

LATHAM & WATKINS LLP

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555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200 Fax: (202) 637-2201
www.lw.com

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June 8, 2004

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Int'l Bureau
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Re: *Ex Parte* Submission
File No. SAT-MSC-20040210-00027

At the request of Commission staff, Inmarsat hereby submits a copy of the Mezzanine Loan Facility Agreement dated October 10, 2003. If you have any questions or would like additional information, please call the undersigned at (202) 637-2200.

Respectfully submitted,



Gary M. Epstein
John P. Janka
Alexander D. Hoehn-Saric
LATHAM & WATKINS LLP
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200 (phone)
(202) 637-2201 (fax)

Received

JUN 21 2004

Policy Branch
International Bureau

Counsel for INMARSAT VENTURES LIMITED

Attachment

cc: Neil Dellar
Stephen Duall
Eliot Greenwald
Bruce Henoach
Bruce Jacobs
Andrea Kelly

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List ABCDE

LATHAM & WATKINS^{LLP}

Karl Kensinger
Alfred Mamlet
Marilyn Simon
Phil Spector
Cassandra Thomas
Qualex International

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2004, I caused a true copy of the foregoing “*Ex Parte* Submission” to be served by first-class mail and, where noted, by hand (*) on the following:

Neil Dellar*
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Stephen Duall*
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Andrea Kelly*
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Karl Kensinger*
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Marilyn Simon*
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Cassandra Thomas*
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Eliot Greenwald
Swidler Berlin Shereff Firedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20006
Counsel for Deere & Company


Bruce Henoch
Assistant General Counsel
Telenor Satellite Services, Inc.
1101 Wootton Parkway, 10th Floor
Rockville, MD 20852
Counsel for Telenor Satellite Services, Inc.

Bruce D. Jacobs
Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037
Counsel for Mobile Satellite Ventures Subsidiary LLC

Alfred M. Mamlet
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036-1795
*Counsel for Stratos Mobile Networks Inc. and
Stratos Communications, Inc.*

Phillip L. Spector
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1615 L Street, N.W.
Suite 1300
Washington, DC 20036
Counsel for SES Americom

Qualex International*
Portals II
Room CY-B402
445 12th Street, S.W.
Washington, DC 20554



Sarah Raison

\$365,000,000

MEZZANINE LOAN FACILITY AGREEMENT

dated 10 October 2003

for

DUCHESSGROVE LIMITED

and

GRAPECLOSE LIMITED

arranged by

CREDIT SUISSE FIRST BOSTON

BARCLAYS CAPITAL

AND

THE ROYAL BANK OF SCOTLAND PLC

with

CREDIT SUISSE FIRST BOSTON

BARCLAYS CAPITAL

AND

THE ROYAL BANK OF SCOTLAND PLC

acting as bookrunners

Credit Suisse First Boston

acting as Agent

and

Barclays Bank plc

acting as Security Trustee

Note: This Agreement is entered into on the basis that it will have the benefit of and be subject to the terms of the Intercreditor Agreement.

LATHAM & WATKINS

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THIS AGREEMENT is dated 10 October 2003 and made between:

- (1) DUCHESSGROVE LIMITED, a company incorporated in England and Wales with registered number 4886072 (the "**Company**");
- (2) GRAPECLOSE LIMITED, a company incorporated in England and Wales with registered number 4886096 (the "**Borrower**" and "**Newco**");
- (3) THE SUBSIDIARIES of the Company listed in Part I of Schedule 1 (*The Original Parties*) as original guarantors (the "**Original Guarantors**");
- (4) CREDIT SUISSE FIRST BOSTON, BARCLAYS CAPITAL and THE ROYAL BANK OF SCOTLAND plc (whether acting individually or together, the "**Mezzanine Loan Arrangers**");
- (5) CREDIT SUISSE FIRST BOSTON, BARCLAYS CAPITAL and THE ROYAL BANK OF SCOTLAND plc (whether acting individually or together, the "**Bookrunners**");
- (6) THE FINANCIAL INSTITUTIONS listed in Part II of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**");
- (7) Credit Suisse First Boston as agent of the other Mezzanine Loan Finance Parties (the "**Agent**"); and
- (8) Barclays Bank plc as security trustee and security agent for the Mezzanine Loan Finance Parties (the "**Security Trustee**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

"Accountants' Report" means the accounting, pensions and taxation report by PricewaterhouseCoopers relating to the Acquired Group.

"Accounting Month" means each period of approximately 30 days ending on the last day of each calendar month in any financial year of the Company.

"Accounting Quarter" means each of the periods of approximately 13 weeks in any financial year of the Company the first of which commences on 1 January in each such financial year and the last of which ends on 31 December.

"Acquired Group" means the Target and its Subsidiaries.

"Acquired Group Member" means the Target, Inmarsat (IP) Company limited (a company incorporated in England and Wales with registered number 3930467) and any member of the Acquired Group which is a Material Subsidiary.

"Acquisition" means the acquisition by Newco of the entire newly issued share capital of the Target pursuant to the Scheme of Arrangement.

“Acquisition Costs” means all costs, commissions, fees and expenses (and Tax on them) and all stamp duty, registration and other similar Tax incurred by or on behalf of Newco, any other member of the Group and/or the Acquired Group in connection with the Acquisition, its financing, refinancing and/or the Facility, the hedging arrangements to be effected in accordance with the Hedging Policy relating to the Senior Facilities, the Loan, the High Yield Notes Finance Documents and/or the Transaction Documents as set out in the summary of acquisition costs provided to the Mezzanine Loan Arrangers.

“Additional Guarantor” or **“Additional Obligor”** means a company which becomes an additional guarantor in accordance with Clause 25 (*Changes to the Obligors*).

“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.

“Agency Arrangement” means the agreement among Latham & Watkins, Clifford Chance LLP and DDBCo relating to the appointment of Latham & Watkins and Clifford Chance LLP to countersign and deliver the Mezzanine Subordinated Preference Certificates on behalf of DDBCo to the Mezzanine Lead Arrangers on the Extension Date.

“Agreed Form” means a document that:

- (a) it is in a form initialled by or on behalf of Newco and the Agent on or before the signing of this Agreement for the purposes of identification; or
- (b) if not falling within paragraph (a) above is in form and substance satisfactory to the Agent (acting reasonably).

“Airia Dispute” means the dispute between the Target and APR Limited in relation to Airia Limited and Airia Services Limited referred to in the Due Diligence Report.

“Announcement Date” means the date on which the Press Release is issued.

“Apax” means Apax Partners Worldwide LLP.

“Applicable Accounting Principles” means GAAP and practices and financial reference periods used in the Financing Case.

“Applicable Margin” means 8.0 per cent. per annum from the Utilisation Date to but not including the six Month anniversary thereof, and shall increase by 1.0 per cent. per annum on such six Month anniversary and by 0.5 per cent. per annum on the nine Month anniversary of the Utilisation Date and at the end of each three Month period thereafter.

“Approved Hedging Bank” means:

- (a) in relation to any hedging arrangements where there is no ongoing liability of the relevant member of the Group, any bank or financial institution; and
- (b) in relation to any other hedging arrangements other than those referred to in paragraph (a) above, any Senior Finance Party or Mezzanine Finance Party.

“Authorisation” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration (including any relevant landlord consent's to create security or to lease any property, any registration on the International Telecommunication Union's Master International Frequency Register and any licence or authorisation required under the Outer Space Act 1986, the Wireless Telegraphy Act 1949 or the Communications Act 2003 (and any equivalent or analogous laws in any relevant jurisdiction)).

“Availability Period” means the period from and including the date of this Agreement to the earlier of (i) the date falling 180 days after the date of this Agreement and (ii) the date falling 14 days after the Completion Date.

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

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

exceeds:

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

“Bondco” means a public limited company to be incorporated in England and Wales as a wholly owned direct subsidiary of Midco.

“Budget” means each budget supplied under and complying with Clause 19.5 (*Annual Budget*).

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

“Capital Expenditure” means any expenditure which should in accordance with the Applicable Accounting Principles be treated as capital expenditure in the audited consolidated financial statements of the Group.

“Capitalising Rate” means:

- (a) during any period prior to the Extension Date, interest that accrues on the Loan at a rate in excess of the Maximum Cash Rate; and
- (b) from and including the Extension Date, the PIK Rate.

“Cash” means any credit balance on any deposit (including time deposits), savings, current or other account held in accordance with Clause 22.21 (*Bank Accounts*), and any cash in hand.

“Cash Equivalent Investments” means:

- (a) securities with a maturity of less than 12 months from the date of acquisition issued or fully guaranteed or fully insured by the Government of the United States or any member state of the European Union which is rated at least A-1 by Standard & Poor’s Ratings Group or P-1 by Moody’s Investors Service, Inc.;
- (b) commercial paper or other debt securities issued by an issuer rated at least A-1 by Standard & Poor’s Ratings Group or P-1 by Moody’s Investors Service, Inc. and with a maturity of less than 12 months; and
- (c) certificates of deposit or time deposits of any commercial bank (which has outstanding debt securities rated as referred to in paragraph (b) above) and with a maturity of less than 12 months.

“Cashflow” has the meaning given to it in Clause 20.7 (*Definitions*).

“Certain Funds Default” means:

- (a) an Event of Default arising under or in connection with Clause 23.1 (*Non-payment*);
- (b) an Event of Default arising under or in connection with Clause 23.3 (*Other obligations*) as it relates to:
 - (i) Clause 22.6 (*Acquisitions and investments*);

- (ii) Clause 22.10 (*Holding company*);
- (iii) Clause 22.15 (*Negative pledge*);
- (iv) Clause 22.18 (*Guarantees*);
- (v) Clause 22.20 (*Financial Indebtedness*);
- (vi) Clause 22.28 (*Scheme of Arrangement*);
- (vii) Clause 22.29 (*Rule 9 bid*) insofar as it relates to any action taken by any member of the Group or any person acting in concert with any member of the Group;
- (viii) Clause 22.32 (*Amendments of Investor Documents, Senior Finance Documents and High Yield Notes Finance Documents*); or
- (ix) Clause 22.34 (*Anti-money laundering*),

in each case only as it relates to any Holdco;

- (c) an Event of Default arising under or in connection with Clause 23.4 (*Misrepresentation*) as it relates to:

- (i) Clause 18.1 (*Status*);
- (ii) Clause 18.2 (*Binding obligations*);
- (iii) Clause 18.3 (*Non-conflict with other obligations*);
- (iv) Clause 18.4 (*Power and authority*);
- (v) Clause 18.6 (*No default*) as it relates to a Certain Funds Default;
- (vi) paragraphs (a) and (b) of Clause 18.13 (*Investor Documents and Mezzanine Finance Documents*);
- (vii) Clause 18.15 (*No prior business*); or
- (viii) Clause 18.16 (*No Financial indebtedness or Security*),

in each case only as it relates to any Holdco;

- (d) an Event of Default arising under or in connection with Clause 23.6 (*Insolvency*) or 23.7 (*Insolvency proceedings*) in each case only as it relates to any Holdco; or
- (e) an Event of Default arising under or in connection with Clause 23.10 (*Unlawfulness*) or 26.11 (*Repudiation*) in each case only as it relates to any Holdco.

“Certain Funds Period” means the period from and including the date of this Agreement to and including the earliest of:

- (a) the date on which any Mandatory Cancellation Event occurs; and
- (b) the end of the Availability Period applicable to the Facility.

“Charged Assets” means the assets over which Security is expressed to be created pursuant to any Security Document.

“Chargor” means any person expressed to create Security pursuant to any Security Document.

“Chief Executive Officer” means Michael Storey and any replacement chief executive officer (or equivalent officer) from time to time of the Company.

“Chief Financial Officer” means Ramin Khadem and any replacement chief financial officer (or equivalent officer) from time to time of the Company.

“City Road Property” means the leasehold property of the Acquired Group located at 99 City Road, London EC1.

“Clean-up Period” means the period of 90 days from and including the Completion Date.

“Code” means the City Code on Takeovers and Mergers.

“Commercial Report” means the commercial report by McKinsey & Company.

“Commitment” means:

- (a) in relation to each Original Lender, the amount in dollars set opposite its name under the heading “Commitment” in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount in dollars of any Commitment transferred to it under this Agreement,

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

“Commitment Letter” means the commitment and underwriting letter dated 5 September 2003 between the Company, Newco, CSFB, Barclays and RBS.

“Completion Date” means the date that an office copy of the court order sanctioning the Scheme of Arrangement has been filed with, and registered by, the Registrar of Companies of England and Wales.

“Compliance Certificate” means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*).

“Confidentiality Undertaking” means a confidentiality undertaking substantially in the form agreed between the Company and the Mezzanine Loan Arrangers on or prior to the date of this Agreement or in any other form agreed between the Company and the Agent.

“DDBCo” means Lavenderview Limited, a company incorporated in England and Wales with registered number 4917504.

“Debenture 1” means a first ranking debenture in favour of the Security Trustee incorporating fixed and floating charges over all of the present and future assets of Newco, as Security for all the obligations of the Obligors under the Finance Documents (other than the High Yield Notes Finance Documents, the Mezzanine Subordinated Preference Certificates and the Mezzanine Subordinated Preference Certificates Instrument).

“Debenture 2” means a first ranking debenture in favour of the Security Trustee incorporating fixed and floating charges over all of the present and future assets of the Chargor, as Security for all the obligations of the Obligors under the Finance Documents (other than the High Yield Notes Finance Documents, the Mezzanine Subordinated Preference Certificates and the Mezzanine Subordinated Preference Certificates Instrument).

“Default” means an Event of Default or any event or circumstance specified in Clause 23 (*Events of Default*) which would (with the lapse of time, the giving of notice, the making of any determination under the Senior Finance Documents or any combination of any of the foregoing) be an Event of Default provided that any such event which by reason of express provisions in any Mezzanine Finance Document requires the satisfaction of a condition as to materiality before it may become an Event of Default shall not be a Default unless that condition is satisfied.

“Demand Securities” means the senior notes, subordinated notes or discount notes of Bondco (and guaranteed by Midco) issued in accordance with Clause 21.4 (*Demand Securities*).

“Dormant Company” means each member of the Group:

- (a) which has been dormant since its incorporation or since the end of its previous financial year (and for this purpose “dormant” has the meaning given to it in section 249 AA(4) of the Companies Act 1985); and
- (b) the value of whose total gross assets is less than £25,000 (or its equivalent in another currency or currencies).

“Due Diligence Report” means the legal due diligence report dated 5 September 2003 by Milbank, Tweed, Hadley & McCloy LLP and Clifford Chance LLP relating to the Acquired Group.

“EBITDA” has the meaning given to it in Clause 20.7 (*Definitions*).

“Engagement Letter” means the engagement letter dated 5 September 2003 between the Company, Midco, Newco, Credit Suisse First Boston (Europe) Limited, Barclays Capital and RBS.

“Environment” means the following media:

- (a) air (including air within natural or man-made structures, whether above or below ground);
- (b) water (including territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including land under water).

“Environmental Law” means all laws and regulations of any relevant jurisdiction which:

- (a) have as a purpose or effect the protection of, and/or prevention of harm or damage to, the Environment;
- (b) provide remedies or compensation for harm or damage to the Environment; or
- (c) relate to any Hazardous Substance or health and safety matters.

“Environmental Licence” means any Authorisation required at any time under Environmental Law.

“Environmental Report” means the environmental report relating to the Acquired Group prepared by URS Environmental and addressed to, amongst others, Apax and Permira and capable of being relied upon by the Senior Finance Parties and the Mezzanine Finance Parties .

“Event of Default” means any event or circumstance specified as such in Clause 23 (*Events of Default*).

“Existing Debt” means the Financial Indebtedness of the Acquired Group existing immediately prior to the Completion Date including any break costs or prepayment fees in relation to such Financial Indebtedness.

“Existing Share Option Schemes” means the “Approved Share Option Plan” (Inmarsat Ventures plc Approved Share Purchase Plan) and the “Executive Share Option Plan” (Inmarsat Ventures plc Share Option Plan), each as described in the Due Diligence Report.

