"*), the circular letter No. 15 (1-015-DVS-2017) of 3 October 2017 in relation to bonds and derivative financial instruments as subject matter of taxation of Swiss federal income tax, Swiss withholding tax and Swiss stamp taxes (*Kreisschreiben Nr. 15 "Obligationen und derivative Finanzinstrumente als Gegenstand der direkten Bundessteuer, der Verrechnungssteuer sowie der Stempelabgaben" vom 3. Oktober 2017*), the circular letter No. 34 of 26 July 2011 (1-034-V-2011) in relation to customer credit balances (*Kreisschreiben Nr. 34 "Kundenguthaben" vom 26. Juli 2011*), the circular letter No. 46 of 24 July 2019 in relation to syndicated credit facilities (*Kreisschreiben Nr. 46 "Steuerliche Behandlung von Konsortialdarlehen, Schuldscheindarlehen, Wechseln und Unterbeteiligungen" vom 24. Juli 2019*) and the circular letter No. 47 of 25 July 2019 in relation to bonds (*Kreisschreiben Nr. 47 "Obligationen" vom 25. Juli 2019*) as issued, and as amended or replaced from time to time by the Swiss Federal Tax Administration, or as applied in accordance with a tax ruling (if any) issued by the Swiss Federal Tax Administration, or as substituted or superseded and overruled by any law, statute, ordinance, regulation, court decision or the like as in force from time to time.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants and contaminants listed, defined, designated, regulated or classified under applicable Environmental Laws as hazardous, toxic, radioactive, dangerous, a pollutant, a contaminant, petroleum, oil or words of similar meaning or effect, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes.

"Hillenbrand Family Group" means the descendants of John A. Hillenbrand in the direct line (*direkte Nachkommen*) and members of such descendants' families (i.e. spouses and registered partners) and trusts for the benefit of such natural persons.

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

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

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

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

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

**"Increase Confirmation"** means a confirmation substantially in the form set out in Schedule 5 (*Form of Increase Confirmation*).

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

**"Increase Period"** means the period beginning on the date falling six Months after the date of this Agreement and ending on the date falling six Months prior to the Termination Date **provided that** if only one or more of the Original Lenders participate in an increase, such period shall begin on the date of this Agreement in respect of such increase.

**"Ineligible Institution"** means (a) a natural person, (b) a Defaulting Lender or its Holding Company, (c) the Company, any of its Subsidiaries or any of its Affiliates, or (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

**"Insolvency Event"** in relation to a Finance Party means that Finance Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief (including a moratorium) 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 a moratorium, its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:

- (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
- (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) 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; and/or
- (g) 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 (f) above.

"**Issuing Bank**" means each Lender.

"**ITA**" means the United Kingdom Income Tax Act 2007.

"**Legal Reservations**" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of United Kingdom stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any relevant jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 24 (*Changes to the Obligors*).

"**Lender**" means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Lender in accordance with Clause 2.2(*Increase*) or Clause 23 (*Changes to the Lenders*),

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

"**Leverage Ratio**" has the meaning given to that term in Clause 20.1(*Financial Definitions*).

"**L/G**" means a standby, commercial or trade letter of credit (*Akkreditive*), surety (*Bürgschaft*) or guarantee (*Garantie*) but excludes any surety or guarantee serving as collateral for any credit obligations (*Kreditbesicherungsavale*) which is:

- (a) in a form agreed by the relevant Issuing Bank; or
- (b) an Existing L/G,

and which in each case satisfies the L/G Approved Criteria and is issued for any of the purposes set out in Clause 3.1 *Purpose*).

"L/G Approved Criteria" means the following:

- (a) it is not unlawful or illegal in any jurisdiction for the relevant Issuing Bank to issue the L/G;
- (b) the principal amount payable under the L/G is specified in that L/G;
- (c) the currency of the amount payable is specified in the L/G and specified at the time of issuance;
- (d) the beneficiary as specified in that L/G is reasonably acceptable to the Issuing Bank;
- (e) pursuant to the terms of the L/G the relevant Issuing Bank deals in documents only and the relevant Issuing Bank is authorised to pay any claim made or purported to be made under that L/G which appears on its face to be in order;
- (f) the L/G contains a provision stating when the obligation of an Issuing Bank under the L/G shall terminate (e. g. specific expiration date, return of L/G deed, release letter) or may be cancelled or not renewed by an Issuing Bank in accordance with its terms;
- (g) the L/G specifies its effective date or is stated to be effective on issuance;
- (h) the L/G is subject to International Standby Practices 1998 (International Chamber of Commerce Publication No. 590, or any subsequent revision thereof) or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (International Chamber of Commerce Publication No. 600, 2007 revision, or any subsequent revision thereof) or the terms are otherwise satisfactory to the relevant Issuing Bank;
- (i) the L/G is governed by the laws of Germany or the laws of any other jurisdiction reasonably satisfactory to the relevant Issuing Bank;
- (j) the terms of the L/G must contain a narrative reference to what has been reported to the Issuing Bank about the underlying transaction but must not contain any confirmation with regard to facts of the underlying contract;
- (k) the terms of the L/G must contain a purpose clause which shall be described in sufficient detail to cover a Borrower's obligations arising from the underlying transaction;
- (l) the payment obligation of the Issuing Bank must be worded as an irrevocable obligation to pay a specific maximum amount of money and not for specific performance of the underlying contract;
- (m) the payment obligation of the Issuing Bank shall be conditional upon presentation of a demand for payment with or, as the case may be, without simultaneous presentation of other documents. The terms of the L/G shall provide that receipt of a formally valid demand for payment has to be made to the Issuing Bank by the expiry date at the latest and confirm that thereafter no further demand shall be honoured; and
- (n) the issuance of the L/G does not conflict or provide for inconsistency with (x) applicable laws, regulations, rules, directions and rulings, (y) any relevant decisions and rulings of any Governmental Authority and (z) any internal rules or guidelines of the Issuing Bank.

"L/G Fee Rate" means 0.70 per cent. per annum applicable from the date of this Agreement until the date the Compliance Certificate for the Relevant Period ending 31 March 2018 has been delivered and thereafter if:

- (a) no Event of Default has occurred and is continuing; and
- (b) the Leverage Ratio in respect of the most recently completed Relevant Period is within a range set out below,

then the L/G Fee Rate for each L/G will be the percentage per annum set out below in the column opposite that range:

<b>Leverage Ratio</b>	<b>L/G Fee Rate (in % p.a.)</b>
Greater than or equal to 3.0:1	1.10
Greater than or equal to 2.5:1 but less than 3.0:1	0.95
Greater than or equal to 2.0:1 but less than 2.5:1	0.80
Greater than or equal to 1.5:1 but less than 2.0:1	0.70
Greater than or equal to 1.0:1 but less than 1.5:1	0.65
Less than 1.0:1	0.55

However:

- (i) any increase or decrease in the L/G Fee Rate shall take effect on the date (the "reset date") which is the fifth Business Day following receipt by the Agent of the Compliance Certificate for a Relevant Period pursuant to Clause 19.2 (*Compliance Certificate*); and
- (ii) while an Event of Default is continuing or a Compliance Certificate has not been delivered on its due date and remains undelivered, the L/G Fee Rate shall be the highest percentage per annum set out above.

"Liquidity Amount" means, as of any date of determination, the lesser of (i) the sum of (a) 100% of the unrestricted and unencumbered cash and cash equivalents maintained by the Company and its Subsidiaries in the United States as of such date, plus (b) 70% of the unrestricted and unencumbered cash and cash equivalents maintained by the Company and its Subsidiaries outside of the United States as of such date and (ii) USD 100,000,000; provided however, that amounts calculated under this definition shall exclude any amounts that would not be considered "cash" or "cash equivalents" as recorded on the books of the Company or the applicable Subsidiary.

"LMA" means the Loan Market Association.

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

"Mandate Letter" means the letter dated 14 February 2018 between the Arranger and the Company.

**"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 the Obligors to perform their material obligations under the Finance Documents, including but not limited to compliance by each Obligor with its payment obligations thereunder; and/or
- (c) the material rights or remedies of the Agent and the Lenders under the Finance Documents.

**"Material Domestic Subsidiary"** means, as of any date of determination, each Domestic Subsidiary:

- (a) whose revenues for a Relevant Period constitute five per cent. (5%) or more of the Consolidated Revenues for that Relevant Period; and/or
- (b) whose total assets at a time constitute five per cent. or more of the Consolidated Total Assets at that time,

in each case as of the last day of the immediately preceding Financial Year of the Company for which annual financial statements of the Company are available. Compliance with the conditions set out above shall be determined by reference to the annual audited consolidated financial statements of the Company.

**"Material Indebtedness"** means, as of any date, Financial Indebtedness (other than Financial Indebtedness arising under this Agreement), or the net obligations in respect of one or more Swap Agreements, of any one or more of the Company and any other member of the Group in an aggregate principal amount exceeding USD 75,000,000 (or its equivalent in any other currency or currencies) as of such date. For purposes of determining Material Indebtedness, the "principal amount" of the net obligations of the Company or any member of the Group in respect of any Swap Agreement at any time shall be deemed to be the Swap Termination Value thereof as of such date.

**"Material Subsidiary"** means, as of any date of determination, a member of the Group (other than the Company):

- (a) whose revenues for a Relevant Period constitute five per cent. (5%) or more of the Consolidated Revenues for that Relevant Period; and/or
- (b) whose total assets at a time constitute five per cent. or more of the Consolidated Total Assets at that time,

in each case as of the last day of the immediately preceding Financial Year of the Company for which annual financial statements of the Company are available. Compliance with the conditions set out above shall be determined by reference to the annual audited consolidated financial statements of the Company.

A list of the initial Material Subsidiaries is set out in Schedule 14 (*List of initial Material Subsidiaries*).

**"Maturity Date"** means the last day of the Term of an L/G.

**"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) 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; and
- (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.

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

"**Monthly**" shall be construed accordingly.

"**Multiemployer Plan**" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA, to which the Company or any of its ERISA Affiliates is contributing or has any obligation to contribute.

"**New Lender**" has the meaning given to that term in Clause 23 *Changes to the Lenders*).

"**Obligor**" means a Borrower or a Guarantor.

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

"**Original Financial Statements**" means:

- (a) in relation to the Company, its audited consolidated financial statements for the Financial Year ended 30 September 2017; and
- (b) in relation to each other Borrower (other than Rotex Europe Ltd.), its audited financial statements for its financial year ended 30 September 2017 and with regard to Rotex Europe Ltd., its audited financial statements for its financial year ended 30 September 2016 as well as drafts of its financial statements for its financial year ended 30 September 2017 and drafts of its unaudited balance sheet and profit and loss statement for its financial year ended 30 September 2017.

"**Original Obligor**" means an Original Borrower or an Original Guarantor.

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

"**Party**" means a party to this Agreement.

"**PBGC**" means the U.S. Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"**Qualifying Lender**" has the meaning given to it in Clause 12 *Tax gross-up and indemnities*).

"**Quarter Date**" has the meaning given to it in Clause 20.1 *Financial Definitions*).

"**Regulations T, U and X**" means, respectively, Regulations T, U and X of the Board of Governors of the Federal Reserve System of the United States (or any successor) as now and from time to time in effect from the date of this Agreement.

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

"**Relevant Period**" has the meaning given to that term in Clause 20.1 *Financial Definitions*).

"**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.

"**Repeated Representations**" means each of the representations set out in Clause 18 (*Representations*) other than Clauses 18.7 (*Deduction of Tax*), 18.10 (*No default*), 18.12 (*No misleading Information*), 18.13 (*Financial statements*), Clause 18.16 (*Environmental laws and licences*) and Clause 18.17 (*Good title to assets*).

"**Replacement Benchmark**" means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a screen rate used in this Agreement (including SONIA, FFE, EONIA, SARON, and Overnight Libor Rate) by:
  - (i) the administrator of that screen rate, **provided that** the market or economic reality that such benchmark rate measures is the same as that measured by that screen rate; or
  - (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;

- (b) in the opinion of the Majority Lenders and the Company, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to that screen rate; or
- (c) in the opinion of the Majority Lenders and the Company, an appropriate successor to a screen rate.

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

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

"**Responsible Officer**" means the chief executive officer, president, Financial Officer or any other person designated by any such person in writing to the Agent and reasonably acceptable to the Agent.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in any member of the Group or any payment (whether in cash, securities or other property) on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in any member of the Group or any option, warrant or other right to acquire such Equity Interests in any member of the Group.

"**Sanctioned Country**" means, at any time, a country, region or territory which is itself the subject or target of any comprehensive Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan, South-Sudan and Syria).



"**Sanctioned Person**" means, at any time, (a) any person listed in any Sanctions-related list of designated persons maintained by, or public announcement of Sanctions designation made by the Office of Foreign Assets Control of the U.S. Department of the Treasury (OFAC), the U.S. Department of State, the United Nations Security Council, the European Union including its member states, Her Majesty's Treasury of the United Kingdom or the Swiss Confederation and its State Secretariat for Economic Affairs SECO and/or its Directorate of International Law or any other respective governmental institution and agency of any of the foregoing each as amended, supplemented or substituted from time to time, (b) any person located, organized or resident in a Sanctioned Country or (c) any person owned 50% or more or controlled by any such person or persons described in the foregoing clauses (a) or (b).

"**Sanctions**" means any international economic sanctions imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (OFAC) or the U.S. Department of State, (b) the United Nations Security Council, the European Union including its member states or Her Majesty's Treasury of the United Kingdom or (c) the Swiss Confederation and administered by its State Secretariat for Economic Affairs SECO and/or Directorate of International Law or any other respective governmental institution and agency of any of the foregoing.

"**SEC**" means the United States Securities and Exchange Commission or any successor thereto.

"**Security**" means a mortgage, land charge, charge, pledge, lien, assignment or transfer for security purposes, retention of title arrangement or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Specified Senior Notes**" means one or more series of senior unsecured debt securities of the Company issued to finance the Bengal Transactions.

"**Specified Senior Notes Indebtedness**" means Indebtedness in respect of the Specified Senior Notes.

"**Specified Senior Notes Indenture**" means that certain indenture and/or supplemental indenture pursuant to which the Specified Senior Notes will be issued.

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

"**Subsidiary**" means:

- (a) in relation to any company or corporation incorporated in Germany, another company which is a subsidiary (*Tochterunternehmen*) of the first one within the meaning of §§271(2), 290 of the German Commercial Code (*Handelsgesetzbuch*); and
- (b) in relation to any company incorporated in any other jurisdiction, any entity from time to time of which another person has direct or indirect control and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation beneficially owns a majority of the equity securities or other ownership interests have ordinary voting rights of it (whether directly or indirectly through one or more intermediaries).

"**Swap Agreement**" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; **provided that** no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or any other member of the Group shall be a Swap Agreement.

"**Swap Termination Value**" means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in subsection (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

"**Swiss Borrower**" means a Borrower incorporated in Switzerland and/or having its registered office in Switzerland and/or qualifying as a Swiss resident pursuant to Art. 9 of the Swiss Federal Withholding Tax Act.

"**Swiss Federal Withholding Tax**" means the Tax levied pursuant to the Swiss Federal Withholding Tax Act.

"**Swiss Federal Withholding Tax Act**" means the Swiss Federal Withholding Tax Act (*Bundesgesetz über die Verrechnungssteuer vom 13 Oktober 1965*); together with the related ordinances, regulations and guidelines, all as amended and applicable from time to time.

"**Swiss Non-Bank Rules**" means the Swiss Ten Non-Qualifying Bank Creditor Rule and the Swiss Twenty Non-Qualifying Bank Creditor Rule.

"**Swiss Qualifying Bank**" means a person or entity (including any commercial bank or financial institution (irrespective of its jurisdiction of organisation)) acting on its own account which has a banking licence in force and effect issued in accordance with the banking laws in its jurisdiction of incorporation, or if acting through a branch, issued in accordance with the banking laws in the jurisdiction of such branch, and which, in both cases, effectively exercises as its main purpose a true banking activity, having bank personnel, premises, communication devices of its own and authority of decision making all in accordance and as defined in the Guidelines or in the legislation and explanatory notes addressing the same issues which are in force at such time.

"**Swiss Ten Non-Qualifying Bank Creditor Rule**" means the rule that the aggregate number of creditors (or deemed creditors) under this Agreement which are not Swiss Qualifying Banks must not exceed 10 (ten), all in accordance with the meaning of the Guidelines or legislation or explanatory notes addressing the same issues which are in force at such time.

"**Swiss Twenty Non-Qualifying Bank Creditor Rule**" means the rule that the aggregate number of creditors (or deemed creditors) (including the Lenders), other than Swiss Qualifying Banks, of a Swiss Borrower under all outstanding debts relevant for classification as debenture (*Kassenobligation*) (within the meaning of the Guidelines), such as loans, facilities and/or private placements (including under the Finance Documents) must not at any time exceed 20 (twenty), all in accordance with the meaning of the Guidelines or legislation or explanatory notes addressing the same issues which are in force at such time.

"**Tax or Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by or paid to any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term" means such period determined under this Agreement for which the Issuing Bank is under a liability under an L/G.

"Termination Date" means the later of:

- (a) 8 December 2022; and
- (b) the date falling five years after the date of this Agreement, if by no later than 8 November 2022, the Company provides evidence in form and substance reasonably satisfactory to the Majority Lenders that the Existing US Facility Agreement has been successfully refinanced or extended with a facility or facilities having a tenor that is at least five years after the date of this Agreement.

"Total Commitments" means the aggregate of the Commitments, being EUR 150,000,000 at the date of this Agreement.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 6 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Company.

"Transfer Date" means, in relation to an assignment and transfer by way of assumption of contract (*Vertragsübernahme*) pursuant to Clause 23.5 (*Procedure for assignment and transfer by way of assumption of contract (Vertragsübernahme)*), the later of:

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

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

"U.S." and "United States" means the United States of America, its territories, possessions and other areas subject to the jurisdiction of the United States of America.

"U.S. Borrower" means a Borrower whose jurisdiction of incorporation is a state of the United States or the District of Columbia.

"U.S. GAAP" means the generally accepted accounting principles in the United States of America as recognised by the Financial Accounting Standards Board or other body or authority that succeeds the Financial Accounting Standards Board in determining the generally accepted accounting principles in the United States from time to time.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Tax Obligor" means:

- (a) a Borrower which is resident for tax purposes in the U.S.; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the U.S. for US federal income tax purposes.

"**Utilisation**" means the issuance of an L/G.

"**Utilisation Date**" means the date on which a Utilisation is to be made, being the date on which the relevant L/G is to be issued.

"**Utilisation Request**" means (i) a notice automatically generated by COGS and sent to the respective Issuing Bank or (ii) in case COGS is not available, a notice substantially in the form set out in Schedule 3 (*Utilisation Request*).

"**VAT**" means:

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

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) the "**Agent**", the "**Arranger**", any "**Finance Party**", any "**Issuing Bank**", any "**Lender**", any "**Obligor**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iii) "**director**" includes any statutory legal representative(s) (*organschaftlicher Vertreter*) of a person pursuant to the laws of its jurisdiction of incorporation, including but not limited to, in relation to a person incorporated or established in Germany, a managing director (*Geschäftsführer*) or member of the board of directors (*Vorstand*);
  - (iv) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (v) "**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;
  - (vi) a Lender's "**participation**" in relation to an L/G, shall be construed as a reference to the relevant amount that is or may be payable by a Lender in relation to that L/G;
  - (vii) a "**person**" includes any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity;
  - (viii) a person acting "**reasonably**" means the exercise of discretion in a reasonable manner (*nach billigem Ermessen*) as set out in section 315 of the German Civil Code (*Bürgerliches Gesetzbuch*).
  - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any Governmental Authority;
  - (x) a provision of law is a reference to that provision as amended or re-enacted;
  - (xi) any reference to "**the date of this Agreement**" shall be a reference to 8 March 2018; and
  - (xii) a time of day is a reference to Luxembourg time.

- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default (including an Event of Default) is "**continuing**" if it has not been remedied or waived.
- (e) A Borrower "**repaying**" or "**prepaying**" an L/G means:
- (i) the Borrower providing Cash Cover for that L/G;
  - (ii) the Agent receiving an L/G Reduction Notice as further specified in Clause 5.5 *Reversal and Reduction of L/Gs*; or
  - (iii) the implementation of any other arrangement, including the delivery of a Counter Guarantee, satisfactory to the relevant Issuing Bank,
- and the amount by which an L/G is repaid or prepaid under paragraphs 1.2(e)(i) to (iii) above is the amount of the relevant Cash Cover or reduction or Counter Guarantee (in the case Cash Cover is provided for an L/G denominated in an Optional Currency, converted into the currency in which that L/G is denominated at the relevant exchange rate displayed in COGS in accordance with the COGS Conditions or (if COGS is not available) at the Agent's Spot Rate of Exchange on the date on which Cash Cover is provided).
- (f) COGS "is not available" means that:
- (i) the Agent has informed the Company and the Issuing Banks that the COGS system will not be operational for a continuing period of more than 24 hours;
  - (ii) the COGS Website will not be accessible via the internet for a continuing period of more than 24 hours;
  - (iii) the Company has informed the Agent with thirty (30) Business Days prior written notice of its decision to discontinue the use of COGS;
  - (iv) the Agent has informed the Company and the Issuing Banks with one (1) Month written notice to the end of a calendar quarter of its decision to discontinue to offer COGS; or
  - (v) the Agent has informed the Company and the Issuing Bank that COGS is disconnected with respect to the Borrowers with immediate effect (i) because COGS has been used by a Borrower in relation to L/G's for any guarantee business with the countries set out in Clause 1.3 *(Limitation of use of COGS)* of the COGS Conditions or (ii) because any of the representations made by a Borrower pursuant to Clause 1.3 *(Limitation of use COGS)* of the COGS Conditions are not correct.

### 1.3 Currency symbols and definitions

"€", "EUR" and "euro" denote the single currency of the Participating Member States, "£", "GBP" and "sterling" denote the lawful currency of the United Kingdom, "\$", "USD" and "dollars" denote the lawful currency of the United States of America, "CHF" denotes the lawful currency of Switzerland, "SEK" denotes the lawful currency of Sweden, "SGD" denotes the lawful currency of Singapore, "CNY" denotes the lawful currency of the People's Republic of China, "INR" denotes the lawful currency of India, "SAR" denotes the lawful currency of Saudi Arabia and "YEN" denotes the lawful currency of Japan.

### 1.4 Language

This Agreement is made in the English language. For the avoidance of doubt, the English language version of this Agreement shall prevail over any translation of this Agreement. However, where a German translation of a word or phrase appears in the text of this Agreement, the German translation of such word or phrase shall prevail.

### 1.5 Pro Forma Calculations

All pro forma computations required to be made hereunder giving effect to any acquisition or disposition, or issuance, incurrence, assumption or repayment of Financial Indebtedness, or other transaction shall in each case be calculated giving pro forma effect thereto (and, in the case of any pro forma computation made hereunder to determine whether such acquisition or disposition, or issuance, incurrence, assumption or repayment of Financial Indebtedness, or other transaction is permitted to be consummated hereunder, to any other such transaction consummated since the first day of the period covered by any component of such pro forma computation and on or prior to the date of such computation) as if such transaction had occurred on the first day of the period of four consecutive Financial Quarters ending with the most recent Financial Quarter for which financial statements shall have been delivered pursuant to Clause 19.1 (*Financial statements*) (or, prior to the delivery of any such financial statements, ending with the last Financial Quarter included in the Original Financial Statements of the Company), and, to the extent applicable, to the historical earnings and cash flows associated with the assets acquired or disposed of (but without giving effect to any synergies or cost savings unless permitted by Article 11 of Regulation S-X of the U.S. Securities Act of 1933) and any related incurrence or reduction of Financial Indebtedness, all in accordance with that Article. If any Financial Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Financial Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Swap Agreement pertaining to interest rates applicable to such Financial Indebtedness).

### 1.6 Divisions

For all purposes under the Finance Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any person becomes the asset, right, obligation or liability of a different person, then it shall be deemed to have been transferred from the original person to the subsequent person, and (b) if any new person comes into existence, such new person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its equity interests at such time.

### 1.7 Certain Calculations

No Default or Event of Default shall arise as a result of any limitation or threshold set forth in Dollars in Clause 20 (*Financial covenants*) and 21 (*General undertakings*) under this Agreement being exceeded solely as a result of changes in currency exchange rates from those rates applicable on the last day of the fiscal quarter of the Company immediately preceding the fiscal quarter of the Company in which the applicable transaction or occurrence requiring a determination occurs.

## 2. THE FACILITY

### 2.1 The Facility

Subject to the terms of this Agreement, the Issuing Banks make available to the Borrowers a multicurrency letter of credit facility in an aggregate amount equal to the Total Commitments **provided that** the aggregate Base Currency Amount of all outstanding L/Gs issued by the Issuing Banks on behalf of (or at the request of) the Company may not exceed EUR 25,000,000 at any time.

### 2.2 Increase

- (a) The Company may by giving at least three Business Days' prior notice to the Agent by no later than the date falling 20 Business Days after the effective date of a cancellation of:
- (i) the Available Commitments of a Defaulting Lender in accordance with paragraph (d) of Clause 9.6 (*Right of replacement or repayment and cancellation in relation to a single Lender*); or
  - (ii) the Commitments of a Lender in accordance with:
    - (A) Clause 9.1 (*Illegality*); or
    - (B) paragraph (a) of Clause 9.6 (*Right of replacement or repayment and cancellation in relation to a single Lender*),
- request that the Commitments be increased (and the Commitments shall be so increased) in an aggregate amount in the Base Currency of up to the amount of the Available Commitments or Commitments so cancelled.
- (b) Subject to Clause 2.3 (*Allocation of Additional Commitments*) below, the Company may by giving at least three Business Days' prior notice to the Agent request that the Total Commitments be increased (and the Total Commitments shall be so increased) in an aggregate amount in the Base Currency of at least EUR 5,000,000 **provided that**:
- (i) the total Base Currency Amount of all such increases of Commitments made pursuant to this paragraph (b) must not exceed EUR 70,000,000 and the Total Commitments after any such increase must not exceed EUR 220,000,000;
  - (ii) the respective increase must become effective during the Increase Period; and
  - (iii) during the term of this Agreement the Company may not increase the Commitments more than four times pursuant to this paragraph (b).

- (c) The implementation of any increase pursuant to paragraph (a) or (b) above shall be subject to the following provisions and the implementation of any increase pursuant to paragraph (b) above shall in addition be subject to Clause 2.3 (*Allocation of Additional Commitments*):
- (i) subject to Clause 2.3 (*Allocation of Additional Commitments*), the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Company (each of which shall not be a member of the Group) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;
  - (ii) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;
  - (iii) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
  - (iv) the Commitments of the other Lenders shall continue in full force and effect; and
  - (v) any increase in the Commitments shall take effect on the date specified by the Company in the notice referred to above or any later date on which the conditions set out in paragraph (d) below are satisfied.
- (d) An increase in the Commitments will only be effective on:
- (i) the execution by the Agent and the Company of an Increase Confirmation from the relevant Increase Lender; and
  - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase the Agent being satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender. The Agent shall promptly notify the Company and the Increase Lender upon being so satisfied.
- (e) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
- (f) The Company shall, promptly on demand, pay the Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.2.



- (g) The Company may pay to the Increase Lender a fee in the amount and at the times agreed between the Company and the Increase Lender in a letter between the Company and the Increase Lender setting out that fee **provided that** in respect of any increase made pursuant to paragraph (b) of this Clause 2.2 the following shall apply:
  - (i) no Increase Lender shall be given preferential treatment in respect of the amount of fees paid to it in respect of such increase so that a higher fee may only be paid if an Increase Lender is participating with a higher amount in the respective increase. Increase Lenders participating with equal amounts must be paid an equal amount of fees; and
  - (ii) the Company must offer to pay the participation fee in the Additional Commitment Request and any Additional Commitment Request served within the first six Months after the date of this Agreement shall offer at least the same level of participation fee as applicable on the signing date of this Agreement.
- (h) Clause 23.4 (*Limitation of responsibility of Existing Lender*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
  - (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
  - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
  - (iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

### 2.3 Allocation of Additional Commitments

- (a) Subject to paragraph (b) of Clause 2.2 (*Increase*) above the Company may, at any time during the Increase Period, request the increase of the Total Commitments by a total amount of EUR 70,000,000 (the amount requested being the "**Requested Additional Commitment Amount**" and the increased part of the Total Commitments being the "**Additional Commitments**") by delivery to the Agent of a duly completed Additional Commitment Request setting out the total Additional Commitments and any fee the Company is offering to pay in respect thereto and asking each Lender whether it is willing to participate in the Additional Commitments on a pro rata basis (based on the proportion borne by its Commitments to the Total Commitments at the time of the request) (the "**Pro Rata Portion**"); **provided that** with regard to any increase up to an amount of EUR 25,000,000 in aggregate over the lifetime of this Agreement (any such increase, a "**Non-Pro Rata Increase**"), the increased Commitments may also be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (any such Lender or other entity shall be deemed to be an "**Increase Lender**") selected by the Company (each of which shall not be a member of the Group) which has confirmed in writing its willingness to participate in the Additional Commitments with respect to the Non-Pro Rata Increase; and provided further that the provisions set out in Clause 2.2 (*Increase*) paragraphs (c) (iii) and (iv) and (d) to (h) shall apply to such Non-Pro Rata Increase *mutatis mutandis*. The Agent shall notify each Lender without undue delay after receipt of an Additional Commitment Request of the terms of that Additional Commitment Request by forwarding a copy of that Additional Commitment Request to each Lender. If the Additional Commitments are offered only to the Lenders, the Agent shall also notify each Lender of its potential Pro Rata Portion.
- (b) Within 15 Business Days of receipt of a copy of such Additional Commitment Request from the Agent (the "**First Response Period**"), each Lender shall notify the Agent and the Company whether it is prepared to participate in the Additional Commitments in its Pro Rata Portion. Any Lender which has not responded to the Agent within such period shall be deemed to have declined to participate in such Additional Commitment.