“Extension Date” means the Mezzanine Loan Maturity Date, unless, on such date:

- (i) any Default under Clause 23.6 (*Insolvency*) or 23.7 (*Insolvency Proceedings*) (other than those set out in Clause 23.7(b)(i)) in relation to Midco, Newco, Bondco, any Guarantor or any Material Subsidiary has occurred and is continuing;

- (ii) there exists a default in the payment when due of any amount in excess of \$1,000,000 under the Fee Letter or the Engagement Letter;
- (iii) any member of the Group is in default under Section 2 of the Engagement Letter; or
- (iv) any Default under Clause 23.1 (*Non-Payment*) of this Agreement has occurred and is continuing;

provided that, if an event as described in Clause (i), (iii) or (iv) is continuing on the Mezzanine Loan Maturity Date and the grace period referred to in Clause 23.3 (*Other obligations*) or Clause 23.1(b) (*Non-Payment*) or Clause 23.7(b)(ii) (*Insolvency Proceedings*) as applicable, has not expired, (A) if, thereafter, the Default is cured within the period referred to in Clause 23.3 (*Other obligations*) or Clause 23.1(b) (*Non-Payment*) or Clause 23.7(b)(ii) (*Insolvency Proceedings*) as applicable, the Extension Date shall occur on the date of such cure and (B) if such event is not cured during the period referred to in Clause 23.3 (*Other obligations*) or Clause 23.1(b) (*Non-Payment*) or Clause 23.7(b)(ii) (*Insolvency Proceedings*) as applicable, the Extension Date shall not occur and the Facility shall become immediately due and payable on expiration of the period referred to in Clause 23.3 (*Other obligations*) or Clause 23.1(b) (*Non-Payment*) or Clause 23.7(b)(ii) (*Insolvency Proceedings*) as applicable, and, **provided further**, that if an event described in Clauses (i), (ii), (iii) or (iv) above is continuing on the Mezzanine Loan Maturity Date and, at such time, the Lenders would not be permitted to take Enforcement Action (as defined in the Intercreditor Agreement) in respect of the Facility pursuant to Clause 20.2 the Intercreditor Agreement, the Extension Date shall not occur and the Facility shall become due and payable on the date such Enforcement Action would be permitted pursuant to Clause 20.2 of the Intercreditor Agreement.

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

"Facility Office" means the office 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 (i) office through which it will perform its obligations under this Agreement where the office is situated in Financial Action Task Force countries, or (ii) with the prior written consent of the Agent, an office through which it will perform its obligations under this Agreement situated in non-Financial Action Task Force countries.

"FATF" shall mean the Financial Action Task Force on Money Laundering, an inter-governmental body the purpose of which is the development and promotion of policies, at both national and international levels, to combat money laundering.

"Fee Letter" means the amended and restated mezzanine fee letter, dated 10 October 2003, between the Company, Midco, Newco, CSFB, Barclays Capital and RBS setting out any of the fees referred to in Clause 11 (*Fees*).

"Finance Documents" means the Senior Finance Documents, the Mezzanine Finance Documents and/or the High Yield Notes Finance Documents, as the case may be.

"Finance Party" means a Senior Finance Party, a Hedging Bank, a Mezzanine Finance Party or a High Yield Notes Finance Party, as the case may be.

"Financial Indebtedness" means (without double counting) any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance or documentary credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds (other than performance bonds and bonds issued by one member of the Group in respect of the obligations of another member of the Group), notes, debentures, loan stock or any similar instrument;

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- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Applicable Accounting Principles, be treated as a finance lease to the extent of such treatment;
 - (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
 - (f) any amount raised under any other transaction (including any forward sale or purchase agreement) required by the Applicable Accounting Principles to be shown as a borrowing in the audited consolidated balance sheet of a company;
 - (g) the net liability under any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the indebtedness under any derivative transaction, only the net amount due and payable shall be taken into account);
 - (h) shares which are expressed to be redeemable before the stated maturity of any Loan;
 - (i) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
 - (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above,

but, for the avoidance of doubt does not include any liability of the Group in respect of deferred satellite incentive payments in relation to the I4 Programme.

"Financing Case" means the financing case in relation to the Group, as enlarged by the Acquisition, and prepared by the Company.

"Fixed Cash Rate" means 11.5 per cent. per annum.

"Funds Flow Memorandum" means the funds flow memorandum in the Agreed Form containing details of the flow of funds for the Acquisition (including details of amounts payable as consideration for the Acquisition, the amount of the Acquisition Costs and the refinancing of the Existing Debt).

"GAAP" means:

- (a) in relation to the consolidated financial statements of the Group, generally accepted accounting principles, standards and practices in the United Kingdom; and
- (b) in relation to any member of the Group, generally accepted accounting principles, standards and practices in its jurisdiction of incorporation.

"Group" means the Company and its Subsidiaries (but excluding the Target and its Subsidiaries prior to the Completion Date).

"Group Structure Chart" means the group structure chart in the Agreed Form (including details of:

- (a) Dormant Companies;
- (b) any shareholder of any member of the Group which is not a member of the Group;
- (c) intra-Group loans; and
- (d) the other information specified in Clause 18.14 (*Group structure*)).

"Guarantor" means an Original Guarantor or an Additional Guarantor.

“Hazardous Substance” means any waste, pollutant, contaminant or other substance (including any liquid, solid, gas, ion, living organism or noise) that may be harmful to human health or other life or the Environment or a nuisance to any person or that may make the use or ownership of any affected land or property more costly.

“Hedging Bank” means an Approved Hedging Bank or an Affiliate of an Approved Hedging Bank, or any Lender (or an Affiliate of a Lender) which provides Permitted Hedging Transactions, which in each case accedes as a hedging bank to the Intercreditor Agreement.

“Hedging Documents” means the documents entered into between a member of the Group and a Hedging Bank in accordance with the Hedging Policy (including, without limitation, any hedging of the Senior Facility Agreement).

“Hedging Policy” means interest rate hedging in respect of the interest payable on 66% of the total commitments in respect of term loans under the Senior Facilities for a period of at least three years from the date the first utilisation of the Senior Facilities.

“High Yield Intercompany Loan Agreement” means the agreement in the form to be agreed between Bondco and Newco, but on terms consistent with the Intercreditor Agreement and to be made between Bondco and Newco on (or about) the date the High Yield Notes are issued and pursuant to which Bondco will make a loan, subordinated to the Senior Finance Documents, to Newco on (or around) the date on which the High Yield Notes are issued for the purpose of funding Newco’s prepayment (or repayment, as appropriate) of the Facility.

“High Yield Noteholders” means the holders of the High Yield Notes.

“High Yield Notes” means high yield notes to be issued by Bondco (and guaranteed by Midco) in accordance with Clause 21.3 (*Loan Refinancing*).

“High Yield Notes Finance Documents” means the High Yield Notes Indenture, any guarantee or guarantor accession agreement under the High Yield Notes Indenture, the Fee Letter, the Engagement Letter, the High Yield Inter-Company Loan Agreement, the High Yield Notes Security Documents and any other documents designated as such by the High Yield Notes Trustee and the Company in each case on terms consistent with the Intercreditor Agreement.

“High Yield Notes Finance Parties” means the High Yield Notes Trustee, the High Yield Noteholders and the Security Trustee.

“High Yield Notes Indenture” means the indenture to be executed by Bondco and the trustee of the High Yield Notes constituting the High Yield Notes.

“High Yield Notes Outstandings” means the aggregate amount outstanding at any time in respect of principal under the High Yield Notes.

“High Yield Notes Security Documents” means the security documents relating to the Security in favour of the High Yield Notes Finance Parties over (a) the issued share capital of the Target and (b) the High Yield Inter-Company Loan Agreement for any of the Liabilities under the High Yield Notes Finance Documents, provided such security documents are expressed to be subject to, and are consistent with, the Intercreditor Agreement.

“High Yield Notes Side Letter” means the letter dated on or about the date of this Agreement between, among others, the Mezzanine Loan Arrangers, the Company and Newco relating to the High Yield Notes and Demand Securities.

“High Yield Notes Trustee” means the trustee of the High Yield Notes under the High Yield Notes Indenture.

“Holdcos” means each of the Company, Midco, DDBCo and Newco.

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

“Information Memorandum” means the document in the form approved by the Company (acting reasonably) concerning the Group (as enlarged by the Acquired Group) which, at the Company’s request and on its behalf, will be prepared in relation to the Facility and the Acquisition and distributed by the Bookrunners to selected financial institutions in connection with the Syndication of the Facility.

“Information Package” means the Reports, the Financing Case and the Information Memorandum.

“Insurance Report” means the insurance report by AON relating to the Acquired Group.

“Intellectual Property Rights” means all patents, designs, copyrights, topographies, trade marks, service marks, trading names, domain names, rights in confidential information and know-how, any other intellectual property and any associated or similar rights, and any interest in any of the foregoing (in each case, whether registered or unregistered and including any related licences and sub-licences of the same, applications and rights to apply for the same and wherever subsisting).

“Intercompany Loan Agreements” means the separate loan agreements and/or subordinated perpetual securities agreements in the Agreed Form to be entered into between DDBCo and Midco respectively (as lenders) and Midco and Newco respectively (as borrowers) pursuant to which the proceeds of issuance of shares in the Company and the Subordinated Preference Certificates are to be downstreamed by the recipient of those proceeds to the relevant member(s) of the Group and which are, in each case, subject to (and consistent with) the Intercreditor Agreement.

“Intercreditor Agreement” means the intercreditor agreement entered into or to be entered into, amongst others, between (among others) the Agent, the Hedging Banks, certain members of the Group, the Investors (to the extent they are direct or indirect holders of Investor Debt), the Management (to the extent they are direct or indirect holders of Investor Debt), the Senior Agent, the Obligors, the Security Trustee and, after issue of the High Yield Notes, the trustee of the High Yield Notes (or in the case of any other refinancing of the Loan Facility, the equivalent under that other refinancing) in the Agreed Form.

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.4 (*Default interest*).

“Investment Banks” means the entities appointed to place securities of the Group pursuant to the Engagement Letter.

“Investor Debt” means:

- (a) the Subordinated Preference Certificates; and
- (b) other unsecured Financial Indebtedness of any Holdco (other than Midco or Newco) to the Investors and/or the Management subordinated pursuant to the Intercreditor Agreement to all amounts which may be or become payable to the Finance Parties under the Finance Documents.

“Investor Documents” means the Subordinated Preference Certificates Instrument, the Subordinated Preference Certificates, the Shareholders’ Agreement, any related fees letters, the constitutional documents of each Holdco and any other document designated as such by the Agent and the Company.

“Investors” means the Original Investors, the Management and any assignee or transferee of any interest in the Company and any assignee or transferee of any interest in the Subordinated Preference Certificates, in each case, where such assignee or transferee has become a party to the Shareholders’ Agreement and, if a holder of Investor Debt, acceded as an Investor to the Intercreditor Agreement.

“I4 Programme” means the programme for the development, construction and launch of the fleet of I4 Satellites (and, in the event of failure, their replacements) and the provision of ‘Broadband Global Area Network’ and ‘Regional-Broadband Global Area Network’ services.

"I2 Satellite" means an Inmarsat-2 satellite.

"I3 Satellite" means an Inmarsat-3 satellite.

"I4 Satellite" means an Inmarsat-4 satellite.

"Joint Venture" means all joint venture entities, whether a company, unincorporated firm, undertaking, joint venture, association, partnership or other entity, in which any member of the Group has an interest from time to time.

"Key Company" means each Holdco, Bondco and each Obligor.

"Lender" means:

- (a) the Original Lenders; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Lender in accordance with Clause 24 (*Changes to the Lenders*),

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

"LESO" means a contractual counterparty of the Group under the land earth station operator agreement dated 15 April 1999 and any replacement (or replacements) or extension thereof.

"Liabilities" of a Chargor means all present and future moneys, debts and liabilities due, owing or incurred by it to any Finance Party under or in connection with any Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise).

"LIBOR" means, in relation to any Loan:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the currency or Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

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

"Loan" means the loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan, including any non cash interest capitalised pursuant to Clause 8 (*Interest*).

"Majority Lenders" means, at any time:

- (a) prior to the Extension Date, Lenders whose aggregate Commitments aggregate more than 66 $\frac{2}{3}$ per cent. of the Total Commitments at that time;
- (b) from and after the Extension Date, Lenders whose aggregate Commitments aggregate more than 50 per cent. of the Total Commitments at that time.

"Majority Senior Lenders" means the **"Majority Lenders"**, as defined in the Senior Facility Agreement.

"Management" means the members of the management of the Group who, directly or indirectly, hold shares in the Company or Subordinated Preference Certificates.

"Mandatory Cancellation Event" means any event specified in paragraph (a) of Clause 7.3 (*Mandatory cancellation*).

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

- (a) the consolidated financial condition, assets or business of the Group taken as a whole;
- (b) the ability of the Obligors taken as a whole to perform and comply with their payment obligations under any Mezzanine Finance Document or the covenants contained in Clause 20 (*Financial Covenants*);
- (c) subject to the Reservations, the validity or legality of any Mezzanine Finance Documents which would materially and adversely affect the interest of the Lenders; or
- (d) subject to the Reservations, the validity or legality of any security expressed to be created pursuant to any Security Document which would materially and adversely affect the interests of the Lenders.

“Material Contract” means:

- (a) the contract(s) referred to in the definition of LESO;
- (b) the 14 Satellite construction and launch contracts; and
- (c) the lease of transponder capacity on the Thuraya 1 and Thuraya 2 satellites.

“Material Subsidiary” means any Subsidiary of the Group from time to time whose (i) turnover or (ii) Subsidiary EBITDA then equals or exceeds 5 per cent. of the consolidated turnover or EBITDA respectively of the Group.

For this purpose:

- (a) the (i) turnover or (ii) Subsidiary EBITDA of a Subsidiary of the Group will be determined from its financial statements upon which the latest audited financial statements of the Group have been based, and in relation to the list of *Material Subsidiaries* delivered as an initial condition precedent under Clause 4.1 (*Initial conditions precedent*) will be determined from its latest audited financial statements;
- (b) if a company becomes a member of the Group after the Completion Date (including members of the Acquired Group for the purposes of establishing the Acquired Group Members for paragraph (a) of Clause 22.23 (*Security and guarantees*)) the (i) turnover or (ii) Subsidiary EBITDA of that company will be determined as set out in its latest audited financial statements as at the date it becomes a member of the Group and based on the most recently available financial information of the Group, adjusted to give *pro forma effect* to the acquisition of such company;
- (c) in relation to a member of the Group which has acquired or disposed of a company or business the (i) turnover or (ii) EBITDA or Subsidiary EBITDA of that member of the Group (as applicable) will be determined from its latest audited financial statements adjusted to reflect such acquisitions or disposals; and
- (d) if a Material Subsidiary disposes of all or substantially all of its assets to another Subsidiary of the Group, it will immediately cease to be a Material Subsidiary and the other Subsidiary (if it is not already) will immediately become a Material Subsidiary. The subsequent financial statements of those Subsidiaries and the Group will be used to determine whether those Subsidiaries are Material Subsidiaries or not.

If there is a dispute as to whether or not a company is a Material Subsidiary, a certificate of the auditors of the Company will be, in the absence of manifest error, conclusive.

“Maximum Cash Rate” means 11.5 per cent. per annum.

“Maximum Mezzanine Rate” means 13.0 per cent. per annum.

"Mezzanine Finance Documents" means this Agreement, any guarantor or borrower accession letter under this Agreement, the Fee Letter, the Security Documents, the Intercreditor Agreement, the Unit Documents, any Syndication Agreement, the Syndication Side Letter and any other documents designated as such by the Agent and the Company.

"Mezzanine Finance Party" means the Agent, the Mezzanine Loan Arrangers, the Lenders and the Security Trustee.

"Mezzanine Loan Maturity Date" means the date that is 364 days after the Completion Date.

"Mezzanine Subordinated Preference Certificates" means the tranche A subordinated preference certificates, in substantially the same form as the Subordinated Preference Certificates (with such other and different terms as the Mezzanine Loan Arrangers shall have agreed prior to the date hereof), issued or to be issued by the Company or DDBCo to certain of the Mezzanine Finance Parties (or their Affiliates, assignees, transferees or any trustee on behalf of such parties) which are subordinated on the terms set out in the Intercreditor Agreement.

"Mezzanine Subordinated Preference Certificates Instrument" means the deed poll instrument in the same form as the Subordinated Preference Certificates Instrument pursuant to which the Mezzanine Subordinated Preference Certificates are, or are to be, constituted.

"Midco" means Grapedrive Limited, a company incorporated in England and Wales with registered number 4886115.

"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.

"Obligor" means a Borrower or a Guarantor.

"Offer Circular" means the circular to be sent to the shareholders of the Target relating to the Acquisition which, among other things, satisfies the Target's obligations under section 426 of the Companies Act 1985.

"Original Financial Statements" means the audited consolidated financial statements of the Acquired Group for the financial year ended 31 December 2002.

"Original Investors" means:

- (a) in relation to Permira:
 - (i) Permira Europe III L.P.1 and Permira Europe III L.P.2 and Permira Europe III Co-Investment Scheme (in each case with Permira Europe III Nominees Limited as nominee) and Permira Investments Limited; and
 - (ii) any funds or limited partnerships managed or advised by Permira;
- (b) in relation to Apax:
 - (i) Apax Europe V-A, L.P., Apax Europe V-B, L.P. Apax Europe V-C GmbH & Co K.G., Apax Europe V-D, L.P., Apax Europe V-E, L.P., Apax Europe V-F, C.V., Apax Europe V-G, C.V., Apax Europe V-1, L.P., and Apax Europe V-2, L.P.; and

- (ii) any funds or limited partnerships managed or advised by Apax; and
- (c) the Re-Investors.

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

“Overfund Deduction” means an amount of up to \$7,000,000.