- (c) If the aggregate of the amounts (the "**Committed Amount**") notified by the Lenders prepared to participate in the Additional Commitment (each a "**Participating Lender**") to the Agent in accordance with, and within the period set out in, paragraph (b) above is equal to the Requested Additional Commitment Amount, the Agent shall allocate the participations in the Additional Commitments to each Participating Lender based on the Pro Rata Portion of each Lender. If the Committed Amount is less than the Requested Additional Commitment Amount due to not all Lenders being Participating Lenders or a Participating Lender only willing to commit less than its Pro Rata Portion the Agent shall allocate the Additional Commitments to each Participating Lender based on the amounts notified by them (**provided that** no allocation shall be made in excess of a Pro Rata Portion of a Participating Lender) and shall then proceed as set out in paragraph (d) below. The Agent shall notify each Participating Lender and the Company of the allocation within five Business Days after the expiry of the First Response Period. Each Participating Lender shall confirm in writing within five Business Days after that notice being given by the Agent its willingness to assume the respective Additional Commitments by executing a respective Increase Confirmation as further specified in paragraph (c) of Clause 2.2 (*Increase*).
- (d) If the Agent determines that the Committed Amount is less than the Requested Additional Commitment Amount, it shall notify the Company and each Participating Lender without undue delay thereof and of the balance of the Requested Additional Commitment Amount and the Committed Amount (the "**Additional Commitment Shortfall**").
- (e) Each Participating Lender may then within five Business Days of such notification notify the Agent and the Company whether or not it is willing to increase its participation in the Additional Commitments (and if so by which amount). Any Participating Lender which has not responded to the Agent within such period shall be deemed to have declined to further increase its participation in the Additional Commitments. If the Agent then determines that the further increase in the Additional Commitments offered by the relevant Participating Lenders is equal to or less than the Additional Commitment Shortfall, it shall allocate further participations in the Requested Additional Commitments to each Participating Lender on the basis of the additional amounts offered by the respective Participating Lender. If the Agent determines that the aggregate amount of the further increase in the Additional Commitments offered by the relevant Participating Lenders is higher than the Additional Commitment Shortfall, it shall allocate the further participations pro rata based on the total amount of all Additional Commitments offered by Participating Lenders pursuant to this paragraph (e) and the share of each Participating Lender in such total amount. Sentences 3 and 4 of paragraph (c) above shall then apply *mutatis mutandis*.
- (f) If the Agent then determines that the aggregate amount of the Participating Lenders' Committed Amount is less than the Requested Additional Commitment Amount, it shall notify the Company without undue delay of such occurrence and of the final Additional Commitment Shortfall. The Company may then within 20 Business Days of such notice select any other bank, financial institution, trusts, funds or other entities (each of which shall not be a member of the Group) to participate in the respective Additional Commitments **provided that** the aggregate amount of such participations shall not exceed the amount of the final Additional Commitment Shortfall and further **provided that** such potential lender confirms in writing within such 20 Business Days its willingness to assume the respective Additional Commitments as further specified in paragraph (c) of Clause 2.2 (*Increase*) by executing the respective Increase Confirmation.
- (g) No Lender shall be obliged to participate in any Additional Commitment or increase its participation in the Additional Commitment it was prepared to assume unless it has otherwise agreed in accordance with paragraphs (c), (d) or (e) (as the case may be) above.

## 2.4 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several and do not constitute a joint obligation (*Ausschluss der gesamtschuldnerischen Haftung*). 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 do not constitute a joint creditorship (*Ausschluss der Gesamtgläubigerschaft*) and any debt arising under the Finance Documents to a Finance Party from an Obligor shall, except as otherwise set out in this Agreement or any other Finance Document, be a separate and independent debt (*Ausschluss der gesamtschuldnerischen Haftung*).
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

## 3. PURPOSE

### 3.1 Purpose

Each Borrower shall use any L/G to collateralise obligations of, or claims against, any Borrower (or, subject to Clause 5.8 (*Affiliate of a Borrower*), any Affiliate Borrower) in each case arising in connection with the operational business requirements of any Borrower (or, subject to Clause 5.8 (*Affiliate of a Borrower*), any Affiliate Borrower) in relation to the issuance of:

- (a) tender guarantees (*Bietungsavale*);
- (b) advance payment guarantees (*Anzahlungsavale*);
- (c) performance guarantees (*Vertragserfüllungsavale*);
- (d) rental guarantees (*Mietavale*);
- (e) customs guarantees (*Zollavale*);
- (f) warranty guarantees (*Gewährleistungsavale*); or
- (g) payment guarantees for suppliers (*Lieferantenavale*).

### 3.2 Monitoring

No Finance Party is bound to monitor or verify the use of an L/G granted pursuant to this Agreement.

#### 4. CONDITIONS OF UTILISATION

##### 4.1 Initial conditions precedent

No Borrower may deliver a Utilisation Request to the Agent or an Issuing Bank unless the Agent has received all of the documents and other evidence listed in Part 1 (*Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders promptly upon being so satisfied.

##### 4.2 Further conditions precedent

An Issuing Bank will only be obliged to comply with Clause 5.3 (*Issue of L/Gs*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the issue of the L/G;
- (b) the Repeated Representations made by each Obligor are true in all material respects; and
- (c) no Change of Control has occurred.

##### 4.3 Conditions relating to Optional Currencies

A currency will constitute an Optional Currency in relation to an L/G if it is:

- (a) USD, GBP or CHF; or
- (b) SEK, SGD, CNY, INR, SAR or YEN; or
- (c) any other currency agreed with the relevant Issuing Bank as at or prior to receipt by it or as the case may be, the Agent of the relevant Utilisation Request for that L/G;

**provided that** in the case of paragraphs (b) and (c) above, the aggregate Base Currency Amount of all L/Gs denominated in any such currencies shall not exceed EUR 20,000,000 at any time. Each Issuing Bank will only be obliged to issue an L/G in an Optional Currency if this Optional Currency (other than in the case of paragraphs (a) and (b) above) is approved between the relevant Issuing Bank and the relevant Borrower.

#### 5. UTILISATION

##### 5.1 General

- (a) Each Borrower may, subject to the provisions of this Clause 5 (*Utilisation*) and Clause 7 (*L/Gs*) utilise the Facility by delivering to the relevant Issuing Bank a duly completed Utilisation Request by entering the required data into COGS in accordance with the COGS Conditions.
- (b) If COGS is not available the relevant Borrower may deliver the respective duly completed Utilisation Request to the Agent not later than the Specified Time **provided that** any Utilisation Request not received via COGS must be pre-advised to the Agent by telephone by the relevant Borrower.
- (c) As soon as reasonably practicable following the date of this Agreement and all Existing L/Gs having been rolled as L/Gs into this Agreement, the Company shall endeavour to request Utilisations on a pro rata basis to ensure that the Commitment of each Lender is utilised pro-rata to its participation in the Total Commitments.

## 5.2 Completion of a Utilisation Request

- (a) Subject to Clause 5.8 (*Affiliate of a Borrower*) and paragraph (f) below, each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
- (i) it identifies the relevant Borrower and the type of L/G (and for the purposes of COGS, standby letters of credit include commercial or trade letters of credit);
  - (ii) it identifies the relevant Issuing Bank and whether it is to be issued by one or several Issuing Banks (and in the latter case in which portions);
  - (iii) it identifies the proposed Utilisation Date which is a Business Day falling within the Availability Period;
  - (iv) it identifies the amount and currency of the requested L/G;
  - (v) the L/G is denominated in the Base Currency or an Optional Currency;
  - (vi) the amount of the L/G requested is an amount whose Base Currency Amount is not more than the Available Facility and the Available Commitment of the Issuing Bank;
  - (vii) a form of the relevant requested L/G as outlined in Clause 3.1 (*Purpose*) is (x) attached, (y) agreed with the relevant Issuing Bank and (z) satisfies the L/G Approved Criteria;
  - (viii) the obligor of the obligations secured by the L/G is the respective Borrower, the beneficiary of the L/G is identified and the underlying contract is specified;
  - (ix) it specifies the expiry date specified in the relevant L/G or, as the case may be, the expiry date of the Commercial Lifetime of the relevant L/G; and
  - (x) the delivery instructions for the L/G are specified.
- (b) The Agent shall in no event be held responsible for a non - or a delayed processing of any Utilisation Request (irrespective of whether made through COGS or otherwise) unless such delayed processing is caused by gross negligence or wilful misconduct on the part of the Agent. As the Agent will not, in the event of a Utilisation Request or other information submitted by telefax, letter or email, be in a position to verify whether any document received as a Utilisation Request has been duly authorised and sent by the relevant Borrower, the Company and each Borrower agrees that the Agent shall be entitled to execute all Utilisation Requests hereunder received by telefax, letter or email or with respect to which further information was delivered by telefax, letter or email if on their face such telefaxes, letters or emails appear to be duly authorised and executed by persons acting on behalf of the Company and/or the relevant Borrower who have been identified as authorised signatories in accordance with the COGS Conditions or in the certificate referred to under paragraph (g) of Part 1 or number 7 of Part 2 (*Conditions Precedent required to be delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*). Neither the Agent nor any of the Issuing Banks shall be held liable for the execution of any forged Utilisation Request received by telefax, letter or email except where the forgery is evident (*offensichtlich*) or the Agent or the respective Issuing Bank acted with gross negligence or wilful misconduct.

- (c) Provided the requirements set out in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) are satisfied, each Existing L/G shall be treated as an L/G issued under this Agreement.
- (d) Only one L/G may be requested in each Utilisation Request.
- (e) The maximum aggregate Base Currency Amount of all outstanding standby, commercial or trade letters of credit shall at no time exceed EUR 50,000,000.
- (f) A Utilisation Request may only be revoked by the relevant Borrower:
  - (i) before the Agent has forwarded the Utilisation Request to the relevant Issuing Bank by giving notice to the Agent; or
  - (ii) thereafter, by giving notice to the relevant Issuing Bank which has to be received by that Issuing Bank at a time that Issuing Bank will, with reasonable efforts, still be in a position to stop the process that the relevant L/G is delivered to the relevant beneficiary or any other party as instructed by the relevant Borrower. In such case that Issuing Bank shall promptly inform the Agent whether or not that L/G has been issued.

### 5.3 Issue of L/Gs

- (a) The Agent must promptly notify the relevant Issuing Bank of the details of the requested L/G (including its Base Currency Amount if the requested L/G is denominated in an Optional Currency).
- (b) An L/G can be issued by one Issuing Bank or jointly by two or more Issuing Banks **provided that** there shall be no joint liability (*Gesamtschuldnerschaft*) between the relevant Issuing Banks and each Issuing Bank shall only be liable for payment of a certain portion of the Face Amount of the relevant L/G which portion must be set out in the L/G and comply with the requirements set out in paragraph (c) of Clause 5.4 (*Extension of L/Gs*) below.
- (c) A proposed Issuing Bank is not obliged to issue (and shall not issue) any L/G if it notifies the relevant Borrower that it will not be able to issue the L/G on the basis of any of the following grounds:
  - (i) a Lender's share in the outstanding L/Gs (including, for the avoidance of doubt and without limitation, any L/G in respect of which Cash Cover has been provided) would exceed its Commitment;
  - (ii) the Base Currency Amount (calculated as at the date of the Utilisation Request) of all outstanding L/Gs constituting standby, commercial or trade letters of credit (including, for the avoidance of doubt and without limitation, any L/Gs of that type in respect of which Cash Cover has been provided) would exceed EUR 50,000,000;
  - (iii) the Base Currency Amount (calculated as at the date of the Utilisation Request) of all outstanding L/Gs (including, for the avoidance of doubt and without limitation, any L/G in respect of which Cash Cover has been provided) would exceed the Total Commitments;
  - (iv) the requirements of Clause 5.2 (*Completion of a Utilisation Request*) are not satisfied; or
  - (v) the L/G Approved Criteria are not satisfied and the relevant Issuing Bank is not willing to dispense with these requirements.

For the avoidance of doubt, any letter of credit or similar instrument issued by an Issuing Bank in excess of the amounts described above will be issued on a bilateral basis and not be subject to (nor benefit from) the provisions of this Agreement.

- (d) Subject to the terms of this Agreement being met:
  - (i) the relevant Issuing Bank must issue the L/G on the Utilisation Date; or
  - (ii) with respect to the Existing L/Gs, on and from the date the requirements set out in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) are satisfied, each Existing L/G will be treated as an L/G issued under this Agreement.
- (e) The Issuing Bank shall use COGS, if COGS is available, also for any amendment, reduction or cancellation of any L/G issued under COGS.
- (f) For the avoidance of doubt, each relevant Issuing Bank is itself responsible for checking whether any currency requested has been approved by it and whether all other requirements for a Utilisation are satisfied and the Agent will take no responsibility for this.

#### 5.4 Extension of L/Gs

- (a) A Borrower may by giving a Utilisation Request request that an L/G issued on its behalf which would otherwise expire is extended by delivery to the Agent of a notice specifying the new proposed Maturity Date in accordance with the terms of that L/G and, in any event, by no later than four Business Days before the Maturity Date of that L/G.
- (b) The Agent must promptly notify the relevant Issuing Bank of the details of the requested extension of the L/G and the amount of its share of that L/G.
- (c) An Issuing Bank shall only be obliged to comply with such a Utilisation Request if on the date of the Utilisation Request and on the proposed extension date no Event of Default is continuing or would result from such extension and no Change of Control has occurred.
- (d) An Issuing Bank is not obliged to (and shall not) extend any L/G if as a result of such extension:
  - (i) a Lender's share in the outstanding L/Gs (including, for the avoidance of doubt and without limitation, any L/G in respect of which Cash Cover has been provided) would exceed its Commitment;
  - (ii) the Base Currency Amount (calculated as at the date of the Utilisation Request) of all outstanding standby, commercial or trade letters of credit (including, for the avoidance of doubt and without limitation, any L/G in respect of which Cash Cover has been provided) would exceed EUR 50,000,000; or
  - (iii) the Base Currency Amount (calculated as at the date of the Utilisation Request) of all outstanding L/Gs (including, for the avoidance of doubt and without limitation, any L/G in respect of which Cash Cover has been provided) would exceed the Total Commitments.

- (e) The terms of each extended L/G will remain the same as before the extension, except that:
  - (i) its amount may be reduced; and
  - (ii) its Maturity Date will be the date specified in the Utilisation Request.
- (f) Subject to the terms of this Agreement being met, the relevant Issuing Bank must extend the L/G in the manner requested.

5.5 **Reversal and reduction of L/Gs**

- (a) An Issuing Bank shall (if COGS is available) enter into COGS and otherwise give written notice to the Agent (in each case an **L/G Reduction Notice**) of any reduction pursuant to any event set out in paragraph (b) of this Clause 5.5 of the maximum amount payable under any L/G issued by it promptly upon the occurrence of such reduction.
- (b) For the purposes of paragraph (a) above, a reduction of the maximum amount payable under any L/G occurs if an Issuing Bank is satisfied that:
  - (i) in relation to an L/G issued by that Issuing Bank which under its terms expires without any doubt if no demand for payment has been received by that Issuing Bank on or before a specified expiry date, no demand in respect of that L/G has been received by that Issuing Bank on or before such date; or
  - (ii) in relation to an L/G issued by that Issuing Bank whose terms do not provide for an expiry without any doubt on a specific expiry date if no demand for payment has been received by that Issuing Bank on or before that date (or, in the case of a release of an L/G, on or before the expiry date specified therein):
    - (A) the original of the L/G (including all amendments (if any)) has been returned to that Issuing Bank by the beneficiary or the relevant Borrower; or
    - (B) the L/G has been released in writing by the beneficiary; or
  - (iii) in relation to an L/G whose terms provide for a reduction of its Face Amount, the conditions of such reduction under the terms of the L/G are without any doubt satisfied; or
  - (iv) the beneficiary has unconditionally certified to the Issuing Bank the reduction of the Face Amount of the L/G in writing; or
  - (v) after having effected (full or partial) payment pursuant to a demand to the extent it has been reimbursed by the relevant Borrower or on its behalf in the amount required by the terms of this Agreement; or
  - (vi) for the avoidance of doubt, such Issuing Bank is otherwise satisfied that it has no further liability under the relevant L/G.



5.6 **Handling of Utilisation Requests, issuance of L/Gs**

- (a) Each Utilisation Request in respect of an L/G with respect to which the terms of sub-paragraphs (a)(ii) and (a)(vii) of Clause 5.2 (*Completion of a Utilisation Request*) and paragraph (c) of Clause 5.4 (*Extension of L/Gs*) are complied with:
- (i) will, if received under COGS, be automatically forwarded to the relevant Issuing Bank, and
  - (ii) shall, if received by the Agent otherwise than over COGS, be forwarded by the Agent without undue delay to the Issuing Bank
- for issuance of the requested L/G. If the terms of sub-paragraphs (a)(ii) and (a)(vii) of Clause 5.2 (*Completion of a Utilisation Request*) and paragraph (c) of Clause 5.4 (*Extension of L/Gs*) applicable to the issuance of such L/G are not fulfilled the relevant Utilisation Request will not be processed and the Agent shall promptly inform the relevant Borrower accordingly.
- (b) Promptly following receipt of the relevant notification under COGS that a Utilisation Request where it is named as the Issuing Bank has been sent to it or, as the case may be, the Utilisation Request forwarded to it by the Agent pursuant to paragraph (a)(ii), the Issuing Bank shall determine whether, in respect of such Utilisation Request and the requested L/G, the L/G Approved Criteria and all other requirements set out in this Clause 5 other than those in sub-paragraphs (a)(ii) and (a)(vii) of Clause 5.2 (*Completion of a Utilisation Request*) and paragraph (c) of Clause 5.4 (*Extension of L/Gs*) (the "**L/G Requirements**") are fulfilled.
- (c) Following determination in accordance with paragraph (b), the Issuing Bank shall confirm through COGS (or, if COGS is not available, inform the Agent accordingly) whether:
- (i) the L/G Requirements are fulfilled (and, if the L/G is denominated in an Optional Currency, COGS will automatically (and if COGS is not available, the Agent shall) calculate the Base Currency Amount with respect thereto); or
  - (ii) it will not be able to issue the requested L/G at all because all or some of the L/G Requirements are not fulfilled and, if so, which one(s).
- (d) In the event of notification by the Issuing Bank that it will not issue the requested L/G the Agent shall, if such information is not generated by COGS, inform the relevant Borrower and the Borrower shall:
- (i) agree with the Issuing Bank such amendment of the requested L/G as is necessary and possible to enable the Issuing Bank to issue the relevant L/G; and
  - (ii) if no agreement can be reached between the Issuing Bank and the Borrower (in particular if the L/G Requirements are not complied with): (A) the Issuing Bank shall not issue the requested L/G; and (B) the Borrower shall promptly withdraw the relevant Utilisation Request.
- (e) The Issuing Bank shall promptly enter into COGS (or, if COGS is not available, inform the Agent of) all changes in respect of a requested L/G agreed with the relevant Borrower pursuant to paragraph (d) above.

## 5.7 Reports, Correction of bookings

- (a) The Agent will generate under COGS (unless COGS is not available) on each day reports (the "**COGS Reports**") stating *inter alia* with respect to the previous day:
  - (i) the Base Currency Amount of all outstanding L/Gs as determined for such day; and
  - (ii) the aggregate Base Currency Amount of all outstanding L/Gs issued on behalf of the Company;
  - (iii) the aggregate Base Currency Amount of all outstanding L/Gs issued in an Optional Currency not being either USD, GBP or CHF; and
  - (iv) all relevant information (including the name of the beneficiary of the L/G, the type of L/G, the L/G amount, the date of issuance or prolongation and the initially fixed maturity date or Commercial Lifetime (and if applicable, any prolongation thereof) of such L/G) with respect to any L/G outstanding.
- (b) The Borrowers, the Agent, the Lenders and the Issuing Banks may download copies of the COGS Reports for their internal use over COGS (or, if COGS is not available, upon request from the Agent). In the event that the Company, the Agent and/or any Issuing Bank does not agree with any matter contained in the COGS Reports it shall, by no later than 5.00 p.m. on the third Business Day following the date of generation of the relevant COGS Report, notify the Agent accordingly; **provided, however**, that the failure to notify the Agent by such third Business Day will not result in the waiver of any right to dispute any matter contained in such COGS Report.
- (c) If the Agent receives a notice pursuant to paragraph (b) that a COGS Report does not properly reflect any booking as it would have to be made pursuant to this Agreement, it shall promptly inform all other Parties who would be affected by any change in the relevant booking and thereafter the relevant Parties shall seek mutual agreement on the relevant corrections and any entries in COGS shall be made or, as the case may be, corrected by the Agent accordingly. In the case that any such correction has an impact on the amount of any fees payable or paid under this Agreement, any such difference shall be taken into account by the Agent in the next notification to the Company and payment to the Lenders pursuant to Clause 11.1 (*Commitment fee*) or Clause 11.2 (*L/G fee*).

## 5.8 Affiliate of a Borrower

- (a) Subject to the terms of this Agreement, an Affiliate of a Borrower may with the approval of the relevant Issuing Bank become a borrower (any such Affiliate, an "**Affiliate Borrower**") with respect to an L/G.
- (b) The Company shall specify any relevant Affiliate Borrower in the Utilisation Request.
- (c) If a Borrower ceases to be a Borrower under this Agreement in accordance with Clause 24.3 (*Resignation of a Borrower*), any Subsidiary of such Borrower that is an Affiliate Borrower shall cease to have any rights under this Agreement and the Borrower is obliged to repay such L/G prior to ceasing to be a Borrower.
- (d) Where this Agreement or any other Finance Document imposes an obligation on a Borrower under an L/G and the relevant borrower is an Affiliate Borrower which is not a party to that document, the relevant Borrower shall ensure that the obligation is performed by its Affiliate.
- (e) Any reference in this Agreement or any other Finance Document to a Borrower being under no obligations (whether actual or contingent) as a Borrower under such Finance Document shall be construed to include a reference to any Affiliate of a Borrower being under no obligations under any Finance Document or L/G.

## 6. REBASING

### 6.1 Determination of the Base Currency Amount

On the last Business Day of each calendar quarter (a "**Calendar Quarter Date**") on which at least one L/G is outstanding under this Agreement which is denominated in an Optional Currency, COGS will automatically and, if COGS is not available, the Agent shall determine the Base Currency Amount of each L/G outstanding by notionally converting the amount of that L/G into the Base Currency on the basis of the relevant exchange rate displayed in COGS in accordance with the COGS Conditions or (if COGS is not available) the Agent's Spot Rate of Exchange on the date of calculation.

### 6.2 Company's obligation to prepay

- (a) If with respect to a Calendar Quarter Date (each a "**Rebasing Day**") the aggregate Base Currency Amount of the outstanding L/Gs of an Issuing Bank exceeds its Commitment applicable on that Rebasing Day (the exceeding amount being the "**Excess Amount**"), the Company must, if requested by the Agent in writing to do so, within 10 Business Days following such request ensure that a sufficient amount of the outstanding L/Gs are prepaid by the Borrowers (including, for the avoidance of doubt, by providing Cash Cover), in each case to eliminate the Excess Amount.
- (b) If in respect of any Rebasing Day subsequent to a Rebasing Day in respect of which Cash Cover had been provided pursuant to paragraph (a) the Excess Amount has been reduced, the whole or relevant part of the Cash Cover shall be released within five Business Days of the relevant Rebasing Day **provided that** no Default has occurred which is continuing.

### 6.3 Notification

The Agent must notify the Company and the Issuing Banks of any relevant Base Currency Amount (and the relevant exchange rate displayed in COGS in accordance with the COGS Conditions or (if COGS is not available) the applicable Agent's Spot Rate of Exchange) promptly after it is ascertained.

## 7. L/GS

### 7.1 Claims under an L/G

- (a) Each Borrower irrevocably and unconditionally authorises the relevant Issuing Bank to pay any claim made or purported to be made under an L/G requested by it (or requested by the Company on its behalf) and which appears on its face to be in order (in this Clause 7.1, a "**claim**") notwithstanding any defences against that claim which are or may be available to it under the law applicable to that L/G and which arise from, or relate to, the underlying transaction.
- (b) Each Borrower shall immediately on demand pay to the Agent for the relevant Issuing Bank an amount equal to the amount of any claim.

- (c) Each Borrower acknowledges that an Issuing Bank:
  - (i) is not obliged to carry out any investigation or notify or seek any confirmation from any other person (including without limitation the Company and the Borrower) before paying a claim; and
  - (ii) deals in documents only and will not be concerned with the legality of a claim or any underlying transaction or any available set-off, counterclaim or other defence of any person (including without limitation any defences which arise from, or relate to, the underlying transaction which are or may be available to that Issuing Bank under the law applicable to the relevant L/G).
- (d) The obligations of a Borrower under this Clause will not be affected by:
  - (i) the sufficiency, accuracy or genuineness of any claim or any other document; or
  - (ii) any incapacity of, or limitation on the powers of, any person signing a claim or other document.

## 7.2 Indemnities

- (a) Each Borrower shall immediately on demand indemnify an Issuing Bank against any cost, loss or liability incurred by that Issuing Bank (otherwise than by reason of that Issuing Bank's gross negligence, bad faith or wilful misconduct) in acting as an Issuing Bank under any L/G requested by (or on behalf of) that Borrower.
- (b) The obligations of any Borrower under this Clause will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause (without limitation and whether or not known to it or any other person) including:
  - (i) any time, waiver or consent granted to, or composition with, any Obligor, any beneficiary under an L/G or any other person;
  - (ii) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor or any member of the Group;
  - (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor, any beneficiary under an L/G or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
  - (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any beneficiary under an L/G or any other person;
  - (v) any amendment (however fundamental) or replacement of a Finance Document consented to by the Company, any L/G or any other document or security;
  - (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, any L/G or any other document or security; or
  - (vii) any insolvency or similar proceedings.
- (c) Neither the Company nor any Borrower shall be entitled to reject payment otherwise due by it pursuant to this Agreement on the basis of the argument that an L/G with respect to which an Issuing Bank claims payment should not have been issued or should not have been issued under its terms by that Issuing Bank pursuant to the terms of this Agreement or applicable law or regulations.

7.3 **Rights of contribution**

- (a) No Obligor will be entitled to any right of contribution or indemnity from any Finance Party in respect of any payment it may make under this Clause 7.
- (b) No Issuing Bank will be entitled to any right of contribution or indemnity from any other Issuing Bank other than pursuant to Clauses 27.6 *Loss Sharing in respect of L/Gs* and 27.7 *(Sharing of Recoveries / Adjustment of Loss Sharing)*.

8. **REPAYMENT**

- (a) Subject to paragraph (b) below, each L/G which would otherwise be outstanding on the Termination Date shall be repaid on the Termination Date.
- (b) In respect of each outstanding L/G the Maturity Date of which falls after the Termination Date, an Issuing Bank may either:
  - (i) continue to provide the respective L/G on a bilateral basis on terms and conditions agreed upon between that Issuing Bank, the Company and the relevant Borrower in a separate agreement reasonably satisfactory to that Issuing Bank to be reached no later than on the Termination Date;
  - (ii) continue to provide the respective L/G on a bilateral basis following receipt of a Counter Guarantee by no later than the Termination Date; or
  - (iii) require that Cash Cover (or such other security which is reasonably satisfactory to that Issuing Bank) is provided by the relevant Borrower (or the Company) with respect to the counterindemnity obligations owed to that Issuing Bank by the relevant Borrower in respect of the outstanding L/Gs issued by that Issuing Bank not later than on the Termination Date.
- (c) Any negotiations between an Issuing Bank, the Company and the relevant Borrower about a bilateral continuation or the terms and conditions and the implementation of the Cash Cover or other Security shall be made between that Issuing Bank and the relevant Borrower directly without involvement of the Agent.
- (d) Each L/G outstanding on the Termination Date shall, in the case of a bilateral continuation of that L/G pursuant to paragraph (b) above, for all purposes of this Agreement cease to be treated as an L/G issued under this Agreement as of the Termination Date provided however that unless otherwise agreed by the relevant Issuing Bank the fees set out in Clauses 11.2 *(L/G fee)* and 11.5 *(Issuance and Administration Fee)* shall continue to be payable but shall be paid directly to (and calculated by) the relevant Issuing Bank instead of the Agent. In addition, the fees set out in Clause 11.2 *(L/G fee)* shall be reduced as set out in paragraph (a) of Clause 11.2 *(L/G fee)*.

## **9. PREPAYMENT AND CANCELLATION**

### **9.1 Illegality**

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

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Company, the Commitment of that Lender will be immediately cancelled and it shall not be obliged to issue any L/G; and
- (c) each Borrower and the Company shall cooperate with the relevant Lender to seek a release by the relevant beneficiaries of each L/G issued by that Lender and outstanding at such time and, if and to the extent an L/G is not released by the date notified by that Lender, the Company shall, or shall procure that any relevant Borrower will, prepay all outstanding L/Gs of that Lender.

### **9.2 Change of control**

In the event of a Change of Control:

- (a) the Company shall promptly notify the Agent upon becoming aware of that event;
- (b) a Lender shall not be obliged to issue any L/Gs; and
- (c) if a Lender so requires and notifies the Agent within 10 days of being informed by the Agent of the event, the Agent shall, by not less than 10 days' notice to the Company, cancel the Commitment of that Lender and declare the participation of that Lender in all outstanding L/Gs, together with accrued L/G fees, and all other amounts accrued under the Finance Documents owed to that Lender by the Obligors, immediately due and payable, whereupon the Commitment of that Lender will be cancelled and all such outstanding amounts will become immediately due and payable and each Borrower shall prepay the relevant outstanding L/Gs.

### **9.3 Voluntary cancellation**

The Company may, if it gives the Agent not less than three Business Days' prior written notice (or such shorter period as the Majority Lenders may agree), cancel the whole or any part (being a minimum amount of EUR 5,000,000) of the Available Facility. Any cancellation under this Clause 9.3 shall reduce the Commitments of the Lenders rateably under the Facility.

### **9.4 Automatic cancellation**

If the first Utilisation Date has not occurred by the date falling one Month after the date of this Agreement, the Facility will be automatically cancelled in full.

### **9.5 Voluntary prepayment**

A Borrower to which an L/G has been issued may, if it gives the Agent not less than three Business Days' prior notice (or such shorter period as the Majority Lenders may agree), prepay the whole or any part of that L/G.

9.6 **Right of replacement or repayment and cancellation in relation to a single Lender**

- (a) If:
- (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*);
  - (ii) any Lender claims indemnification from the Company under Clause 12.3 (Tax indemnity) or Clause 13.1 (Increased costs); or
  - (iii) any Lender is a Defaulting Lender;
- the Company may, whilst the circumstance giving rise to the requirement for that increase, indemnification or Defaulting Lender status continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the L/Gs.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) Each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in any such Utilisations.
- (d) The Company may, in the circumstances set out in paragraph (a) above, on three Business Days' prior notice to the Agent and the Lender (or such shorter period as the Majority Lenders may agree), replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) assign and transfer by way of assumption of contract (*Vertragsübernahme*) pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its Available Commitment under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Company which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*).
- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
- (i) the Company shall have no right to replace the Agent;
  - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
  - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
  - (iv) the Lender shall only be obliged to assign and transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph 9.6(e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

#### 9.7 **Mandatory repayment and cancellation of Lenders**

If on the date falling six months before the earliest FATCA Application Date for any payment by a Party to a Lender (or to the Agent for the account of that Lender), that Lender is not a FATCA Exempt Party and, in the opinion of that Lender (acting reasonably), that Party will, as a consequence, be required to make a FATCA Deduction from a payment to that Lender (or to the Agent for the account of that Lender) on or after that FATCA Application Date (a "**FATCA Event**");

- (a) that Lender shall, reasonably promptly after that date, notify the Agent of that FATCA Event and the relevant FATCA Application Date;
- (b) if, on the date falling one month before such FATCA Application Date, that FATCA Event is continuing:
  - (i) that Lender may, at any time between one month and two weeks before such FATCA Application Date, notify the Agent;
  - (ii) upon the Agent notifying the Company, the Commitment of that Lender will be immediately cancelled; and
  - (iii) each Borrower shall repay that Lender's participation in the Utilisations made to that Borrower on the last Business Day before the relevant FATCA Application Date.