“Overfunding” means, at any time, up to \$244,000,000 of the funds raised by the Group from the term facilities under the Senior Facilities, the Subordinated Preference Certificates and the subscription for shares in the Company and from cash of the Acquired Group as at the Completion Date which is not used (or to be used) to fund the consideration payable to shareholders of the Target pursuant to the Scheme of Arrangement, the refinancing of the Existing Debt or the Acquisition Costs and which is shown as an overfunding in the Funds Flow Memorandum less any increase (or plus any decrease) in Working Capital from the Completion Date until the end of the most recent Accounting Quarter **provided** that, if there is a decrease in Working Capital, an amount equal to that decrease is paid in cash into the Overfunding Account by the last day of that Accounting Quarter.

“Overfunding Account” means an interest bearing cash collateral account in the name of Newco with the Security Trustee into which the Overfunding is to be paid (or has been paid) pursuant to Clause 22.37 (*Overfunding*).

“Panel” means the Panel on Takeovers and Mergers.

“Party” means a party to this Agreement.

“Perfection Requirements” means the making or the procuring of the appropriate registrations, filings, stampings and/or notifications of the Security Documents as specifically contemplated by any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) or Clause 25 (*Changes to the Obligors*).

“Permira” means Permira Advisers Limited.

“Permitted Acquisition” means:

- (a) the Acquisition;
- (b) any Permitted Merger;
- (c) any Permitted Joint Venture;
- (d) any acquisition of shares by way of consideration for a Permitted Disposal (other than a disposal set out in paragraph (c) of that definition);
- (e) the acquisition of shares in any joint ventures referred to in the definition of Permitted Joint Venture;
- (f) any acquisition by a member of the Group other than the Company, DDBCo, Bondco or Midco of a profit making, cash generative similar business or profit making, cash generative limited liability company incorporated in the United States of America or the European Union where the consideration paid therefor, or the liabilities taken on in respect thereof, do not exceed \$15,000,000 per annum plus, where the fixed assets of the business acquired would be treated as Capital Expenditure if they had been acquired directly by the relevant member of the Group rather than by the acquisition of shares, the amount of any Capital Expenditure which the Group is permitted to incur under this Agreement during the period in which such acquisition is made provided that in each case:
 - (i) no Event of Default is continuing at the time such acquisition is made; and

- (ii) the making of such acquisition would not reasonably be expected, in the six months immediately following the making of such acquisition, to result in a breach of Clause 20 (*Financial Covenants*) and two directors of Newco (including the Chief Executive Officer and/or the Chief Financial Officer) issue a certificate to the Agent to that effect;
- (g) the acquisition of Airia Limited pursuant to an exercise by APR Limited of its rights to put the shares in that company to the Target as described in the Due Diligence Report; and
- (h) the acquisition of shares in the Target from persons exercising outstanding options under the Existing Share Option Schemes as contemplated by the Offer Circular.

“Permitted Disposal” means the sale, lease, transfer or other disposal:

- (a) of assets subject only to a floating charge under the Security Documents and made in the ordinary course of trading of the disposing entity;
- (b) of assets of any member of the Group which are seized, expropriated or acquired by compulsory purchase by or by the order of any central or local government authority;
- (c) of cash or Cash Equivalent Investments for any other purpose not prohibited under this Agreement;
- (d) constituting the creation of any Permitted Security;
- (e) of assets to a Joint Venture that is permitted under the definition of Permitted Joint Venture;
- (f) of assets (other than material Intellectual Property Rights, real property, shares or satellites) in exchange or replacement for other assets which are, in the reasonable opinion of the person effecting the acquisition, comparable or superior as to the type, value and quality of assets being disposed of;
- (g) being sales, leases, transfers or disposals of:
 - (i) any surplus, obsolete or worn-out assets (excluding real estate or satellites);
 - (ii) any redundant real estate in the ordinary course of the Group’s trading;
 - (iii) real estate by way of the granting of leases or licences;

in each case which, in the reasonable opinion of the member of the Group making the sale, transfer or disposal, is not required by any member of the Group for the efficient operation of the business of the Group and does not interfere in any material respect with the ordinary conduct of the business of any member of the Group;

- (h) of assets by an Obligor to another Obligor;
- (i) of assets by a member of the Group which is not an Obligor to another member of the Group which is not an Obligor;
- (j) of assets by a member of the Group which is not an Obligor to an Obligor;
- (k) of assets by an Obligor to a member of the Group which is not an Obligor provided that the aggregate of the consideration for such assets when aggregated with the consideration for any other assets sold by an Obligor to a member of the Group which is not an Obligor does not, in any financial year of Newco, when aggregated with:
 - (i) (the amount of any loans outstanding at that time which are permitted under paragraph (l) of Permitted Loans; and

(ii) the amount of any guarantee or indemnities outstanding at that time which are permitted under paragraph (n) of Permitted Guarantees,

exceed \$5,000,000 or its equivalent;

- (l) a sale and leaseback of the City Road Property on terms approved by the Majority Lenders (acting reasonably);
- (m) of shares in, and assets of, Airia Limited and Airia Services Limited to APR Limited in settlement of the Airia Dispute as described in the Due Diligence Report; or
- (n) where consideration receivable for any other sale, lease, transfer or other disposal, other than any permitted under the other paragraphs in this definition, does not exceed \$10,000,000 or its equivalent in any financial year of the Company.

“Permitted Financial Indebtedness” means:

- (a) Financial Indebtedness under the Finance Documents;
- (b) Financial Indebtedness in respect of the Investor Debt;
- (d) Financial Indebtedness which is referred to in paragraphs (b), (c), (d), (e), (h), (i) or (l) of the definition of Permitted Loan or which is referred to in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (j), (k), (m) and (n) of the definition of Permitted Guarantees;
- (e) Financial Indebtedness under a Permitted Hedging Transaction;
- (f) until 30 days after the Utilisation Date, any Existing Debt which is not to be refinanced using the Senior Facilities;
- (g) any Existing Debt the retention of which has been approved by the Majority Lenders;
- (h) Financial Indebtedness which the Funds Flow Memorandum shows is to be refinanced using the Senior Facilities until the earlier of:
 - (i) the first to occur of (A) the date falling 30 days after the Utilisation Date and (B) the later of (i) the date falling 15 days after the Utilisation Date and (ii) the last day of the interest period prevailing at the Utilisation Date for such Financial Indebtedness; and
 - (ii) the date on which repayment of such Financial Indebtedness is demanded by the relevant lender of that Existing Debt;
- (i) Financial Indebtedness under a Permitted Joint Venture up to the limit specified in that definition;
- (j) unsecured Financial Indebtedness of any member of the Group, to the extent covered by any Letter of Credit or Bank Guarantee (each as defined in the Senior Facility Agreement) issued under the Senior Facility Agreement or by a guarantee, bond or letter of credit issued under any Ancillary Facility (as defined in the Senior Facility Agreement);
- (k) Financial Indebtedness under a finance or capital lease the aggregate principal amount of which when aggregated with the Financial Indebtedness under each other finance or capital lease entered into by a member of the Group does not exceed \$5,000,000 (or its equivalent in another currency or currencies);
- (k) Financial Indebtedness under any finance or capital lease of the City Road Property entered into by the Group under paragraph (l) of the definition of Permitted Disposal; and
- (l) Financial Indebtedness (other than that falling within paragraph (g) of the definition of Financial Indebtedness) not owed to a Restricted Person and not falling within paragraphs

(a) to (k) above, the aggregate outstanding principal amount of which does not exceed \$5,000,000 or its equivalent in another currency or currencies.

"Permitted Guarantees" means:

- (a) guarantees and indemnities granted under the Finance Documents and indemnities granted by a Holdco under the Investor Documents where such indemnities are customarily granted in documents of the type of the Investor Documents;
- (b) trade credits, guarantees, indemnities, bonds and letters of credit granted, given or issued by a member of the Group on arm's length terms and in the ordinary course of its trading, not in respect of Financial Indebtedness, nor to or for the benefit of, nor in respect of liabilities or obligations of, a Restricted Person;
- (c) guarantees, bonds and indemnities issued by a member of the Group in respect of the Financial Indebtedness of another member of the Group:
 - (i) prior to the Utilisation Date which, when aggregated with loans referred to in paragraph (b)(i) of the definition of Permitted Loans (A) are less than \$10,000,000 or (B) to the extent they are greater than \$10,000,000 have either been consented to by the Majority Lenders or have been subordinated, within 15 days of the Utilisation Date, to the Facilities and the Loan under the Intercreditor Agreement; or
 - (ii) expressly referred to in the Funds Flow Memorandum;
- (d) guarantees, bonds and indemnities issued by an Obligor in respect of the Financial Indebtedness of another Obligor;
- (e) guarantees, bonds and indemnities issued by a member of the Group which is not an Obligor in respect of the Financial Indebtedness of another member of the Group which is not an Obligor;
- (f) guarantees, bonds and indemnities issued by a member of the Group which is not an Obligor in respect of the Financial Indebtedness of an Obligor;
- (g) guarantees, bonds and indemnities under or in respect of a Permitted Joint Venture up to the limit specified in that definition;
- (h) any customary guarantee, bond or indemnity to a purchaser in relation to a Permitted Disposal;
- (i) any guarantee, bond or indemnity permitted under paragraph (j) of Permitted Financial Indebtedness;
- (j) guarantees or indemnities entered into by a member of the Group in favour of a bank in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of any member of the Group;
- (k) guarantees or indemnities entered into by a member of the Group in relation to Permitted Hedging Transactions (other than under or in respect of any Hedging Documents);
- (l) any guarantee or indemnity given by a member of the Group to a landlord in respect of the obligations of an immediate assignee or transferee of a lease as a result of the assignment or transfer of such lease;
- (m) any unsecured bond, guarantee or indemnity in relation to the obligations of any member of the Group to pay rent under a lease of real property;
- (n) any guarantee or indemnity issued by an Obligor in relation to the Financial Indebtedness of a member of the Group which is not an Obligor provided that the aggregate principal amount guaranteed or indemnified at any time does not, when aggregated with:

- (i) the amount of any loans outstanding at that time which are permitted under paragraph (l) of Permitted Loans; and
- (ii) the aggregate consideration payable for the sale, lease, transfer or other disposal of assets permitted to be sold, leased, transferred or otherwise disposed of under paragraph (k) of Permitted Disposals in the then current financial year of Newco,

exceed \$5,000,000 or its equivalent in another currency or currencies at any time; or

- (o) any guarantee or indemnity that is not of the obligations of a Restricted Person or not falling within the other paragraphs in this definition in respect of which the aggregate principal amount guaranteed or indemnified at any time does not, when aggregated with the amount of any loans outstanding at that time which are permitted under paragraph (m) of the definition of Permitted Loan, at any time exceed \$5,000,000 (or its equivalent).

“Permitted Hedging Transaction” means:

- (a) the hedging transactions in accordance with the Hedging Policy and any replacements or extensions (on substantially similar terms and in respect of similar amounts); and
- (b) any transactions to hedge actual or projected interest or forward exposures (including any spot and/or forward exchange contracts) arising in the ordinary course of trading of a member of the Group and not for speculative purposes.

“Permitted Joint Venture” means existing Joint Ventures and any other Joint Ventures engaged in a similar business, the aggregate amount of all investments in which, in the case of a loan, guarantee or indemnity, the disposal of any asset to, or the taking on of any material liability outside the ordinary course of its trading does not exceed \$15,000,000 at any time (or its equivalent in another currency or currencies), provided that no Event of Default has occurred and is continuing at the time of the investment in such Joint Venture or would occur as a result of investment in that Joint Venture and the Joint Venture vehicle is a limited liability company incorporated in the United States of America or the European Union. For the avoidance of doubt, nothing in this Agreement shall be construed so as to restrict the Group’s rights to make the payments up to an aggregate amount of \$10,000,000 required under the settlement agreement relating to the Airia Dispute.

“Permitted Loan” means:

- (a) trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;
- (b) a loan made by a member of the Group to another member of the Group (other than a Restricted Person):
 - (i) prior to the Utilisation Date which, when aggregated with guarantees, bonds and indemnities referred to in paragraph (c) (i) of the definition of Permitted Guarantees (A) are less than \$10,000,000 or (B) to the extent that they are greater than \$10,000,000 have either been consented to by the Majority Lenders or have been subordinated, within 15 days of the Utilisation Date, to the Facilities and the Loan under the Intercreditor Agreement; or
 - (ii) expressly referred to in the Funds Flow Memorandum or the Group Structure Chart;
- (c) a loan made by an Obligor to another Obligor;
- (d) a loan made by a member of the Group which is not an Obligor to another member of the Group which is not an Obligor;
- (e) a loan made by a member of the Group which is not an Obligor to an Obligor where the aggregate of such loans does not exceed \$10,000,000 or, to the extent the aggregate of such loans does exceed \$10,000,000 where those loans have either been consented to by

the Majority Lenders or have been subordinated to the Senior Facilities and the Facility under the Intercreditor Agreement;

- (f) loans made by members of the Group to a Permitted Joint Venture up to the limit specified in that definition;
- (g) a loan by a member of the Group in the ordinary course of business to an employee or director of any member of the Group if the amount of that loan, when aggregated with the outstanding amount of all other such loans under this paragraph, does not exceed \$2,000,000 (or its equivalent) at any time;
- (h) a loan made under the High Yield Intercompany Loan Agreement or the Intercompany Loan Agreements
- (i) any loan made by a member of the Group to another member of the Group for the purpose of financing any Permitted Payments;
- (j) a credit balance on an account of a member of the Group with a bank or financial institution;
- (k) any loan arising on a Permitted Disposal;
- (l) a loan made by an Obligor to another member of the Group which is not an Obligor provided that the aggregate principal amount of all such loans outstanding at any time does not, when aggregated with:
 - (i) the amount of any guarantees or indemnities outstanding at that time which are permitted under paragraph (n) of Permitted Guarantees; and
 - (ii) the aggregate consideration payable from the sale, lease, transfer or other disposal of assets permitted to be sold, leased, transferred or otherwise disposed of under paragraph (k) of Permitted Disposals in the then current financial year of Newco,
- (m) exceed \$5,000,000 or its equivalent in another currency or currencies; or
- (n) a loan not made to a Restricted Person or not falling within (a) to (l) above which does not at any time, when aggregated with guarantee and indemnities permitted under paragraph (o) of Permitted Guarantees, exceed \$5,000,000 or its equivalent in another currency or currencies.

“Permitted Merger” means:

- (a) an acquisition by way of merger which is a Permitted Acquisition;
- (b) any amalgamation, demerger, merger, consolidation or corporate reconstruction on a solvent basis of a member of the Group where all of the business and assets of that member remain within the Group provided that:
 - (i) if that member of the Group was an Obligor immediately prior to such reorganisation being implemented, all of the business and assets of that member are retained by one or more other Obligors;
 - (ii) if that member of the Group is not an Obligor, so long as any assets distributed as a result of such reorganisation are distributed to other members of the Group,

and, in each case:

- (A) the surviving entity of any such reorganisation is liable for the obligations of the member of the Group it has merged with to the same extent as that member of the Group;

- (B) the surviving entity is incorporated in the same jurisdiction as that member of the Group; and
- (C) the Agent and the Security Trustee are given 30 Business Days' notice by Newco and they either:
 - (aa) confirm to Newco that they are satisfied (acting reasonably), that such reorganisation will not materially and adversely affect any Security created in favour of the Security Trustee under the Security Documents (but excluding any Security over the issued share capital of an Obligor which is transferred to another Obligor provided that such shares become subject to Security created on substantially the same terms as under the Security Document under which Security was previously created in favour of the Security Trustee); or
 - (bb) if the relevant previous entity had granted a Debenture 1 or Debenture 2, require the surviving entity to accede to Debenture 2 or grant a debenture substantially in the form of Debenture 2 as a condition precedent to such amalgamation, demerger, merger, consolidation or corporate reconstruction.

"Permitted Payment" means:

- (a) any payment, repayment or prepayment under any Finance Document permitted by the Intercreditor Agreement;
- (b) the payment of reasonable out of pocket expenses of the Investors or any director of the Company;
- (c) the payment of initial financial arrangements and other fees payable to the Investors in accordance with the Funds Flow Memorandum;
- (d) payments to any of the Investors (not constituting part of any management fee, royalty fee or similar fee or other investment return) for corporate finance, M&A and transaction advice actually provided to the Group on bona fide arms' length commercial terms;
- (e) the consideration payable for the re-purchase of shares in Newco or the Company from any former director or employee of the Group following termination of their directorship or employment, **provided** that the maximum amount paid does not exceed the higher of the amount determined to be paid in relation to such termination of directorship or employment under either the Investor Documents or the amount payable by law in relation to such termination of directorship or employment;
- (f) after the Trigger Date, cash payments in relation to Sponsor Equity which accrue (or have accrued) after the Trigger Date provided that:
 - (A) at the time of each such payment the ratio of Total Net Debt to EBITDA (calculated by reference to that ratio as shown in the most recent Compliance Certificate delivered to the Agent adjusted to reflect the making of the relevant payment of interest) is less than 2.25:1;
 - (B) the making of each such payment would not reasonably be expected, in the six months immediately following the making of such payment, to result in a breach of Clause 20 (*Financial Covenants*) and the directors of Newco issue a certificate to the Agent to that effect;
 - (C) at the time of each such payment no Event of Default is continuing; and
 - (D) each such payment is made from Retained Cash; or

- (g) provided that no Event of Default is continuing, payment of the Monitoring Fee (as that term is defined in the Shareholders' Agreement) in an amount of \$500,000 per annum plus VAT thereon (which amount may increase in accordance with the Shareholders' Agreement; **provided** that the annual percentage increase of that amount shall not, in any year, exceed the average percentage by which the salaries of the executive directors of the Company have increased in that year);
- (h) any fees paid to a non-executive director at a level to be agreed with the Majority Lender;
- (i) the payment of Tax and of properly incurred legal or audit fees by Bondco or any Holdco;
- (j) payments made in consideration of the acquisition of shares in the Target from persons exercising outstanding options under any Existing Share Option Schemes as contemplated by the Offer Circular; and
- (k) the payment of salaries at market rates to executive directors in accordance with the employment contracts of such executive directors.