#### 9.8 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 9 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 the Facility which is prepaid (other than pursuant to Clause 9.5 (*Voluntary prepayment*)) or cancelled pursuant to Clause 9.3 (*Voluntary Cancellation*) or Clause 9.4 (*Automatic Cancellation*).
- (d) The Borrowers shall not repay or prepay all or any part of the L/Gs or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 9 it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.
- (g) If all or part of an L/G is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of the Commitments (equal to the Base Currency Amount of the amount of the L/G which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.
- (h) Any prepayment of an outstanding L/G shall be made in the manner described in paragraph (b) of Clause 8 (*Repayment*) and shall be subject to the continued payment of the L/G fees and administration fees as further specified in Clause 8 (*Repayment*).



## 10. CASH COVER

- (a) Where any Borrower or the Company is obliged to provide "**Cash Cover**" for an L/G to the Agent or an Issuing Bank under this Agreement, cash cover is provided if that Borrower or the Company pays an amount in the currency in which that L/G is denominated to an interest-bearing account in the name of that Borrower or the Company, as the case may be, and the following conditions are met:
- (i) the account is with the Agent or with an Affiliate of the Agent (if the Cash Cover is to be provided to the Agent) or with the relevant Issuing Bank or other party agreed by the Issuing Bank (if the Cash Cover is to be provided to that Issuing Bank);
  - (ii) until no amount is or may be outstanding under that L/G, withdrawals from the account may only be made to pay the relevant Issuing Bank (or Agent, if applicable) amounts due and payable to it under this Agreement in respect of that L/G, subject to paragraph (c) below; and
  - (iii) that Borrower or, as the case may be, the Company has executed a security document over that account, in form and substance reasonably satisfactory to the Agent or the relevant Issuing Banks (as applicable) with which that account is held, creating a first ranking security interest over that account for the sole benefit of the relevant Issuing Bank,

and the account will bear interest at a rate equal to: for GBP, SONIA (Sterling Over Night Index Average), for USD, FFE (Feds Funds Effective), for EUR, EONIA (Euro Overnight Index Average) and for CHF, SARON (Swiss Overnight Index Average) (in each case as determined by the Issuing Bank) for deposits in that currency for one month (if that amount is placed on a one month time deposit), or upon the request of the Agent or any of the Issuing Banks the applicable Overnight Libor Rate for the relevant currency (GBP, USD, EUR or CHF), or otherwise (if it is not or if the deposit is in a currency other than GBP, USD, EUR or CHF) at a normal commercial rate or as otherwise agreed between the Company or the relevant Borrower with the Agent or the relevant Issuing Bank (as applicable).

- (b) Where Cash Cover has been provided by a Borrower or the Company:
- (i) for an L/G and that L/G is subsequently repaid or prepaid (other than by the provision of Cash Cover), the Agent or the Issuing Banks (as applicable) shall repay to the relevant Borrower the Cash Cover held by it in an amount equal to the amount of such repayment or prepayment (and, if that L/G is denominated in an Optional Currency, the amount repaid or prepaid converted into the Base Currency at the relevant exchange rate displayed in COGS in accordance with the COGS Conditions or (if COGS is not available) the Agent's Spot Rate of Exchange on the date of repayment or prepayment) and shall, if the Borrower requests, execute such documentation as is necessary to discharge any security interest over the account referred to above; or

- (ii) pursuant to Clause 6.2 (*Company's obligation to prepay*) and subsequently the amount by which the aggregate amount of the Base Currency Amount of all L/Gs outstanding exceeds the Total Commitments is reduced to an amount which is lower than the amount of the Cash Cover provided to the Agent, the Agent shall repay to the relevant Borrower or the Company the Cash Cover held by it in an amount equal to the difference and shall, if the Company requests, execute such documentation as is necessary to discharge any security interest over the account referred to above,

in each case if no Event of Default has occurred which is continuing.

- (c) As long as no Event of Default has occurred which is continuing, interest paid on the Cash Cover shall be released at any time to the Company or the Borrower providing the Cash Cover (as the case may be).
- (d) For the avoidance of doubt, any Cash Cover relating to an L/G shall be released at its Maturity Date, **provided that** the relevant Issuing Bank has not received any demand of payment in respect of such L/G or, if so received, has been reimbursed by the Company or the relevant Borrower.

## 11. FEES

### 11.1 Commitment fee

- (a) The Company shall pay to the Agent (for the account of each Lender) a fee in the Base Currency computed at the rate of 35 per cent. of the then applicable L/G fee on that Lender's Available Commitment for the Availability Period.
- (b) Subject to the terms of this Clause 11.1, the accrued commitment fee is payable in arrears for each successive period of three Months ending on 31 March, 30 June, 30 September and 31 December and any shorter period ending on 31 March 2018, on the last day of the Availability Period and, if cancelled in full, in respect of the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) The commitment fee shall be calculated by the Agent. The Agent shall notify the Company and the relevant Lenders in writing of the aggregate amount of all such commitment fees owed to the relevant Lender within five Business Days after the end of each period set out in paragraph (b) of this Clause 11.1. The Company shall pay the commitment fee to the Agent (for the account of each Lender) not later than on the fifth Business Day following receipt by the Company of the notification from the Agent.
- (d) No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

### 11.2 L/G fee

- (a) Each Borrower shall pay to the Agent (for the account of each relevant Issuing Bank) an L/G fee in the Base Currency (computed at the rate equal to the L/G Fee Rate) on the outstanding amount of each L/G requested by it for the period from the date of issue of that L/G until its Maturity Date. For the avoidance of doubt, such fee shall, if not otherwise agreed between the relevant Issuing Bank and the Company (or the relevant Borrower) be reduced to 0.55 per cent. per annum in relation to and beginning at the time any L/G has been repaid by way of Cash Cover or a Counter Guarantee prior to its Maturity Date.
- (b) The accrued L/G fee on an L/G shall be payable in arrears in respect of each period of three months ending on 31 March, 30 June, 30 September and 31 December (or any shorter periods ending on 31 March 2018, the Termination Date, the date on which the Commitments of a Lender under this Agreement are cancelled in full or the date on which the Total Commitments under this Agreement are cancelled in full) (each a "**Calculation Period**").

- (c) The L/G fee shall be calculated by the Agent. The Agent shall notify the Company and the relevant Issuing Banks in writing of the aggregate amount of all such L/G Fees owed to the relevant Issuing Bank within five Business Days after the end of each Calculation Period. The relevant Borrowers shall pay the respective amounts to the Agent for distribution to the relevant Issuing Banks not later than on the fifth Business Day following the receipt by the Company of the notification from the Agent.

**11.3 Arrangement and participation fee**

The Company shall pay to the Arranger an arrangement fee and a participation fee in the amount and at the times agreed in the Mandate Letter.

**11.4 Agency fee**

The Company shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in the Agency Fee Letter.

**11.5 Issuance and Administration Fee**

Each Borrower shall pay to the relevant Issuing Bank (for its own account) an issuance and administration fee in respect of each L/G requested by it and issued by that Issuing Bank in the amount of EUR 50 per issued L/G or as otherwise agreed between that Issuing Bank and the Company.

**11.6 Default interest and lump sum damages**

- (a) If an Obligor fails to pay any amount (other than default interest) payable by it under a Finance Document on its due date, default interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which complies with the rate set out in paragraph 288(2) of the German Civil Code (*Bürgerliches Gesetzbuch*). If an Obligor fails to pay default interest payable by it under the Finance Documents on its due date, lump sum damages (*pauschalierter Schadensersatz*) shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which complies with the rate set out in paragraph 288(2) of the German Civil Code (*Bürgerliches Gesetzbuch*). In the case of lump sum damages, the relevant Obligor shall be free to prove that no damages have arisen or that damages have not arisen in the asserted amount and any Finance Party shall be entitled to prove that further damages have arisen. Any interest or lump sum accruing under this Clause 11.6 shall be immediately payable by the relevant Obligor on demand by the Agent.

- (b) The Agent shall promptly notify the Lenders and the relevant Obligor of the determination of a rate of default interest under this Agreement.

**11.7 Minimum Fee Rates**

- (a) The fee rates provided for in this Agreement, including this Clause 11 (*Fees*) are minimum fee rates.

- (b) When entering into this Agreement, the parties have assumed that the fees payable at the rates set out in this Agreement are not and will not become subject to the Swiss Federal Withholding Tax. Notwithstanding that the parties do not anticipate that any fee payment under this Agreement is or will be subject to the Swiss Federal Withholding Tax, they agree that, in the event that Swiss Federal Withholding Tax should be imposed on fee payments by a Borrower and should it be unlawful for such Borrower to comply with paragraph (c) of Clause 12.2 (*Tax gross-up*) for any reason (where this would otherwise be required by the terms of Clause 12.2 (*Tax gross-up*), taking into account the exclusions set out in paragraph (g) of Clause 12.2 (*Tax gross-up*)), the payment of such fees due by such Borrower shall be increased to an amount which (after making any deduction of the Non-Refundable Portion (as defined below) of the Swiss Federal Withholding Tax) results in a payment to each Finance Party entitled to such payment of an amount equal to the payment which would have been due had no deduction of Swiss Federal Withholding Tax been required. For this purpose, the Swiss Federal Withholding Tax shall be calculated on the full grossed-up interest amount.
- (c) For the purposes of this Clause, "**Non-Refundable Portion**" shall mean Swiss Federal Withholding Tax at the standard rate (being, as at the date hereof, 35%) unless a tax ruling issued by the Swiss Federal Tax Administration (SFTA) confirms that, in relation to a specific Finance Party based on an applicable double tax treaty, the Non-Refundable Portion is a specified lower rate in which case such lower rate shall be applied in relation to such Finance Party and each Borrower shall provide to the Agent the documents required by law or applicable double taxation treaties for the Finance Parties to claim a refund of any Swiss Federal Withholding Tax so deducted.

## 12. TAX GROSS UP AND INDEMNITIES

### 12.1 Definitions

- (a) In this Agreement:

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

- (i) where it relates to a Treaty Lender that is an Original Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name in Part 2 of Schedule 1 (*The Original Parties*), and:
  - (A) where the Borrower is an Original Borrower, is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
  - (B) where the Borrower is an Additional Borrower, is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower; or
- (ii) where it relates to a Treaty Lender that is a New Lender or an Increase Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Certificate or Increase Confirmation (as applicable), and:
  - (A) where the Borrower is a Borrower as at the relevant Transfer Date or Increase Date (as applicable), is filed with HM Revenue & Customs within 30 days of that Transfer Date or Increase Date (as applicable); or
  - (B) where the Borrower is not a Borrower as at the relevant Transfer Date or Increase Date (as applicable), is filed with HM Revenue & Customs within 30 days of the date on which that Borrower becomes an Additional Borrower.

"**German Borrower**" means a Borrower incorporated in Germany.

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

"**Qualifying Lender**" means:

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

- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
- (3) a Treaty Lender; or
- (B) a Lender which is a building society (as defined for the purpose of section 880 of the ITA) making an advance under a Finance Document.
- (iii) in respect of a U.S. Borrower, a Lender that has satisfied its obligations under paragraph (f) of Clause 12.2 (*Tax gross-up*);
- (iv) in respect of any other Borrower, any Lender.

"**Tax Confirmation**" means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

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

"**Tax Credit**" means a credit against, relief or remission for, or 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; and
- (ii) does not carry on a business in the jurisdiction of incorporation of the relevant Borrower through a permanent establishment with which that Lender's participation in the Utilisation is effectively connected.

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

"**UK Borrower**" means a Borrower incorporated in the United Kingdom.

"**UK Non-Bank Lender**" means:

- (i) where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed in Part 2 of Schedule 1 (*The Original Parties*); and
  - (ii) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Transfer Certificate which it executes on becoming a Party.
- (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 Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. 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 Company and that Obligor.
- (c) If a Tax Deduction is required by law to be made by or on behalf of 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 shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax (other than Swiss Federal Withholding Tax in which case paragraph (g) shall apply) imposed on payments of interest by the jurisdiction of incorporation of the relevant Borrower if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender with respect to the relevant Borrower, but on that date that Lender is not or has ceased to be a Qualifying Lender with respect to the relevant Borrower other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or published concession of any relevant taxing authority;

- (ii) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (j) or (with respect to payments by a UK Borrower) paragraph (k) below;
- (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (ii)(A)(2) of the definition of Qualifying Lender; and
  - (A) an officer of HM Revenue & Customs has given (and not revoked) a direction (a **Direction**) under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and
  - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
- (iv) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (ii)(A)(2) of the definition of Qualifying Lender; and
  - (A) the relevant Lender has not given a Tax Confirmation to the Company; and
  - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA.
- (e) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax (other than Swiss Federal Withholding Tax in which case paragraph (g) shall apply) imposed by the jurisdiction of incorporation of the relevant Borrower if on the date on which the payment falls due, such payment relates to:
  - (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, or branch profits Taxes, in each case:
    - (A) imposed as a result of the recipient Lender being organised under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof); or
    - (B) that are Taxes imposed as a result of a present or former connection between such recipient Lender and the jurisdiction imposing such Tax (other than connections arising from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Finance Document, or sold or assigned an interest in any L/G or Finance Document);



- (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in an L/G or Commitment pursuant to a law in effect on the date on which:
    - (A) such Lender acquires such interest in the L/G or Commitment (other than pursuant to an assignment request by the Borrower under Clause 9.6 (*Right of replacement or repayment and cancellation in relation to a single Lender*)); or
    - (B) such Lender changes its lending office, except in each case to the extent that, pursuant to this Clause 12, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office;
  - (iii) Taxes attributable to such Lender's failure to comply with this paragraph (e) or paragraph (f) of this Clause 12.2.
- (f) Status of Lenders
- (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Finance Document shall deliver to the Borrowers and the Agent, prior to the date on which such Lender becomes a Lender under this Agreement or acquired an interest therein and at the time or times reasonably requested by the Borrowers or the Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Agent as will enable the Borrowers or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 12.2(f)(ii)(A), (ii)(B) and 12.8(e) below, or the UK tax documentation required under Section 12.2(j)(ii)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.
  - (ii) Without limiting the generality of the foregoing, in the case of a U.S. Borrower:
    - (A) any Lender that is a U.S. Person shall deliver to such U.S. Borrower and the Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such U.S. Borrower or the Agent), duly executed copies of IRS Form W-9 or successor form certifying that such Lender is exempt from U.S. federal backup withholding tax;

- (B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such U.S. Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such U.S. Borrower or the Agent), whichever of the following is applicable;
- (I) duly executed copies of IRS Form W-8BEN/W-8BEN-E establishing any exemption or reduction in payments made under any Finance Document;
  - (II) duly executed copies of IRS Form W-8ECI;
  - (III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Clause 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Clause 881(c)(3)(A) of the Code, a "10 percent shareholder" of such U.S. Borrower within the meaning of Clause 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Clause 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN/W-8BEN-E; or
  - (IV) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN/W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as may be required; **provided that** if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner;
- (C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such U.S. Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such U.S. Borrower or the Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit such U.S. Borrower or the Agent to determine the withholding or deduction required to be made.
- (iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

- (g) A Borrower shall not be required to make an increased payment to a specific Lender under paragraph (c) above by reason of a Tax Deduction by a Borrower on account of Swiss Federal Withholding Tax if the number of Lenders under this Agreement that are not Swiss Qualifying Banks exceeds 10 (ten) solely because such Lender (i) has failed to comply with its obligations under Clause 23 (*Changes to Lenders*) or (ii) ceased to be a Swiss Qualifying Bank other than as a result of any change after the date it became a Finance Party under this Agreement in (or in the interpretation, administration or application of) any law or any published practice or concession of any relevant taxing authority.
- (h) 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.
- (i) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment 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.
- (j) (i) Subject to sub-paragraph (ii) below, a Treaty Lender, and each Obligor which makes a payment to which that Treaty Lender is entitled, shall cooperate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction;
- (ii) (A) a Treaty Lender with respect to a UK Borrower which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name in Part 2 of Schedule 1 (*The Original Parties*); and
- (B) a New Lender or an Increase Lender that is a Treaty Lender with respect to a UK Borrower and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Certificate or Increase Confirmation (as applicable) which it executes,
- and, having done so, that Lender shall be under no obligation pursuant to sub-paragraph (i) above.
- (k) If a Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph 12.2(j)(ii) above and:
- (i) a Borrower making a payment to that Lender has not made a Borrower DTTP Filing in respect of that Lender; or
- (ii) a Borrower making a payment to that Lender has made a Borrower DTTP Filing in respect of that Lender but:
- (A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

- (B) HM Revenue & Customs has not given the Borrower authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

and in each case, the Borrower has notified that Lender in writing, that Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for that Borrower to obtain authorisation to make that payment without a Tax Deduction.

- (l) If a Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph 12.2(j)(ii) above, no Obligor shall make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment(s) or its participation in any Utilisation unless the Lender otherwise agrees.
- (m) A Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Agent for delivery to the relevant Lender.
- (n) A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Company by entering into this Agreement.
- (o) A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation.

### 12.3 Tax indemnity

- (a) The Company shall (within five Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
  - (i) with respect to any Tax assessed on a Finance Party:
    - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) or Clause 11.7 (*Minimum Fee Rates*);
    - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) or Clause 11.7 (*Minimum Fee Rates*) but was not so compensated solely because one of the exclusions in paragraph (d), (e) or (g) of Clause 12.2 (*Tax gross-up*) or in paragraph (b) of Clause 11.7 (*Minimum Fee Rates*) applied;

(C) which relates to a FATCA Deduction required to be made by a Party; or

(D) relates to any Bank Levy.

(c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Company.

(d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 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 an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) that Finance Party 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. If a Finance Party makes a payment to an Obligor pursuant to this Clause 12.4 in connection with a Tax Credit, the Obligor, upon the request of the Finance Party, shall repay to the Finance Party such amount that was paid pursuant to Clause 12.4 (plus any penalties, interest or other charges imposed by the relevant governmental or taxing authority) in the event that the Finance Party loses the benefit of, or has to repay to such governmental or taxing authority, such Tax Credit.

#### 12.5 **Lender Status Confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Increase Confirmation which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in with respect to each relevant Borrower:

(a) not a Qualifying Lender;

(b) a Qualifying Lender (other than a Treaty Lender); or

(c) a Treaty Lender.

If a New Lender or Increase Lender fails to indicate its status in accordance with this Clause 12.5, then such New Lender or Increase Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, a Transfer Certificate or Increase Confirmation shall not be invalidated by any failure of a Lender to comply with this Clause 12.5.

## 12.6 Stamp taxes

The Company shall pay and, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

## 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 such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (b)(i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 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 person who is treated as making the supply or (as appropriate) receiving the supply under the grouping rules (as provided for in Article 11 of the Council Directive 2006/112/EC (or as implemented by the relevant member state of the European Union or any other similar provision in any jurisdiction which is not a member state of the European Union)) (including, for the avoidance of doubt, in accordance with section 43 of the United Kingdom Value Added Tax Act 1994) so that a reference to a Party shall be construed as a reference to that Party or the relevant group or unity (or fiscal unity) of which that Party is a member for VAT purposes at the relevant time or the relevant member (or head) of that group or unity (or fiscal unity) at the relevant time (as the case may be).

- (e) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

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:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

- (e) If a Borrower is a U.S. Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
- (i) where an Original Borrower is a U.S. Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
  - (ii) where a Borrower is a U.S. Tax Obligor on a date on which any other Lender becomes a Party as a Lender, that date;
  - (iii) the date a new U.S. Tax Obligor accedes as a Borrower; or
  - (iv) where a Borrower is not a U.S. Tax Obligor, the date of a request from the Agent, supply to the Agent:
    - (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
    - (B) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the relevant Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the relevant Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

#### 12.9 **FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Agent and the Agent shall notify the other Finance Parties.



### 13. INCREASED COSTS

#### 13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Company shall pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation in each case made after the date of this Agreement; **provided that** notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to have been introduced after the date of this Agreement, regardless of the date enacted, adopted or issued.
- (b) In this Agreement "**Increased Costs**" means:
- (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
  - (ii) an additional or increased cost; or
  - (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document. Such amounts shall be determined in good faith consistent with similarly situated customers of the applicable Finance Party under agreements having provisions similar to this Clause 13.1 after consideration of such factors as such Finance Party then reasonably determines to be relevant.

#### 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 Company.
- (b) A certificate of the affected Finance Party setting forth, in reasonable detail, the basis and calculation of the amount or amounts necessary to compensate such Finance Party or its Affiliates, as the case may be, as specified in Clauses 13.1(a) or (b) shall be delivered to the Company and shall be conclusive absent manifest error. The Company shall pay, or cause the other Borrowers to pay, such Finance Party, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

#### 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) attributable to a FATCA Deduction required to be made by a Party;

- (iii) 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);
  - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation;
  - (v) incurred more than 180 days prior to the date that such Finance Party notifies the Company of the circumstance giving rise to such increased costs or reductions and of such Finance Party's intention to claim compensation therefore; provided further that, if the circumstance giving rise to such Increased Costs is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof; or
  - (vi) attributable to any Bank Levy
- (b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to the 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 five 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

Subject to and without any duplication of Clause 16.3 (*Enforcement Costs*) which shall prevail over this Clause 14.2, the Company shall (or shall procure that an Obligor will), within five Business Days of demand, indemnify each Finance Party against any cost (which in the case of counsel, shall be limited to the fees, charges and disbursements of (x) one primary counsel and one local counsel in each applicable jurisdiction for the Agent, (y) one additional primary counsel and one additional local counsel in each applicable jurisdiction, for all Lenders other than the Agent and (z) additional counsel for affected Lenders in light of actual or potential conflicts of interest), loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due by an Obligor under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 27 (*Sharing among the Finance Parties*);
- (c) making arrangements to issue any L/G requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company,

**provided that** such indemnity shall not, as to any Finance Party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgement to have resulted from any dispute solely among the Finance Parties (not arising as a result of any act or omission by any member of the Group) other than claims against the Agent or any Issuing Bank or any Arranger in its capacity as, or in fulfilling its role as, the Agent or an Issuing Bank or an Arranger or any similar role under this Agreement.

#### 14.3 Indemnity to the Agent

- (a) The Company shall promptly indemnify the Agent against any cost (which in the case of counsel, shall be limited to the fees, charges and disbursements of one primary counsel and one local counsel in each applicable jurisdiction for the Agent, loss or liability incurred by the Agent (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default; or
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.
- (b) In case a Lender fails to inform the Agent pursuant to Clause 12.8 (*FATCA Information*) or such information is incomplete or incorrect the relevant Lender shall indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent respectively as a consequence of non-compliance with FATCA by the Agent as a result of such Lender's failure.

## 15. MITIGATION BY THE LENDERS

### 15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 9.1 (*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 Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 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 Company shall promptly on demand pay the Agent and the Arranger the amount of all costs and expenses (including legal fees subject to the agreed cap (if any)) reasonably incurred by any of them in connection with the negotiation, preparation and execution of:

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

### 16.2 Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 28.10 (*Change of currency*), the Company shall, within five Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including pre-agreed legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

### 16.3 Enforcement costs

The Company shall, within three Business Days of demand, pay to each Finance Party the amount of all documented out-of-pocket costs and expenses (which in the case of counsel, shall be limited to the reasonable fees, charges and disbursements of one primary counsel and one local counsel in each applicable jurisdiction for the Agent and one additional primary counsel and one additional local counsel in each applicable jurisdiction for all Lenders other than the Agent and additional counsel for affected Lenders in light of actual or potential conflicts of interest) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

## 17. GUARANTEE AND INDEMNITY

### 17.1 Guarantee (*Garantie*) and indemnity (*Ausfallhaftung*)

Each Guarantor irrevocably and unconditionally (but subject to any limitations set out in any Accession Letter by which such Guarantor becomes a party hereto) jointly and severally (*gesamtschuldnerisch*):

- (a) guarantees (*garantiert*) by way of an independent payment obligation (*selbständiges Zahlungsversprechen*) to each Finance Party to pay to that Finance Party any amount of principal, interest, costs, expenses or other amount owed by an Obligor under or in connection with the Finance Documents that has not been fully and irrevocably paid by a Borrower or the Company; the payment shall be due (*fällig*) within five Business Days of a written demand by a Finance Party (or the Agent on its behalf) stating the sum demanded from that Guarantor and that such sum is an amount of principal, interest, costs, expenses or other amount owed by an Obligor under or in connection with the Finance Documents that has not been fully and irrevocably paid by a Borrower or the Company; and
- (b) undertakes vis-à-vis each Finance Party to indemnify (*schadlos halten*) that Finance Party against any cost, loss or liability suffered by that Finance Party if any obligation of a Borrower or the Company under or in connection with any Finance Document (except for any cost, loss or liability directly caused by the gross negligence or wilful misconduct of such Finance Party) or any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover (*Ersatz des positiven Interesses*) and that claim shall be due (*fällig*) within five Business Days of a written demand by that Finance Party (or the Agent on its behalf).

For the avoidance of doubt this guarantee and indemnity does not constitute a guarantee upon first demand (*Garantie auf erstes Anfordern*) and, in particular, receipt of such written demand shall not preclude any rights and/or defences the Guarantor may have with respect to any payment requested by a Finance Party (or the Agent on its behalf) under this guarantee and indemnity.

### 17.2 Continuing and independent guarantee and indemnity

- (a) This guarantee and indemnity is independent and separate from the obligations of any Borrower and is a continuing guarantee and indemnity which will extend to the ultimate balance of sums payable by any Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.
- (b) The guarantee and indemnity shall extend to any additional obligations of a Borrower resulting from any amendment, novation, supplement, extension, restatement or replacement of any Finance Documents, including without limitation any extension of or increase in any facility or the addition of a new facility under any Finance Document.
- (c) Subject to Clause 17.3 (*Reinstatement*) below, at such time as both (i) the Commitments have expired or been irrevocably terminated and (ii) all L/Gs have been irrevocably repaid in full as set out in Clause 8 (*Repayment*) of this Agreement and any other amounts outstanding under the Finance Documents have been irrevocably discharged in full, all obligations (other than those expressly stated to survive such termination) of each Guarantor under this Clause 17 (*Guarantee and Indemnity*) shall automatically terminate, all without delivery of any instrument or performance of any act by any person.

### 17.3 Reinstatement

If any payment by an Obligor or any discharge given by a Finance Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) each Finance Party shall be entitled to recover the value or amount of that security or payment from each Guarantor, as if the payment, discharge, avoidance or reduction had not occurred.

### 17.4 Excluded defences

- (a) The obligations of each Guarantor under this Clause 17 will not be affected by an act, omission, matter or thing which relates to the principal obligation (or purported obligation) of any Borrower and which would reduce, release or prejudice any of its obligations under this Clause 17, including any personal defences of any Borrower (*Einreden des Hauptschuldners*) or any right of revocation (*Anfechtung*) or set-off (*Aufrechnung*) (excluding any Tax Deduction permitted by Clause 12 (*Tax Gross Up and Indemnities*)) of any Borrower.
- (b) The obligations of each Guarantor under this Clause 17 are independent from any other security or guarantee which may have been or will be given to the Finance Parties. In particular, the obligations of each Guarantor under this Clause 17 will not be affected by any of the following:
  - (i) the release of, or any time (*Stundung*), waiver or consent granted to, any other Obligor from or in respect of its obligations under or in connection with any Finance Document;
  - (ii) 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 any other person or any failure to realise the full value of any security;
  - (iii) any incapacity or lack of power, authority or legal personality of or dissolution or a deterioration of the financial condition of any other Obligor; or
  - (iv) any unenforceability, illegality or invalidity of any obligation of any other Obligor under any Finance Document.
- (c) For the avoidance of doubt nothing in this Clause 17 shall preclude any defences that any Guarantor (in its capacity as Guarantor only) may have against a Finance Party that the guarantee and indemnity does not constitute its legal, valid, binding or enforceable obligations.

17.5 **Immediate recourse**

No Finance Party will be required 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 applies irrespective of any provision of a Finance Document to the contrary.

17.6 **Appropriations**

Until all amounts which may be or become payable by the Obligor under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party 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.

For the avoidance of doubt, nothing in this Clause 17.6 shall be construed as creating a liability for a Borrower for the amounts which may be or become payable by the other Obligor under or in connection with the Finance Documents.

17.7 **Deferral of Guarantors' rights**

Until all amounts which may be or become payable by the Obligor 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 exercise any right of set-off against any Obligor; and/or
- (d) to take the benefit (in whole or in part and whether by way of legal 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.

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 Obligor 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 28 (*Payment Mechanics*) of this Agreement.

17.8 **Release of Guarantors' right of contribution**

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with Clause 24.5 (*Resignation of a Guarantor*) or Clause 24.6 (*Release of a Guarantor*) or otherwise 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.

17.9 **Additional obligations**

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.

17.10 **Guarantee Limitation - Fraudulent Conveyance**

Any term or provision of this Clause 17 or any other term in this Agreement or any Finance Document notwithstanding, the maximum aggregate amount of the obligations for which any Guarantor shall be liable under this Agreement or any other Finance Document shall in no event exceed an amount equal to the largest amount that would not render such Guarantor's obligations under this Agreement subject to avoidance under applicable United States federal or state fraudulent transfer, fraudulent conveyance or similar laws.

17.11 **Guarantee Limitation - Deemed Dividends**

Any term or provision of this Clause 17 or any other term in this Agreement or any Finance Document notwithstanding, no member of the Group that is a "controlled foreign corporation" for U.S. federal income tax purposes will have any obligation or liability, directly or indirectly, as guarantor or otherwise under this Agreement or any Finance Document with respect to any obligation or liability arising under any Finance Document of any U.S. Borrower to the extent such obligation or liability would cause or result in any "deemed dividend" to any Obligor incorporated in the U.S. pursuant to Section 956 of the Code; **provided that** this Clause shall not limit or reduce any obligation or liability of any Borrower in its capacity as such.