"Permitted Security" means:

- (a) any lien arising by operation of law and in the ordinary course of trading;
- (b) any retention of title arrangements and rights of set-off arising in the ordinary course of trading with suppliers of goods to any member of the Group;
- (c) any Security or Quasi Security created pursuant to any Finance Document;
- (d) any netting or set-off arrangement entered into under a Permitted Hedging Transaction where the obligations of the parties are calculated by reference to net exposure under that Permitted Hedging Transaction;
- (e) any netting or set-off arrangement over cash balances held with banks or financial institutions permitted under Clause 22.21 (*Bank Accounts*) entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit or credit balances;
- (f) any Security or Quasi Security over or affecting any asset acquired by a member of the Group or over or affecting any asset of a company acquired by a member of the Group after the date of this Agreement if:
 - (i) such Security or Quasi Security was not created in contemplation of the acquisition of that asset, or that company (as appropriate), by a member of the Group;
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset, or that company (as appropriate), by a member of the Group; and
 - (iii) such Security or Quasi Security is irrevocably released and discharged within three Months of the date of acquisition of that asset, or that company (as appropriate);
- (g) any Security or Quasi Security arising under any finance or capital leases which are permitted under this Agreement;
- (h) any Security or Quasi Security over goods and documents of title to goods arising in the ordinary course of guarantee, bond or letter of credit transactions under an Ancillary Facility, Letters of Credit or Bank Guarantees under the Revolving Facility (each, as defined in the Senior Facility Agreement) or other Permitted Financial Indebtedness;
- (i) any Security or Quasi Security arising under an order, an attachment, an injunction or other similar legal process restraining the disposal of an asset;

- (j) any Security or Quasi Security granted by any member of the Group under an escrow agreement in respect of any part of the sale proceeds of any asset permitted to be sold under this Agreement;
- (k) any Quasi Security securing Financial Indebtedness in relation to any Permitted Hedging Transaction;
- (l) Quasi Security arising as a result of a disposal set out in paragraph (l) of the definition of Permitted Disposal; and
- (m) any Security or Quasi Security securing indebtedness the principal amount of which, when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security or Quasi Security given by any member of the Group other than any permitted under the paragraphs set out above in this definition, does not exceed \$2,000,000 (or its equivalent in another currency or currencies).

“Permitted Share Issue” means:

- (a) the issue of shares by the Company to the Investors and the Management and under the Shareholders’ Agreement;
- (b) the issue of shares by any member of the Group (other than the Company) to any other member of the Group provided that the new shares are subject to the same security, if any, under the Security Documents as the shares already in issue;
- (c) the issue of any shares in Target to any directors, executives, non-executives, managers or employees of the Group pursuant to any Existing Share Option Scheme;
- (c) the issue of any shares in the Company pursuant to any share option scheme introduced to replace the Existing Share Option Schemes;
- (d) with the prior approval of the Agent (acting on the instructions of the Majority Lenders) the issue of shares of any Holdco (other than of Midco or Newco) under any employees’ share option scheme, or any other directors’, executives’, non-executives’, or managers’ share option scheme not referred to in paragraph (c) above; or
- (e) the issue of shares under the Scheme of Arrangement, the Warrant Instrument or as contemplated by the Funds Flow Memorandum.

“Permitted Transaction” means:

- (a) any loan permitted under paragraph (b), (c), (d), (e), (f), (g), (h) and, to the extent it relates to a loan from one Obligor to another Obligor only, (i) of Permitted Loan;
- (b) any guarantee, bond or indemnity permitted under paragraph (c), (d), (e) and (g) of Permitted Guarantees;
- (c) any transaction expressly required pursuant to the Transaction Documents;
- (d) any arrangement in respect of a Permitted Payment (other than in respect of paragraph (d) of that definition);
- (e) any payments or other transactions contemplated by the Funds Flow Memorandum;
- (f) the Whitewash Intra-Group Loan Agreement;
- (g) the Intercompany Loan Agreements; or
- (h) the Working Capital Support Letter.

“PIK Rate” means 1.5 per cent. per annum.

“Press Release” means a press release in the Agreed Form to be issued by or on behalf of Newco announcing the terms and conditions of the Acquisition.

“Proceeds” means Net Flotation Proceeds, Net Sale Proceeds, Net Recovery Proceeds and Insurance Proceeds (in each case as defined in Clause 7 (*Prepayment and Cancellation*)) and Mezzanine Refinancing Proceeds (as defined in Clause 7.9) (*Mezzanine Refinancing Proceeds*).

“Qualifying Lender” has the meaning given to it in Clause 12 (*Tax gross-up and indemnities*).

“Quasi Security” means a transaction under which any member of the Group will:

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the Group;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms (except for customary warranties in respect of the disposal of such receivables); or
- (c) enter into any other preferential arrangement having a similar effect,

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

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

“Receiving Agent” means the receiving agent for Newco in connection with the Acquisition.

“Receiving Agent Account” means the account to be established with a bank in the name of Newco into which amounts (including the proceeds of the Utilisation) to purchase shares in the share capital of Target will be paid and from which payments will be made by the Receiving Agent to shareholders of the Target in consideration of the Acquisition.

“Receiving Agent Letter” means the letter of appointment for the Receiving Agent, containing customary terms for such letter as utilised in transactions of this nature, from Newco to the Receiving Agent and countersigned by the Receiving Agent.

“Reference Banks” means, the principal London offices of Barclays Bank PLC, Credit Suisse First Boston and The Royal Bank of Scotland plc.

“Re-Investors” means shareholders of the Target prior to the Completion Date (and/or their Affiliates) who elect to become investors in the Company under the Scheme of Arrangement.

“Related Fund” means, in relation to a trust or fund or other entity, another trust, fund or other entity which is regularly engaged in, or established for the purpose of making, purchasing or investing in loans, securities or other financial assets and either has the same fund manager or asset manager or has common ownership as such first mentioned relevant trust or fund or other entity.

“Relevant Interbank Market” means, the London interbank market.

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

- (a) its jurisdiction of incorporation; and
- (b) any jurisdiction where it conducts its business.

“Repeating Representations” means each of the representations set out in Clause 18.1 (*Status*) to Clause 18.4 (*Power and Authority*), paragraph (a) of Clause 18.6 (*No Default*) and paragraph (d) of Clause 18.8 (*Financial statements*).

“Reports” means the Accountants’ Report, the Financing Case, the Commercial Report, the Due Diligence Report, the Environmental Report, the Insurance Report, the Tax Report and the Technical Report.

“Reservations” means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court, the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors, the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of UK stamp duty may be void, defences of set-off or counterclaim and similar principles, rights and defences under the laws of any jurisdiction in which relevant obligations may have to be performed; and
- (b) any general principles of the law limiting the obligations of any Obligor which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) or Clause 25 (*Changes to the Obligors*).

“Restricted Person” means:

- (a) any Investor, the Management or any Holding Company of any Investor;
- (b) any person with an interest (direct or indirect) in the shares in the Company; and
- (c) any joint venture, consortium, partnership or similar arrangement of which any person described in (a) or (b) is a member.

“Retained Cash” means any Surplus Cashflow that the Group is not obliged to repay under Clause 7.8 (*Mandatory prepayment of Surplus Cashflow*) or the corresponding provision of the Senior Facility Agreement in relation to the relevant financial year of the Company.

“Scheme Documents” means:

- (a) the Press Release;
- (b) the Offer Circular and any other circular sent to the shareholders of the Target after the date of this Agreement relating to the Acquisition or the Scheme of Arrangement;
- (c) the Scheme of Arrangement document (the final form of which is to be set out in part 3 of the Offer Circular); and
- (d) the documentation relating to the offers to be made to holders of options under the Existing Share Option Schemes.

“Scheme of Arrangement” means the scheme of arrangement pursuant to section 425 of the Companies Act 1985 pursuant to which the existing share capital of the Target will be cancelled and new share capital in the Target will be issued to Newco and in consideration of which (i) Newco will make certain payments to Target’s existing shareholders, and/or (ii) Target’s existing shareholders shall subscribe for Subordinated Preference Certificates and shares in the Company.

“Screen Rate” means the British Bankers Association Interest Settlement Rate for the relevant currency and period displayed on the appropriate page of the Telerate screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Lenders.

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

"Security Documents" means:

- (a) Debenture 1 and Debenture 2; and
- (b) any other security document that may at any time be agreed to be given as Security in favour of a Finance Party (other than a High Yield Notes Finance Party) for any of the Liabilities pursuant to or in connection with any Finance Document (other than the High Yield Notes Finance Documents, the Mezzanine Subordinated Preference Certificates and the Mezzanine Subordinated Preference Certificates Instrument).

"Senior Accession Letter" means an "Accession Letter" as defined in the Senior Facility Agreement.

"Senior Agency Fee Letter" means any letter or letters dated on or about the date of the Senior Facility Agreement between the Senior Facility Agent and the Company setting out any of the fees referred to in the Senior Facility Agreement.

"Senior Agent" means the "Agent" as defined in the Senior Facility Agreement.

"Senior Arrangement Fee Letter" means any letter or letters dated before or about the date of the Senior Facility Agreement between the Senior Arranger and the Company setting out any of the fees referred to in the Senior Facility Agreement.

"Senior Arrangers" means the "Mandated Lead Arrangers" as defined in the Senior Facility Agreement.

"Senior Borrowings" has the meaning given to it in Clause 20 (*Financial Covenants*).

"Senior Discharge Date" has the meaning given to it in the Intercreditor Agreement.

"Senior Facilities" means the facilities made under the Senior Facility Agreement.

"Senior Facility Agreement" means the senior facility agreement dated on or about the date of this Agreement and made between (among others) the Company, the Senior Agent, the Senior Arrangers, the Security Trustee and the "Original Lenders" (as defined therein), setting out the terms and conditions on which the Senior Facilities will be made available to the Company and other borrowers thereunder.

"Senior Finance Documents" means the Senior Facility Agreement, any Senior Accession Letter, any Ancillary Facility Document (as defined in the Senior Facility Agreement), the Senior Agency Fee Letter, the Senior Arrangement Fee Letter, any Hedging Document, the Hedging Letter, the Hedging Documents, each Security Document, the Intercreditor Agreement, any Syndication Agreement (as defined in the Senior Facility Agreement), any Syndication Side Letter and any other documents designated as such by the Senior Agent and the Company.

"Senior Finance Party" means a "Senior Finance Party" as defined in the Senior Facility Agreement.

"Senior Lenders" means the "Lenders" as defined in the Senior Facility Agreement.

"Shareholders' Agreement" means the shareholders' agreement in the Agreed Form dated on or about the date of this Agreement between the Target, the Original Investors, set out in paragraphs (a) and (b) of the definition of Original Investors, the Company, DDBCo, Midco and Newco (and to which the Management and the Re-Investors will accede) relating to:

- (a) the subscription for shares in the Company by the Original Investors and the Management; and

- (b) the issue of Subordinated Preference Certificates pursuant to the Subordinated Preference Certificates Instrument.

"Specified Time" means a time determined in accordance with Schedule 8 (*Timetables*).

"Sponsor Equity" means the ordinary share capital of the company and the Subordinated Preference Certificates.

"Subordinated Preference Certificates" means:

- (a) the Subordinated Preference Certificates, in the Agreed Form, issued or to be issued by the Company or DDBCo pursuant to the Subordinated Preference Certificates Instrument to the Original Investors and the Management which are subordinated on the terms set out in the Intercreditor Agreement; and
- (b) any other Subordinated Preference Certificates on the same terms as those described in (a) above (except for technical and administrative amendments) issued by the Company or DDBCo to a person that is party to (or accedes as a party to) the Intercreditor Agreement as an Investor.

"Subordinated Preference Certificates Instrument" means the deed poll instrument (or instruments, if appropriate) in the Agreed Form pursuant to which the Subordinated Preference Certificates are, or are to be, constituted.

"Subsidiary" means in relation to any company or corporation (a "holding company"), a company or corporation:

- (a) which is controlled, directly or indirectly, by the holding company;
- (b) more than half the issued voting share capital of which is beneficially owned, directly or indirectly, by the holding company; or
- (c) which is a subsidiary of another Subsidiary of the holding company,

and, for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to determine the composition of the majority of its board of directors or equivalent body.

"Subsidiary EBITDA" means, in respect of a Subsidiary of the Group, the EBITDA as defined in Clause 20.7 (*Definitions*) as if references to the Group in that definition and in the definition of any other defined terms referred to in the definition of EBITDA were deemed to be references to the relevant Subsidiary of the Group for the purposes of this definition and shall be calculated on an unconsolidated basis.

"Surplus Cashflow" means, in relation to the period of 24 months to 31 December 2005 or any subsequent financial year of the Company, Cashflow for that period of 24 months or financial year (as applicable) minus:

- (a) Net Debt Service (as defined in Clause 20.7 (*Definitions*)) for that period or financial year (as appropriate);
- (b) any prepayments of the Senior Facilities or, if such prepayment is made in accordance with the terms of the Intercreditor Agreement and is not a prepayment from the proceeds of issue of the High Yield Notes, any prepayments of the Facility made during that period or financial year (as appropriate) other than prepayments of the Senior Facilities or the Facility made under Clause 7.8 (*Mandatory prepayment of Surplus Cashflow*);
- (c) the amount by which budgeted Capex (as defined in Clause 20.7 (*Definitions*)) for that period or financial year (as appropriate) (as set out in the Financing Case) is greater than actual Capex (as defined in Clause 20.7 (*Definitions*)) for that period or financial year (as appropriate);

- (d) \$10,000,000;
- (e) any Proceeds received by the Group during that period or financial year (as appropriate) permitted under the terms of this Agreement to be reinvested in the Group; and
- (f) the proceeds received in that financial year of each subscription for shares in the Company or subordinated shareholders loans to any Holdco that have been on lent (directly or indirectly) to Newco or used to subscribe for shares in Newco and subordinated (in each case) to the Senior Facilities and the Facility under the terms of the Intercreditor Agreement.

"Syndication" means completion of the general syndication of the Facility.

"Syndication Agreement" means an agreement to be entered into between the Parties to novate rights and obligations under this Agreement to persons becoming Parties as a result of any syndication of the Facility.

"Syndication Date" means the date (as determined by the Bookrunners and notified to the Company) on which a Syndication has occurred and the additional syndicate members have become bound by this Agreement or, if earlier, the date falling 180 days after the Extension Date.

"Syndication Side Letter" means the letter dated on or about the date of the Commitment Letter between, among others, the Mezzanine Loan Arrangers and Newco relating to Syndication.

"Target" means Inmarsat Ventures plc.

"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).

"Taxes Act" means the Income and Corporation Taxes Act 1988.

"Tax Report" means the tax structuring report relating to the Acquisition prepared by PricewaterhouseCoopers.

"Technical Report" means the technical report relating to the Acquired Group prepared by independent consultants.

"Termination Date" means the Mezzanine Loan Maturity Date or, if the Extension Date occurs, the date which is nine years after the Completion Date.

"Testing Period" has the meaning given to it in Clause 20.7 (*Definitions*).

"Total Borrowings" means, at any time, the aggregate outstanding principal, capital or nominal amount (including any accrued "payment-in-kind" interest but excluding any fixed or minimum premium payable on prepayment or redemption):

- (a) under the Senior Finance Documents;
- (b) under the Mezzanine Finance Documents (other than the Mezzanine Subordinated Preference Certificates and the Mezzanine Subordinated Preference Certificates Instrument); and
- (c) under the High Yield Notes Finance Documents (other than the High Yield Notes Intercompany Loan Agreement); and
- (d) of Financial Indebtedness incurred under paragraphs (f), (j), (k) and (l) of the definition of Permitted Financial Indebtedness,

in each case at that time.

"Total Commitments" means the aggregate of the Commitments, being \$365,000,000 at the date of this Agreement.

"Transaction Documents" means the Investor Documents, the Scheme Documents and the Finance Documents.

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

"Transfer Date" means, in relation to a transfer, 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.

"Trigger Date" means the later of:

- (a) the date of successful in-orbit acceptance of one I4 Satellite; and
- (b) the date falling three years after the Completion Date.