**18. REPRESENTATIONS**

Each Obligor on behalf of itself (and in the case of the Company and where set out expressly below, on behalf of each other member of the Group) makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement and the date the first Utilisation Request is submitted under this Agreement.

18.1 **Status**

- (a) It is a corporation, limited liability company or partnership with limited liability, duly incorporated or organised or, in the case of a partnership, established and validly existing and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the laws of the jurisdiction of its incorporation or organisation.
- (b) It has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing (to the extent such concept is applicable) in every jurisdiction where such qualification is required.



## 18.2 **Binding obligations**

Subject to the Legal Reservations, the obligations expressed to be assumed by it in each Finance Document are legal, valid, binding obligations, enforceable in accordance with their terms.

## 18.3 **Non-conflict with other obligations and compliance with laws**

- (a) The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:
- (i) any applicable material law or regulation applicable to it or any order of any Governmental Authority;
  - (ii) its charter, by-laws, constitutional or other organisational documents; or;
  - (iii) any agreement, indenture or instrument binding upon it or any of its assets (or give rise to any right thereunder to require any payment to be made by any member of the Group) except with respect to this paragraph (iii) for any such conflict which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.
- (b) It and each member of the Group has complied in all respects with all laws, regulations and orders of any Governmental Authority to which it may be subject where failure so to comply would reasonably be expected to result in a Material Adverse Effect.

## 18.4 **Power and authority**

It has the organisational power to enter into, perform and deliver, and has taken all necessary organisational 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 and the Finance Documents to which it is a party have been duly executed by it and, where applicable, delivered by it.

## 18.5 **Validity and admissibility in evidence**

All Authorisations required:

- (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 its jurisdiction of incorporation, subject to the Legal Reservations,
- have been obtained or effected and are in full force and effect.

## 18.6 **Governing law and enforcement**

- (a) The choice of German law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation, subject to the Legal Reservations.

- (b) Any judgment obtained in Germany in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation, subject to the Legal Reservations.

**18.7 Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Lender which is a Qualifying Lender subject, where the Qualifying Lender is a Treaty Lender with respect to a UK Borrower, to the completion of procedural formalities and subject further with respect to the UK Borrower where a Lender falls within paragraph (ii)(A)(2) of the definition of Qualifying Lender that no Direction has been given under section 931 of the ITA in relation to the payment concerned.

**18.8 Taxes**

It and each of its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which it has set aside on its books adequate reserves or (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

**18.9 Compliance with Swiss Non-Bank Rules**

Each Swiss Borrower is compliant with the Swiss Non-Bank Rules. This representation shall not be deemed to be breached if the Swiss Non-Bank Rules are breached as a result solely of:

- (a) a Lender has failed to comply with its obligations under Clause 23 (*Changes to Lenders*);
- (b) a Lender ceased to be a Swiss Qualifying Bank other than as a result of any change after the date it became a Finance Party under this Agreement in (or in the interpretation, administration or application of) any law or any published practice or concession of any relevant taxing authority.

**18.10 No default**

No Default or Event of Default has occurred and is continuing.

**18.11 Anti-Corruption Laws and Sanctions**

- (a) The Company has implemented and maintains in effect policies and procedures reasonably designed to promote compliance in all material respects by the Company, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Company, its Subsidiaries and their respective officers and employees and to the knowledge of the Company its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.
- (b) None of (i) the Company, any Subsidiary or to the knowledge of the Company any of their respective directors, officers or employees, or (ii) to the knowledge of the Company, any agent of the Company or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person.

- (c) No Borrower or any Subsidiary will, to the knowledge of the Company, use any Letter of Credit in violation in any respect of any Anti-Corruption Law or in violation in any material respect of applicable Sanctions.
- (d) The representations and warranties given in paragraph (a) to (c) of this Clause 18.11 shall not be given (i) by any Obligor or (ii) to any Lender to the extent that any such representation and warranty would result in any violation of, conflict with or liability under EU Regulation (EC) 2271/96, section 7 of the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) or a similar anti-boycott statute.

**18.12 No misleading information**

Any written factual information contained in the Original Financial Statements and the list of Material Subsidiaries provided by the Company, other than projections, does not (when furnished) contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made; **provided that** with respect to projections, the Obligors represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time prepared (it being understood by the Agent and the Lenders that any such projections are not to be viewed as facts and are subject to significant uncertainties and contingencies, many of which are beyond the control of the Group, that no assurances can be given that such projections will be realised and that actual results may differ materially from such projections).

**18.13 Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with Applicable GAAP consistently applied.
- (b) Its Original Financial Statements fairly represent, in all material respects, its financial position and results of operations (consolidated in the case of the Company's audited consolidated financial statements and including cashflows of the Company and its consolidated Subsidiaries) during the relevant financial year in accordance with Applicable GAAP.
- (c) There has been no material adverse change in the business, operations or financial condition of the Group taken as a whole since 30 September 2017.

**18.14 Pari passu ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**18.15 No proceedings pending or threatened**

There is no litigation, arbitration or administrative proceeding before any court, arbitral body or Governmental Authority pending against or, to the knowledge of the Company or any Borrower, threatened against any member of the Group which would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect (taking into account reserves made for the benefit of warranties and/or insurance coverage in respect thereof) or which purports to affect the legality, validity or enforceability of this Agreement or the transactions contemplated thereby.

**18.16 Environmental laws and licences**

It and (in the case of the Company only) each other member of the Group has:

- (a) complied with all Environmental Laws to which it may be subject;
- (b) obtained all Environmental Licences required in connection with its business;
- (c) complied with the terms of those Environmental Licences,

in each case, individually or in the aggregate, where failure to do so would reasonably be expected to have a Material Adverse Effect.

**18.17 Good title to assets**

It has a good title to, or valid leasehold interests in, and to all its real and personal property material to its business except to the extent that any failure to have such title or leasehold interest would not reasonably be expected to have a Material Adverse Effect.

**18.18 Investment Company Act status**

Neither the Company nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

**18.19 ERISA**

No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would reasonably be expected to result in a Material Adverse Effect.

**18.20 Federal Reserve Regulations**

No part of the proceeds of any Utilisation have been used or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

**18.21 Repetition**

- (a) The Repeated Representations shall be made by the Company on its own behalf and on behalf of the other Obligors (under a power of attorney *Vollmacht*) granted to it by the Obligors pursuant to paragraph (b) below) by reference to the facts and circumstances then existing on;
  - (i) the date of each Utilisation Request, each Additional Commitment Request and each Increase Confirmation; and
  - (ii) in the case of an Additional Obligor, the day on which the company becomes (or it is proposed that the company becomes) an Additional Obligor.
- (b) Each Obligor (other than the Company) hereby empowers *bevollmächtigt* the Company to make the Repeated Representations on its behalf as its attorney (*Stellvertreter*). Each Obligor (other than the Company) hereby relieves the Company from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) for the purpose of making the Repeated Representations on its behalf as attorney *Stellvertreter*.

## 19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the date of this Agreement until both (i) the Commitments have expired or been terminated and (ii) all L/Gs have been repaid in full as set out in Clause 8 (*Repayment*) of this Agreement and there is no other amount outstanding under the Finance Documents.

### 19.1 Financial statements

The Company shall supply to the Agent in sufficient copies for all the Lenders as soon as they are available but in any event:

- (a) within 100 days after the end of each of its Financial Years, the Company's audited consolidated financial statements for that Financial Year;
- (b) within 120 days after the end of each Borrower's financial years, the unaudited balance sheet and profit and loss of the respective Borrower (other than the Company) for that financial year;
- (c) within 180 days after the end of each Borrower's financial years the financial statements (only audited if available or required by law to be audited and in the form available or required by law to be prepared) of the respective Borrower (other than the Company) for that financial year; and
- (d) within 55 days after the end of each of the first three quarters of each of its Financial Years, consolidated financial statements of the Company for that quarter and the then elapsed portion of that Financial Year.

### 19.2 Compliance Certificate

- (a) The Company shall supply to the Agent, with each set of financial statements delivered pursuant to paragraph (a) or (d) of Clause 19.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 20 (*Financial Covenants*) as at the end of such Financial Year or Financial Quarter (as applicable) and certifying as to whether a Default has occurred and is continuing and, if a Default has occurred that is continuing, specify the details thereof and any action taken or proposed to be taken with respect thereto.
- (b) Each Compliance Certificate shall be signed by persons authorised to represent the Company but such persons shall at least include one Financial Officer.
- (c) If a Compliance Certificate is required to be delivered together with the annual financial statements of the Company it shall set out a list of the Material Subsidiaries (identifying the Material Domestic Subsidiaries).

### 19.3 Requirements as to financial statements

- (a) The Company shall procure that each set of its annual and quarterly financial statements delivered pursuant to Clause 19.1 (*Financial statements*) includes a balance sheet, related statements of operations, stockholders' equity and cash flows as of the end of and for such Financial Year or Financial Quarter (as applicable) and the then elapsed portion of the Financial Year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Financial Year, in the case of the annual financial statements of the Company all reported on by PricewaterhouseCoopers LLP or other independent public accountants of recognised national standing (without any adverse qualification or exception as to the scope of such audit) and in the case of its quarterly financial statements all certified by one of its Financial Officers, as presenting fairly in all material respects the financial condition of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with U.S. GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

- (b) The Company shall procure that each set of financial statements of the Company delivered pursuant to Clause 19.1 (*Financial statements*) is prepared using U.S. GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the Company unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in U.S. GAAP, the accounting practices or reference periods. If a change in U.S. GAAP or in the application thereof has occurred since the date of the Original Financial Statements, the Company shall specify the effect of such change in the Compliance Certificate accompanying such Financial Statements.

#### 19.4 Accounting Terms; U.S. GAAP

Except as otherwise expressly provided in this Agreement, all terms of an accounting or financial nature shall be construed in accordance with U.S. GAAP, as in effect from time to time; **provided that**, if the Company notifies the Agent that the Company requests an amendment to any provision of this Agreement to eliminate the effect of any change in U.S. GAAP occurring after the date of this Agreement or in the application thereof on the operation of such provision (or if the Agent notifies the Company that the Majority Lenders request an amendment to any provision of this Agreement for such purpose), regardless of whether any such notice is given before or after such change in U.S. GAAP or in the application thereof, then such provision shall be interpreted on the basis of U.S. GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained in this Agreement, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (x) without giving effect to any election under Accounting Standards Codification 825-10-25 of U.S. GAAP (or any other accounting standard having a similar result or effect) to value any Financial Indebtedness or other liabilities of the Company or any Subsidiary at "fair value", as defined therein and (y) without giving effect to any treatment of Financial Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 of U.S. GAAP (or any other accounting standard having a similar result or effect) to value any such Financial Indebtedness in a reduced or bifurcated manner as described therein, and such Financial Indebtedness shall at all times be valued at the full stated principal amount thereof, net of discounts and premiums and (ii) any obligations relating to a lease that was accounted for by such person as an operating lease as of 3 June 2013 and any similar lease entered into after 3 June 2013 by such person shall be accounted for as obligations relating to an operating lease and not as obligations relating to a capital lease; provided however, that the Company may elect, with notice to the Agent to treat operating leases as capital leases in accordance with U.S. GAAP as in effect from time to time and, upon such election, and upon any subsequent change to U.S. GAAP therefor, the Parties will enter into negotiations in good faith in an effort to preserve the original intent of the financial covenants set forth Clause 20 (*Financial Covenants*) (it being understood and agreed that the treatment of operating leases be interpreted on the basis of U.S. GAAP as in effect on 3 June 2013 until such election shall have been withdrawn or such provision amended in accordance herewith).

19.5 **Budget**

- (a) The Company shall supply to the Agent as soon as the same becomes available but in any event no later than the first day of each of its Financial Years, a budget for the next Financial Year and the following two Financial Years.
- (b) The Company shall ensure that each budget is substantially in the same form as the Budget delivered to the Agent under Clause 4.1 (*Initial conditions precedent*) and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Group.

19.6 **Information: miscellaneous**

The Company shall supply to the Agent:

- (a) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Company or any of its Subsidiaries with the SEC or with any other national securities exchange and all documents dispatched by the Company to its shareholders generally, as the case may be;
- (b) promptly upon a Responsible Officer having actual knowledge of them, the details of the filing or commencement of any litigation, arbitration or administrative proceedings which are filed or commenced against any member of the Group and which have or would reasonably be expected to have a Material Adverse Effect;
- (c) promptly upon a Responsible Officer having actual knowledge thereof of the occurrence of any ERISA Event which, alone or together with any other ERISA Events that have occurred, have resulted or would reasonably be expected to have a Material Adverse Effect;
- (d) promptly upon a Responsible Officer having actual knowledge of them, of any other developments that have resulted or would reasonably be expected to have a Material Adverse Effect; and
- (e) promptly following a request therefore, such further information regarding the financial condition, business affairs and operations of any member of the Group as any Finance Party (through the Agent) may reasonably request.

19.7 **Delivery of information**

- (a) Documents required to be delivered pursuant to paragraphs (a) and (d) of Clause 19.1 (*Financial Statements*) and paragraph (a) of Clause 19.6 (*Information: miscellaneous*) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are (i) filed for public availability on the SEC's Electronic Data Gathering and Retrieval System, (ii) posted or the Company provides a link thereto on <http://www.hillenbrand.com>; or (iii) posted on the Company's behalf on an Internet or intranet website, if any, to which the Agent and the Lenders have access (whether a commercial, third-party website or whether sponsored by the Agent). Information required to be delivered pursuant to this Section may also be delivered by electronic communications pursuant to procedures approved by the Agent.
- (b) If any Lender (a "**Paper Form Lender**") notifies the Agent that it requests the delivery of a paper copy of information delivered electronically as set out in paragraph (a) above, then the Agent shall notify the Company accordingly and the Company shall supply the information delivered pursuant to paragraph (a) above to the Agent (in sufficient copies for each Paper Form Lender) in paper form.

19.8 "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 after the date of this Agreement; or
  - (iii) a proposed assignment or assignment and transfer by way of assumption of contract (*Vertragsübernahme*) 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 assignment and transfer by way of assumption of contract (*Vertragsübernahme*) or the assumption of any Commitment under this Agreement pursuant to Clause 2.2 (*Increase*) or Clause 2.3 (*Allocation of Additional Commitments*) by a party that is not a Lender prior to such assumption,

obliges the Agent or any Lender (or, in the case of paragraph (a)(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 (a)(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 (a)(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) Following the giving of any notice of intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Section 24 *Changes to the Obligors*), if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures or anti-money laundering rules and regulations in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks or anti-money laundering rules and regulations under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.



19.9 **Notice of Default**

The Company shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon a Responsible Officer having actual knowledge of its occurrence.

20. **FINANCIAL COVENANTS**

20.1 **Financial Definitions in this Clause 20:**

"**Consolidated EBITDA**" means, with reference to any period, Consolidated Net Income for such period:

(a) Plus, without duplication and to the extent deducted from revenues in determining Consolidated Net Income for such period:

- (i) interest expense;
- (ii) income tax expense;
- (iii) depreciation expense;
- (iv) amortisation expense;
- (v) all non-cash expenses, charges or losses;
- (vi) losses attributable to the early extinguishment of Indebtedness;

(vii)

(A) cash fees, costs, expenses, premiums, penalties or other losses incurred in connection with any acquisition, any asset sale or other disposal, any recapitalisation, any investment, any issuance of equity interests by the Company or any issuance, incurrence or repayment of any Indebtedness by the Company or any of its Financial Subsidiaries, the amortisation of any deferred financing charges, and/or any refinancing transaction or modification or amendment of any debt instrument (including any transaction undertaken but not completed) and

(B) non-recurring or unusual expenses,

in an aggregate amount for clauses (A) and (B), not to exceed ten percent (10%) of Consolidated EBITDA during any Relevant Period (as calculated without giving effect to the add-back of any item pursuant to this clause (vii)); and

(viii) M&A, legal and other out-of-pocket transaction fees and expenses of the Company and Bengal relating to the Bengal Acquisition and any financing related thereto (including, without limitation, any issuance, incurrence or repayment of any Indebtedness by the Company, Bengal or their respective Subsidiaries, the amortization of any deferred financing charges, and/or any refinancing transaction or modification or amendment of any debt instrument (including any transaction undertaken but not completed) related thereto);

(b) minus to the extent included in Consolidated Net Income for such period:

- (i) interest income;

- (ii) income tax benefits (to the extent not netted from tax expense);
- (iii) any cash payments made during such period in respect of items described in sub-paragraph (a)(v) above subsequent to the Financial Quarter in which the relevant non-cash expense, charge or loss was incurred; and
- (iv) gains attributable to the early extinguishment of Indebtedness,

all calculated for the Company and its Financial Subsidiaries in accordance with U.S. GAAP on a consolidated basis.

**"Consolidated Indebtedness"** means at any time, the aggregate Indebtedness of the Company and its Financial Subsidiaries calculated on a consolidated basis as of such time in accordance with U.S. GAAP but excluding 75% of the principal amount of any mandatorily convertible unsecured bonds, debentures, preferred stock or similar instruments in a principal amount not exceeding USD 500,000,000 (or its equivalent in any other currency or currencies) in the aggregate during the term of this Agreement which are payable in no more than three years (whether by redemption, call option or otherwise) solely in common stock or other common equity interests.

**"Consolidated Interest Expense"** means with reference to any Relevant Period, the interest payable on, and amortisation of debt discount in respect of, all Indebtedness of the Company and its Financial Subsidiaries calculated on a consolidated basis for such period in accordance with U.S. GAAP.

**"Consolidated Net Income"** means for any Relevant Period, the net income (or loss) of the Company and its Financial Subsidiaries calculated in accordance with U.S. GAAP on a consolidated basis (without duplication) for such Relevant Period.

**"Consolidated Revenues"** means, with reference to any Relevant Period, total revenues of the Company and its Financial Subsidiaries calculated in accordance with U.S. GAAP on a consolidated basis as of the end of such Relevant Period.

**"Consolidated Tangible Assets"** means, as of the date of determination thereof, Consolidated Total Assets minus the Intangible Assets of the Company and its Financial Subsidiaries as of that date.

**"Consolidated Total Assets"** means as of the date of determination thereof total assets of the Company and its Financial Subsidiaries calculated in accordance with U.S. GAAP on a consolidated basis as of such date.

**"Financial Subsidiary"** means any person which is (or is required to be) consolidated by the Company into its consolidated financial statements pursuant to U.S. GAAP.

**"Indebtedness"** means, as to any person at a particular time, without duplication, all of the following, but only to the extent included as indebtedness or liabilities in accordance with U.S. GAAP:

- (a) all obligations of such person for borrowed money;
- (b) all obligations of such person evidenced by bonds, debentures, notes, loan agreements or similar instruments;
- (c) all obligations of such person to pay the deferred purchase price of property or services (other than accounts payable incurred in the ordinary course of business or any earn-out obligations);

- (d) all obligations of such person in respect of indebtedness (excluding prepaid interest thereon) secured by Security on property owned or being purchased by such person (including indebtedness arising under conditional sales or other title retention agreements) whether or not such indebtedness shall have been assumed by such person or is limited in recourse;
- (e) all obligations of such person for unreimbursed payments made under letters of credit (including standby and commercial letters of credit), bankers' acceptances and bank guarantees;
- (f) all obligations of such person in respect of capital leases of such person;
- (g) (in respect of this Clause 20 only for the purpose of calculating Consolidated Indebtedness) all net obligations of such person under any Swap Agreement pertaining to interest rates; and
- (h) all guarantees granted by such person in respect of any of the foregoing.

For the purposes of this definition, the Indebtedness of any person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation, limited liability company or other limited liability entity) in which such person is a general partner or a joint venture, unless such Indebtedness is expressly made non-recourse to such person. The amount of any net obligation under a Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. Upon the defeasance or satisfaction and discharge of Indebtedness in accordance with the terms of such Indebtedness, such Indebtedness will cease to be "Indebtedness" hereunder (upon the giving or mailing of a notice of redemption and redemption funds being deposited with a trustee or paying agent or otherwise segregated or held in trust or under an escrow or other funding arrangement for the sole purpose of repurchasing, redeeming, defeasing, repaying, satisfying and discharging, or otherwise acquiring or retiring such Indebtedness, or other substantially comparable processes).

**"Intangible Assets"** means the aggregate amount, for the Company and its Financial Subsidiaries on a consolidated basis, of all assets classified as intangible assets under U.S. GAAP, including, without limitation, customer lists, acquired technology, goodwill, computer software, trademarks, patents, copyrights, organisation expenses, franchises, licenses, trade names, brand names, mailing lists, catalogues, unamortised debt discount and capitalised research and development costs.

**"Interest Coverage"** means the ratio of Consolidated EBITDA to Consolidated Interest Expense.

**"Leverage"** means the ratio of Consolidated Indebtedness to Consolidated EBITDA.

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

**"Relevant Period"** means each period of twelve months ending on a Quarter Date.

## 20.2 Financial condition

The Company shall ensure that:

- (a) **Maximum Leverage:** the ratio of (i) (x) the Company's Consolidated Indebtedness minus (y) the Liquidity Amount to (ii) Consolidated EBITDA, in each case in respect of any Relevant Period ending on or after 31 December 2017 shall not exceed a ratio of 3.50:1; **provided that** (i) the Company may, by written notice to the Agent for distribution to the Lenders and not more than twice during the term of this Agreement, elect to increase the Maximum Leverage ratio pursuant to this clause (a) to 4.00:1.00 for a period of three (3) consecutive fiscal quarters in connection with a Material Acquisition (as defined in paragraph (c) of Clause 20.3 (*Financial testing*)) that involves the payment of consideration (including assumed debt) by the Company and/or its Financial Subsidiaries in excess of USD 75,000,000 (or its equivalent in any other currency or currencies) occurring during the first of such three fiscal quarters (each such period, an "**Adjusted Covenant Period**") and (ii) notwithstanding the foregoing clause (i), the Company may not elect an Adjusted Covenant Period for at least two (2) full fiscal quarters following the end of an Adjusted Covenant Period before a new Adjusted Covenant Period is available again pursuant to the preceding clause (i) for a new period of three (3) consecutive fiscal quarters.
- (b) **Minimum Interest Coverage:** the Company's Interest Coverage ratio in respect of any Relevant Period ending on or after 31 December 2017 shall not be less than a ratio of 3.00:1.

For purposes of calculations under this Clause 20.2, prior to the consummation of the Bengal Acquisition (or until the date that is 90 days after the termination of the Bengal Acquisition Agreement), Consolidated Indebtedness shall not include Specified Senior Notes Indebtedness; provided that (i) the release of the proceeds of the Specified Senior Note Indebtedness to the Company and its Subsidiaries is contingent upon the consummation of the Bengal Acquisition and, pending such release, such proceeds are held in escrow (and, if the Bengal Acquisition Agreement is terminated prior to the consummation of the Bengal Acquisition or if the Bengal Acquisition is otherwise not consummated by the date specified in the Specified Senior Notes Indenture, such proceeds shall be promptly applied to satisfy and discharge all obligations of the Company and its Subsidiaries in respect of the Specified Senior Notes Indebtedness) or (ii) the Specified Senior Notes Indenture contains a "special mandatory redemption" provision (or other similar provision) or otherwise permits the Specified Senior Notes Indebtedness to be redeemed or prepaid if the Bengal Acquisition is not consummated by the date specified in the Specified Senior Notes Indenture (and if the Bengal Acquisition Agreement is terminated in accordance with its terms prior to the consummation of the Bengal Acquisition or the Bengal Acquisition is otherwise not consummated by the date specified in the Specified Senior Notes Indenture, the Specified Senior Notes Indebtedness is so redeemed or prepaid within 90 days of such termination or such specified date, as the case may be).

## 20.3 Financial testing

- (a) The financial covenants set out in Clause 20.2 (*Financial condition*) shall be tested as of the last day of each Relevant Period (and for the first time for the Relevant Period ending on 31 March 2018) by reference to each of the financial statements of the Company delivered pursuant to paragraphs (a) and (d) of Clause 19.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 19.2 (*Compliance Certificate*).
- (b) For the avoidance of doubt, the financial covenants set out in Clause 20.2 (*Financial condition*) shall be tested based on the consolidated financial statements of the Company and include any Financial Subsidiary.
- (c) For the purposes of calculating Consolidated EBITDA and/or Consolidated Interest Expense for any Relevant Period:
  - (i) if at any time during such Relevant Period the Company or any Financial Subsidiary shall have made any Material Disposal, the Consolidated EBITDA for such Relevant Period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Material Disposal for such Relevant Period or increased by an amount equal to Consolidated EBITDA (if negative) attributable thereto for such Relevant Period; and

- (ii) if during such Relevant Period the Company or any Financial Subsidiary shall have made a Material Acquisition, Consolidated EBITDA for such Relevant Period shall be calculated after giving effect thereto on a pro forma basis as if such Material Acquisition occurred on the first day of such Relevant Period; and
- (iii) Consolidated Interest Expense shall be determined for such period on a pro forma basis as if such acquisition or disposal, and any related incurrence or repayment of Indebtedness, had occurred at the beginning of such period.

As used in this paragraph (c):

**"Material Acquisition"** means any acquisition of property or a series of related acquisitions of property that:

- (i) constitutes:
  - (A) assets comprising all or substantially all or any significant portion of a business or operating unit of a business; or
  - (B) all or substantially all of the common stock or other Equity Interests of a person; and
- (ii) involves the payment of consideration (including assumed debt) by the Company and its Financial Subsidiaries in excess of USD 10,000,000 (or its equivalent in any other currency or currencies).

**"Material Disposal"** means any sale, transfer or disposal of property or series of related sales, transfers or disposal of property that

- (i) constitutes:
  - (A) assets comprising all or substantially all or any significant portion of a business or operating unit of a business; or
  - (B) all or substantially all of the common stock or other Equity Interests of a person, and
- (ii) involves gross proceeds to the Company or any of its Financial Subsidiaries in excess of USD 10,000,000 (or its equivalent in any other currency or currencies).

## 21. GENERAL UNDERTAKINGS

The undertakings in this Clause 21 remain in force from the date of this Agreement until both (i) the Commitments have expired or been terminated and (ii) all L/Gs have been repaid in full as set out in Clause 8 (*Repayment*) of this Agreement and there is no other amount outstanding under the Finance Documents.

### 21.1 Authorisations

The Company shall and shall cause each of its Material Subsidiaries to:

- (a) preserve and do all that is necessary to maintain in full force and effect its legal existence; and
- (b) take, or cause to be taken, all reasonable actions to preserve, renew and keep in full force and effect the rights, qualifications, licenses, permits, privileges, franchises, Authorisations and intellectual property rights material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted except, for the purposes of this paragraph (b) only, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect,

**provided that** the foregoing shall not:

- (i) prohibit any merger, consolidation, amalgamation, disposition, liquidation or dissolution permitted under Clause 21.5 (*Merger*); and
- (ii) require any member of the Group to preserve any right, qualification, license, permit, privilege, franchise, Authorisation, intellectual property right or authority to conduct its business if any member of the Group shall determine that the preservation thereon is no longer desirable in the conduct of the business of any member of the Group and that the loss thereof is not disadvantageous in any material respect to any member of the Group or the Lenders.

### 21.2 Compliance with laws

Each Obligor shall (and the Company shall ensure that its Subsidiaries will) comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including without limitation Environmental Laws), in each case except whether the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. The Company will maintain in effect and enforce policies and procedures reasonably designed to promote compliance in all material respects by the Company, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, provided that such undertaking shall (to the extent it relates to Sanctions) not be given (i) by/in respect of any Obligor or (ii) to any Lender to the extent that such undertaking would result in any violation of, conflict with or liability under EU Regulation (EC) 2271/96, section 7 of the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) or a similar anti-boycott statute.