"Unit Documents" means the Warrant Instrument, the certificates relating to the Warrants, the Agency Arrangements, the Mezzanine Subordinated Preference Certificates Instrument and the Mezzanine Subordinated Preference Certificates.

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

"US GAAP" means accounting principles, standards and practices generally accepted from time to time in the United States of America.

"Utilisation Date" means the date on which the Loan is, or is to be, made.

"Utilisation Request" means a notice substantially in the form set out in Schedule 3 (*Requests*).

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

"Warrants" means the warrants in respect of "B" Ordinary Shares of the Company granted pursuant to the Warrant Instrument.

"Warrant Instrument" means the warrant instrument in the Agreed Form relating to the Warrants and executed prior to the Utilisation Date by the Company.

"Whitewash Intra-Group Loan Agreement" means the loan agreement between the Holdcos and certain other members of the Group pursuant to which loans are made by members of the Group to the Holdcos and certain other members of the Group for the purpose of enabling them to meet payment obligations under the Finance Documents and/or the Investor Documents.

"Working Capital" has the meaning given to it in Clause 20.7 (*Definitions*).

"Working Capital Support Letter" means the letter from the Company and certain other members of the Group to certain members of the Group relating to the provision of downstream working capital support by the Company to members of the Acquired Group for the purposes of complying with the obligation set out in Clause 22.5 (*Financial Assistance*) requiring Obligors which are members of the Acquired Group to implement the procedures set out in sections 155 to 158 of the Companies Act 1985.

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:

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- (i) any person 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) **"Barclays Capital"** means Barclays Capital, the Investment Banking Division of Barclays Bank PLC;
 - (iv) the **"equivalent"** in any currency (the **"first currency"**) of any amount in another currency (the **"second currency"**) shall be construed as a reference to the amount in the first currency which could be purchased with that amount in the second currency at the Agent's spot rate of exchange for the purchase of the first currency with the second currency in the London foreign exchange market at or about 11:00 a.m. on a particular day (or at or about such time and on such date as the Agent may from time to time reasonably determine to be appropriate in the circumstances);
 - (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 **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
 - (vii) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation but, if not having the force of law, compliance with which is customary for entities or persons such as the relevant entity or person.
 - (viii) any reference to a document, agreement or instrument is a reference to that document, agreement or instrument as varied, amended, novated, supplemented or restated in each case in accordance with this Agreement.
 - (ix) **"shares"** or **"share capital"** includes equivalent ownership interests (and **"shareholder"** and similar expressions shall be construed accordingly);
 - (A) **"dollars"** and **"\$"** shall mean the lawful currency of the United States of America;
 - (B) **"sterling"** and **"£"** shall mean the lawful currency of the United Kingdom; and
 - (C) **"euro"** and **"€"** shall mean the single currency of the Participating Member States.
 - (x) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xi) a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Mezzanine Finance Document or in any notice given under or in connection with any Mezzanine Finance Document has the same meaning in that Mezzanine Finance Document or notice as in this Agreement.
- (d) A Default and an Event of Default is **"continuing"** if it has not been remedied or waived.
- 1.3 Third Party Rights**
- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
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- (b) Notwithstanding the terms of this Agreement, the consent of any person who is not a Party to this Agreement is not required to rescind or vary this Agreement at any time.

SECTION 2
THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the other provisions of this Agreement, the Lenders agree to make available to the Borrower a term loan facility in a principal amount not exceeding \$365,000,000 and not less than \$200,000,000, which shall be available by way of one Loan.

2.2 Mezzanine Finance Parties' rights and obligations

- (a) The obligations of each Mezzanine Finance Party under the Mezzanine Finance Documents are several. Failure by a Mezzanine Finance Party to perform its obligations under the Mezzanine Finance Documents does not affect the obligations of any other Party under the Mezzanine Finance Documents. No Mezzanine Finance Party is responsible for the obligations of any other Mezzanine Finance Party under the Mezzanine Finance Documents.
- (b) The rights of each Mezzanine Finance Party under or in connection with the Mezzanine Finance Documents are separate and independent rights and any debt arising under the Mezzanine Finance Documents to a Mezzanine Finance Party from an Obligor shall be a separate and independent debt.
- (c) A Mezzanine Finance Party may, except as otherwise stated in the Mezzanine Finance Documents, separately enforce its rights under the Mezzanine Finance Documents.

2.3 Company as Obligors' agent

Each Obligor:

- (a) irrevocably authorises the Company to act on its behalf as its agent in relation to the Mezzanine Finance Documents (in the case of Additional Obligors by their execution of Accession Letters), including:
 - (i) to give and receive as agent on its behalf all notices, consents and instructions (including a Utilisation Request);
 - (ii) to supply on its behalf all information concerning itself, its financial condition or otherwise to the relevant persons contemplated under this Agreement;
 - (iii) to agree, accept and sign on its behalf all documents in connection with the Mezzanine Finance Documents (including amendments, restatements and variations of and consents under any Mezzanine Finance Documents, and to execute any new Mezzanine Finance Documents); and
 - (iv) to take such other action as may be necessary or desirable under or in connection with the Mezzanine Finance Documents; and
- (b) confirms that it will be bound by any omission, agreement, undertaking, settlement, waiver, notice, communication or notice or other action taken by the Company under or in connection with the Mezzanine Finance Documents (whether or not known to any other Obligor and whether occurring before or after such Obligor became an Obligor under this Agreement) and each Mezzanine Finance Party may rely on any action purported to be taken by the Company on behalf of any Obligor.

2.4 Acts of the Company

- (a) The respective liabilities of each of the Obligors under the Mezzanine Finance Documents shall not be in any way affected by:

- (i) any actual or purported irregularity in any act done, or failure to act, by the Company;
 - (ii) the Company acting (or purporting to act) in any respect outside any authority conferred upon it by any Obligor; or
 - (iii) any actual or purported failure by, or inability of, the Company to inform any Obligor of receipt by it of any notification under the Mezzanine Finance Documents.
- (b) In the event of any conflict between any notices or other communications of the Company and any other Obligor, those of the Company shall prevail.

3. PURPOSE

3.1 Purpose

- (a) The Borrower shall apply all amounts borrowed by it under the Facility in or towards financing or refinancing and/or, in relation to paragraph (ii) only, making intra-group loans for the purpose of financing or refinancing (but, in each case, only on or after the Completion Date):

- (i) consideration payable to shareholders of the Target for the Acquisition under the Scheme of Arrangement; and
- (ii) the Acquisition Costs;

in each case, in accordance with the Funds Flow Memorandum and/or the summary of Acquisition Costs (and the Company irrevocably authorises and directs the Agent to make the payments to the relevant recipients on its behalf as described in the Funds Flow Memorandum).

- (b) No amount borrowed under the Facility shall be applied in any manner that may be illegal or contravene any applicable law or regulation in any relevant jurisdiction concerning financial assistance by a company for the acquisition of or subscription for shares or concerning the protection of shareholders' capital.

3.2 Monitoring

No Mezzanine Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

- (a) This Agreement shall not be effective unless, on or before the date of this Agreement, the Agent has received (or waived in writing receipt of) all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Company and the Lenders promptly on being so satisfied.
- (b) The Borrower may not borrow the Loan unless the Agent has received all of the documents and other evidence listed in Part I and Part II 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.
- (c) Each duly executed document that is delivered to the Agent in the Agreed Form under this Clause 4.1 (*Initial conditions precedent*) shall be deemed to be in form and substance satisfactory to the Agent.

4.2 Further conditions precedent

Subject to Clause 4.3 (*Certain Funds Period*), the Lenders will only be obliged to comply with Clause 5.5 (*Lenders' participation in a Loan*) if on the date of the Utilisation Request and on the Utilisation Date, all the representations and warranties in Clause 18 (*Representations*) expressed to

apply on the Utilisation Date as set out in Clause 18.25 (*Times on which representations made*) are true.

4.3 **Certain Funds Period**

Notwithstanding any other term of this Agreement or any other Mezzanine Finance Document, during the Certain Funds Period, unless a Certain Funds Default is continuing or would result from the proposed Loan, neither the Agent nor any of the Lenders shall:

- (a) invoke any condition set out in Clause 4.2 (*Further conditions precedent*) as a ground for refusing to make any Loan during the Certain Funds Period solely for the purposes specified in sub-paragraph (a)(i) of Clause 3.1 (*Purpose*) (a "**Scheme of Arrangement Utilisation**") to the extent of its Commitment in respect of the Facility;
- (b) exercise any right, power or discretion to terminate or cancel the obligation to make any Scheme of Arrangement Utilisation, other than under Clause 7.1 (*Illegality*) or Clause 7.3 (*Mandatory cancellation*);
- (c) have or exercise any right of rescission or similar right or remedy which it or they may have in respect of this Agreement in respect of any Scheme of Arrangement Utilisation;
- (d) take any step under Clause 23.23 (*Acceleration*) in respect of any Scheme of Arrangement Utilisation or that part of the Commitments which may be used by way of Scheme of Arrangement Utilisation (including the enforcement of any Security Documents) so as to prevent or inhibit the payment of consideration in connection with the Scheme of Arrangement; or
- (e) exercise any right of set-off or counterclaim in respect of any Scheme of Arrangement Utilisation.

However, from and after termination of the Certain Funds Period, all those rights, remedies and entitlements shall be available even though they have not been exercised or available during the Certain Funds Period.

**SECTION 3
UTILISATION**

5.

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by way of one Loan only by delivery to the Agent of a duly completed Utilisation Request in the form of Schedule 3 (*Requests*) not later than the Specified Time.

5.2 Completion of a Utilisation Request for a Loan

(a) The Utilisation Request for the Loan is irrevocable and will not be regarded as having been duly completed unless:

- (i) the proposed Utilisation Date is a Business Day within the Availability Period;
- (ii) the currency and amount of the proposed Loan complies with Clause 5.3 (*Currency and amount of a Loan*); and
- (iii) it specifies the account and bank (which must be in the principal financial centre of the country of the currency of the Loan to which the proceeds of the Loan are to be credited).

5.3 Currency and amount of a Loan

- (a) The currency specified in a Utilisation Request for a Loan must be U.S. dollars.
- (b) The amount of the Loan may not be more than \$365,000,000 or less than \$200,000,000.

5.4 Number and Frequency of Requests

No more than one Loan may be borrowed.

5.5 Lenders' participation in a Loan

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in the Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in the Loan will be equal to its Commitment immediately prior to making the Loan.

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT OF LOANS

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

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

If after the date of this Agreement it becomes (or any change in the interpretation, administration or application of any law makes it apparent that it is) unlawful in any jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund its participation in the Loan:

- (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
- (c) the Borrower shall repay that Lender's participation in the Loan on the last day of the Interest Period for such Loan occurring after the Agent has notified the Company or, if earlier, the date specified by the applicable Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

7.2 Flotation, Change of Control and Sale

(a) In this Clause 7.2:

- (i) a "Change of Control" will occur if:
 - (A) the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors cease to hold (whether directly or indirectly through any person) beneficially in aggregate more than 50 per cent. of the issued share capital of the Company or issued share capital of the Company having the right to cast more than 50 per cent. of the votes capable of being cast in general meetings of the Company (disregarding for these purposes any of the issued share capital of the Company constituted by shares which have been issued under the Warrant Instrument);
 - (B) the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors cease to hold beneficially the right to determine the composition of the majority of the board of directors or equivalent body of the Company; or
 - (C) the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors cease to control (as defined in section 416(2) of the Taxes Act) the Company;
- (ii) "Flotation" means a flotation of any part of the share capital of the Company (or, if applicable, any other ultimate Holding Company of the Group) on any investment exchange or issue by way of flotation or public offering or any equivalent circumstances in relation to the Company (or that other ultimate Holding Company (as appropriate)) in any jurisdiction immediately following which the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors continue to hold (whether directly or indirectly through any person) beneficially in aggregate more than 50 per cent. of the issued share capital of the Company and issued share capital having the right to cast more than 50 per cent. of the votes capable of being cast in general meetings of the Company (disregarding for these purposes any of the issued share capital of the Company constituted by shares which have been issued under the Warrant Instrument).
- (iii) "ORBIT Flotation" means a Flotation of up to one-sixth of the share capital of the Company (or any other ultimate Holding Company of the Group) solely conducted for the purpose of

complying with the Open-market Reorganisation for the Betterment of International Telecommunications Act of the United States of America.

- (iv) **"Net Flotation Proceeds"** means the cash proceeds (including, when received, the cash proceeds of any deferred consideration, whether by way of adjustment to the purchase price or otherwise) received by a member of the Group in connection with a Flotation after deducting:
 - (A) fees and reasonable transaction costs and expenses incurred in connection with that sale, transfer or disposal; and
 - (B) Taxes paid or reasonably estimated by the relevant member of the Group to be payable as a result of that Flotation.
 - (v) **"Sale"** means a disposal (whether in a single transaction or a series of related transactions) of all or substantially all of the assets of the Group or the Company.
- (b) If a Flotation occurs:
- (i) the Company shall promptly notify the Agent upon becoming aware of that event;
 - (ii) if (A) such Flotation is not an ORBIT Flotation and immediately after such Flotation the credit rating of Newco is BBB- (as rated by Standard & Poor's Ratings Group) and Baa3 (as rated by Moody's Investors Service, Inc.) or better or (B) such Flotation is an ORBIT Flotation, then the Company shall ensure that any Net Flotation Proceeds are applied in accordance with Clause 7.10 (*Application of Proceeds*); and
 - (iii) if such Flotation is not an ORBIT Flotation and immediately after such Flotation the credit rating of Newco is less than BBB- (as rated by Standard & Poor's Ratings Group) or Baa3 (as rated by Moody's Investors Service, Inc.):
 - (A) the Borrower may not request a Loan; and
 - (B) the Facility shall immediately be cancelled and all outstanding Loans, together with accrued interest, and all other amounts accrued under the Mezzanine Finance Documents shall become immediately due and payable.
- (c) If a Change of Control or Sale occurs:
- (i) the Company shall promptly notify the Agent upon becoming aware of that event;
 - (ii) the Borrower may not request the Loan; and
 - (iii) the Facility shall immediately be cancelled and any outstanding Loan, together with accrued interest, and all other amounts accrued under the Mezzanine Finance Documents shall, become immediately due and payable.

7.3 **Mandatory cancellation**

- (a) If:
- (i) the Completion Date does not occur within 180 days of the date of this Agreement; or
 - (ii) prior to the Completion Date, the European Commission initiates proceedings in respect of the Acquisition under Article 6(1)(c) of Council Regulation (EEC) 4064/89 or makes a referral in respect of the Acquisition to a competent authority of the United Kingdom under Article 9(3) of that regulation and there is a subsequent referral to the Competition Commission before (in each case) the meeting referred to in paragraph (iv) below; or
 - (iii) the Scheme of Arrangement is withdrawn by the Target or Newco's offer for the Target otherwise is withdrawn or lapses; or

- (iv) in any meeting of shareholders (or class of shareholders) of the Target held under section 425 of the Companies Act 1985 to consider the Scheme of Arrangement (or any adjournment thereof), the requisite number of shareholders (or class of shareholders) of the Target required by that section to pass the Scheme of Arrangement does not vote in favour of the Scheme of Arrangement; or
- (v) the resolutions required to approve and implement the Scheme of Arrangement are not passed at the extraordinary general meeting of the shareholders of the Target convened to consider those resolutions (or any adjournment thereof); or
- (vi) the High Yield Notes are issued on or prior to the Utilisation Date for gross proceeds of at least \$365,000,000 together with the fees and expenses related to such issue;

all the Commitments will be immediately and automatically cancelled other than in respect of paragraph (vi) of Clause 7.3(a) above where the Commitment will only be immediately and automatically cancelled on the first occur of:

- (i) expiry of the Certain Funds Period; and
 - (ii) confirmation from the Company or the underwriter(s) or the initial purchaser(s) in respect of the issue of High Yield Notes that the proceeds of those High Yield Notes are held in escrow for applications solely for the purposes set out in Clause 3.1(a) (*Purpose*) of this Agreement;
- (b) Any part of the Commitments not borrowed or utilised under this Agreement shall be cancelled automatically on the close of business on the expiry of the Availability Period.

7.4 Voluntary cancellation

- (a) The Company may, if it gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$2,000,000 or an integral multiple thereof) of the Loan, **provided** that at no time shall any partial cancellation under this Clause 7.4 (*Voluntary cancellation*) reduce the amount of the Loan below \$200,000,000. Any cancellation under this Clause 7.4 (*Voluntary cancellation*) shall reduce the Commitment of each Lender rateably.

7.5 Mandatory prepayment from Net Sale Proceeds

- (a) In this Clause 7:

"Net Sale Proceeds" means the cash proceeds (including, when received, the cash proceeds of any deferred consideration, whether by way of adjustment to the purchase price or otherwise) received by a member of the Group in connection with the sale, transfer or other disposal by any member of the Group of an asset (other than as set out in sub-paragraphs (a), (b), (c), (d), (e), (h), (i), (j), (k), (l) and (n) of the definition of Permitted Disposal) after deducting:

- (i) fees and reasonable transaction costs and expenses incurred in connection with that sale, transfer or disposal;
- (ii) Taxes paid or reasonably estimated by the relevant member of the Group to be payable as a result of that sale, transfer or disposal or upstreaming of the Net Sale Proceeds to the Borrower to meet its mandatory prepayment obligations under the Senior Facilities and/or this Agreement;
- (iii) such amount as is reasonably required as a provision against warranty or indemnity claims arising as a result of that sale, transfer or other disposal; and
- (iv) any amount required to discharge any Permitted Financial Indebtedness (including any applicable prepayment or cancellation fee) which any member of the Group is contractually obliged to discharge in relation to such asset disposal.

- (b) The Company shall ensure that any Net Sale Proceeds are applied in accordance with Clause 7.10 (*Application of Proceeds*).
- (c) The obligation in Clause 7.10 (*Application of Proceeds*) to apply such Net Sale Proceeds in prepayment does not apply to any Net Sale Proceeds to the extent that such Net Sale Proceeds are, within 12 months of receipt, applied or contractually committed to be applied for reinvestment in or towards fixed assets required for use in connection with the business of the Group.
- (d) The obligation in Clause 7.10 (*Application of Proceeds*) to apply such Net Sale Proceeds in prepayment in relation to the disposal set out in paragraph (l) of the definition of Permitted Disposal shall only apply to such Net Sale Proceeds to the extent that they amount to up to 4.2 times the annual rent payable by the Group on the City Road Property as a result of such a disposal or, if higher, 50% of such Net Sale Proceeds.

7.6 Mandatory prepayment from Insurance Proceeds

- (a) In this Clause 7:

"Insurance Proceeds" means any proceeds (other than in relation to third party or public liability policies that are actually applied to meet such liabilities or consequential loss policies that are actually applied to cover operating losses) received by any member of the Group under or pursuant to any insurance policy (or equivalent) after the date of this Agreement.

- (b) The Company shall ensure that any Insurance Proceeds are applied in accordance with Clause 7.10 (*Application of Proceeds*).
- (c) Paragraph (b) does not apply to any Insurance Proceeds to the extent that the Insurance Proceeds received by members of the Group in any financial year of the Company do not in aggregate exceed \$1,000,000 (or its equivalent in another currency or currencies).
- (d) The obligation in Clause 7.10 (*Application of Proceeds*) to apply such Insurance Proceeds in prepayment does not apply to any Insurance Proceeds to the extent that such Insurance Proceeds are, within 12 months of receipt, applied or contractually committed to be applied to replace, repair or reinstate the asset(s) to which those proceeds relate or for reinvestment in or towards fixed assets required for use in connection with the business of the Group .
- (e) The obligation in Clause 7.10 (*Application of Proceeds*) to apply such Insurance Proceeds in prepayment does not apply to any Insurance Proceeds relating to the I4 Programme to the extent that such Insurance Proceeds are, within 12 months of receipt, committed to be applied (i) in the case of the first loss (or partial loss) of an I4 Satellite, in construction of a new launch vehicle for the F-3 I4 Satellite and (ii) in the case of any subsequent loss (or partial loss) of an I4 Satellite, in the construction of a new I4 Satellite and a new launch vehicle for such new I4 Satellite and insurances in relation to such new I4 Satellite.
- (f) The obligation in Clause 7.10 (*Application of Proceeds*) to apply such Insurance Proceeds in prepayment does not apply to any Insurance Proceeds relating to an I3 Satellite to the extent that such Insurance Proceeds are promptly applied in purchasing further insurance for the Group's fleet of I3 Satellites.

7.7 Mandatory prepayment from Net Recovery Proceeds

- (a) In this Clause 7:

"Net Recovery Proceeds" means any amount received or recovered by a member of the Group pursuant to or in respect of any Report or related reliance letter or any breach of contract, warranty claim or legal action or proceedings in respect of such Report or reliance letter (whether by way of judgment on or settlement of such claim) (in each case net of Tax and any reasonable fees and reasonable transaction costs and expenses incurred in achieving any such recoveries).

- (b) The Company shall ensure that any Net Recovery Proceeds are applied in accordance with Clause 7.10 (*Application of Proceeds*).

- (c) Paragraph (b) does not apply to any Net Recovery Proceeds to the extent that the Net Recovery Proceeds received by members of the Group in any financial year of the Company do not in aggregate exceed \$1,000,000 (or its equivalent in another currency or currencies).
- (d) The obligation in Clause 7.10 (*Application of Proceeds*) to apply such Net Recovery Proceeds in prepayment does not apply to any Net Recovery Proceeds to the extent that such Net Recovery Proceeds are, within 12 months of receipt, contractually committed to be applied to replace, reinstate or invest in assets or meet liabilities in each case in respect of which those proceeds relate (including payment of Tax) or for reinvestment in or towards fixed assets required for use in connection with the business of the Group.

7.8 **Mandatory prepayment of Surplus Cashflow**

- (a) Within 14 days of delivery to the Agent of the Company's audited consolidated financial statements for:
 - (i) the financial year of the Company ended 31 December 2005; and
 - (ii) each financial year of the Company thereafter,

the Company shall ensure that an amount equal to 50 per cent. of the Surplus Cashflow in respect of (A) the 24 months to 31 December 2005 (in the case of the delivery of audited consolidated financial statements of the Company for the financial year ended 31 December 2005) or (B) that financial year (in the case of the delivery of audited consolidated financial statements of the Company for each financial year after that ending on 31 December 2005) is applied (in each case) in accordance with Clause 7.10 (*Application of Proceeds*).

- (b) For the avoidance of doubt, notwithstanding the other terms of this Agreement, the Group shall be entitled to use Retained Cash to fund Capital Expenditure (or acquire businesses where the acquisition of the assets of such businesses would be treated as Capital Expenditure if such assets had been directly acquired by the Group).

7.9 **Mezzanine Refinancing Proceeds**

- (a) In this Clause 7.9, "**Mezzanine Refinancing Proceeds**" means the proceeds received by the Group from any issue of the High Yield Notes or Demand Securities after deducting:
 - (i) fees and reasonable transaction costs and expenses; and
 - (ii) Taxes paid or reasonably estimated by the relevant member of the Group to be payable.
- (b) The Company shall ensure that 100% of all Mezzanine Refinancing Proceeds are applied in accordance with Clause 7.10 (*Application of Proceeds*).

7.10 **Application of Proceeds**

- (a) Unless otherwise stated in this Agreement or otherwise agreed all payments:
 - (i) of the Loan pursuant to Clauses 7.2(b)(ii) (*Flotation, Change of Control and Sale*), 7.5 (*Mandatory Prepayment from Net Sales*), 7.6 (*Mandatory Prepayment from Insurance Proceeds*), 7.7 (*Mandatory Prepayment from Net Sale Proceeds*), 7.8 (*Mandatory prepayment of Surplus Cashflow*), and 7.11 (*Voluntary prepayment of Loans*) shall be made on the last day of the current Interest Period, unless the Company gives the Agent five days' prior written notice to make such payment before the last day of the Interest Period and all prepayments under Clause 7.9 (*Mezzanine Refinancing Proceeds*) shall be made immediately;

- (ii) shall be applied (directly or through the making of a loan pursuant to the High Yield Intercompany Loan Agreement) to prepay the principal of the Loans, together with accrued and unpaid interest thereon, all prepayment fees payable under Clause 11.2 (*Prepayment Premium*) and all other sums payable under this Agreement; and
 - (iii) shall, save in respect of Clause 7.9 (*Mezzanine Refinancing Proceeds*), be made, or fall due for payment, only if the Senior Discharge Date has occurred.
- (b) No mandatory prepayment shall be required under this Clause 7.10 if:
- (i) it would be unlawful to do so or in order to do so moneys need to be upstreamed or transferred from one Group Company to another Group Company and these monies cannot be so upstreamed or transferred without breaching a financial assistance restriction or prohibition or other legal restriction or prohibition applicable to any Group Company (or any of its directors); or
 - (ii) the making of such payment would result in the incurring of arm's length transmission or foreign exchange costs or Taxes to the applicable member(s) of the Group which, in aggregate, exceed 5 per cent. of the amount which would otherwise be due to be prepaid,

in each case, provided that the relevant member(s) of the Group have used all reasonable endeavours to avoid such unlawfulness and to facilitate cash movement within the Group to enable the prepayment to be made, until the relevant impediment, restriction or prohibition no longer applies.

7.11 Voluntary prepayment of Loans

The Company and the Borrower may, if the Borrower or the Company, as applicable, gives the Agent not less than five Business Days' (or such shorter period as the Majority Lenders may agree) prior notice prepay the Loan by a minimum amount of \$2,000,000, **provided** that at no time shall any partial prepayment under this Clause 7.11 (*Voluntary prepayment of Loans*) reduce the amount of the Loan below \$200,000,000. Any prepayment under this Clause 7.11 (*Voluntary prepayment of Loans*) shall reduce the Commitment of each Lender rateably.

7.12 Right of replacement of a single Lender

If:

- (a) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*);
- (b) any Lender or Issuing Bank claims indemnification from Newco under Clause 12.3 (*Tax and Expenses Indemnity*) or Clause 13.1 (*Increased Costs*); or
- (c) (A) the Company or an Obligor requests an amendment or waiver which requires the consent of all of the Lenders; and
(B) the Majority Lenders have consented to that amendment or waiver; but
(C) a Lender has not consented to that amendment or waiver,

the Company may:

- (ii) whilst the circumstance giving rise to the requirement or indemnification continues or the request for an amendment or waiver request is outstanding (as appropriate), arrange for the transfer at par of the whole (but not part only) of that Lender's Commitment and participations in the Loans to a new or existing Lender willing to accept that transfer and acceptable to the Company and the remaining Lenders of the Facility; or

- (iii) with the prior consent of all the other Lenders, 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 Loans granted by that Lender, whereupon the Commitment of that Lender shall immediately be reduced to zero. On the last day of each Interest Period which ends after the Company has given notice under this paragraph (ii) (or, if earlier, the date specified by the Company in that notice), the Borrower shall repay that Lender's participation in the Loans granted by that Lender.

7.13 Replacement of a Lender

- (a) The replacement of a Lender pursuant to Clause 7.12 (*Right of replacement of a single Lender*) shall be subject to the following conditions:
 - (i) no Mezzanine Finance Party shall have any obligation to find a replacement Lender;
 - (ii) any Lender replaced pursuant to Clause 7.12 (*Right of replacement of a single Lender*) shall not be required to refund, or to pay or surrender to any other Lender, any of the fees or other amounts received by that Lender under any Mezzanine Finance Document; and
 - (iii) any replacement pursuant to Clause 7.12 (*Right of replacement of a single Lender*) of a Lender which is the Agent or the Security Trustee shall not affect its role as the Agent or the Security Trustee;
 - (iv) Newco shall promptly on demand pay to the Lender who is replaced and the Agent all reasonable costs and expenses (including legal fees) incurred by any of them in connection with such transfer.

7.14 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, 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, subject to any Break Costs and (to the extent applicable but, for the avoidance of doubt, excluding in relation to prepayments made under Clauses 7.1 (*Illegality*) and 7.12 (*Right of replacement of a single Lender*)) the fees referred to in Clause 11.2 (*Prepayment Premium*), without premium or penalty.
- (c) A Borrower may not reborrow any part of the Facility which is repaid.
- (d) The Borrower shall not repay or prepay all or any part of any Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.
- (g) Where any member of the Group is in receipt of Proceeds then those Proceeds shall, pending prepayment under this Clause 7 or other application by the Group in accordance with the terms of this Agreement, be credited to a bank account held with the Security Trustee and charged to the Security Trustee (on behalf of the Senior Finance Parties and the Mezzanine Finance Parties) on terms satisfactory to it (a "**Proceeds Account**"). No amount may be withdrawn or transferred from a Proceeds Account except:
 - (i) to make the prepayments required under this Clause 7 or for other application by the Group as permitted by this Agreement; or

(ii) with the prior consent of the Majority Lenders.

SECTION 5
COSTS OF UTILISATION

8. INTEREST

8.1 Interest Prior to the Extension Date

Interest will accrue and be payable on the Loan for each Interest Period ending prior to the Extension Date at the rate per annum determined by the Agent to be the sum of the greater of:

- (a) 9.0% per annum, and
- (b) the aggregate of (i) three month LIBOR and (ii) the Applicable Margin;

provided that, in no event shall the interest rate applicable to the Loan pursuant to this Clause 8.1 exceed the Maximum Mezzanine Rate.

Prior to the Extension Date, accrued interest on the loan will be payable in cash in arrears on the last day of each Interest Period; **provided however** that any interest accruing at the Capitalising Rate may, at the option of the Borrower, be paid by capitalisation to the principal of the Loan on the last day of the relevant Interest Period. If so capitalised, such interest will form part of the Loan, and from and after such capitalisation, shall bear interest in accordance with this Clause 8.1. Notwithstanding the foregoing, all accrued and unpaid interest shall be paid in cash upon repayment of all or any part of the Loans in accordance with Clause 7 (*Prepayment and Cancellation*).

8.2 Interest From the Extension Date

- (a) From and after the Extension Date, cash interest will accrue and be payable on the Loan for each Interest Period at the Fixed Cash Rate.
- (b) In addition to cash interest accruing pursuant to Clause 8.2(a), non-cash interest will accrue and be payable on the Loans at the Capitalising Rate.
- (c) From and after the Extension Date, accrued and unpaid cash interest will be payable in cash in arrears on the last day of each Interest Period. Non-cash interest accrued since the immediately preceding Capitalisation Date (or, if no such date has occurred, the Utilisation Date) shall be capitalised on the last day of each Interest Period (each such date being referred to as the "**Capitalisation Date**") so as to form part of the Loan, and from and after such Capitalisation Date, shall bear interest in accordance with this Clause 8.2.
- (d) Notwithstanding the foregoing, accrued and uncapitalised non-cash Interest shall be payable in cash upon repayment of all or any part of the Loans in accordance with Clause 7 (*Prepayment and Cancellation*).

8.3 Calculation

Interest will accrue daily from and including the first day of an Interest Period and be calculated on the basis of a 360 day year.

8.4 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Mezzanine Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is the sum of 1 per cent. and the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.4 shall, subject to the terms of the Intercreditor Agreement, be immediately payable by the Obligor on demand by the Agent.

- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to the Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to the Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be the sum of 1 per cent. and the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.5 Notification of rates of interest

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

9. INTEREST PERIODS

9.1 Facility

- (a) Subject to the provisions of this Agreement, each Interest Period for the Loan shall be (i) with respect to interest accruing on the Loan prior to the Extension Date, three Months, (ii) with respect to interest accruing from and after the Extension Date, six Months, or (iii) in any such case, such other period which the Lenders may agree.
- (b) For any Interest Period beginning before the Syndication Date, the Agent may shorten the Interest Period to a duration of one Month (or such other duration as may be agreed between the Mezzanine Loan Arrangers and the Company to ensure that the Interest Period ends on a date on which rights and obligations under this Agreement are to be novated to persons becoming Parties as a result of Syndication).
- (c) The first Interest Period for the Loan will start on the Utilisation Date and each subsequent Interest Period for the Loan will start on the last day of the immediately preceding Interest Period for the Loan.

9.2 Non-Business Days

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

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if LIBOR is to be determined by reference to the Reference Banks but if a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

10.2 Market disruption

Prior to the Extension Date:

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the rate per annum which is the sum of:

-
- (i) the Applicable Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) In this Agreement "**Market Disruption Event**" means:
- (i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR for the relevant currency and Interest Period; or
 - (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notification from a Lender or Lenders (whose participations in a Loan exceed 50 per cent. of that Loan) that the cost to it of obtaining matching deposits in the London Interbank Market would be in excess of LIBOR.

10.3 **Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.

10.4 **Break Costs**

- (a) The Borrower shall, within three Business Days of demand by a Mezzanine Finance Party, pay to that Mezzanine Finance Party its Break Costs attributable to all or any part of the Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for the Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11. **FEES**

11.1 **Fees**

The Borrower shall pay or cause to be paid to the Mezzanine Loan Finance Parties all fees set forth in the Fee Letter at the times and in the manner set forth therein.

11.2 **Prepayment Premium**

In the event that, after the Extension Date, the Borrower prepays all or part of the Loan pursuant to Clauses 7.2 to 7.11 (inclusive) during the periods specified in column (1) below, the Borrower shall pay to the Facility Agent for the account of the Lenders the amount (specified as a percentage of the amount of the Loan repaid), together with accrued and unpaid interest on the Loan so repaid, which is specified opposite that period in column (2) below:

(1) Period from Extension Date	(2) Percentage of Loans Repaid
12 months or less	2.0%
12 to 24 months	1.0%

provided that, if the Loan is repaid with proceeds from any offering of High Yield Notes (or a similar instrument), in an offering sole-managed by the Mezzanine Loan Arranger (or their Affiliates) in which they receive a fee at least equal to that specified in the Engagement Letter, no such fee shall be payable pursuant to this Clause 11.2 (*Prepayment Premium*) to any Original Lender.