### 21.3 Negative pledge

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security over or with respect to any of its assets, whether now owned or hereafter acquired, or assign any right to receive income.
- (b) Paragraph (a) above shall not apply to any Security which is:
  - (i) Security, if any, pursuant to any Finance Document (including Security on any cash in favour of an Issuing Bank required pursuant to the terms of this Agreement);

- (ii) Security existing on the date of this Agreement (i) that does not exceed USD 1,000,000 (or its equivalent in any other currency or currencies) or (ii) listed on Schedule 17 (*List of Existing Financial Indebtedness and Existing Security*) and any renewals or extensions thereof; **provided that** the property covered thereby is not increased and any renewal or extension of the obligations secured or benefited thereby is permitted by sub-paragraph (ii) of paragraph (b) of Clause 21.14 (*Financial Indebtedness*);
- (iii) Security for taxes not yet due and payable or which are being contested in good faith and by appropriate proceedings in the circumstances, if adequate reserves with respect thereto are maintained on the books of the applicable person in accordance with Applicable GAAP;
- (iv) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Security arising in the ordinary course of business which are not overdue for a period of more than 60 days or which are being contested in good faith and by appropriate proceedings in the circumstances, if adequate reserves with respect thereto are maintained on the books of the applicable person to the extent required in accordance with Applicable GAAP;
- (v) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation (including, but not limited to, section 8a of the German Semi-retirement Act (*Altersteilzeitgesetz*) and section 7d of the German Social Law Act No. 4 (*Sozialgesetzbuch IV*) but other than any Security imposed by ERISA), including cash collateral for obligations in respect of letters of credit, guarantee obligations or similar instruments related to the foregoing, and deposits securing liability insurance carriers under insurance or self-insurance arrangements in the ordinary course of business;
- (vi) pledges or deposits (including cash collateral for obligations in respect of letters of credit and bank guarantees) to secure the performance of bids, trade contracts and leases (other than Financial Indebtedness), statutory obligations, surety bonds (other than bonds related to judgements or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (vii) easements, rights-of-way, restrictions and other similar encumbrances affecting real property and other minor defects or irregularities in title and other similar encumbrances including the reservations, limitations, provisos and conditions, which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property of the Group taken as a whole or materially interfere with the ordinary conduct of the business of the applicable person;
- (viii) Security securing Financial Indebtedness permitted under sub-paragraph (b)(iv) of Clause 21.14 (*Financial Indebtedness*) **provided that**:
  - (A) such Security does not at any time encumber any property other than the property financed by such Financial Indebtedness; and
  - (B) the Financial Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

- (ix) Security securing Financial Indebtedness permitted under sub-paragraph (xviii) of Clause 21.14 (*Financial Indebtedness*) below;
- (x) statutory rights of set-off arising in the ordinary course of business;
- (xi) Security existing on the property at the time of acquisition thereof by any member of the Group and not created in contemplation thereof;
- (xii) Security existing on property of a Subsidiary of the Company at the time such Subsidiary of the Company is merged, consolidated or amalgamated with or into, or acquired by, any member of the Group or becomes a Subsidiary of the Company and not created in contemplation thereof;
- (xiii) Security in favour of banks which arise under Article 4 of the Uniform Commercial Code on items in collection and documents relating thereto and the proceeds thereof or which arise under banks' standard terms and conditions;
- (xiv) judgement Security in respect of judgements that do not constitute an Event of Default under Clause 22.12 (*Adverse Judgement*) or Security securing appeal or surety bonds related to such judgements, in particular but not limited to any Security granted or to be granted by Coperion GmbH in connection with a litigation between Jürgen Horstmann and, *inter alios*, ThyssenKrupp Technologies Beteiligungen and Coperion GmbH;
- (xv) any interest or title of a landlord, lessor or sublessor under any lease of real estate or any Security affecting solely the interest of the landlord, lessor or sublessor;
- (xvi) leases, licenses, subleases or sublicenses granted:
  - (A) to others not interfering in any material respect with the business of the Group, taken as a whole; or
  - (B) between or among any member of the Group;
- (xvii) purported Security evidenced by the filing of precautionary UCC financing statements, PPSA financing statements or similar filings relating to operating leases of personal property entered into by any member of the Group in the ordinary course of business;
- (xviii) any interest or title of a licensor under any license or sublicense entered into by any member of the Group as a licensee or sublicensee:
  - (A) existing on the date of this Agreement; or
  - (B) in the ordinary course of business;
- (xix) with respect to any real property, immaterial title defects or irregularities that do not, individually or in the aggregate, materially impair the use of such real property;
- (xx) Security on any cash earnest money deposits or other escrow arrangements made in connection with any letter of intent or purchase agreement;



- (xxi) Security in favour of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (xxii) Security arising out of sale and leaseback transactions;
- (xxiii) customary rights of first refusal, "tag along" and "drag along" rights, and put and call arrangements under joint venture agreements;
- (xxiv) Security on treasury stock of the Company;
- (xxv) Security (x) in favour of collecting or payor banks having a right of set-off, revocation, refund or chargeback with respect to money or instruments on deposit with or in possession of such bank, (y) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or (z) in favor of banking institutions arising as a matter of law or standard business terms and conditions encumbering deposits (including the right of setoff) and which are within the general parameters customary in the banking industry;
- (xxvi) Security securing obligations (contingent or otherwise) of any member of the Group existing or arising under any Swap Agreement;
- (xxvii) other Security securing liabilities or assignments of rights to receive income in an aggregate amount not to exceed the greater of:
  - (A) USD 150,000,000 (or its equivalent in another currency or currencies); and
  - (B) 15% of Consolidated Tangible Assets (calculated as of the end of the immediately preceding Financial Quarter for which the Company's financial statements were most recently delivered pursuant to Clause 19.1 (*Financial Statements*) or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to Clause 19.1 (*Financial Statements*), the most recent financial statements referred to in Clause 18.13 (*Financial statements*)) at any time outstanding,

**provided that**, for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred if, at the time of the creation, incurrence, assumption or initial existence thereof, such Security was permitted to be incurred pursuant to this paragraph (xxvii) notwithstanding a decrease after such time in the basket amount permitted under this paragraph (xxvii) as a result of a decrease in Consolidated Tangible Assets;
- (xxviii) Security on property or assets deposited with a trustee or paying agent or otherwise segregated or held in trust or under an escrow or other funding arrangement with respect to the Specified Senior Notes Indebtedness prior to the consummation of the Bengal Acquisition (or during the period from the Effective Date until the date that is 90 days after the termination of the Bengal Acquisition Agreement); and
- (xxix) Security on property or assets deposited with a trustee or paying agent or otherwise segregated or held in trust or under an escrow or other funding arrangement for the sole purpose of repurchasing, redeeming, defeasing, repaying, satisfying and discharging or otherwise acquiring or retiring Indebtedness.

#### 21.4 Disposals

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of all or substantially all of the assets of the Group, taken as a whole.
- (b) Paragraph (a) shall not apply to:
  - (i) the Disposal by any Subsidiary of the Company of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Company or to another Subsidiary of the Company **provided that** if the transferor in such a transaction is a wholly owned Subsidiary of the Company, then the transferee must either be the Company or a wholly-owned-Subsidiary of the Company;
  - (ii) the Disposal by the Company of its treasury stock; and
  - (iii) the Company and any of its Subsidiaries entering into any transaction permitted by Clause 21.5 (*Merger*).

#### 21.5 Merger

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will) merge, consolidate or amalgamate with or into another person.
- (b) Paragraph (a) shall not apply to:
  - (i) any Subsidiary of the Company:
    - (A) merging or consolidating with or into the Company, **provided that** the Company shall be the continuing or surviving person; or
    - (B) merging, consolidating or amalgamating with any one or more other Subsidiaries of the Company, **provided that** when any wholly-owned Subsidiary of the Company is merging or amalgamating with another Subsidiary of the Company, the wholly owned Subsidiary of the Company shall be the continuing or surviving person (or the continuing corporation resulting from such amalgamation, shall be the wholly owned Subsidiary of the Company);
  - (ii) any member of the Group merging (or in the case of a Subsidiary of the Company, amalgamating) with any person in a transaction that would be an acquisition permitted under paragraph (b) of Clause 21.12 (*Acquisitions*) or a Disposal that is permitted under paragraph (b) of Clause 21.4 (*Disposals*) **provided that** in the case of an acquisition:
    - (A) if the Company is a party to such merger, it shall be the continuing or surviving person; or
    - (B) if any Obligor (other than the Company) is a party to such merger or amalgamation, such Obligor shall be the continuing or surviving person (or the continuing corporation resulting from such amalgamation shall be the Obligor and shall have executed and delivered to the Agent a confirmation to that effect reasonably satisfactory to the Agent); and

(iii) any member of the Group entering into any transaction permitted by paragraph (b) of Clause 21.4 (*Disposals*).

**21.6 Change of business**

No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any material line of business if, after giving effect thereto, the business of the Group (taken as a whole) would be substantially different from the business in which the Group (taken as a whole) are presently engaged provided that this Clause 21.6 shall not prohibit the Company or its Subsidiaries from entering into (x) any line of business that is reasonably related, incidental, ancillary or complementary to, or any reasonable extension, development or expansion of, the business in which the Company and its Subsidiaries, taken as a whole, are presently engaged, or (y) any other non-core incidental businesses acquired in connection with any acquisition or investment not prohibited hereunder.

**21.7 Centre of Main Interests and Establishments**

Each Obligor incorporated in a member state of the European Union shall cause its registered office and "centre of main interests" (as that term is used in Article 3(1) of the regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)) to be situated solely in its jurisdiction of incorporation and shall have an "establishment" (as that term is used in Article 2(10) of the regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)) situated solely in its jurisdiction of incorporation.

**21.8 Preservation of assets and insurance**

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

- (a) keep and maintain all property material to the conduct of the business of the Group (taken as a whole) in good working order and condition, ordinary wear and tear excepted; and
- (b) maintain insurances with financially sound and reputable insurance companies or with a captive insurance company that is an Affiliate of the Company in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

**21.9 Pari passu**

Each Obligor shall ensure that its payment obligations under the Finance Documents rank at all time at least *pari passu* with the claims of all of its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

#### 21.10 Taxation

Each Obligor shall (and the Company shall ensure that each member of the Group will) pay and discharge all Taxes that, if not paid, would reasonably be expected to result in a Material Adverse Effect before the same shall become delinquent or in default unless and only to the extent that:

- (a) the validity or amount of such payment is being contested in good faith by appropriate proceedings;
- (b) the Company or such member of the Group has set aside on its books adequate reserves with respect thereto in accordance with Applicable GAAP; and
- (c) the failure to pay those Taxes would not reasonably be expected to result in a Material Adverse Effect.

#### 21.11 Compliance with Swiss Non-Bank Rules

Each Swiss Borrower shall ensure at any time that it is in compliance with the Swiss Non-Bank Rules. This undertaking shall not be deemed to be breached if the Swiss Non-Bank Rules are breached as a result solely of:

- (a) a Lender has failed to comply with its obligations under Clause 23 (*Changes to Lenders*);
- (b) a Lender ceased to be a Swiss Qualifying Bank other than as a result of any change after the date it became a Finance Party under this Agreement in (or in the interpretation, administration or application of) any law or any published practice or concession of any relevant taxing authority.

#### 21.12 Access

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

- (a) keep proper books of record and accounts of all material financial dealings and transactions in relation to its business activities, which entries are true and correct in all material respects and, subject to Clause 19.1 (*Financial Statements*), in form permitting financial statements conforming with GAAP to be derived therefrom; and
- (b) permit that representatives designated by the Agent access at reasonable times and upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and, **provided that** any member of the Group is afforded the opportunity to participate in such discussions, its independent accountants, all at such reasonable times and as often as reasonably requested, **provided that** such visitations, inspections or examinations shall not occur more frequently than once per calendar year so long as no Event of Default has occurred and is continuing.

The Company acknowledges that the Agent, after exercising its rights of inspection, may, subject to Clause 35 (*Confidentiality*), prepare and distribute to the Lenders certain reports pertaining to the Group's assets for internal use by the Agent and the Lenders. Notwithstanding anything to the contrary in this Clause 21.12, no member of the Group will be required to disclose, permit the inspection, examination or making of extracts, or discussion of, any documents, information or other matter that:

- (i) constitutes non-financial trade secrets or non-financial proprietary information;
- (ii) in respect of which disclosure to the Agent (or any designated representative) is then prohibited by law or any agreement binding on any member of the Group; or
- (iii) is subject to lawyer-client or similar privilege which constitutes lawyer work-product.

#### 21.13 Acquisitions

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no other member of the Group will) acquire (in one or a series of transactions) all of the capital stock or equity interests or all or substantially all of the assets of any person.
- (b) Paragraph (a) shall not apply to any acquisition of all of the capital stock or equity interests or all or substantially all of the assets of any person where:
  - (i) immediately before and after giving effect thereto, no Default shall have occurred and be continuing or would result therefrom; and
  - (ii) (A) the aggregate amount invested (including assumed debt) is less than or equal to USD 375,000,000 (or its equivalent in any other currency or currencies); or
    - (B) the aggregate amount invested (including assumed debt) is greater than USD 375,000,000 (or its equivalent in any other currency or currencies), and not less than five Business Days prior to the consummation of any such acquisition or series of acquisitions, the Company delivers to the Agent relevant financial information, statements and projections reasonably requested by the Agent for the Relevant Period ending on the last day of the Financial Quarter for which consolidated financial statements have most recently been delivered pursuant to Clause 19.1 (*Financial statements*), such relevant financial statements giving effect to the acquisition of the company or business on a pro forma basis and to be delivered together with a certificate by a Responsible Officer of the Company demonstrating pro forma compliance with Clause 20 (*Financial Covenants*) after giving effect to such acquisition or series of acquisitions for that Relevant Period;

**provided that** notwithstanding anything to the contrary set forth in this Clause 21.13, it is hereby understood and agreed that the Bengal Acquisition is permitted under this Clause 21.13 and is not subject to the requirements set forth in the foregoing paragraphs (i) and (ii).

## 21.14 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) shall not apply to:
- (i) Financial Indebtedness arising under the Finance Documents;
  - (ii) Financial Indebtedness that:
    - (A) is outstanding on the date hereof and is less than USD 2,000,000 (or its equivalent in any other currency or currencies) individually or USD 15,000,000 in the aggregate; or
    - (B) arises or is incurred under agreements listed in Schedule 17 (*List of Existing Financial Indebtedness and Existing Security*) and any refinancings, refundings, renewals or extensions thereof,

**provided that** the amount of such Financial Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilised thereunder;
  - (iii) obligations (contingent or otherwise) of the Company or any Subsidiary existing or arising under any Swap Agreement, **provided that** such obligations are (or were) entered into in the ordinary course of business and not for purposes of speculation;
  - (iv) Financial Indebtedness in respect of capital leases and purchase money obligations for fixed or capital assets and any refinancings, refundings, renewals or extensions thereof **provided that** the amount of such Financial Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilised thereunder **provided that** the only property subject to such capital leases and purchase money obligations is the property so acquired;
  - (v) Financial Indebtedness that may be deemed to exist pursuant to surety bonds, appeal bonds, supersedeas bonds or similar obligations incurred in the ordinary course of business;
  - (vi) so long as no Default has occurred and is continuing or would result therefrom at the time of incurrence, (1) the Specified Senior Notes Indebtedness and (2) any other unsecured Financial Indebtedness of (x) the Company or any Guarantor and (y) any Borrower under and as defined in the Existing US Facility Agreement which is a Foreign Subsidiary, in the case of clause (y), in an aggregate principal amount not to exceed the greater of (i) USD 200,000,000 and (ii) 20% of Consolidated Tangible Assets (calculated as of the end of the immediately preceding Financial Quarter for which the Company's financial statements were most recently delivered pursuant to paragraph (a) or (d) of Clause 19.1 (*Financial statements*) or, if prior to the date of the delivery of the first financial statements to be delivered pursuant to paragraph (a) or (d) of Clause 19.1 (*Financial statements*), the Original Financial Statements **provided that, in each case,** such Financial Indebtedness is not senior in right of payment to the payment of the Financial Indebtedness arising under this Agreement and the Finance Documents;

- (vii) Financial Indebtedness of a Subsidiary of the Company to the Company or any of the Company's other Subsidiaries or Financial Indebtedness of the Company to any Subsidiary of the Company in connection with loans or advances **provided that** each item of intercompany debt shall be unsecured and such Financial Indebtedness shall only be permitted under this sub-paragraph (b)(vii) to the extent it will be eliminated for the purposes of the consolidated financial statements of the Company in accordance with U.S. GAAP;
- (viii) Financial Indebtedness arising as a result of the endorsement in the ordinary course of business of negotiable instruments in the course of collection;
- (ix) Financial Indebtedness incurred in connection with the acquisition of all or a portion of Hill-Rom Company, Inc.'s interest in the real and personal property described in the Farm Agreement;
- (x) guarantees by the Company of Financial Indebtedness of any Subsidiary of the Company and by any Subsidiary of the Company of Financial Indebtedness of the Company or any other Subsidiary of the Company **provided that** the Financial Indebtedness so guaranteed is permitted by this paragraph (b);
- (xi) Financial Indebtedness owed to any person providing workers' compensation, health, disability or other employee benefits or property, casualty, liability or other insurance to the Company or any Subsidiary of the Company, including pursuant to reimbursement or indemnification obligations to such person, in each case incurred in the ordinary course of business;
- (xii) customary contingent indemnification obligations to purchasers in connection with any Disposal;
- (xiii) Financial Indebtedness of any person that becomes a Subsidiary of the Company after the date of this Agreement, **provided that** such Financial Indebtedness exists at the time such person becomes a Subsidiary of the Company and is not created in contemplation thereof, and any refinancings, refundings, renewals or extensions thereof, **provided that** the amount of such Financial Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilised thereunder;
- (xiv) Financial Indebtedness in respect of netting services, cash management obligations, overdraft protections and otherwise in connection with deposit accounts and Financial Indebtedness arising from the honouring by a bank or other financial institution of a cheque, draft or similar instrument inadvertently (except in the case of daylight overdrafts) being drawn against insufficient funds in the ordinary course of business;

- (xv) Financial Indebtedness with respect to the deferred purchase price of property acquired and any refinancings, refundings, renewals or extensions thereof **provided that** the amount of such Financial Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to any existing commitments unutilised thereunder or by an amount equal to a reasonable premium or other reasonable amount paid and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilised thereunder;
- (xvi) Financial Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards or purchase cards (including so-called "procurement cards" or "P-cards") in each case, incurred in the ordinary course of business;
- (xvii) contingent liabilities in respect of any indemnification obligations, adjustment of purchase price, non-compete, or similar obligations (other than guarantees of any Financial Indebtedness for borrowed money) of the Company or any Subsidiary of the Company incurred in connection with the consummation of one or more acquisitions;
- (xviii) other Financial Indebtedness not covered under paragraphs (i) to (xvii) above in an aggregate principal amount not to exceed the greater of:
  - (A) USD 150,000,000 (or its equivalent in any other currency or currencies); and
  - (B) 15 per cent. of Consolidated Tangible Assets (calculated as of the end of the immediately preceding Financial Quarter for which the Company's financial statements were most recently delivered pursuant to Clause 19.1 (*Financial statements*), or if prior to the date of the delivery of the first financial statements to be delivered pursuant to Clause 19.1 (*Financial statements*), the Original Financial Statements) **provided that** for the avoidance of doubt, no Default or Event of Default shall be deemed to have occurred if, at the time of creation, incurrence, assumption or initial existence thereof, such Financial Indebtedness was permitted to be incurred pursuant to this sub-paragraph (xviii) notwithstanding a decrease after such time in the basket amount permitted under this sub-paragraph (xviii) as a result of a decrease in Consolidated Tangible Assets.

#### 21.15 Permitted Distributions and Payments

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Company shall ensure that no member of the Group will) declare or make any Restricted Payment or incur any obligation (contingent or otherwise) to do so.
- (b) Paragraph (a) above shall not apply to:
  - (i) any Subsidiary of the Company making Restricted Payments to any member of the Group (and, in the case of a Restricted Payment by a non-wholly-owned Subsidiary of the Company, such Restricted Payment may be made to each other owner of capital stock or other equity interests of such Subsidiary of the Company on a pro rata basis based on their relative ownership interests);



- (ii) any member of the Group declaring or making any dividend payments or other distributions payable solely in the common stock or other common equity interests of such person;
- (iii) any member of the Group purchasing, redeeming or otherwise acquiring shares of its common stock or other common equity interests or warrants or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common equity interests;
- (iv) any member of the Group making distributions to current and former employees, officers or directors of any member of the Group (or any spouses, ex-spouses or estates of any of the foregoing) on account of purchases, redemptions or other acquisitions of Equity Interests of any member of the Group held by such persons; and/or
- (v) the Company declaring and paying cash dividends to its stockholders and purchasing, redeeming or otherwise acquiring shares of its capital stock or warrants, rights or options to acquire any such shares for cash **provided that** immediately after giving effect to such proposed action, no Event of Default would exist.

21.16 **Burdensome Agreements**

- (a) No Obligor shall (and the Company shall ensure that no member of the Group will) enter into any Contractual Obligation that limits the ability:
  - (i) of any Subsidiary of the Company to make Restricted Payments to the Company;
  - (ii) of any Subsidiary of the Company to guarantee the Financial Indebtedness of the Borrowers under the Finance Documents; or
  - (iii) of any member of the Group to create, incur, assume or suffer to exist Security on property of such person to secure the obligations of the Obligors under the Finance Documents,
- (b) Paragraph (a) of this Clause 21.16 shall not apply to any Contractual Obligation:
  - (i) set out in this Agreement or any other Finance Document;
  - (ii) on subletting or assignment of any leases or licenses of any member of the Group or on the assignment of a Contractual Obligation or any rights thereunder or any other customary non-assignment provisions, in each case entered into in the ordinary course of business;
  - (iii) set out in Contractual Obligations for the disposal of assets (including any Equity Interests in any Subsidiary of the Company) of any member of the Group **provided that** such restrictions and conditions apply only to the assets or Subsidiary of the Company that is to be sold;
  - (iv) set out in the Farm Agreement;
  - (v) set out in any Contractual Obligation governing Financial Indebtedness permitted under sub-paragraphs (ii), (iv), (vi), (x), (xiii), (xv) or (xviii) of paragraph (b) of Clause 21.14 (*Financial Indebtedness*);

- (vi) with respect to cash or other deposits (including escrowed funds) received by any member of the Group in the ordinary course of business and assets subject to Security permitted by sub-paragraphs (ii), (v), (vi), (viii), (x), (xi), (xii), (xiv), (xx), (xxii) or (xxvii) of paragraph (b) of Clause 21.3 (*Negative pledge*);
- (vii) set out in joint venture agreements or other similar agreements concerning joint ventures and applicable solely to such joint venture;
- (viii) set out in any Contractual Obligation relating to an asset being acquired existing at the time of acquisition or a Subsidiary of the Company existing at the time such Subsidiary of the Company is merged, consolidated or amalgamated with or into, or acquired by, any member of the Group or becomes a Subsidiary of the Company and, in each case, not in contemplation thereof;
- (ix) contained in any trading, netting, operating, construction, service, supply, purchase, credit card, credit card processing service, debit card, stored value card, purchase card (including a so-called “procurement card” or “P-card”) or other agreement to which any member of the Group is a party and entered into in the ordinary course of business; provided that such agreement prohibits the encumbrance of solely the property or assets of any member of the Group that are the subject of such agreement, the payment rights arising thereunder, the accounts associated with such agreement, or the proceeds thereof and does not extend to any other asset or property of any member of the Group or the assets or property of any other Subsidiary;
- (x) (A) existing by virtue of any transfer of, agreement to transfer, option or right with respect to, or Security in, any property or assets of the Company or any Material Subsidiary not otherwise prohibited by this Agreement (so long as such limitation or restriction applies only to the property or assets subject to such transfer, agreement to transfer, option, right or Security), (B) contained in mortgages, pledges or other security agreements securing Financial Indebtedness of a Subsidiary to the extent restricting the transfer of the property or assets subject thereto, (C) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of any member of the Group, (D) pursuant to customary provisions in any swap or derivative transactions (including any Swap Agreement), (E) pursuant to customary provisions in leases or licenses of intellectual property (or in other contracts governing intellectual property rights) and other similar agreements entered into in the ordinary course of business, (F) pursuant to customary net worth provisions contained in real property leases entered into by Subsidiaries, so long as the Company has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Group to meet their ongoing obligations or (G) on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;
- (xi) customary restrictions and conditions contained in the document relating to Security permitted under this Agreement, so long as (1) such restrictions or conditions relate only to the specific asset subject to such Security, and (2) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Clause 21.16; or

- (xii) customary restrictions required by, or arising by operation of law under, applicable law, rule or regulation to the extent contained in a document relating to the Equity Interests or governance of any Foreign Subsidiary that is not a Borrower.

#### 21.17 Use of Proceeds

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) use the proceeds of any Utilisations, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case, in violation of Regulation T, U and Regulation X of the Board. No Borrower will request any Letter of Credit, and no Borrower shall use, and the Company shall procure that its other Subsidiaries shall not use, a Letter of Credit (i) for the purpose of making an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation in any material respect of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, in each case, in violation of applicable Sanctions or (iii) in any manner that would result in the violation of any Sanctions applicable to any party thereto.
- (b) The undertaking given in the immediately preceding paragraph shall not be given (i) by any Obligor or (ii) to any Lender to the extent that such undertaking would result in any violation of, conflict with or liability under EU Regulation (EC) 2271/96, section 7 of the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) or a similar anti-boycott statute.

#### 21.18 Compliance with U.S. Regulations

No Obligor currently is required to be registered as an "investment company" (as such term is defined in the United States Investment Company Act of 1940) and the Company shall ensure that no Obligor is required to register as an investment company under such act if such registration would cause the making of any Utilisation, or the application of the proceeds or repayment of any Utilisation by any Obligor or the consummation of the other transactions contemplated by this Agreement, to violate any provision of such act or any rule, regulation or order of the SEC thereunder.

### 22. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 22 is an Event of Default (save for Clause 22.15 *Acceleration*) and Clause 22.16 *Acceleration for Insolvency*)).

#### 22.1 Non-payment

An Obligor does not pay on the due date any amount payable by an Obligor 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 administrative or technical error; and
- (b) payment is made within five Business Days of its due date.

22.2 **Financial covenants**

Any requirement of Clause 20 (*Financial Covenants*) is not satisfied.

22.3 **Other obligations**

An Obligor does not comply with any provision of the Finance Documents relating to an Obligor (other than those referred to in Clause 22.1 (*Non-payment*) and Clause 20 (*Financial Covenants*) above), and such failure shall continue unremedied for a period of 15 Business Days after notice thereof from the Agent to the Company (which notice will be given at the request of any Lender).

22.4 **Misrepresentation**

Any representation or warranty made or deemed to be made by or on behalf of an Obligor in the Finance Documents or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Finance Document or any amendment or modification thereof or waiver thereunder, proves to have been incorrect in any material respect when made or deemed to be made.

22.5 **Cross default**

- (a) Any Material Indebtedness of any member of the Group is not paid when due which failure to pay is not cured within any applicable grace period after delivery of any applicable required notice.
- (b) Any Material Indebtedness of any member of the Group becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any creditor of any member of the Group becomes entitled, after the expiration of any applicable grace period and delivery of any applicable required notice, to declare any Material Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (d) For the avoidance of doubt, paragraphs (b) and (c) shall not apply if any Material Indebtedness:
  - (i) becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness;
  - (ii) becomes due as a result of a refinancing thereof permitted pursuant to this Agreement;
  - (iii) constitutes any reimbursement obligation in respect of a letter of credit as a result of a drawing thereunder by a beneficiary therein in accordance with its terms;
  - (iv) is mandatorily prepayable prior to the scheduled maturity thereof with the proceeds of the issuance of capital stock, the incurrence of other Material Indebtedness or the sale or other disposal of any assets, that has become due so long as it is prepaid in full with such net proceeds required to be prepaid when due (or within any applicable grace period) and such event shall not have otherwise resulted in an event of default with respect thereto;

- (v) is repaid by way of any redemption, conversion or settlement that is convertible into Equity Interests (and cash in lieu of fractional shares) and/or cash (in lieu of such Equity Interests in an amount determined by reference to the price of the common stock of the Company at the time of such conversion or settlement) in the Company pursuant to its terms unless such redemption, conversion or settlement results from a default thereunder or an event of a type that constitutes an Event of Default;
- (vi) becomes due as a result of prepayments required by the terms of Indebtedness as a result of customary provisions in respect of illegality, replacement of lenders and gross-up provisions for Taxes, increased costs, capital adequacy and other similar customary requirements; and
- (vii) becomes due as a result of any voluntary prepayment, redemption or other satisfaction of Indebtedness becoming mandatory in accordance with the terms of such Indebtedness solely as the result of the Company or any Subsidiary delivering a prepayment, redemption or similar notice with respect to such prepayment, redemption or other satisfaction.

## 22.6 Insolvency

- (a) The Company, any Borrower or any Material Subsidiary is unable or admits in writing its inability or failure generally to pay its debts as they fall due and in particular any Borrower or Material Subsidiary incorporated in Germany is unable to pay its debts as they fall due (*zahlungsunfähig*) within the meaning of section 17 of the Insolvency Code (*Insolvenzordnung*).
- (b) Any Borrower or any Material Subsidiary (other than the Company, any other Borrower or any Material Subsidiary incorporated in a jurisdiction of the U.S.):
  - (i) by reasons of actual or anticipated financial difficulties commences negotiations with its creditors in general (or any class of them) with a view to rescheduling any of its indebtedness;
  - (ii) the value of the assets of which are less than its liabilities (taking into account contingent and prospective liabilities) and under the laws of the respective jurisdiction of incorporation or organisation of that entity, this constitutes a reason for the opening of insolvency proceedings;
  - (iii) which is a Borrower organized under the laws of England and Wales, or which is a Borrower capable of becoming subject of an order for winding-up or administration under the Insolvency Act 1986, is deemed to or declared to be unable to pay its debts when due.
- (c) Any Material Subsidiary or any Borrower incorporated in Germany is deemed to or declared to be unable to pay its debts when due, suspends or announces its intention to suspend payments of any of its debts, is over-indebted (*überschuldet*) within the meaning of section 19 of the Insolvency Code (*Insolvenzordnung*) or, with respect to any other Material Subsidiary or any Borrower which is neither incorporated in Germany nor in a jurisdiction of the U.S. the value of its assets is less than its liabilities and under the laws of its respective jurisdiction of incorporation this constitutes a reason for the opening of insolvency proceedings.

## 22.7 Insolvency proceedings

- (a) An involuntary proceeding is commenced or an involuntary petition is filed against the Company, any Borrower or any Material Subsidiary seeking:
- (i) liquidation, reorganisation or other relief in respect of the Company or any Material Subsidiary or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect (including, without limitation, any applicable provisions or any corporations legislation); or
  - (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company or any Material Subsidiary or for a substantial part of its assets,
- and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered.
- (b) The Company, any Borrower or any Material Subsidiary shall:
- (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect (including, without limitation, any applicable provisions or any corporations legislation);
  - (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph 22.7(a)(i) of this Clause 22.7;
  - (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Company, any Borrower or any Material Subsidiary or for a substantial part of its assets;
  - (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding;
  - (v) make a general assignment for the benefit of creditors; or
  - (vi) take any action for the purpose of effecting any of the foregoing.
- (c) Any board or shareholder resolution is passed, legal proceedings or other constitutional procedure or step is taken by any Obligor or Material Subsidiary (other than any Obligor or Material Subsidiary incorporated in a jurisdiction of the U.S.) (such Obligor or Material Subsidiary, a "**Non-U.S. Entity**") whether voluntary or involuntary in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Non-U.S. Entity other than a solvent liquidation or reorganisation of any Non-U.S. Entity which is not an Obligor;
  - (ii) (by reason of financial difficulties) a composition, compromise, assignment or arrangement with any creditor of any Non-U.S. Entity;
  - (iii) the appointment of a liquidator (other than in respect of a solvent liquidation of any Non-U.S. Entity which is not an Obligor), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Non-U.S. Entity or any of its assets;

- (iv) enforcement of any Security over any assets of any Borrower organized under the laws of England and Wales, or any other Borrower capable of becoming subject of an order for winding-up or administration under the Insolvency Act 1986, if in excess of GBP 25,000,000; or
- (v) any analogous procedure or step is taken in any jurisdiction.

This paragraph (c) shall not apply to any to any action, proceeding, procedure or formal step which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement.

- (d) Any corporate action legal proceeding or other formal step or procedure is taken by or in relation to a Borrower or Material Subsidiary incorporated in Germany in relation to:
  - (i) the filing for the opening of insolvency proceedings (*Antrag auf Eröffnung eines Insolvenzverfahrens*) in relation to it or any of its assets; or
  - (ii) the competent court takes any of the actions set out in section 21 German Insolvency Code (*Anordnung von Sicherungsmaßnahmen*) against it; or
  - (iii) a competent court institutes or rejects (for reason of insufficiency of its funds to implement such proceedings (*Abweisung mangels Masse*)) insolvency proceedings against it (*Eröffnung des Insolvenzverfahrens*)

save that this paragraph (d) shall not apply to any action, proceeding, procedure or formal step which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement.

#### 22.8 **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects a substantial part of the assets of the Company, any Borrower or the Material Subsidiaries and is not discharged within 15 Business Days.

#### 22.9 **Ownership of the Borrowers**

The Company ceases to own, directly or indirectly and/or control 100 per cent. (other than (i) directors' qualifying shares and (ii) shares issued to foreign nationals to the extent required by applicable law) of the ordinary voting and economic power of any Borrower.