11.3 No Fees if Completion Date does not occur

For the avoidance of doubt, no fees under this Clause 11 shall be payable if the Completion Date does not occur.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS-UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

"Protected Party" means a Mezzanine 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 Mezzanine Finance Document.

"Qualifying Lender" means in relation to a Tax Deduction in respect of Tax imposed by the United Kingdom, a Lender which is beneficially entitled to interest payable to that Lender in respect of a Loan under a Mezzanine Finance Document and is:

(i) a Lender:

- (A) which is a bank (as defined for the purpose of section 349 of the Taxes Act) making a Loan under a Mezzanine Finance Document; or
- (B) in respect of a Loan made under a Mezzanine Finance Document by a person that was a bank (as defined for the purpose of section 349 of the Taxes Act) at the time that that Loan was made,

and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that Loan; or

(ii) a Lender which is:

- (A) a company resident in the United Kingdom for United Kingdom tax purposes;
- (B) a partnership each member of which is a company resident in the United Kingdom for United Kingdom tax purposes; or
- (C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a branch or agency and which brings into account interest payable in respect of that Loan in computing its chargeable profits (within the meaning given by section 11(2) of the Taxes Act); or

(iii) a Treaty Lender with respect to the United Kingdom.

"Tax Confirmation" means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of a Loan under a Mezzanine Finance Document is either:

- (A) a company resident in the United Kingdom, or a partnership each member of which is a company resident in the United Kingdom, for United Kingdom tax purposes; or
- (B) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a branch or agency and that interest payable in respect of that Loan falls to be brought into account in computing the chargeable profits of that company for the purposes of section 11 (2) of the Taxes Act.

"Tax Credit" means a credit against, relief or remission for, or repayment of any Tax.

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Mezzanine Finance Document.

"Tax Payment" means either the increase in a payment made by an Obligor to a Mezzanine Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax and Expenses Indemnity*).

"Treaty Lender" means a Lender which in relation to a Tax Deduction in respect of Tax imposed by the United Kingdom:

- (C) is treated as a resident of 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) for the purposes of the Treaty; and
- (D) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in the Loans is effectively connected.

"UK Non-Bank Lender" means:

- (E) where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed in Part III of Schedule 1 (*The Original Parties*); and
- (F) where a Lender becomes a Party to this Agreement 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 to this Agreement.

- (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.

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 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) An Obligor is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of Tax imposed by the United Kingdom 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 Treaty, or any published practice or concession of any relevant taxing authority; or
 - (ii)
 - (A) the relevant Lender is a UK Non-Bank Lender, or would have been a UK Non-Bank Lender were it not for any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority; and

- (B) the Board of the Inland Revenue has given (and not revoked) a direction under section 349C of the Taxes Act (as that provision has effect on the date on which the relevant Lender became a party to this Agreement) which relates to that payment and that Obligor has notified that UK Non-Bank Lender of the precise terms of that notice; or
- (iii) 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 (g) below.
- (e) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Mezzanine Finance Party entitled to the payment an original receipt (or certified copy thereof) evidencing payment or other evidence reasonably satisfactory to that Mezzanine Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (g) A Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
- (h) 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.
- (i) A UK Non-Bank Lender shall promptly notify the Company and the Agent if there is any change in the position from that set out in the Tax Confirmation.

12.3 Tax and Expenses Indemnity

- (a) Newco shall (within 3 Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Mezzanine Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Mezzanine Finance Party:
 - (A) under the law of the jurisdiction in which that Mezzanine Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Mezzanine Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Mezzanine 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 Mezzanine 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
 - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 (*Tax gross-up*) applied.

- (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 Mezzanine Finance Party determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
- (b) that Mezzanine Finance Party has obtained, utilised and retained that Tax Credit on an affiliated group basis,

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

12.5 Stamp taxes

Newco shall pay and, within three Business Days of demand, indemnify each Mezzanine Finance Party against any cost, loss or liability that such Mezzanine Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Mezzanine Finance Document.

12.6 Value added tax

- (a) All consideration expressed to be payable under a Mezzanine Finance Document by any Party to a Mezzanine Finance Party shall be deemed to be exclusive of any VAT. If VAT is chargeable on any supply made by any Mezzanine Finance Party to any Party in connection with a Mezzanine Finance Document, that Party shall pay to the Mezzanine Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT.
- (b) Where a Mezzanine Finance Document requires any Party to reimburse a Mezzanine Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Mezzanine Finance Party against all VAT incurred by the Mezzanine Finance Party in respect of the costs or expenses.

13. INCREASED COSTS

13.1 Increased Costs

- (a) Subject to Clause 13.3 (*Exceptions*) Newco shall, within three Business Days of a demand by the Agent, pay for the account of a Mezzanine Finance Party the amount of any Increased Costs incurred by that Mezzanine 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 made after the date of this Agreement.
- (b) In this Agreement "**Increased Costs**" means:
 - (i) a reduction in the rate of return from the Facility or on a Mezzanine 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 Mezzanine Finance Document,

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

13.2 Increased cost claims

- (a) A Mezzanine 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) Each Mezzanine Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

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

13.4 Additional Costs

- (a) This Clause 13.4 applies if, whether now or in the future, either:
 - (i) a requirement to pay fees is imposed by the Financial Services Authority under the Fees Regulations; or
 - (ii) a reserve requirement is imposed by the Central European Bank;

which, in either case, is applied to any Lender (and would be applied generally to banks or financial institutions of a similar nature to that Lender) as a consequence of its entering into and/or performing its obligations under this Agreement and/or assuming or maintaining a commitment under this Agreement and/or making the Loan hereunder. If, as a result, that Lender's effective return on its overall capital is reduced, the Borrower agrees to reimburse that Lender for the amount claimed.

- (b) In the event that Clause 13.4(a) applies, each Lender may submit a certificate setting out a calculation of the amount claimed by it to the Agent within the period (the "**Certificate Period**") of 10 Business Days after the end of each Relevant Period. The Agent will notify the Borrower of the amount claimed by that Lender within five Business Days after the end of the relevant Certification period and the Borrower shall reimburse that Lender for the amount claimed within three Business Days after the date of such notification.
- (c) In this Clause 13.4 a "**Relevant Period**" is, as appropriate:
 - (i) the period beginning on the date of this Agreement and ending on 31 December 2003, or
 - (ii) each subsequent period of six months starting on the previous day of the preceding period and ending on 30 June or, as the case may be, 31 December; and

- (iii) the period shorter than six months which starts on the 30 June or 31 December in a year and ends on the Termination Date.

And "**Fees Regulations**" means, as appropriate, either:

- (i) the Banking Supervision (Fees) Regulations 2000; or
- (ii) such regulations as may be in force from time to time relating to the payment of fees for banking supervision after 31 March 2001.

14. OTHER INDEMNITIES

14.1 Currency indemnity

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

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Mezzanine 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 Mezzanine Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities

Newco shall (or the Company shall procure that an Obligor will), within three Business Days of demand, indemnify each Mezzanine Finance Party against any cost, loss or liability incurred by that Mezzanine 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 under a Mezzanine Finance Document on its due date, including, without limitation, any cost, loss or liability arising as a result of Clause 28 (*Sharing among the Mezzanine Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the 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 Mezzanine Finance Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company or as required by this Agreement.

14.3 Indemnity to the Agent

Newco shall (or the Company shall procure that an Obligor will) within three Business Days of demand promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default except if after doing so it is apparent that there is and was no Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised to the extent such cost, loss or liability was because such notice, request or instruction was not so genuine, correct or appropriate.

15. MITIGATION BY THE LENDERS

15.1 Mitigation

- (a) Each Mezzanine 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 7.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Mezzanine 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 Mezzanine Finance Documents.

15.2 Limitation of liability

- (a) Newco shall indemnify each Mezzanine Finance Party for all costs and expenses reasonably incurred by that Mezzanine Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Mezzanine Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Mezzanine Finance Party (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses

Newco shall promptly on demand pay the Agent, the Security Trustee and the Mezzanine Loan Arrangers the amount of all reasonable costs and expenses (including legal fees) incurred by any of them in connection with the negotiation, preparation, arrangement, printing, execution and Syndication of:

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

provided that Newco shall not be required to meet any such costs and expenses to the extent they exceed amounts agreed in respect thereof between Apax, Permira and the Mezzanine Loan Arrangers prior to 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 29.9 (*Change of currency*), Newco shall, within three Business Days of demand, reimburse the Agent and the Security Trustee for the amount of all reasonable costs and expenses (including legal fees) incurred by the Agent or the Security Trustee in responding to, evaluating, negotiating or complying with that request or in connection with that required amendment.

16.3 Enforcement costs

Newco shall, within three Business Days of demand, pay to each Mezzanine Finance Party the amount of all costs and expenses (including legal fees) incurred by that Mezzanine Finance Party in connection with the enforcement of, or the preservation of any rights under, any Mezzanine Finance Document.

16.4 Security Trustee expenses

Newco shall promptly on demand pay the Security Trustee the amount of all reasonable costs and expenses (including legal fees) incurred by it in connection with the administration or release of any Security created pursuant to any Security Document.

SECTION 7
GUARANTEE AND SECURITY

17. GUARANTEE AND INDEMNITY

17.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Mezzanine Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Mezzanine Finance Documents;
- (b) undertakes with each Mezzanine Finance Party that whenever an Obligor does not pay any amount when due under or in connection with any Mezzanine Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) indemnifies each Mezzanine Finance Party immediately on demand against any cost, loss or liability suffered by that Mezzanine Finance Party if 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 Mezzanine Finance Party would otherwise have been entitled to recover.

17.2 Continuing guarantee

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

17.3 Reinstatement

If any payment by an Obligor or any discharge given by a Mezzanine 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 Mezzanine Finance Party (as applicable) shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

17.4 Waiver of defences

The obligations of each Guarantor under this Clause 17 will not be affected by an act, omission, matter or thing which, but for this Clause 17, would reduce, release or prejudice any of its obligations under this Clause 17 (without limitation and whether or not known to it or any Mezzanine Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group or any other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment (however fundamental) or replacement of a Mezzanine Finance Document, or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Mezzanine Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

17.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Mezzanine Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 17. This waiver applies irrespective of any law or any provision of a Mezzanine Finance Document to the contrary.

17.6 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Mezzanine Finance Documents have been irrevocably paid in full, each Mezzanine Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security, Mezzanine Finance Documents or rights held or received by that Mezzanine Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 17.

17.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Mezzanine Finance Documents have been irrevocably paid in full and unless the Agent (or, as the case may be, the Security Trustee) otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Mezzanine Finance Documents:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Mezzanine Finance Documents; and/or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Mezzanine Finance Party under the Mezzanine Finance Documents under any other guarantee or security taken pursuant to, or in connection with, the Mezzanine Finance Documents by any Mezzanine Finance Party.

17.8 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Mezzanine Finance Party.

17.9 Guarantee limitations

- (a) The obligations of each Guarantor which is not incorporated in England and Wales shall be subject to the guarantee limitations (if any) specified in the Accession Letter in relation to that Additional Guarantor.

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- (b) The obligations of each Guarantor incorporated in England and Wales under the guarantee and indemnity contained in Clause 17.1 (*Guarantee and indemnity*) will not extend to cover any guarantee or indemnity of indebtedness which, if those obligations did so extend, would cause that Guarantor to be in breach of any of the provisions of section 151 of the Companies Act 1985 (or, in the case of any Guarantor which is not incorporated in England and Wales, in breach of any similar or analogous enactment or provisions applicable in any other jurisdiction).

SECTION 8
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18. REPRESENTATIONS

The Company and each Obligor makes the representations and warranties set out in this Clause 18 to each Mezzanine Finance Party on the dates set out in Clause 18.25 (*Times on which representations made*) (in the case of any Obligor, only in relation to itself and, to the extent expressed to be applicable to them, its Material Subsidiaries). In relation to each representation and warranty made on the Utilisation Date, each Acquired Group Member shall be deemed to be part of the Group.

18.1 Status

- (a) It is a limited liability company or corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It, and each of its Material Subsidiaries, has the power to own its assets and carry on its business substantially as it is presently being conducted.

18.2 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is or will be a party are legal, valid, binding and enforceable, subject to:

- (a) any applicable Reservations; and
- (b) in the case of any Security Document, also the applicable Perfection Requirements.

18.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents do not and will not:

- (a) conflict with:
 - (i) any law or any official or judicial regulation applicable to it or any of its Subsidiaries;
 - (ii) its, or any of its Subsidiaries', constitutional documents; or
 - (iii) any agreement or instrument to which it or any Subsidiary of it is a party or which is binding upon them or on any of its or any of its Subsidiaries' assets,in each case to the extent that such a conflict would reasonably be expected to have a **Material Adverse Effect** or could reasonably be expected to result in a material liability to any Mezzanine Finance Party; or
- (b) (except as provided in any Security Document or to the extent a Permitted Security) result in the existence of, or oblige it or any of its Subsidiaries to create, any Security over any of its or any of its Subsidiaries' assets.

18.4 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

18.5 Validity and admissibility in evidence

All material Authorisations required:

- (a) to enable it to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party and the transactions contemplated by the Transaction Documents;
- (b) to make the Finance Documents to which it is a party admissible in evidence in the Relevant Jurisdictions, subject to any applicable Reservations;
- (c) to enable it to create the Security purported to be created by it pursuant to any Security Document, subject to any applicable Reservations; and
- (d) to enable it to carry on its business where failure to have such Authorisation would reasonably be expected to have a Material Adverse Effect,
- (e) have (in the case of paragraph (d) above, to the knowledge of the Company after due and careful enquiry) been obtained or effected and are in full force and effect, save for complying with any applicable Perfection Requirements or (in the case of any Authorisation in connection with the Acquisition and other transactions contemplated by the Transaction Documents) such Authorisations will have been obtained or effected and will be in full force and effect before the Utilisation Request.

18.6 No default

- (a) No Event of Default has occurred and is continuing or would reasonably be expected to result from the making of the Loan.
- (b) To the knowledge of the Company after due and careful enquiry, no other event or circumstance is outstanding which constitutes (or which would, with the lapse of time, the giving of notice, the making of any determination under the relevant document or any combination of the foregoing, constitute (other than the mere occurrence of such event)) a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which would be reasonably expected to have a Material Adverse Effect.

18.7 Information Package

- (a) To the knowledge of the Company after due and careful enquiry, all material factual information in the Information Package (other than the Commercial Report) was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) Any financial projections or forecasts in:
 - (i) the Financing Case and the Accountants' Report; and
 - (ii) all other items contained in the Information Package (other than the Commercial Report),
 have (in the case of paragraph (ii) above, to the knowledge of the Company after due and careful enquiry) been prepared in all material respects on the basis of recent historical information and on the basis of reasonable assumptions at the time of such preparation.
- (c) To the knowledge of the Company after due and careful enquiry, any expressions of opinion or intention in the Information Package, other than those attributable to persons other than the management of the Acquired Group and other than in the Commercial Report, were made in all material respects after due and careful consideration and based on reasonable grounds.
- (d) To the knowledge of the Company after due and careful enquiry, nothing has occurred or been omitted from the Information Package (other than the Commercial Report) and no information has been given or withheld that results in:
 - (i) any of the material factual information contained in the Information Package relating to the Acquired Group (other than the Commercial Report) being untrue or misleading in any material respect; or

- (ii) any of the projections, forecasts or expressions of opinion or intention contained in the Information Package relating to the Acquired Group (other than the Commercial Report) being based on unreasonable assumptions; or
- (iii) any assumptions on which any of the projections, forecasts or expressions of opinion or intention contained in the Information Package relating to the Acquired Group (other than the Commercial Report) are based being unreasonable or unsound.

18.8 Financial statements

- (a) The Original Financial Statements of the Acquired Group were prepared in accordance with GAAP.
- (b) To the knowledge of the Company after due and careful enquiry, the Original Financial Statements of the Acquired Group fairly represents its financial condition and operations as at the end of the relevant financial year and the most recent unaudited consolidated monthly financial statements of the Acquired Group fairly represent its financial condition and operations as at the end of the Accounting Month to which they relate.
- (c) To the knowledge of the Company after due and careful enquiry, there has been no material adverse change in its assets, business, financial condition or prospects since the date to which the Accountants' Report was drawn up.
- (d) The financial year end of the Group is 31 December.
- (e) The Financing Case was prepared in accordance with the assumptions contained in the Financing Case and financial reference periods of the Target consistently applied.

18.9 Pari passu ranking

Subject to any applicable Reservations and Perfection Requirements, its payment obligations under this Agreement rank junior to its obligations under the Senior Finance Documents (to the extent set forth in the Intercreditor Agreement), but 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.

18.10 No proceedings pending or threatened

- (a) To the knowledge of the Company after due and careful enquiry, no litigation, arbitration or administrative proceedings or investigations of or before any court, arbitral body or agency (including any arising from or relating to Environmental Law) which are reasonably likely to be adversely determined and would reasonably be expected to have a Material Adverse Effect, have been started or, are threatened against it or any of its Subsidiaries or any member of the Acquired Group.
- (b) To the knowledge of the Company after due and careful enquiry, no labour disputes which would reasonably be expected to have a Material Adverse Effect are current or, threatened against it or any of its Subsidiaries.