#### 22.10 **Unlawfulness**

It is or becomes unlawful for an Obligor to perform any of its material obligations under the Finance Documents.

#### 22.11 **Repudiation or invalidity**

- (a) An Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document in any material respect.
- (b) Any material provision of any Finance Document that is binding on an Obligor ceases to be valid, binding or enforceable in accordance with its terms.

**22.12 Adverse Judgement**

- (a) A judgement or order for the payment of an amount exceeding USD 75,000,000 (or its equivalent in any other currency or currencies) (net of any amounts that are covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and as to which such insurer, which shall be rated at least "A" by A.M. Best Company, has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order) is rendered against a member of the Group and remains undischarged or unpaid and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 60 days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.
- (b) No Event of Default will occur under this Clause 22.12 in respect of the litigation between Jürgen Horstmann and, *inter alios*, ThyssenKrupp Technologies Beteiligungen and Coperion GmbH.

**22.13 ERISA Event**

Any ERISA Event shall have occurred that, when aggregated with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

**22.14 Cessation of Business**

Other than pursuant to a transaction expressly permitted pursuant to this Agreement, any Obligor ceases to carry on all or a material part of its business it carried on at the date of signing of the Agreement to the extent that such cessation would reasonably be expected to result in a Material Adverse Effect.

**22.15 Acceleration**

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

- (a) cancel the Total Commitments whereupon they shall immediately be cancelled; and/or
- (b) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;

**22.16 Acceleration for Insolvency**

If an Event of Default under paragraphs (a) or (b) of Clause 22.7 (*Insolvency Proceedings*) shall occur in respect of any Obligor in any U.S. jurisdiction or is being commenced in any U.S. court, then without notice to such Obligor or any other act by the Agent or any other person, the Utilisations made available to or for the benefit of such Obligor, interest thereon or other fees and all other amounts owed by such Obligor under the Finance Documents shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which are expressly waived.



## 23. CHANGES TO THE LENDERS

### 23.1 Assignments and transfers by the Lenders

No Lender may transfer or assign any of its rights or obligations under any Finance Document, except that, subject to this Clause 23, a Lender (the **Existing Lender**) may:

- (a) assign any of its rights; or
- (b) assign and transfer by assumption of contract (*Vertragsübernahme*) 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 investing into L/G facilities and issuing of L/Gs (other than an Ineligible Institution) (the **"New Lender"**).

### 23.2 Conditions of assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*)

- (a) The consent of the Company is required for an assignment or an assignment and transfer by assumption of contract (*Vertragsübernahme*) by an Existing Lender, unless the assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) is:
  - (i) to another Lender or an Affiliate of a Lender; and such Affiliate of a Lender is a Swiss Qualifying Bank;
  - (ii) an Approved Fund, provided such transfer does not lead to a violation of the Swiss Ten Non-Qualifying Bank Creditor Rule; or
  - (iii) (iii) made at a time when an Event of Default under Clause 22.1 (Non payment), Clause 22.6 (Insolvency) and/or Clause 22.7 (Insolvency proceedings) is continuing.
- (b) The consent of the Company to an assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) must not be unreasonably withheld or delayed. The consent of the Company is not deemed to be unreasonably withheld if the proposed assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) would lead to a breach of the Swiss Ten Non-Qualifying Bank Creditor Rule. The Finance Parties shall have the right to make assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) in relation to this Agreement to up to 10 (ten) New Lenders that are not a Swiss Qualifying Bank and the Company and each Swiss Borrower shall ensure that the acceptance of up to 10 (ten) New Lenders that are not a Swiss Qualifying Bank under this Agreement would not cause a breach of the Swiss Twenty Non-Qualifying Bank Creditor Rule at any time. The Company will be deemed to have given its consent (10) ten Business Days after the Existing Lender has requested it in writing unless consent is expressly refused by the Company within that time.
- (c) An assignment will only be effective on:
  - (i) receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender and, with respect to a Swiss Borrower, if the New Lender represents in the Transfer Certificate to the Agent and each Obligor whether or not it is a Swiss Qualifying Bank; 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 Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

- (d) An assignment and transfer by assumption of contract (*Vertragsübernahme*) will only be effective if the procedure set out in Clause 23.5 *Procedure for assignment and transfer by assumption of contract (Vertragsübernahme)* is complied with.
- (e) If:
  - (i) a Lender assigns or assigns and transfers by assumption of contract (*Vertragsübernahme*) 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, assignment and transfer by assumption of contract (*Vertragsübernahme*) or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and Indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, assignment and transfer by assumption of contract (*Vertragsübernahme*) or change had not occurred. This paragraph (e) shall not apply in relation to Clause 12 (*Tax gross-up and Indemnities*), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (j)(ii)(B) of Clause 12.2 (*Tax gross-up*) if the Borrower making the payment has not made a Borrower DTTP Filing in respect of that Treaty Lender.

- (f) Each New Lender, by executing the relevant Transfer Certificate 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 assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) 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.
- (g) The New Lender agrees, by executing the relevant Transfer Certificate, that its identity and other information regarding its status as to whether or not it is a Swiss Qualifying Bank may be disclosed to the Swiss Federal Tax Administration (if the latter so requests).

### 23.3 **Assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) fee**

The New Lender shall, on the date upon which an assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) takes effect, pay to the Agent (for its own account) a fee of EUR 3,000.

### 23.4 **Limitation of responsibility of Existing Lender**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
  - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents 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 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-assignment or a re-assignment and re-transfer by assumption of contract (*Vertragsübernahme*) from a New Lender of any of the rights and obligations assigned or assigned and transferred by assumption of contract (*Vertragsübernahme*) under this Clause 23; or
  - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

23.5 **Procedure for assignment and transfer by assumption of contract (*Vertragsübernahme*)**

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or assignment and transfer by assumption of contract (Vertragsübernahme)*) an assignment and transfer by assumption of contract (*Vertragsübernahme*) is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- (b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) On the Transfer Date:
  - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to assign and transfer by assumption of contract (*Vertragsübernahme*) its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the **"Discharged Rights and Obligations"**);

- (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
- (iii) the Agent, the Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the assignment and transfer by assumption of contract (*Vertragsübernahme*) and to that extent the Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a "Lender".

**23.6 Copy of Transfer Certificate or Increase Confirmation to Company**

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

**23.7 Security over Lenders' rights**

In addition to the other rights provided to Lenders under this Clause 23, each Lender may without consulting with or obtaining consent from any Obligor, at any time assign, charge, pledge 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 any assignment, charge, pledge or other Security to secure obligations to a federal reserve or central bank except that no such assignment, charge, pledge or Security shall:

- (a) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant assignment, charge, pledge or Security for the Lender as a party to any of the Finance Documents; or
- (b) require any payments to be made by an Obligor other than or in excess of, 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.

**23.8 Register**

The Agent, acting solely for this purpose as a non-fiduciary agent of any Borrower, shall maintain a copy of each Transfer Certificate, Increase Confirmation, or an assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) delivered to it and a register for the recording of the names and addresses of the Lenders, and the Commitments of, and the Utilisations owing to, each Lender pursuant to the terms hereof from time to time (for the purposes of this provision, the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Obligors, the Agent and the Lenders shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Obligors and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

## 24. CHANGES TO THE OBLIGORS

### 24.1 Assignments and transfers by Obligors

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

### 24.2 Additional Borrowers

- (a) Subject to compliance with the provisions of paragraph (c) of Clause 19.8 (*"Know your customer" checks*), the Company may, by not less than 10 Business Days' prior written notice to the Agent, request that any of its wholly owned Subsidiaries becomes an Additional Borrower (*Vertragsbeitritt*). That Subsidiary shall become an Additional Borrower if:
- (i) It is a Subsidiary incorporated in a jurisdiction of a Borrower;
  - (ii) it is a Subsidiary incorporated in an Approved Jurisdiction and the Majority Lenders approve the addition of that Subsidiary (such approval not to be unreasonably withheld or delayed); or
  - (iii) it is a Subsidiary incorporated in any other jurisdiction and all the Lenders approve the addition of that Subsidiary (such approval not to be unreasonably withheld or delayed); and in each case
    - (A) the Company delivers to the Agent a duly completed and executed Accession Letter;
    - (B) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
    - (C) the Agent has received all of the documents and other evidence listed in Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*).

### 24.3 Resignation of a Borrower

- (a) The Company may request that a Borrower (other than Coperion GmbH) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
- (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case); and
  - (ii) the Borrower has repaid its L/G (and any L/G of its Affiliates, if any), any fees, interests or costs relating thereto and any other amount payable by such Borrower (or any Affiliate of it) under the Finance Documents (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made),

whereupon that company shall cease to be a Borrower and shall have no further rights or further obligations under the Finance Documents from the date of effectiveness of that resignation.

#### 24.4 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraph (c) of Clause 19.8 (*"Know your customer" checks*), the Company may, by not less than 10 Business Days' prior written notice to the Agent, request that any of its wholly owned Subsidiaries or any Domestic Subsidiary become an Additional Guarantor. That Subsidiary or Domestic Subsidiary shall become an Additional Guarantor if:
  - (i) it is a Subsidiary incorporated in an Approved Jurisdiction and it is either a Domestic Subsidiary or the Majority Lenders approve the addition of that Subsidiary (such approval not to be unreasonably withheld or delayed); or
  - (ii) it is a Subsidiary incorporated in any other jurisdiction and all the Lenders approve the addition of that Subsidiary (such approval not to be unreasonably withheld or delayed); and in each case
    - (A) the Company delivers to the Agent a duly completed and executed Accession Letter; and
    - (B) the Agent has received all of the documents and other evidence listed in Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- (b) The Company shall procure that any other member of the Group which is a Material Domestic Subsidiary (except for any Excluded Subsidiary) shall, as soon as possible after becoming a Material Domestic Subsidiary but in any event within 45 days after delivery of the respective annual Compliance Certificate showing that such member of the Group qualifies as a Material Domestic Subsidiary becomes an Additional Guarantor under this Agreement.
- (c) The Agent shall notify the Company 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 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*).

#### 24.5 Resignation of a Guarantor

- (a) The Company may request that a Guarantor (other than the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance, **provided that**:
  - (i) no Default is continuing or would result from the acceptance of the Resignation Letter;

- (ii) at the time of acceptance of the respective Resignation Letter, the Guarantor is not a Material Domestic Subsidiary;
- (iii) no payment is due from the Guarantor under Clause 17 (*Guarantee and Indemnity*); and
- (iv) where the Guarantor is also a Borrower, it has repaid its L/G (and any L/G of its Affiliates, if any), any fees, interests or costs relating thereto and any other amount payable by such Borrower (or any Affiliate of it) under the Finance Documents (other than indemnities and other contingent obligations not then due and payable and as to which no claim has been made) and has resigned and ceased to be a Borrower under Clause 24.3 (*Resignation of a Borrower*),

whereupon that company shall cease to be a Guarantor and shall have no further obligations under the Finance Documents from the date of effectiveness of that resignation.

#### 24.6 Release of a Guarantor

Notwithstanding anything contained in this Clause 24 to the contrary a Guarantor (other than the Company) shall automatically be released from its obligations as a Guarantor under this Agreement upon the consummation of any transaction permitted by this Agreement as a result of which such Guarantor ceases to be a Subsidiary of the Company **provided that**, if so required by this Agreement, the Majority Lenders shall have consented to such transaction and the terms of such consent shall not have provided otherwise. In connection with any termination or release pursuant to this Clause 24.6 the Agent shall (and is hereby irrevocably authorized by each Lender to) execute and deliver to any Obligor, at such Obligor's expense, all documents that such Obligor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Clause shall be without recourse to or warranty by the Agent.

#### 24.7 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeated Representations are true and correct in all material respects in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing, except that to the extent that such representation or warranty expressly relates to an earlier date, such representation or warranty is true and correct as of such earlier date.

### 25. ROLE OF THE AGENT AND THE ARRANGER

#### 25.1 Appointment of the Agent

- (a) Each other Finance Party appoints the Agent to act as its agent and attorney (*Stellvertreter*) under and in connection with the Finance Documents.
- (b) Each other Finance Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) Each other Finance Party hereby relieves the Agent from the restrictions pursuant to section 181 German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to such Finance Party. A Finance Party which is barred by its constitutional documents or by-laws from granting such exemption shall notify the Agent accordingly.

## 25.2 Duties of the Agent

- (a) 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) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) 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 Finance Parties.
- (d) 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 Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (e) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (f) The Agent shall provide to the Company, within 10 Business Days of a request by the Company (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

## 25.3 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

## 25.4 No fiduciary duties

- (a) Nothing in this Agreement constitutes the Agent or the Arranger as a trustee (*Treuhänder*) of any other person. Neither the Agent nor the Arranger has any financial or commercial duty of care (*Vermögensfürsorgepflicht*) for any person.
- (b) Neither the Agent nor the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

## 25.5 Business with the Group

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



25.6 **Rights and discretions of the Agent**

- (a) The Agent may rely on:
  - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received 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 22.1 *Non-payment*);
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
  - (iii) any notice or request made by the Company (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as Agent under this Agreement.
- (f) Without prejudice to the generality of paragraph (e) above, the Agent may disclose the identity of a Defaulting Lender to the other Finance Parties and the Company and shall disclose the same upon the written request of the Company or the Majority Lenders.
- (g) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

25.7 **Majority Lenders' instructions**

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

25.8 **Responsibility for documentation**

Neither the Agent nor the Arranger is responsible for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Obligor or any other person given in or in connection with any Finance Document or the transactions contemplated by the Finance Documents; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document; 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.

25.9 **Exclusion of liability**

- (a) Without limiting paragraph (b) below, the Agent will not be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence, bad faith or wilful misconduct.
- (b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause pursuant to section 328 para 1 German Civil Code (*Bürgerliches Gesetzbuch*) (*echter berechtigender Vertrag zugunsten Dritter*).
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

**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 incurred by the Agent (otherwise than by reason of the Agent's gross negligence, bad faith or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).
- (b) Each Lender shall also indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent with respect to any Tax imposed by reason of FATCA attributable to such Lender in relation to the Finance Documents.

**25.11 Resignation of the Agent**

- (a) Subject to Clause 25.11(e), the Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Company.
- (b) Alternatively, subject to Clause 25.11(e) the Agent may resign by giving 30 days' notice to the other Finance Parties and the Company, in which case the Majority Lenders (with the consent of the Company, such consent not to be unreasonably withheld or delayed) may appoint a successor Agent acting through an office in Germany, Luxembourg, Switzerland, the United Kingdom or the U.S.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent acting through an office in Germany, Luxembourg, Switzerland, the United Kingdom or the U.S.
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 25. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) The Agent shall resign in accordance with paragraph (b) above (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 Company and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) the relevant Lender has been advised by US tax counsel of international standing 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 that Lender, by notice to the Agent, requires it to resign.

#### 25.12 Replacement of the Agent

- (a) After consultation with the Company, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent acting through an office in Germany, Luxembourg, Switzerland, the United Kingdom or the U.S.
- (b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 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.

#### 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 30.6 (*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 30.2 (*Addresses*) and paragraph (a)(ii) of Clause 30.6 (*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 it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the 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
- (d) the adequacy, accuracy and/or completeness of the information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

#### 25.16 Agent's Management Time

Any amount payable to the Agent under Clause 14.3 (*Indemnity to the Agent*), Clause 16 (*Costs and Expenses*) and Clause 25.10 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 11 (*Fees*).

**25.17 Deduction from amounts payable by the Agent**

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

**25.18 US Withholding**

To the extent required by any applicable U. S. laws, the Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Each Lender shall indemnify and hold harmless the Agent against, and shall make payable in respect thereof within 10 days after demand therefor, any and all Taxes and (unless caused by gross negligence or wilful misconduct on the part of the Agent) any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Agent) incurred by or asserted against the Agent by the U.S. Internal Revenue Service or any other U. S. Governmental Authority as a result of the failure of the Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall present *prima facie* evidence. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Finance Document against any amount due the Agent under this Section 25.18 (*Withholding*). The agreements in this Section 25.18 (*Withholding*) shall survive the resignation and/or replacement of the Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other obligations.

**26. 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.

**27. SHARING AMONG THE FINANCE PARTIES**

**27.1 Payments to Finance Parties**

Unless otherwise provided for in Clause 27.6 (*Loss Sharing in respect of L/Gs*) or Clause 27.7 (*Sharing of Recoveries / Adjustment of Loss Sharing*), if a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 28 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

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

- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 28 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the '**Sharing Payment**') equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 28.6 (*Partial payments*).

#### 27.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 28.6 (*Partial payments*).

#### 27.3 **Recovering Finance Party's rights**

- (a) On a distribution by the Agent under Clause 27.2 (*Redistribution of payments*), the Recovering Finance Party shall be entitled to receive by way of assignment the rights of the Finance Parties to the extent they have shared in the redistribution.
- (b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

#### 27.4 **Reversal of redistribution**

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

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 27.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights of assignment in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed and the Recovering Finance Party shall re-assign any claims assigned to it pursuant to paragraph (a) of Clause 27.3 (*Recovering Finance Party's rights*).

#### 27.5 **Exceptions**

- (a) This Clause 27 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified 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.

27.6 **Loss Sharing in respect of L/Gs**

- (a) In the event a Borrower or, as the case may be, the Obligors do not reimburse and indemnify a Lender (an **'Entitled Lender'**) with respect to any amount claimed in respect of an L/G in accordance with paragraph (a) of Clause 7.2 (*Indemnities*) and Clause 17 (*Guarantee and Indemnity*) and
  - (i) it cannot obtain satisfaction with respect to such amount from any Cash Cover obtained by it; and
  - (ii) no Counter Guarantee or any other form of Security had, in each case, been provided by or on behalf of the Company or the respective Borrower in respect of that amount (in whole or in part) which had been accepted by the relevant Entitled Lender in its sole discretion (such remaining amount the **"Loss"**) such Entitled Lender shall receive from the Lenders compensation for its Loss in accordance with this Clause 27.6.
- (b) An Entitled Lender shall have the right to demand payment from each Lender of the Indemnified Loss Amount (as defined below) determined by the Agent in accordance with paragraph (c) below only
  - (i) if the Facility has been cancelled by notice of the Agent pursuant to Clause 22.15 (*Acceleration*) or the Facility has been automatically accelerated pursuant to Clause 22.16 (*Acceleration for Insolvency*) and since such notice of the Agent or automatic acceleration a period of six (6) months has lapsed; or
  - (ii) if in the event that following the occurrence of an Event of Default due to the default of a Borrower vis-à-vis the Entitled Lender to fulfil its obligations pursuant to paragraph (a) of Clause 7.2 (*Indemnities*) in respect of an L/G no notice pursuant to Clause 22.15 (*Acceleration*) has been submitted by the Agent and no automatic acceleration has occurred pursuant to Clause 22.16 (*Acceleration for Insolvency*) and following such Event of Default a period of three (3) months has lapsed,  
  
(the time period referred to in sub-paragraph (i) and (ii) each the **'First Loss Determination Period'**).
- (c) Each Entitled Lender shall notify the Agent not later than on the fifteenth Business Day preceding the end of the relevant First Loss Determination Period about the amount of any Loss suffered by it until such date (taking into account any recoveries received by then from a Borrower or the Guarantors or any third party by way of payment, set-off, enforcement of any collateral or otherwise) (the **'First Loss Determination Date'**).



- (d) The Agent shall not later than on the tenth Business Day preceding the end of the relevant First Loss Determination Period determine the aggregate amount of all Losses suffered by all Entitled Lenders as notified to it (the "**Total Loss Amount**").
- (e) The Agent shall then, based on the Total Loss Amount, determine the amount which each Entitled Lender may claim from or pay to each other Lender (including, as the case may be, other Entitled Lenders) (the "**Indemnified Loss Amount**") and notify all Lenders accordingly not later than on the third Business Day preceding the end of the relevant First Loss Determination Period (the "**First Sharing Date**") and the Lenders shall then make payments of the Indemnified Loss Amounts as instructed by the Agent. The Indemnified Loss Amount shall be the amount which has to be received, or, as the case may be, paid by each Lender (including Entitled Lenders) to each Entitled Lender so that following the payment of all Indemnified Loss Amounts between the Lenders the proportion of the sum of the amounts paid by each individual Lender hereunder and the Loss of such Lender (after deducting the aggregate Indemnified Loss Amounts to be paid to the relevant Lender) to its respective Commitments is equal to the proportion of the Total Loss Amount to the Total Commitments (the "**Loss Quota**") (or, if the Commitments are then zero, such Commitments prior to their reduction / cancellation to zero).
- (f) Each Lender shall on the First Sharing Date pay the Indemnified Loss Amounts to be paid by it to any Entitled Lender only against assignment by the relevant Entitled Lender of a corresponding portion of its claim against the relevant Borrower pursuant to paragraph (a) of Clause 7.2 (*Indemnities*) and the Guarantors pursuant to Clause 17 (*Guarantee and Indemnity*).
- (g) Save for manifest error the determination of the Total Loss Amount and the Indemnified Loss Amounts by the Agent shall be binding for all Lenders.

#### 27.7 Sharing of Recoveries / Adjustment of Loss Sharing

- (a) If at any time following the First Loss Determination Date a Lender (i) receives payment from any Obligor or any receiver over the assets of such Obligor (a "**Recovering Lender**") by way of set-off or otherwise in respect of any amounts due from a Borrower under paragraph (a) of Clause 7.2 (*Indemnities*) in respect of an L/G (the "**Recovered Amount**") or (ii) incurs any (further) Loss (a "**Loss Lender**"), then such Lender shall promptly notify the Agent. The Agent shall semi-annually following the First Sharing Date and as long as any Lender continues to receive Recovered Amounts or incur Losses (each such date a "**Subsequent Loss Determination Date**") determine the amounts to be paid by each of the Recovering Lenders to the other Lenders as a proportion of the Recovered Amounts realised until the relevant Subsequent Loss Determination Date or the amounts to be paid by each of the Lender to the Loss Lender as a proportion of the Loss incurred until the relevant Subsequent Loss Determination Date, in each case to equalize the Loss Quota of all Lenders as of the relevant Subsequent Loss Determination Date (the "**Loss Sharing Payment**").
- (b) The Agent shall inform the Lenders in due course following each Subsequent Loss Determination Date about any Loss Sharing Payment which shall then be made available by the Recovering Lenders or the Lenders to the Agent for distribution to the Lenders or the Loss Lender, respectively, within three (3) Business Days of such notification.
- (c) To the extent that amounts received or recovered by a Recovering Lender resulted in the satisfaction of a Recovering Lender's claim under paragraph (a) of Clause 7.2 (*Indemnities*) in respect of an L/G, but are allocated in accordance with paragraph (a) to another Lender, the latter shall assign to the Recovering Lender the claims (or the part thereof) to which the amount is allocated. Each Lender shall on the Subsequent Loss Determination Date pay its portion of the incurred Loss to any Loss Lender only against assignment by the relevant Loss Lender of a corresponding portion of its claim against the Borrower pursuant to paragraph (a) of Clause 7.2 (*Indemnities*) in respect of an L/G.

- (d) If any part of the Loss Sharing Payment received or recovered by a Recovering Lender becomes repayable and is repaid by such Recovering Lender, then each Party which has received a share of such Loss Sharing Payment pursuant to paragraph (a) shall, upon request of the Agent, pay to the Agent for account of such Recovering Lender an amount equal to its share of such Loss Sharing Payment together with its proportionate share of any interest or other sum paid to a Borrower or any other Obligor by the Recovering Lender in respect of the Loss Sharing Payment and such Recovering Lender shall re-assign to the relevant Lender any amount assigned to it by such Lender pursuant to paragraph (b) above.
- (e) This Clause 27.7 shall not apply if the Recovering Lender would not, after having made such payment, have a valid and enforceable claim against the relevant Obligor and sums recovered as a result of litigation started by a Lender to enforce its rights under paragraph (a) of Clause 7.2 (*Indemnities*) in respect of an L/G and resulting in a Loss Sharing Payment shall only be shared with such Lenders that have joined in such litigation or commenced and diligently pursued separate litigation to enforce their rights under the Finance Documents.
- (f) Save for manifest error the determination of the Loss Sharing Payment by the Agent shall be binding for all Lenders.

## **28. PAYMENT MECHANICS**

### **28.1 Payments to the Agent**

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date 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 Luxembourg, the U.S. or Germany with such bank as the Agent specifies in writing.

### **28.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 28.3 (*Distributions to an Obligor*), Clause 28.4 (*Clawback*) and Clause 25.17 (*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 five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London).

### **28.3 Distributions to an Obligor**

The Agent may (with the consent of the Obligor or in accordance with Clause 29 *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.

28.4 **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.

28.5 **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 28.1 (*Payments to the Agent*) may instead pay that amount direct to the required recipient(s). Such payments must be made on the due date for payment under the Finance Documents.
- (b) A Party which has made a payment in accordance with this Clause 28.5 shall be discharged of the relevant payment obligation under the Finance Documents.

28.6 **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 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 paragraphs 28.6(a)(ii) to 28.6(a)(iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

28.7 **No set-off by Obligors**

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off (including against any successor pursuant to section 406 of the German Civil Code) or counterclaim unless the counterclaim is undisputed or has been confirmed in a final non-appealable judgement.

**28.8 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.

**28.9 Currency of account**

- (a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

**28.10 Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Company); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

**29. SET-OFF**

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents against any satisfiable (*erfüllbar*) obligation (within the meaning of section 387 German Civil Code (*Bürgerliches Gesetzbuch*)) 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.

### 30. NOTICES

#### 30.1 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 and subject to Clause 30.6 (*Electronic communication*), may be made by fax or letter.

#### 30.2 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 Original Obligors, identified with their name below;
- (b) in the case of each Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, 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 three Business Days' notice.

#### 30.3 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 when received (*zugegangen*), in particular:
  - (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 30.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the 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 by the Finance Parties to the Obligors may be made or delivered to the Company for its own account and for the account of the Obligors. For that purpose each Obligor appoints the Company as its agent of receipt (*Empfangsvertreter*).

- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

30.4 **Notification of address and fax number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 30.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

30.5 **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.

30.6 **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 (including, without limitation, by way of posting to a secure website) if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission 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 five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way 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.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) 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.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 30.6.

### 30.7 Use of COGS

- (a) Commerzbank Finance & Covered Bonds S.A. agrees, as long as it is the Agent hereunder, to make available COGS to the Borrowers and the Issuing Banks for the issuance and administration of L/Gs under this Agreement.
- (b) The Parties, any Additional Obligor, any Increase Lender and any New Lender acknowledge, by becoming party to this Agreement, that the services provided by Commerzbank Finance & Covered Bonds S.A. in its capacity as the Agent in connection with the issuance and administration of the L/Gs shall be subject to the terms of the COGS Conditions.

### 30.8 English language

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

## 31. CALCULATIONS AND CERTIFICATES

### 31.1 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 (*Beweis des ersten Anscheins*) of the matters to which they relate.

### 31.2 Certificates and Determinations

- (a) The Finance Parties make the certifications or determinations of a rate or amount under any Finance Document in the exercise of their unilateral right to specify performance (*einseitiges Leistungsbestimmungsrecht*) which they will exercise with reasonable discretion (*billiges Ermessen*).
- (b) The Parties agree not to dispute in any legal proceeding the correctness of the determinations and certifications of a rate or amount made by a Finance Party under any Finance Document unless the determinations or certifications are inaccurate on their face or fraud can be shown.

### 31.3 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 and/or in any case where the practice in the relevant interbank market differs, in accordance with that market practice.

## 32. PARTIAL INVALIDITY

- (a) The Parties agree that should at any time, any provisions of this Agreement be or become void (*nichtig*), invalid or due to any reason ineffective (*unwirksam*) this will indisputably (*unwiderlegbar*) not affect the validity or effectiveness of the remaining provisions and this Agreement will remain valid and effective, save for the void, invalid or ineffective provisions, without any Party having to argue (*darlegen*) and prove (*beweisen*) the Parties intent to uphold this Agreement even without the void, invalid or ineffective provisions.

- (b) The void, invalid or ineffective provision shall be deemed replaced by such valid and effective provision that in legal and economic terms comes closest to what the Parties intended or would have intended in accordance with the purpose of this Agreement if they had considered the point at the time of conclusion of this Agreement.

### 33. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance 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 Finance 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.

### 34. AMENDMENTS AND WAIVERS

#### 34.1 Required consents

- (a) Other than pursuant to Clause 2.2 (Increase) and Clause 2.3 (*Allocation of Additional Commitments*), subject to Clause 34.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 34.

#### 34.2 Exceptions

- (a) An amendment or waiver that has the effect of changing or which relates to:
- (i) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
  - (ii) an extension to the date of payment of any amount owed to a Lender by an Obligor under the Finance Documents;
  - (iii) a reduction in the L/G Fee Rate or a reduction in the amount of any payment of principal, interest, fees or commission payable to a Lender, **provided that** (x) any amendment to the financial covenants or financial definitions in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this sub-clause (iii) even if the effect of such amendment would be to reduce the L/G Fee Rate or to reduce any other fee payable hereunder and (y) that only the consent of the Majority Lenders shall be necessary to reduce or waive any obligation of the Borrowers to pay interest or fees at the applicable default rate even if the effect of such amendment would be to reduce the L/G Fee Rate or to reduce any other fee payable hereunder;
  - (iv) an increase in or an extension of any Commitment (other than pursuant to Clause 2.2 (*Increase*) or any requirement that a cancellation of the Commitments reduces the Commitments of the Lenders rateably);
  - (v) a change to the Borrowers or Guarantors other than in accordance with Clause 24 (*Changes to the Obligors*);



- (vi) any provision which expressly requires the consent of all the Lenders;
- (vii) Clause 2.4 (*Finance Parties' rights and obligations*), Clause 23 (*Changes to the Lenders*) or this Clause 34; or
- (viii) Clause 39 (*Governing Law*) and Clause 40.1 (*Jurisdiction*);
- (ix) the nature or scope of the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*),

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

- (b) An amendment or waiver which relates to the rights or obligations of the Agent or the Arranger (each in their capacity as such) may not be effected without the consent of the Agent or, as the case may be, the Arranger.

### 34.3 **Disenfranchisement of Defaulting Lenders**

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:

- (i) the Majority Lenders; or

- (ii) whether:

- (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or

- (B) 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,

that Defaulting Lender's Commitments under the Facility will be reduced by the amount of its Available Commitments under the Facility and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

- (b) For the purposes of this Clause 35.3, the Agent may assume that the following Lenders are Defaulting Lenders:

- (i) any Lender which has notified the Agent that it has become a Defaulting Lender; and

- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "**Defaulting Lender**" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

#### 34.4 Excluded Commitments

If any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within ten Business Days (unless the Company and the Agent agree to a longer time period in relation to any request) of that request being made:

- (a) its Commitments shall not be included for the purpose of calculating the Total Commitments under the 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.

#### 34.5 Replacement of a Defaulting Lender

- (a) The Company may, at any time a Lender has become and continues to be a Defaulting Lender, by giving five Business Days notice to the Agent and such Lender:
  - (i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement; and
  - (ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 23 (*Changes to the Lenders*) all (and not part only) of the Available Commitments of the Lender; orto a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Company, which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender in accordance with Clause 23 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:
  - (A) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and other amounts payable in relation thereto under the Finance Documents; or
  - (B) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Company and which does not exceed the amount described in paragraph (A) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:
  - (i) the Company shall have no right to replace the Agent;
  - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Company to find a Replacement Lender;
  - (iii) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and

- (iv) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Company when it is satisfied that it has complied with those checks.

34.6 **Replacement of Screen Rate**

Subject to paragraph (b) of Clause 34.2 (*Exceptions*), any amendment or waiver which relates to:

- (a) providing for the use of a Replacement Benchmark in relation to that currency in place of that screen rate; and
  - (b)
    - (i) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
    - (ii) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
    - (iii) implementing market conventions applicable to that Replacement Benchmark;
    - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
    - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Majority Lenders and the Company.

35. **CONFIDENTIALITY**

35.1 **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 35.2 (*Disclosure of Confidential Information*) and Clause 35.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 35.2 **Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential) in connection with this Agreement;
- (b) to the extent requested by any regulatory authority purporting to have jurisdiction over such person or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners);
- (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case the Agent and the Lenders agree (except with respect to any audit or examination conducted by bank accountants or any self regulatory authority or governmental or regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, rule or regulation, to inform the Company promptly thereof prior to the disclosure thereof);
- (d) in connection with the exercise of any remedies under this Agreement or any of the other Finance Documents or any suit, action or proceeding relating to this Agreement or any other Finance Document or the enforcement of its rights hereunder or thereunder;
- (e) subject to an agreement containing provisions substantially the same as those of this Clause 35.2, to any person:
  - (i) any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement;
  - (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Borrower and its obligations.
  - (iii) who is a Party;
- (f) to the extent such Confidential Information:
  - (i) becomes publicly available other than as a result of a breach of this Clause 35.2;
  - (ii) becomes available to any Finance Party on a non-confidential basis from a source other than the Company; or
- (g) Confidential Information with the written consent of the Company.

### 35.3 **Disclosure to numbering service providers**

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
  - (i) names of Obligor;

- (ii) country of domicile of Obligors;
- (iii) place of incorporation of Obligors;
- (iv) date of this Agreement;
- (v) the names of the Agent and the Arranger;
- (vi) date of each amendment and restatement of this Agreement;
- (vii) amount of Total Commitments;
- (viii) currencies of the Facility;
- (ix) type of Facility;
- (x) ranking of Facility;
- (xi) Termination Date for Facility;
- (xii) changes to any of the information previously supplied pursuant to paragraphs 35.3(a)(i) to 35.3(a)(xi) above; and
- (xiii) such other information agreed between such Finance Party and the Company,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Company represents that none of the information set out in paragraphs 35.3(a)(i) to (a)(xiii) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Company and the other Finance Parties of:
  - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
  - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

#### 35.4 **Entire agreement**

This Clause 35 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### 35.5 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

**35.6 Notification of disclosure**

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (e) of Clause 35.2 (*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 35 (*Confidentiality*).

**35.7 Continuing obligations**

The obligations in this Clause 35 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of thirty six (36) 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.

**36. USA PATRIOT ACT**

Each Lender hereby notifies each Obligor that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (commonly known as the "**USA Patriot Act**"), such Lender is required to obtain, verify and record information that identifies such Obligor, which information includes the name and address of such Obligor and other information that will allow such Lender to identify such Obligor in accordance with the USA Patriot Act.

**37. INTEREST RATE LIMITATION**

Notwithstanding anything herein to the contrary, if at any time any interest rate applicable to hereunder, together with all fees, charges and other amounts which are treated as interest under applicable law (collectively the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender against a U.S. Borrower or a Guarantor whose jurisdiction of incorporation is a state of the United States or the District of Columbia in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable hereunder but were not payable as a result of the operation of this Clause 37 shall be cumulated and the interest and Charges payable to such Lender shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate to the date of repayment, shall have been received by such Lender.

### 38. BORROWING FOR OWN BENEFIT

Each Borrower hereby confirms that it acts for its own account and neither directly nor indirectly on behalf of a commercial beneficiary in the meaning of Section 3 of the German Money Laundering Act (*Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten (Geldwäschegesetz)*).

### 39. GOVERNING LAW

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

### 40. ENFORCEMENT

#### 40.1 Jurisdiction

- (a) The courts of Frankfurt am Main, Germany have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of Frankfurt am Main, Germany are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 40.1 is for the benefit of the Finance Parties only. As a result, no Finance 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 may take concurrent proceedings in any number of jurisdictions.

#### 40.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than the Process Agent or any other Obligor incorporated in Germany, if any):
  - (i) irrevocably appoints Coperion GmbH (the "**Process Agent**") as its agent for service of process in relation to any proceedings before the German courts in connection with any Finance Document;
  - (ii) agrees that failure by a Process Agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned; and
  - (iii) undertakes to deliver to the Process Agent without undue delay upon execution of this Agreement a process agent appointment letter (the "**Process Agent Appointment Letter**") substantially in the form of Schedule 12 (*Form of Process Agent Appointment Letter*) and to send a copy of the executed Process Agent Appointment Letter to the Agent.
- (b) The Process Agent hereby acknowledges the appointment. The Process Agent shall ensure that documents to be served to an Obligor may validly be served by delivery to the Process Agent. In particular, the Process Agent shall notify the Agent of any change of address, accept any documents delivered to it on behalf of an Obligor and fulfil any requirements of section 171 Code of Civil Procedure (*Zivilprozessordnung*), in particular present the original Process Agent Appointment Letter to any person effecting the service of process as required pursuant to section 171 sentence 2 Code of Civil Procedure (*Zivilprozessordnung*).

**41. WAIVER OF JURY TRIAL**

EACH OF THE PARTIES TO THIS AGREEMENT AGREES TO WAIVE IRREVOCABLY ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE DOCUMENTS REFERRED TO IN THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN THIS AGREEMENT. This waiver is intended to apply to all Disputes. Each party acknowledges that (a) this waiver is a material inducement to enter into this Agreement, (b) it has already relied on this waiver in entering into this Agreement and (c) it will continue to rely on this waiver in future dealings. Each party represents that it has reviewed this waiver with its legal advisers and that it knowingly and voluntarily waives its jury trial rights after consultation with its legal advisers. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**42. CONCLUSION OF THIS AGREEMENT (*VERTRAGSSCHLUSS*)**

- 42.1 The Parties to this Agreement may choose to conclude this Agreement by an exchange of signed signature page(s), transmitted by any means of telecommunication (*telekommunikative Übermittlung*) such as by way of fax or electronic photocopy.
- 42.2 If the Parties to this Agreement choose to conclude this Agreement pursuant to Clause 42.1 above, they will transmit the signed signature page(s) of this Agreement to Latham & Watkins LLP, attention to alexandra.hagelueken@lw.com or Sibylle.muench@lw.com (each a "**Recipient**"). The Agreement will be considered concluded once one Recipient has actually received the signed signature page(s) (*Zugang der Unterschriftsseite(n)*) from all Parties to this Agreement (whether by way of fax, electronic photocopy or other means of telecommunication) and at the time of the receipt of the last outstanding signature page(s) by such one Recipient.
- 42.3 For the purposes of this Clause 42 only, the Parties to this Agreement appoint each Recipient as their attorney (*Empfangsvertreter*) and expressly allow (*gestatten*) each Recipient to collect the signed signature page(s) from all and for all Parties to this Agreement. For the avoidance of doubt, each Recipient will have no further duties connected with its position as Recipient. In particular, each Recipient may assume the conformity to the authentic original(s) of the signature page(s) transmitted to it by means of telecommunication, the genuineness of all signatures on the original signature page(s) and the signing authority of the signatories.

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



**SCHEDULE 1**

**THE ORIGINAL PARTIES**

**Part 1**

**The Original Obligors**

<b>Name of Original Borrower</b>	<b>Registration number (or equivalent, if any)</b>
Hillenbrand, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #2007110100396
Coperion GmbH	HRB 23976 (Local Court of Stuttgart) Theodorstraße 10, 70469 Stuttgart
Coperion K-Tron (Schweiz) GmbH	CHE-105.883.566 Lenzhardweg 43/45 CH-5702 Niederlenz, Switzerland
Rotex Europe Ltd	04307924 (Registered with Companies House) Ashton Lane North Whitehouse Vale Runcorn, Cheshire WA7 3FA, England
Abel GmbH	HRB 102566 (Local Court of Frankfurt am Main) Abel-Twiete 1 21514 Büchen

<b>Name of Original Borrower</b>	<b>Registration number (or equivalent, if any)</b>
Hillenbrand, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #2007110100396
Batesville Manufacturing, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #1998090618
Batesville Casket Company, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #2008022200482
Batesville Services, Inc.	One Batesville Boulevard Batesville, Indiana 47006 Indiana Secretary of State #192822-024
Process Equipment Group, Inc.	28 West State Street Trenton, New Jersey 08608 New Jersey Secretary of State #5278301800
K-Tron Investment Co.	103 Foulk Road, Suite 202 Wilmington, Delaware 19802 Delaware Secretary of State #2250493
Coperion K-Tron Pitman, Inc.	1209 Orange Street Wilmington, Delaware 19801 Delaware Secretary of State #0853369

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<b>Name of Original Borrower</b>	<b>Registration number (or equivalent, if any)</b>
TerraSource Global Corporation	1209 Orange Street Wilmington, Delaware 19801 Delaware Secretary of State #2105312
Rotex Global, LLC	1209 Orange Street Wilmington, Delaware 19801 Delaware Secretary of State #4312111
Coperion Corporation	2711 Centerville Road, Suite 400 Wilmington, Delaware 19808 Delaware Secretary of State #0780901
Red Valve Company, Inc.	600 North Bell Avenue Building II, Second Floor Carnegie, Pennsylvania 15106 # 300220

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**Part 2**

**The Original Lenders**

<b>Name of Original Lender</b>	<b>Commitment in EUR</b>	<b>Treaty Passport Scheme reference number and jurisdiction of tax residence (if applicable)</b>
Commerzbank Aktiengesellschaft	75,000,000.00	7/C/25382/DTTP
HSBC Trinkaus & Burkhardt AG	35,000,000.00	7/H/275147/DTTP
Skandinaviska Enskilda Banken AB (publ) Frankfurt Branch	30,000,000.00	73/S/42621/DTTP
Sumitomo Mitsui Banking Corporation	10,000,000.00	43/S/274647/DTTP
<b>TOTAL</b>	<b>150,000,000.00</b>	

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

**Part 1**

**Conditions Precedent to Initial Utilisation**

**1. ORIGINAL OBLIGORS**

- (a) In relation to an Original Obligor incorporated or established in Germany an up-to-date commercial register extract (*Handelsregisterausdruck*), its articles of association (*Satzung*) or partnership agreement (*Gesellschaftsvertrag*), copies of any by-laws as well as a list of shareholders (*Gesellschafterliste*) (in each case, if applicable).
- (b) A copy of a good standing certificate (including verification of tax status) with respect to each U.S. Obligor, issued as of a recent date by the Secretary of State or other appropriate official of each U.S. Obligor's jurisdiction of incorporation or organisation.
- (c) In relation to an Original Obligor incorporated or established in a jurisdiction other than Germany a copy of its constitutional documents.
- (d) In relation to an Original Obligor incorporated or established in Germany a copy of a resolution signed by all the holders of the issued shares of such Original Obligor and/or if applicable and required under the respective Original Obligor's constitutional documents, a copy of a resolution of the supervisory board (*Aufsichtsrat*) and/or advisory board (*Beirat*) of such Original Obligor approving the terms of, and the transactions contemplated by the Finance Documents.
- (e) In relation to an Original Obligor incorporated in a jurisdiction other than Germany, or England and Wales or a jurisdiction of the U.S., a copy of a resolution signed by all the holders of the issued shares in each such Original Obligor, approving the terms of, and the transactions contemplated by the Finance Documents.
- (f) A copy of a resolution of the board of directors, or equivalent governing body, of each Original Obligor incorporated or established in a jurisdiction other than Germany:
  - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; 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.
- (g) A specimen of the signature of each person authorised to execute any Finance Document and other 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.

- (h) A certificate of an authorised signatory of the relevant Original Obligor incorporated or established in a jurisdiction in the United Kingdom, confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guarantee or similar limit binding on it to be exceeded.
- (i) A certificate of an authorised signatory of the relevant Original Obligor certifying that each copy document relating to it specified in this Part 1 *Conditions Precedent to Initial Utilisation*) of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

**2. FINANCE DOCUMENTS**

- (a) This Agreement executed by each member of the Group party to this Agreement.
- (b) The Agency Fee Letter and Mandate Letter executed by the Company.

**3. LEGAL OPINIONS**

- (a) A legal opinion of Latham & Watkins LLP, legal advisers to the Arranger and the Agent in Germany as to German law, substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (b) A legal opinion of Latham & Watkins LLP, legal advisers to the Arranger and the Agent in Germany as to English law, substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (c) A legal opinion of Latham & Watkins LLP, legal advisers to the Arranger and the Agent in New York as to certain U.S. law matters, substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (d) A legal opinion of Niederer Kraft & Frey Ltd, legal advisers to the Arranger and Agent in Switzerland as to Swiss law, substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (e) A legal opinion of Skadden, Arps, Slate, Meagher & Flom LLP, legal advisers to the Company in Germany as to German law, substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (f) A legal opinion of Skadden, Arps, Slate, Meagher & Flom (UK) LLP, legal advisers to the Company in England as to English law, substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (g) A legal opinion of Baker & McKenzie Zurich, legal advisers to the Company in Switzerland as to Swiss law, substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (h) A legal opinion of Skadden, Arps, Slate, Meagher & Flom LLP, legal advisers to the Company in Delaware as to Delaware law, substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (i) A legal opinion of Drinker Biddle & Reath LLP, legal advisers to the Company in New Jersey as to New Jersey law, substantially in the form distributed to the Original Lenders prior to signing this Agreement;
- (j) A legal opinion of Faegre Baker Daniels LLP, legal advisers to the Company in Indiana as to Indiana law, substantially in the form distributed to the Original Lenders prior to signing this Agreement;

provided that no legal opinion shall be granted in relation to Red Valve Company, Inc.

#### 4. OTHER DOCUMENTS AND EVIDENCE

- (a) Evidence that any process agent referred to in Clause 40.2 (*Service of process*), if not an Original Obligor, has accepted its appointment as well as a copy of the executed Process Agent Appointment Letter.
- (b) A copy of any other authorisation or other document, opinion or assurance reasonably requested by the Agent (if it has notified the Company accordingly) 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.
- (c) The Original Financial Statements of each Original Obligor.
- (d) The Budget.
- (e) An unaudited list of Material Domestic Subsidiaries as of 30 September 2017.
- (f) Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 11 (*Fees*) and, to the extent invoiced at least one Business Day prior to the proposed Utilisation, Clause 16 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
- (g) The Group Structure Chart.
- (h) A certificate of the Company certifying that:
  - (i) all of the representations and warranties of the Company set forth in the Agreement are true and correct in all material respects **provided that** any representation or warranty qualified by materiality or Material Adverse Effect is true and correct in all respects), except that to the extent that such representation or warranty expressly relates to an earlier date, such representation or warranty is true and correct as of such earlier date; and
  - (ii) no Default or Event of Default has occurred and is continuing.
- (i) A copy of any other documentation necessary to enable any Finance Party to comply with its applicable client identification procedures and money laundering rules.

## Part 2

### Conditions Precedent required to be delivered by an Additional Obligor

1. An Accession Letter, duly executed by the Additional Obligor and the Company.
2. In relation to an Additional Obligor incorporated or established in Germany an up to date commercial register extract (*Handelsregisterausdruck*), its articles of association (*Satzung*) or partnership agreement (*Gesellschaftsvertrag*), copies of any by laws as well as a list of shareholders (*Gesellschafterliste*) (in each case, if applicable).
3. In relation to an Additional Obligor incorporated in a jurisdiction other than Germany, a copy of its constitutional documents.
4. In relation to an Additional Obligor incorporated or established in Germany a copy of a resolution signed by all the holders of the issued shares in such Additional Obligor and/or if applicable and required under the respective Additional Obligor's constitutional documents a copy of a resolution of the supervisory board (*Aufsichtsrat*) and/or if applicable and required under the respective Additional Obligor's constitutional documents the advisory board (*Beirat*) of such Additional Obligor approving the terms of, and the transactions contemplated by the Finance Documents.
5. In relation to an Additional Obligor incorporated in a jurisdiction other than Germany or England and Wales or a jurisdiction of the U.S. a copy of a resolution signed by all the holders of the issued shares in each such Additional Obligor if required under the respective Additional Obligor's constitutional documents, approving the terms of, and the transactions contemplated by the Finance Documents.
6. A copy of a resolution of the board of directors or equivalent governing body of any Additional Obligor incorporated or established in a jurisdiction other than Germany:
  - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter;
  - (b) authorising a specified person or persons to execute the Accession Letter on its behalf; and
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents.
7. A specimen of the signature of each person authorised to execute any Finance Document and other documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
8. A certificate of an authorised signatory of the Additional Obligor certifying that each copy constitutional documents or resolution (including items listed in No. 4, 5 and 6, as applicable) listed in this Part 2 (*Conditions Precedent required to be Delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.

9. A copy of any other authorisation or other document, opinion or assurance reasonably requested by the Agent 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.
10. If available, the latest audited financial statements of the Additional Obligor.
11. A legal opinion of Latham & Watkins LLP, legal advisers to the Arranger and the Agent in Germany.
12. A legal opinion of the legal advisers to the Company in the jurisdiction in which the Additional Obligor is incorporated.
13. If the proposed Additional Obligor is incorporated in a jurisdiction other than Germany, evidence that the process agent specified in Clause 40.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor together with a copy of the executed Process Agent Appointment Letter in relation to the proposed Additional Obligor.



**SCHEDULE 3**  
**UTILISATION REQUEST**

From: [Borrower]

To: [Issuing Bank]

Dated:

Dear Sirs

**Hillenbrand, Inc. - EUR 150,000,000 L/G Facility Agreement dated [•] 2018 (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to arrange for an L/G to be issued on the following terms:  
Borrower and obligor of secured obligations:  
Issuing Bank:<sup>1</sup>  
Proposed Utilisation Date: [ • ] (or, if that is not a Business Day, the next Business Day)  
Currency of L/G: [ • ]  
Amount: [ • ]  
Beneficiary: [ • ]  
Term or Maturity Date: [ • ]  
Type of L/ G:<sup>2</sup> [ • ]
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The Company confirms to each Finance Party that each of the Repeated Representations is true and correct in all material respects as at the date hereof as if made by reference to the facts and circumstances existing on the date hereof, except that to the extent that such representation or warranty expressly relates to an earlier date, such representation or warranty is true and correct as of such earlier date.
5. This Utilisation Request is irrevocable.
6. Delivery Instructions:
7. [specify delivery instructions]
8. The draft of the requested L/G is attached to this Utilisation Request.

---

<sup>1</sup> If more than one, portion of participation in L/G.

<sup>2</sup> For the purposes of COGS, standby letters of credit includes commercial or trade letters of credit.

Yours faithfully

---

authorised signatory for  
*[name of relevant Borrower]*

---

authorised signatory for  
**Hillenbrand, Inc.**<sup>3</sup>

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<sup>3</sup> If different from the Borrower

SCHEDULE 4

FORM OF ADDITIONAL COMMITMENT REQUEST

From: Hillenbrand, Inc.

To: [Agent]

Attn: [ • ]

**Hillenbrand, Inc. - EUR 150,000,000 L/G Facility Agreement dated [ • ] 2018 (the "Agreement")**

Dear Sirs,

1. We refer to the Agreement. This is an Additional Commitment Request. Terms defined in the Agreement shall have the same meaning in this Additional Commitment Request.
2. We hereby give you notice that we request the increase of the Total Commitments by an amount of [ • ] pursuant to Clause 2.3 (*Allocation of Additional Commitments*) of the Agreement.
3. [We will pay to each participating Lender participating with an amount of EUR[ • ], a participation fee of [ • ] per cent. [in each case] on the amount of the Commitment assumed by it, payable to [it/the Agent for the account of each such Lender] within five Business Days after effectiveness of the respective increase.]<sup>4</sup>
4. We confirm that, at the date hereof, no Default has occurred which is continuing.

Yours faithfully

---

authorised signatory for  
**Hillenbrand, Inc.**

---

<sup>4</sup> Specify terms offered.

SCHEDULE 5

FORM OF INCREASE CONFIRMATION

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

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

Dated:

**Hillenbrand, Inc. - EUR 150,000,000 L/G Facility Agreement dated [•] 2018 (the "Agreement")**

1. We refer to the Agreement. This is an Increase Confirmation. Terms defined in the Agreement have the same meaning in this Increase Confirmation unless given a different meaning in this Increase Confirmation.
2. We refer to Clause 2.2 (*Increase*).
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "Relevant Commitment") as if it was an Original Lender under the Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "Increase Date") is [ • ].
5. On the Increase Date, the Increase Lender becomes a party to the Finance Documents as a Lender.
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 30.2(*Addresses*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (f) of Clause 2.2 (*Increase*).
8. The Increase Lender expressly confirms that it [can/cannot] exempt the Agent from the restrictions pursuant to section 181 German Civil Code *Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law as provided for Clause 25.1 (*Appointment of the Agent*).
9. The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is<sup>5</sup>
  - (a) [a Qualifying Lender (other than a Treaty Lender);]
  - (b) [a Treaty Lender;]
  - (c) [not a Qualifying Lender].
10. [The Increase Lender confirms, for the benefit of each other Party to the Agreement that it [is]/[is not] a FATCA Exempt Party.]

---

5 Delete as applicable. Each Increase Lender is required to confirm which of these categories it falls within with respect to each relevant Borrower.

6 Delete as applicable.

11. [The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
  - (b) a partnership each member of which is:
    - (i) a company so resident in the United Kingdom; or
    - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
  - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]<sup>7</sup>
  - (d) [The Increase Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [●]) and is tax resident in [●],<sup>8</sup> so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Parent notify:
  - (e) each Borrower which is a Party as a Borrower as at the Increase Date; and
  - (f) each Additional Borrower which becomes an Additional Borrower after the Increase Date,
- that it wishes that scheme to apply to the Agreement.]<sup>9</sup>

12. This Increase Confirmation 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 Increase Confirmation.

13. This Increase Confirmation and any non-contractual obligations arising out of or in connection with it are governed by German law.

---

<sup>7</sup> Include if the Increase Lender comes within paragraph (ii)(A)(2) of the definition of Qualifying Lender in Clause 12.1 *Definitions*

<sup>8</sup> Insert jurisdiction of tax residence.

<sup>9</sup> Include if the Increase Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

**THE SCHEDULE**

**Relevant Commitment/rights and obligations to be assumed by the Increase Lender**

*[insert relevant details]*

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

[Increase Lender]

By:

This Increase Confirmation is accepted by the Company.

Company

By:

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

Agent

By:

SCHEDULE 6

FORM OF TRANSFER CERTIFICATE

To: [●] as Agent

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

Dated:

Hillenbrand, Inc. - EUR 150,000,000 L/G Facility Agreement dated [●] 2018 (the "Agreement")

1. We refer to the Agreement. This is a Transfer Certificate. 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 23.5 (Procedure for assignment and transfer by assumption of contract (Vertragsübernahme)) of the Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender assigning and transferring to the New Lender by assumption of contract (*Vertragsübernahme*) and in accordance with Clause (ii) (*Procedure for assignment and transfer by assumption of contract (Vertragsübernahme)*) of the Agreement all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in L/Gs under the 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 30.2 (*Addresses*) of the Agreement 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 23.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement.
4. The New Lender expressly confirms that it [can/cannot] exempt the Agent from the restrictions pursuant to section 181 German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law as provided for in paragraph (c) of Clause 25.1 (*Appointment of the Agent*) of the Agreement.
5. 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.]<sup>10</sup>

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<sup>10</sup> Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.

6. [The New Lender confirms, for the benefit of each other Party to the Agreement that it [is]/[is not]<sup>11</sup> a FATCA Exempt Party.]
7. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
  - (b) a partnership each member of which is:
    - (i) a company so resident in the United Kingdom; or
    - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
  - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]<sup>12</sup>
8. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [● ]) and is tax resident in [● ],<sup>13</sup> so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and requests that the Parent notify:
- (a) each Borrower which is a Party as a Borrower as at the Transfer Date; and
  - (b) each Additional Borrower which becomes an Additional Borrower after the Transfer Date,
- that it wishes that scheme to apply to the Agreement.]<sup>14</sup>
9. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that as of the date of this Transfer Certificate [it is / it is not]<sup>15</sup> a Swiss Qualifying Bank.
10. 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.
11. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by German law.
12. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

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<sup>11</sup> Delete as applicable.

<sup>12</sup> Include if New Lender comes within paragraph (ii)(A)(2) of the definition of Qualifying Lender in Clause 12.1 *Definitions*

<sup>13</sup> Insert jurisdiction of tax residence.

<sup>14</sup> Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

<sup>15</sup> Delete as applicable.



**THE SCHEDULE**

**Commitment/rights and obligations to be assigned and transferred by way of assumption of contract***(Vertragsübernahme)*

*[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 by the Agent and the Transfer Date is confirmed as [ • ] [Agent]

By:

**SCHEDULE 7**  
**FORM OF ACCESSION LETTER**

To: [●] as Agent

From: [Subsidiary] and Hillenbrand, Inc.

Dated:

Dear Sirs

**Hillenbrand, Inc. - EUR 150,000,000 L/G Facility Agreement dated [●] 2018 (the "Agreement")**

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the 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 [Borrower]/[Guarantor] and to be bound by the terms of the Agreement as an Additional [Borrower]/[Guarantor] pursuant to Clause [24.2 (Additional Borrowers)]/[Clause 24.4 (Additional Guarantors)] of the Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction].
3. [The Company confirms as of the date hereof that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional Borrower.]<sup>16</sup>
4. We confirm to each Finance Party that each of the Repeated Representations is true and correct in all material respects in relation to us as at the date hereof as if made by reference to the facts and circumstances existing on the date hereof, except that to the extent that such representation or warranty expressly relates to an earlier date, such representation or warranty is true and correct as of such earlier date.
5. [Subsidiary's] administrative details are as follows:  
Address:  
Fax No:  
Attention:
6. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by German law.

Hillenbrand, Inc.

[Subsidiary]

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<sup>16</sup> Include in the case of an Additional Borrower.

SCHEDULE 8

FORM OF RESIGNATION LETTER

To: [●] as Agent

From: [resigning Obligor] and Hillenbrand, Inc.

Dated:

Dear Sirs

**Hillenbrand, Inc. - EUR 150,000,000 L/G Facility Agreement dated [●] 2018 (the "Agreement")**

1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to [Clause 24.3 (*Resignation of a Borrower*)]/[Clause 24.5 (*Resignation of a Guarantor*)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Agreement.
3. We confirm that, as of the date hereof:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) [●]<sup>17</sup>
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by German law.

Hillenbrand, Inc.

[Subsidiary]

By:

By:

<sup>17</sup> Insert any other conditions required by the Facility Agreement.

SCHEDULE 9

FORM OF COMPLIANCE CERTIFICATE

To: [ • ] as Agent

From: Hillenbrand, Inc.

Dated:

Dear Sirs

**Hillenbrand, Inc. - EUR 150,000,000 L/G Facility Agreement dated [ • ] 2018 (the "Agreement")**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:
  - (a) Leverage in respect of the Relevant Period ending [ • ] is [ • ] and complies with the requirements of paragraph (a) of Clause 20.2 (*Financial condition*).
  - (b) Interest Coverage in respect of the Relevant Period ending [ • ] is [ • ] and complies with the requirements of paragraph (b) of Clause 20.2 (*Financial condition*).
3. We confirm that as of [ • ] the following members of the Group constitute Material Subsidiaries for the purpose of the Agreement:<sup>18</sup>
  - (a) [ • ]
  - (b) Material Domestic Subsidiaries are marked with an \* and Excluded Subsidiaries are marked with \*\*.
- 3.2 We confirm that, as of the date hereof, no Default is continuing.<sup>19</sup>
4. [According to the definition of "L/G Fee Rate" the applicable L/G Fee Rate is [ • ] per cent. per annum.]

Signed:

\_\_\_\_\_  
Director  
of  
Hillenbrand, Inc.

\_\_\_\_\_  
Director  
of  
Hillenbrand, Inc.

<sup>18</sup> Only relevant for annual certificate and to be confirmed as of financial year end.

<sup>19</sup> Only relevant for annual certificate.

**SCHEDULE 10**

**LMA FORM OF CONFIDENTIALITY UNDERTAKING**

To: [insert name of Potential Lender]

Re: The Facility

Borrower: [ • ] (the "Borrower")

Amount: [ • ]

Agent: [ • ]

Dear Sirs

We understand that you are considering participating in the Facility. In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

**1. CONFIDENTIALITY UNDERTAKING**

You undertake:

- 1.1 to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;
- 1.2 to keep confidential and not disclose to anyone the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us in connection with the Facility;
- 1.3 to use the Confidential Information only for the Permitted Purpose;
- 1.4 to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2.2 below) acknowledges and complies with the provisions of this letter as if that person were also a party to it; and
- 1.5 not to make enquiries of any member of the Group or any of their officers, directors, employees or professional advisers relating directly or indirectly to the Facility.

**2. PERMITTED DISCLOSURE**

We agree that you may disclose Confidential Information:

- 2.1 to any of its Affiliates and Related Funds and any of its or their directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential) in connection with this Agreement;
- 2.2 to the extent requested by any regulatory authority purporting to have jurisdiction over such person or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners);

- 2.3 to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case the Agent and the Lenders agree (except with respect to any audit or examination conducted by bank accountants or any self regulatory authority or governmental or regulatory authority exercising examination or regulatory authority), to the extent practicable and not prohibited by applicable law, rule or regulation, to inform the Company promptly thereof prior to the disclosure thereof);
- 2.4 in connection with the exercise of any remedies under this letter or any suit, action or proceeding relating to this letter or the enforcement of its rights under this letter;
- 2.5 to the extent such Confidential Information:
- (a) becomes publicly available other than as a result of a breach of this letter;
  - (b) becomes available on a non-confidential basis from a source other than the Company; or
- 2.6 with the prior written consent of us and the Company.

**3. NOTIFICATION OF REQUIRED OR UNAUTHORISED DISCLOSURE**

You agree (to the extent permitted by law) to inform us of the full circumstances of any disclosure under paragraph 2.2 or upon becoming aware that Confidential Information has been disclosed in breach of this letter.

**4. RETURN OF COPIES**

If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2.2 above.

**5. CONTINUING OBLIGATIONS**

The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease (a) if you become a party or otherwise acquire an interest, direct or indirect in the Facility or (b) thirty six (36) months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub paragraph 2.2) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).

**6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC**

You acknowledge and agree that:

- 6.1 neither we nor any of our officers, employees or advisers (each a "Relevant Person") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or any member of the Group or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or any member of the Group or be otherwise liable to you or any other person in respect to the Confidential Information or any such information; and

6.2 we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person or member of the Group may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

**7. NO WAIVER; AMENDMENTS, ETC**

This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege under this letter will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this letter. The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

**8. INSIDE INFORMATION**

You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to insider dealing and you undertake not to use any Confidential Information for any unlawful purpose.

**9. NATURE OF UNDERTAKINGS**

The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the Company and each other member of the Group by way of a contract for the benefit of third parties (*Vertrag zugunsten Dritter*).

**10. THIRD PARTY RIGHTS**

10.1 Subject to paragraph 6 and paragraph 9 the terms of this letter may be enforced and relied upon only by you and us.

10.2 Notwithstanding any provisions of this letter, the parties to this letter do not re-quire the consent of any Relevant Person or any member of the Group to rescind or vary this letter at any time.

**11. GOVERNING LAW AND JURISDICTION**

This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of Germany and the parties submit to the non-exclusive jurisdiction of the district court (*Landgericht*) of Frankfurt am Main.

**12. DEFINITIONS**

In this letter (including the acknowledgement set out below):

"**Confidential Information**" means any information relating to the Company, the Group, and the Facility provided to you by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, other than from a source which is connected with the Group and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality;

"**Group**" means the Borrower and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies.

"**Participant Group**" means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies; and

"**Permitted Purpose**" means considering and evaluating whether to enter into the Facility.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

---

For and on behalf of [Arranger]

To: [Arranger]

The Company and each other member of the Group

We acknowledge and agree to the above:

---

For and on behalf of [Potential Lender]



**SCHEDULE 11**

**TIMETABLES**

Request for approval as an Optional Currency, if required.

L/GS

Delivery of a duly completed Utilisation Request (Clause 5.1 (General))

U-5

U-3

"U" = date of utilisation

"U - X" = Business Days prior to date of utilisation

SCHEDULE 12

FORM OF PROCESS AGENT APPOINTMENT LETTER

To: [Coperion GmbH] as process agent

From: [Obligor]

Date:

Dear Sirs

**Hillenbrand, Inc. - EUR 150,000,000 L/G Facility Agreement dated [●] 2018 (the "Agreement")**

We refer to the Agreement and hereby irrevocably appoint you as our agent for service of process in relation to any proceeding before any German court in connection with the above mentioned Agreement.

Signed:

[\_\_\_\_\_] ]  
of  
[Obligor]

SCHEDULE 13  
COGS CONDITIONS



Commerzbank Online Guarantee System (COGS)

Conditions of use

**1. General Principles**

**1.1 Scope of application**

These conditions of use (the “**Conditions**”) are applicable with respect to the use of the Commerzbank Online Guarantee System (“**COGS**”) made available to the Borrowers, the Issuing Banks and the Lenders (the “**Users**”) for the administration of L/Gs under a facility agreement (the “**Facility Agreement**”) and made between, inter alia, the Users and Commerzbank Finance & Covered Bond S.A., as agent for the administration of L/Gs (the “**Agent**”). These Conditions shall be applicable with respect to the use of COGS by the Users and the Agent in connection with the issuance of L/Gs under the Facility Agreement and their administration. In the case of any discrepancies between the terms of the Facility Agreement and these Conditions, the terms of the Facility Agreement shall prevail.

**1.2 Definitions**

In these Conditions:

“**Borrower**” means an original borrower or an additional borrower under the Facility Agreement unless it has ceased to be a borrower in accordance with the Facility Agreement;

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Luxembourg; and in relation to (i) any utilisation by way of issuance of an L/G or (ii) delivery of any utilisation reduction notice, a day on which banks are open for general business in the location of the relevant Issuing Bank’s facility office;

“**COGS User Manual**” means the summary of the instructions how to use and access COGS made available to the Users by the Agent, as amended from time to time;

“**Frankfurt Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Frankfurt am Main;

“**Issuing Bank**” means each bank party to the Facility Agreement which has agreed to issue L/Gs thereunder;

“**L/G**” means any letter of credit, surety, guarantee or such other form of utilisation under the Facility Agreement to be administered via COGS;

“**Lender**” means any original lender and any bank, financial institution, trust, fund or other entity which has become a lender under the Facility Agreement, and which in each case has not ceased to be a lender under the Facility Agreement.

### **1.3 Limitation of use of COGS**

Each User may access and use COGS only for the purposes of and in connection with the administration of L/Gs issued or to be issued under the Facility Agreement as long as the Agent acts as L/G agent under the Facility Agreement. No User shall be entitled to make available any information retrieved from COGS to any third party unless permitted under the Facility Agreement. Each User may only use COGS if and to the extent such use is in compliance with these Conditions and the Facility Agreement.

Due to general business policy restrictions, COGS may not be used for any Guarantee business with the following countries:

- Democratic People’s Republic of North Korea
- Sudan
- South Sudan
- Iran
- Syria
- Cuba
- Crimea.

The Principal represents and warrants with the Agent that it has obtained all necessary foreign trade approvals and that it complies with all applicable laws (including all foreign trade law related provisions of the European Union, in particular, but not limited to, on embargoes and sanctions).

The Agent reserves the right to refuse the use of COGS in a specific case due to the risks associated with the wording and/or the term and/or the beneficiary and/or the underlying transaction of a guarantee.

## **2. Use of COGS**

### **2.1 Features of COGS**

COGS is an internet platform operated by Commerzbank Aktiengesellschaft (“Commerzbank”) and designed to allow for timely and efficient processing of utilisation requests regarding the issuance of L/Gs and the administration of L/Gs issued under the Facility Agreement. This requires that the Agent and/or the Users (as applicable) use COGS:

- to submit utilisation requests with respect to L/Gs;
- to submit confirmations of issuance or non-issuance of L/Gs by the Issuing Banks;
- to submit details of agreed changes to requested L/Gs;
- to deliver utilisation reduction notices with respect to L/Gs;
- to monitor the available commitment as to the issuance of L/Gs which is linked to the L/Gs outstanding;
- to monitor the total face amount of L/Gs issued;
- to monitor and determine the base currency amount of any L/Gs issued for a currency other than the base currency of the Facility Agreement;
- to monitor and calculate any fees and expenses payable under the Facility Agreement with respect to any L/Gs;
- to have access to the terms of any L/G issued under the Facility Agreement; and
- to perform such of the Agent's reporting and documentation duties as are required to be carried out under the Facility Agreement.

Version September 2017

## **2.2 Binding Use**

Any use of COGS is legally binding for the respective User in accordance with the terms and conditions of the Facility Agreement.

## **2.3 Use by Borrower**

Each Borrower undertakes to enter any utilisation request regarding the issuance or the amendment of an L/G into COGS. The transmission of a utilisation request other than through COGS shall be permitted only in accordance with the Facility Agreement.

## **2.4 Use by Issuing Banks**

2.4.1 Following receipt of a notice generated under COGS that a utilisation request in which the relevant User is named as Issuing Bank has been posted on COGS, the relevant User will use its reasonable best efforts to issue the L/G on the requested utilisation date. Any utilisation request shall only be processed and the requested L/G shall only be issued by the requested Issuing Bank in accordance with the terms of the Facility Agreement.

2.4.2 Save as otherwise provided in the Facility Agreement, only the relevant Issuing Bank shall be responsible for the determination that the terms of the requested L/G comply with the relevant requirements under the Facility Agreement, for ensuring that the L/G is correctly classified and that all information and criteria for completion and issuance of the L/G have been correctly specified and met in accordance with the Facility Agreement.

- 2.4.3 Immediately following the decision to issue or not to issue a requested L/G the relevant Issuing Bank shall either enter (i) all relevant data or (ii) that the issuance has been denied and thereafter, if applicable, any changes agreed to such L/G to enable its issuance, into COGS.
- 2.4.4 Each Issuing Bank shall, if the conditions for the cancellation or reduction of an L/G under the terms of the Facility Agreement are fulfilled, enter the relevant utilisation reduction notice into COGS as and when provided for under the Facility Agreement.

**3. Uptime, Downtime of COGS**

- 3.1 Subject as provided in these Conditions, Commerzbank and the Agent will use their reasonable best efforts to ensure that COGS will be operational and accessible at all times 24 hours each day of the year and in full compliance with the terms set out in these Conditions.
- 3.2 The Agent will perform any services regarding the issuance of L/Gs and the administration of L/Gs under the Facility Agreement (if not automatically performed by COGS) from 8 a.m. to 6 p.m. on Business Days.
- 3.3 Subject as follows, amendments to or maintenance of COGS shall not be carried out between 8 a.m. and 6 p.m. on Frankfurt Business Days. If any amendments or maintenance have to be carried out during these times, the Agent will, if practicable, inform the Users in advance of the relevant downtime(s).
- 3.4 If COGS is not operational or accessible or is producing incorrect data, the Agent will inform the Users and the Users will inform the Agent promptly upon becoming aware of the problem.
- 3.5 During any COGS downtimes, the alternative means of communication for the issuance and the administration of L/Gs as set out in the Facility Agreement shall apply.

**4. Technical Requirements**

- 4.1 Each User is responsible at its own cost for implementing, maintaining and updating the respective technical requirements as set out in the COGS User Manual to access and use COGS.
- 4.2 Each User is responsible for ensuring that there exist adequate data security measures for its own systems and that it maintains at all times sufficient and up-to-date precautions against viruses and other harmful computer programs, e.g. Trojan horses and worms which could affect COGS or the IT systems of any other User.

**5. Representatives**

- 5.1 Each User shall determine a number of representatives authorised by the respective User to access COGS (each, a “Representative”) and shall provide the Agent with a list thereof. Each User shall be liable for all acts and omissions of its Representative(s).
- 5.2 The Agent must be informed immediately in writing if any Representative ceases to be so authorised.
- 5.3 In the event a User believes that an unauthorised person has gained access to COGS or has become aware of a User ID or password, or a User becomes aware or believes that a User ID or password has or may have been lost, or acquired by any third party or other person who is not a Representative, the User shall inform the Agent immediately.
- 5.4 As protection against unauthorised use, the Agent may direct an annual inquiry to each User to request a confirmation that the determined Representatives shall continue to have access to COGS. Each User undertakes to issue the above-mentioned confirmation within a period of two weeks after request by the Agent. If the confirmation is not issued in due time, the Agent may block the access of the Representative concerned.

**6. COGS User Manual**

- 6.1 The use of COGS and entry of any data into COGS shall always be made in a confidential manner and in compliance with the COGS User Manual as made available by the Agent to the Users. Each User shall comply with the latest version of the COGS User Manual as accessible on the COGS website.
- 6.2 Each User shall keep itself informed of all changes to COGS referred to on the COGS website.

**7. Access to COGS, Technical Support**

- 7.1 COGS is accessible through the COGS website at: [www.cogs.commerzbank.de](http://www.cogs.commerzbank.de).
- 7.2 To become accredited for the purposes of COGS each Representative shall submit to the Agent a user account form. Log-in to COGS is protected through log-in identification details (User ID and password). The User ID and the password must at all times be kept secret and may not be disclosed to third parties or saved electronically.
- 7.3 Technical support (+352 477 911 3109 or +352 477 911 2587) is available for assistance and for answering technical queries concerning access to and features of COGS. Technical support will be available from 8 a.m. to 6 p.m. on Frankfurt Business Days. Alternatively, queries may be submitted by e-mail to technical support at the following address: [cogs-agency@commerzbank.com](mailto:cogs-agency@commerzbank.com).

- 7.4 The internal approval procedures of each Borrower for the submission of L/G requests must be submitted to the Agent in advance in order to ensure that these procedures are reflected in COGS.
- 7.5 Each User will provide upon request to Commerzbank and the Agent all information considered necessary by Commerzbank and the Agent for the operation of COGS and performance of its function as L/G agent under the Facility Agreement.

**8. Currency Calculations**

- 8.1 If any L/Gs are denominated in any currency other than the base currency under the Facility Agreement, COGS will automatically calculate the base currency amount of each such L/G on the basis set out in Clause 8.2 below on the day on which the relevant Issuing Bank approves the issuance of such L/G. Recalculations of the base currency amount of such L/Gs which are outstanding will be supplied by COGS at such intervals (which may be daily, weekly, monthly or quarterly) as are provided for under the Facility Agreement.
- 8.2 The base currency amount shall be calculated using the exchange rates displayed in and used for calculations made by COGS. The relevant exchange rates are imported by an automatic real-time data feed from Reuters at 14 o'clock daily and are accessible in COGS on a daily basis (FX Rates Reports). If an L/G is to be issued in a currency not recognised by COGS for the time being, the relevant Issuing Bank shall inform the Agent accordingly who will provide for an addition of the relevant exchange rate to COGS.

**9. Banking Secrecy, Records and Data Protection**

- 9.1 The Lenders, Issuing Banks and the Agent have the duty to maintain secrecy about any information obtained from COGS and evaluations of which they may have knowledge. The Lenders, Issuing Banks and the Agent may only disclose such information if they are obliged to do this under any applicable law or directive by a public authority or court, or if they are authorised to disclose banking affairs or if the respective User has consented thereto.
- 9.2 The Agent is entitled to collect, record, alter and communicate personal data as far as necessary to operate COGS.
- 9.3 The data in respect of and copies of all L/Gs (if uploaded in COGS) and requests for the issuance of L/Gs will be stored in a database maintained in COGS for 10 years. A daily back-up of such database will also be carried out. Notwithstanding this, each User is responsible for maintaining all records (including corresponding documents) which it is bound to keep by law, contract or otherwise.

**10. No guarantee**

Neither Commerzbank nor the Agent gives any assurance or guarantee that COGS, its contents and functions shall remain usable without error or interruption or that the data available under COGS is correct or complete at any time.



## **11. Liability and responsibility**

### 11.1 General Liability

11.1.1 None of Commerzbank, the Agent as well as any of their respective legal representatives and vicarious agents (Erfüllungs- und Verrichtungsgehilfe) shall be liable for any direct, indirect, typical or untypical, foreseeable or unforeseeable damages or costs caused by a culpable action of their own or attributable to any of these persons arising from or in connection with the use of COGS.

### 11.2 Responsibility/liability for the use of the internet and e-mail communication

11.2.1 Each User acknowledges that the use of both the Internet and e-mail communication involves inherent risks that are beyond the reasonable control of Commerzbank or the Agent, as the flow of data to or from COGS through the public internet structure depends in large parts on computer hardware and software controlled by third parties. Although the transmission and receipt of information through COGS is protected through the use of 128-bit SSL (Secure Sockets Layer) encryption technology, these inherent risks cannot be excluded.

11.2.2 Data sent through the internet can be delayed, lost, corrupted, changed or falsified, with or without any interference of third parties. Additionally, the data may be cached, stored or mirrored on the computer systems of third parties during transfer. Therefore it cannot be ensured that unauthorised third parties will not obtain access to confidential data and that these data will not be used without authorisation, falsified or deleted. Neither Commerzbank nor the Agent nor any of their respective legal representatives or vicarious agents (Erfüllungs- oder Verrichtungsgehilfe) accepts any liability for any damages or costs that may possibly arise from the violation of the integrity or confidentiality of any data after it has left their respective spheres of control.

11.2.3 E-mail communication may be infected with viruses and other harmful computer programs, e.g. Trojan horses and worms, which could affect COGS or the IT systems of any User. These computer programs may change the content of e-mails, transfer confidential data to third parties or cause the loss of other data and therefore involve a considerable risk for other databases and IT systems. Whilst Commerzbank carries out commercially reasonable procedures to check for any harmful computer programs, neither Commerzbank nor the Agent nor any of their respective legal representatives or vicarious agents (Erfüllungs- und Verrichtungsgehilfe) accept any liability for any damages or costs arising in this connection, especially if in connection with an e-mail communication the IT systems of a User are adversely affected.

### 11.3 Exceptions from the limitation of liability

11.3.1 In deviation from the above clauses 11.1 and 11.2, liability for slight negligence shall continue to exist if a duty is violated, the performance of which allows the proper execution of the agreement in the first place and on compliance with which the party to the agreement may rely regularly (cardinal duty). In the event of a slightly negligent violation of a cardinal duty, however, the liability shall be limited to foreseeable and typically occurring damages.

- 11.3.2 Contrary to this, in deviation from the restrictions of the above clauses 11.1, 11.2 and 11.3.1, an unlimited liability shall continue to exist if the liability results from a grossly negligent or wilful action of Commerzbank or the Agent itself or their respective legal representatives or vicarious agents (Erfüllungs- und Verrichtungsgelhilfe) themselves or attributable to them.
- 11.3.3 In the same way, in deviation from the restrictions of the above clauses 11.1, 11.2, and 11.3.1, a possible liability without fault or a liability in the case of negligent injury to body, life or health shall continue to exist without limitation.

## **12. Copyrights, Names, Trademarks**

- 12.1 The COGS website and its presentation of a distinctive 'look and feel' experience constitute intellectual property rights of Commerzbank. Commerzbank reserves all rights of use and exploitation with respect to data, descriptions, pictures, images, software and all other elements shown on or made available by download or otherwise from the website, other than the rights of use granted to each User under and in accordance with these Conditions.
- 12.2 Unless otherwise permitted in the Facility Agreement, the Users may not, in particular:
- (i) use the COGS website to offer any services other than in connection with the Facility Agreement;
  - (ii) remove any copyright remark, trademark, commercial designation or caveat of Commerzbank or the Agent or their respective suppliers;
  - (iii) use any trademark, trade name for services and products, commercial designation, logo or domain name of Commerzbank or the Agent without their express permission.

## **13. Term of COGS**

The Agent shall provide COGS during the lifetime of the Facility Agreement if and for so long as the Agent remains L/G agent thereunder. Access by the Users to COGS shall be terminated one month after the latest applicable final maturity date of the Facility Agreement.

## **14. Amendments to these Conditions**

- 14.1 Commerzbank and the Agent may from time to time amend these Conditions (including amendments they consider appropriate to properly reflect the practical operation of COGS in the terms of these Conditions). Any amendments of these Conditions will be notified to the Users by the Agent via e-mail and by publication of the amended Conditions on the COGS website.

14.2 Each such amendment shall be deemed to have been approved unless the respective User objects thereto in writing. Together with notification of an amendment the Agent shall expressly draw the Users' attention to this consequence. A User must notify any such objection to the Agent within six weeks following the relevant notification by the Agent.

**15. Changes to COGS**

Commerzbank and the Agent may from time to time release an updated version of COGS to implement new features, make enhancements or provide bug fixes ("Changes to COGS"). These Changes to COGS do not require the consent of any User, provided that the implementation of such Changes does not unreasonably affect the User's ability to make use of COGS as set out in these Conditions and in the Facility Agreement. If any such Change restricts any User's ability to make use of COGS in accordance with these Conditions and the Facility Agreement, the Agent will inform the Users by e-mail with a reasonable description of such Changes at least ten Business Days prior to such Changes being made. The list of Changes for any new release version of COGS will be published on the COGS website.

**16. Miscellaneous**

16.1 The Agent and the Users agree that, should any provision of these Conditions at any time due to any reason be or become void, invalid or ineffective, this will indisputably not affect the validity or effectiveness of the remaining provisions and these Conditions will remain valid and effective, save for the void, invalid or ineffective provisions, without any party having to argue and prove the parties' intent to uphold these Conditions even without the void, invalid or ineffective provisions.

16.2 These Conditions shall be governed by the law of the Federal Republic of Germany.

16.3 The courts of Frankfurt am Main shall have exclusive jurisdiction to settle any dispute arising out of or in connection with these Conditions.

**SCHEDULE 14**

**LIST OF INITIAL MATERIAL SUBSIDIARIES**

Batesville Casket Company, Inc.\*

Batesville Services, Inc.\*

Process Equipment Group, Inc.\*

K-Tron Investment Co.\*

TerraSource Global Corporation\*

Rotex Global, LLC\*

Coperion Corporation\*

Red Valve Company, Inc.\*

Hillenbrand International Holding Corporation

Hillenbrand Switzerland GmbH

Hillenbrand Luxembourg S.à.r.l.

Coperion K-Tron (Schweiz) GmbH

Hillenbrand Germany Holding GmbH

Coperion Capital GmbH

Coperion GmbH

\*Material Domestic Subsidiary

SCHEDULE 15

FORM OF BANK GUARANTEE

Beneficiary: [ • ]

EUR 150,000,000 L/G Facility Agreement dated [•] 2018 between, amongst others, Hillenbrand, Inc. as the company, Commerzbank Aktiengesellschaft as arranger, Commerzbank Finance & Covered Bonds S.A. as agent and certain other financial institutions as lenders and as issuing banks (the "Facility Agreement")

We have been informed that you have issued the guarantees set out in Annex 1 hereto under the Facility Agreement (hereinafter the "Guarantees"). These Guarantees shall be fully secured by this Counter Guarantee in your favour.

This being premised, we hereby open in your favour our irrevocable Counter Guarantee number (..) for an amount of *(amount)* (*amount in words*) being our proportionate liability of *(amount)* of the Guarantees issued by you, available against your authenticated swift / tested telex / written request received by registered mail or courier at our address set out below stating either (i) that you have duly issued your Guarantee (setting out what type of guarantee you have issued referring to Annex 1) and that you have received a claim in accordance with the terms of such Guarantee and specifying the amount claimed thereunder or (ii) that this Counter Guarantee will expire within 30 days of such authenticated swift / tested telex / written request, and the following (*insert Guarantee details from Annex 1*) remain outstanding and no cash collateral or replacement counter guarantee satisfactory to you have been received by you, and specifying the amount claimed thereunder.

This Counter Guarantee expires on *(date)* (the "Expiry Date").

This Counter Guarantee is personal to you and not assignable without our prior written consent.

The construction, validity and performance of this Counter Guarantee shall be governed by and construed in accordance with German law and any dispute shall be submitted to the exclusive jurisdiction of the Frankfurt am Main courts in Germany.

In the event of a drawing under this Counter Guarantee our maximum aggregate liability is restricted to *(amount)* (*amount in words*).

We undertake to pay to you on your first authenticated swift / tested telex / written request received by registered mail or courier at our address set out above any amount that you may claim not exceeding the maximum amount stated above **provided that** such demand is made in accordance with the terms of this Counter Guarantee and is received before close of business (German CET time) on the Expiry Date.

This Counter Guarantee shall be available for multiple drawings.

Special Conditions:

The stated amount of this Counter Guarantee shall also be reduced from time to time, upon receipt by Commerzbank Finance & Covered Bonds S.A. of the following:

your statement (such statements to be delivered on a quarterly basis), purportedly signed by one of your authorised financial officers reading as follows, on or prior to the Expiry Date hereof, stating therein the following:

The outstanding Guarantees no.(s) (*supply relevant number(s) per attached Annex 1*) issued by you or on your behalf for the account of *(name)*, has (have) expired (such that there is no further liability under such Guarantee) with an unused balance of EUR/USD (*supply amount*), therefore Commerzbank Finance & Covered Bonds S.A. is instructed and authorized to reduce the stated amount of their Counter Guarantee number (*insert number*) by such amount.

and/or

The outstanding Guarantees no.(s) (*supply relevant number(s) per attached Annex I*) issued by you or on your behalf for the account of *(name)*, has (have) been returned to us for cancellation and has (have) been terminated by us with an unused balance of EUR/USD (*supply amount*), therefore Commerzbank Finance & Covered Bonds S.A. is instructed and authorized to reduce the stated amount of their Counter Guarantee number (*insert number*) by such amount.

and/or

The outstanding Guarantees no.(s) (*supply relevant number(s) per attached Annex I*) issued by you or on your behalf for the account of *(name)*, has (have) been reduced by EUR/USD (*supply amount*), therefore Commerzbank Finance & Covered Bonds S.A. is instructed and authorized to reduce the stated amount of their Counter Guarantee number (*insert number*) by such amount.

(BANK)

(*address*)

**Annex 1**

To Counter Guarantee No

Secured Guarantees

<u>Guarantee No.</u>	<u>Beneficiary</u>	<u>Currency</u>	<u>Guarantee Amount</u>
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**SCHEDULE 16**  
**LIST OF EXISTING L/GS**



**SCHEDULE 17**

**LIST OF EXISTING FINANCIAL INDEBTEDNESS AND EXISTING SECURITY**

<b>Description</b>	<b>Interest Rate</b>	<b>Maturity</b>	<b>Amount</b>
Senior Unsecured Notes issued pursuant to the Indenture between Hillenbrand, Inc. and U.S. Bank National Association as trustee, dated as of July 9, 2010 and that certain Supplemental Indenture, dated as of January 10, 2013 by and among Hillenbrand, Inc., Batesville Casket Company, Inc., Batesville Manufacturing, Inc., Batesville Services, Inc., Coperion Corporation, K-Tron Investment Co., Terrasource Global Corporation, Process Equipment Group, Inc., Rotex Global, LLC, and U.S. Bank National Association, as trustee, and that certain Supplemental Indenture No. 2, dated as of April 16, 2016, by and among Hillenbrand, Inc., Red Valve Company, Inc. and U.S. Bank National Association, as trustee.	5.50% (coupon)	7/15/2020	\$150,000,000 (face value)

**Other Agreements:**

Notes up to a maximum principal amount of \$200,000,000 and related indebtedness issued pursuant to that certain Private Shelf Agreement dated as of December 6, 2012, by and among Hillenbrand, Inc. and Prudential Investment Management, Inc., as amended, restated, amended and restated, supplemented or otherwise modified, including the \$100,000,000 4.6% Series A Senior Notes issued December 15, 2014 thereunder.

Indebtedness incurred from time to time pursuant to the Existing US Facility Agreement, as amended, restated, amended and restated, supplemented or otherwise modified.

Restricted cash:

<b>Entity</b>	<b>Amount (USD equivalent)</b>	<b>Bank</b>	<b>Location</b>
Jeffrey Rader AB	\$0.7m	Handelsbanken	Sweden

**SIGNATURES**

*[Signature pages intentionally deleted]*

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**SIGNATURES**

**THE COMPANY**

**Hillenbrand, Inc.**

By: /s/ Theodore S. Haddad, Jr.  
Address: One Batesville Boulevard  
Batesville, Indiana 47006

**THE BORROWERS**

**Hillenbrand, Inc.**

By: /s/ Theodore S. Haddad, Jr.  
Address: One Batesville Boulevard  
Batesville, Indiana 47006

**Coperion GmbH**

By: /s/ Kimberly K. Ryan /s/ Stefan Rottke  
Address: Theodorstraße 10,  
70469 Stuttgart

**Coperion K-Tron (Schweiz) GmbH**

By: /s/ Theodore S. Haddad, Jr.  
Address: Lenzhardweg 43/45  
CH-5702 Niederlenz, Switzerland

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**Rotex Europe Ltd**

By: /s/ Kristina A. Cerniglia  
Address: Ashton Lane North  
Whitehouse Vale  
Runcorn, Cheshire WA7 3FA, England

**Abel GmbH**

By: /s/ Thorsten Adria  
Address: Abel-Twiete 1  
21514 Büchen

**THE GUARANTORS**

**Hillenbrand, Inc.**

By: /s/ Theodore S. Haddad, Jr.  
Address: One Batesville Boulevard  
Batesville, Indiana 47006

**Batesville Manufacturing, Inc.**

By: /s/ Theodore S. Haddad, Jr.  
Address: One Batesville Boulevard  
Batesville, Indiana 47006

**Batesville Casket Company, Inc.**

By: /s/ Theodore S. Haddad, Jr.  
Address: One Batesville Boulevard  
Batesville, Indiana 47006

*[Hillenbrand - Signature Page to Amendment Agreement]*

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**Batesville Services, Inc.**

By: /s/ Theodore S. Haddad, Jr.  
Address: One Batesville Boulevard  
Batesville, Indiana 47006

**Process Equipment Group, Inc.**

By: /s/ Theodore S. Haddad, Jr.  
Address: 28 West State Street  
Trenton, New Jersey 08608

**K-Tron Investment Co.**

By: /s/ Theodore S. Haddad, Jr.  
Address: 103 Foulk Road, Suite 202  
Wilmington, Delaware 19803

**Coperion K-Tron Pitman, Inc.**

By: /s/ Theodore S. Haddad, Jr.  
Address: 1209 Orange Street  
Wilmington, Delaware 19801

**TerraSource Global Corporation**

By: /s/ Theodore S. Haddad, Jr.  
Address: 1209 Orange Street  
Wilmington, Delaware 19801

*[Hillenbrand - Signature Page to Amendment Agreement]*

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**Rotex Global, LLC**

By: /s/ Theodore S. Haddad, Jr.  
Address: 1209 Orange Street  
Wilmington, Delaware 19801

**Coperion Corporation**

By: /s/ Theodore S. Haddad, Jr.  
Address: 2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

**Red Valve Company, Inc.**

By: /s/ Theodore S. Haddad, Jr.  
Address: 600 North Bell Avenue, Building II,  
Second Floor  
Carnegie,  
Pennsylvania 15106

*[Hillenbrand - Signature Page to Amendment Agreement]*

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**THE AGENT**

**Commerzbank Finance & Covered Bond S.A.**

By: /s/ Frank Rommelfänger

/s/ Marcus Gögler

**THE ARRANGER**

**Commerzbank Aktiengesellschaft**

By: /s/ Sven Saur

/s/ Christian Müller

**THE LENDERS**

**Commerzbank Aktiengesellschaft**

By: /s/ Philipp Wörz

/s/ Jens-Henning Meyer

**HSBC Trinkaus & Burkhardt AG**

By: /s/ Christoph Pott

/s/ Dr. Michael-Alexander Kreysel

**Skandinaviska Enskilda Banken AB (publ) Frankfurt Branch**

By: /s/ Alexander Schneider

/s/ Jürgen Baudisch

**Sumitomo Mitsui Banking Corporation**

By: /s/ Alexander Kowald

/s/ Marco Frensel

*[Hillenbrand - Signature Page to Amendment Agreement]*

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