18.11 Environmental Laws and Licences

To the knowledge of the Company after due and careful enquiry, it and each of its Subsidiaries has (and each member of the Acquired Group has):

- (a) complied with all Environmental Laws to which it may be subject;
- (b) all Environmental Licences required or desirable in connection with its business; and
- (c) complied with the terms of those Environmental Licences,

in each case where failure to do so would reasonably be expected to have a Material Adverse Effect.

18.12 Environmental releases

To the knowledge of the Company after due and careful enquiry, no:

- (a) property currently or previously owned, leased, occupied or controlled by it or any of its Subsidiaries or any Acquired Group Member (including any offsite waste management or disposal location utilised by it or any of its Subsidiaries) is contaminated with any Hazardous Substance; and
- (b) discharge, release, leaching, migration or escape of any Hazardous Substance into the Environment has occurred or is occurring on, under or from that property,

in each case in circumstances where this would reasonably be expected to have a Material Adverse Effect.

18.13 Investor Documents and Mezzanine Finance Documents

(a) The Investor Documents:

- (i) contain all the material terms of the agreement and arrangements between the Investors (and/or any of their respective Affiliates) and any member of the Group (and/or any of their respective Affiliates) in relation to investment (whether by way of equity, debt or otherwise) in the Group save for, until the Completion Date, any shareholders' agreements between the Re-Investors and the Acquired Group;
- (ii) subject to any conditions as to the unconditionality of the other Transaction Documents, are or, simultaneously with the date of the Utilisation Request will be, in full force and effect; and
- (iii) have not been amended or waived (in whole or in part) and no consent has been given thereunder, save for any which are minor or technical or have been approved in writing by the Agent (acting on the instructions of the Majority Lenders).

(b) The Senior Finance Documents:

- (i) contain all the material terms of the agreement and arrangements between the Senior Parties (and/or any of their respective Affiliates) and any member of the Group (and/or any of their respective Affiliates) in relation to the Senior Facilities;
- (ii) subject to any conditions as to the unconditionality of the other Transaction Documents, are or, simultaneously with the date of the first Utilisation Request will be, in full force and effect; and
- (iii) have not been amended or waived (in whole or in part) and no consent has been given thereunder, save for any which are minor or technical or have been approved in writing by the Agent (acting on the instructions of the Majority Lenders).

18.14 Group structure

(a) To the knowledge of the Company after due and careful enquiry, the Group Structure Chart shows:

- (i) each member of the Group and any person in whose shares any member of the Group has an interest (and, other than in relation to Target, the percentage of the issued share capital held, and whether legally or beneficially, by that member), in each case both as at the date of this Agreement and, in the case of an Acquired Group Member, as it will be immediately after the Completion Date;
- (ii) the jurisdiction of incorporation or establishment of each person shown in it; and
- (iii) each person shown in it which is a Dormant Company.

- (b) Each Obligor, other than the Holdcos and the Target, is on the Completion Date directly or indirectly a wholly-owned Subsidiary of the Target.
- (c) DDBCo is a directly wholly-owned Subsidiary of the Company.
- (d) Midco is a directly wholly-owned Subsidiary of DDBCo.
- (e) Newco is a directly wholly-owned Subsidiary of Midco.

18.15 No prior business

None of the Holdcos:

- (a) has traded or carried on any business;
- (b) has any material liability or obligation (actual or contingent, present or future) other than in respect of the Acquisition Costs; or
- (c) has entered into any contract and, in particular, has not made any disposal or acquisition of any shares (other than shares in the Holdcos and the Target) or any business (other than that of a holding company) or granted any Security,

other than as contemplated by or in connection with the Transaction Documents or the Funds Flow Memorandum.

18.16 No Financial Indebtedness or Security

- (a) No Holdco has any Financial Indebtedness at the date of this Agreement other than Permitted Financial Indebtedness.
- (b) No Security exists over the assets of the Company, Midco, DDBCo or Newco other than Permitted Security.

18.17 Shares

- (a) Newco will be entitled forthwith after the Completion Date (but subject to registration in the shareholders' register of the Target) to become the legal registered owner of the entire issued share capital of the Target, free from all Security.
- (b) Other than under the Warrant Instrument, any Investor Document or any Existing Share Option Schemes, no person has or is entitled to or, to the knowledge of the Company after due and careful enquiry in the case of an Acquired Group Member, immediately upon becoming a Subsidiary of the Group, no person has or will be entitled to, any conditional or unconditional option, warrant or other right to call for the issue or allotment of, subscribe for, purchase or otherwise acquire any share capital of any member of the Group (including any right of pre-emption, conversion or exchange).

18.18 Intellectual Property Rights

To the knowledge of the Company after due and careful enquiry:

- (a) each member of the Group owns or has licensed to it on arm's length terms all the Intellectual Property Rights that are material for the conduct of its business as it is presently being conducted;
- (b) each member of the Group has taken all necessary action (including payments of fees) to safeguard, maintain in full force and effect and preserve its ability to enforce all such material Intellectual Property Rights, except where the failure to take such action would not reasonably be expected to have a Material Adverse Effect;
- (c) no member of the Group has infringed any Intellectual Property Rights of any third party in any manner which would be reasonably expected to have a Material Adverse Effect; and

- (d) there has been no infringement or threatened or suspected infringement of or challenge to the validity of any Intellectual Property Rights owned by or licensed to any member of the Group which would reasonably be expected to have a Material Adverse Effect.

18.19 Solvency

To the knowledge of the Company after due and careful enquiry:

- (a) no Obligor is insolvent or unable to pay its debts (including subordinated and contingent debts), nor could it be deemed by a court to be unable to pay its debts within the meaning of:
 - (ii) (in the case of a company incorporated in England or Wales) section 123(1)(e) or 123(2) of the Insolvency Act 1986; or
 - (iii) (in the case of any other company) the law of the jurisdiction in which it is incorporated.

nor, in any such case, will it become so in consequence of entering into any Transaction Document, making the Acquisition, and/or performing any transaction contemplated by any Transaction Document;

- (a) other than the proceedings referred to in paragraph (b) of Clause 23.7 (*Insolvency proceedings*), no Obligor has taken any corporate action nor have any legal proceedings or other procedure or step been taken, started or, to the knowledge of the Company after due and careful enquiry, threatened in relation to anything referred to in Clause 23.7 (*Insolvency proceedings*).

18.20 Taxes

To the knowledge of the Company after due and careful enquiry, each Holdco and each Material Subsidiary has paid all Taxes required to be paid by it within the time period allowed for payment without incurring any material penalties for non-payment, other than any Taxes:

- (a) being contested by it in good faith and in accordance with the relevant procedures;
- (b) which have been disclosed to the Mezzanine Loan Arrangers and for which adequate reserves are being maintained in accordance with GAAP; and
- (c) where payment can be lawfully withheld and will not result in the imposition of any material penalty nor in any Security ranking in priority to the claims of any Mezzanine Finance Party under any Mezzanine Finance Document or to any Security created under any Security Document.

18.21 Pensions

- (a) Save as disclosed in the Accountants' Report and the Due Diligence Report, to the knowledge of the Company after due and careful enquiry, no member of the Group has any material liability in respect of any pension scheme and there are no circumstances which would give rise to such a liability.
- (b) To the knowledge of the Company after due and careful enquiry, each member of the Group is in compliance in all material respects with all material applicable laws and material contracts relating to and the governing provisions of the pension schemes maintained by or for the benefit of any member of the Group and/or any of its employees.

18.22 Satellites

- (a) To the knowledge of the Company after due and careful enquiry, the Acquired Group (A) has good title to one I2 Satellite and to five I3 Satellites and (B) has leased to it three other I2 Satellites with exclusive rights to use the same as envisaged by the Financing Case.

- (b) To the knowledge of the Company after due and careful enquiry, none of the satellites that have been brought into use by the Group are subject to harmful interference from other satellites that is materially adversely affecting the operation of such satellites.
- (c) In relation to the bringing into use of the fleet of I4 Satellites, to the knowledge of the Company after due and careful enquiry, the Group is not aware of any undue interference from other satellites that would materially adversely affect the operation of each such I4 Satellite.

18.23 Documents provided

- (a) All documents that are or have been provided to the Agent under Clause 4.1 (*Initial conditions precedent*) are in each case the complete document in all material respects.
- (b) All of the certified copies or copies of documents provided to the Agent under Clause 4.1 (*Initial Conditions precedent*) or Clause 25.2 (*Additional Guarantors*) are true, complete and accurate copies of the original documents in all material respects.

18.24 Knowledge of the Company

For the purpose of this Clause 18:

- (a) any obligation of the Company to make due and careful review and enquiry shall be satisfied by due and careful review and enquiry being made by it of its directors;
- (b) in relation to representations and warranties made on the date of the Utilisation Request and the Utilisation Date, references to the Group shall be deemed to include each Holdco and each Material Subsidiary;
- (c) it is assumed that the Company has the knowledge of its directors; and
- (d) as from the earlier of the Extension Date and the Syndication Date (**provided** that the Syndication Date occurs after the Completion Date) the Company is assumed to have the knowledge of the management of the Acquired Group.

18.25 Times on which representations made

- (a) The representations and warranties set out in this Clause 18 (except for Clause 18.7 (*Information Package*) insofar as it relates to the Information Memorandum) are:
 - (i) made by each Original Obligor on the date of this Agreement; and
 - (ii) deemed to be made by each Obligor on the Utilisation Date by reference to the facts and circumstances then existing.
- (b) The representations and warranties set out in Clause 18.7 (*Information Package*) (in so far as it relates to the Information Memorandum) are deemed to be made by each Obligor (to the extent provided at the beginning of this Clause 18) by reference to the facts and circumstances then existing on:
 - (i) each date on which the Information Memorandum is approved; and
 - (ii) the Syndication Date,subject in each case to written disclosure by the Company.
- (c) The Repeating Representations (and paragraphs (a) and (b) of Clause 18.8 (*Financial statements*) in relation to financial statement delivered by that Obligor) are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:
 - (i) the date of the Utilisation Request;

- (ii) the first day of each Interest Period;
 - (iii) in the case of an Additional Obligor, the day on which that person becomes (or it is proposed that that person becomes) an Additional Obligor; and
 - (iv) the Extension Date.
- (d) If any Report subject to representations and warranties to be repeated as set out in Clause 18.25 (*Times on which representations made*) is dated and delivered after the date of this Agreement, the representation and warranty in relation to such Report shall be made in respect of such Report on such date by reference to the facts and circumstances existing at such date.

19. INFORMATION UNDERTAKINGS

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

19.1 Annual financial statements

Newco shall supply to the Agent in sufficient copies for all the Lenders as soon as the same become available, but in any event within 120 days after the end of each of its financial years the audited consolidated financial statements of the Group for that financial year and, to the extent required by any Lender to comply with regulatory provisions applicable to it, the audited financial statements of each member of the Group for that financial year.

19.2 Monthly financial statements

- (a) Newco shall for the first three months after the Completion Date supply to the Agent in sufficient copies for all the Lenders as soon as the same become available, but in any event within 30 days after the end of each Accounting Month, the consolidated monthly financial statements for the Target for that Accounting Month and shall use reasonable endeavours to procure that such monthly financial statements include:
- (i) a consolidated cashflow statement and profit and loss account for the Group for the relevant Accounting Month and for the financial year to date;
 - (ii) a consolidated balance sheet of the Group as at the end of the relevant Accounting Month;
 - (iii) a comparison of actual performance with the performance projected by the Budget for the relevant Accounting Month and for the financial year to date;
 - (iv) a summary of Capital Expenditure in relation to the I4 Programme for the financial year to date; and
 - (v) management commentary on the Group's performance during the relevant Accounting Month and any material developments or proposals affecting the Group or its business.
- (b) Newco shall for each Accounting Month falling more than three months after the Completion Date, supply to the Agent in sufficient copies for all the Lenders as soon as the same become available, but in any event within 30 days after the end of each Accounting Month the consolidated monthly financial statements of the Group for that Accounting Month.
- (c) Each set of consolidated monthly financial statements delivered pursuant to paragraph (b) above shall include:
- (i) a consolidated cashflow statement and profit and loss account of the Group for the relevant Accounting Month and for the financial year to date;
 - (ii) a consolidated balance sheet of the Group as at the end of the relevant Accounting Month;

- (iii) a comparison of actual performance with the performance projected by the Budget for the relevant Accounting Month, for the financial year to date and in the case of financial statements for periods ending less than one year after the Completion Date and in relation to the profit and loss account only against the corresponding Accounting month in the previous financial year;
- (iv) a summary of Capital Expenditure in relation to the I4 Programme for the financial year to date;
- (v) (in the case of financial statements for periods ending more than one year after the Completion Date) a comparison with the corresponding Accounting Month, and the year-to-date performance, in the previous year, including commentary from the Chief Executive Officer and the Chief Financial Officer; and
- (vi) management commentary on the Group's performance during the relevant Accounting Month (including, in the case of financial statements for periods ending more than one year after the Completion Date, a comparison with budgeted performance and performance in the previous year and commentary from the Chief Executive Officer and the Chief Financial Officer) and any material developments or proposals affecting the Group or its business.

19.3 Compliance Certificate

- (a) Newco shall supply to the Agent within 30 days of the end of each Accounting Quarter, a Compliance Certificate which shall:
 - (i) set out (in reasonable detail) computations as to compliance with Clause 20 (*Financial Covenants*) and Clause 22.23 (*Security and guarantees*) as at, or, as the case may be, in respect of the Testing Period ending on, the most recent Accounting Quarter; and
 - (ii) confirm that no Default is continuing (or if a Default is continuing, specify the Default and the steps being taken to remedy it).
- (b) The Compliance Certificate in relation to the fourth Accounting Quarter (being the Accounting Quarter ending on 31 December) in each financial year of the Company shall also:
 - (i) set out (in reasonable detail) the computation of Surplus Cashflow for that financial year;
 - (ii) set out (in reasonable detail) the Capital Expenditure for that financial year and demonstrating compliance with Clause 20.4 (*I4 Capex limit*) and 20.5 (*Other Capex limit*); and
 - (iii) set out the Material Subsidiaries and (in reasonable detail) the computations for the determination of which members of the Group are Material Subsidiaries to the extent that there has been any change.
- (c) Each Compliance Certificate shall be signed by the Chief Financial Officer and one other director of Newco and, in respect of the Compliance Certificate in relation to the fourth Accounting Quarter in each financial year of the Company, shall be reported on by the Company's auditors in the Agreed Form at the same time as the audited consolidated financial statements of the Group are delivered.
- (d) After the financial year-end of the Company and, once the audited consolidated financial statements of the Group are available, Newco shall deliver a reconciliation of the audited financial statements of the Group for that financial year and the management accounts of the Group as at the end of that financial year.

19.4 Requirements as to financial statements

- (a) Each set of financial statements delivered by Newco pursuant to Clause 19.1 (*Annual financial statements*) or Clause 19.2 (*Monthly financial statements*) shall be certified by a director of the relevant company and the Chief Financial Officer as fairly representing its (or, as the case may be,

its consolidated) financial condition and operations as at the end of and for the period in relation to which those financial statements were drawn up.

- (b) Newco shall procure that each set of financial statements of an Obligor delivered pursuant to Clause 19.1 (*Annual financial statements*) is prepared using GAAP, accounting practices and financial reference periods in each case consistent with the Applicable Accounting Principles and each set of financial statements of an Obligor delivered pursuant to Clause 19.2 (*Monthly financial statements*) is based on financial practices used in the preparation of the Financing Case unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in GAAP, the accounting practices or reference periods or, as the case may be, financial practices and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Agent:
- (i) a description of any change necessary for the relevant financial statements to reflect the Applicable Accounting Principles; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether the covenants contained in Clause 20 (*Financial covenants*) have been complied with, to calculate the Surplus Cashflow, to determine any other relevant matter and/or to make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the Applicable Accounting Principles.

19.5 Annual Budget

- (a) Newco shall supply to the Agent in sufficient copies for all the Lenders as soon as the same becomes available, but in any event no later than the start of each of the financial years of the Company, a Budget in respect of that next financial year in the Agreed Form.
- (b) Each Budget shall include:
- (i) a projected consolidated cashflow statement and profit and loss account of the Group for that financial year and for each Accounting Month of that financial year;
 - (ii) a projected consolidated balance sheet of the Group as at the end of each Accounting Month of that financial year;
 - (iii) a summary of the Capital Expenditure projected to be made by the Group during each Accounting Month of that financial year;
 - (iv) projected levels of the financial ratios in Clause 20 (*Financial Covenants*) as at the end of, or, as the case may be, in respect of the Testing Period ending at the end of, each Accounting Quarter of that financial year;
 - (v) projected EBITDA of the Group for that financial year and for each Accounting Month of that financial year; and
 - (vi) a management commentary on:
 - (A) the proposed activities of the Group during that year; and
 - (B) the principal assumptions underlying the projections in that Budget; and
 - (C) Capital Expenditure in relation to the I4 Programme.
- (c) If requested and on reasonable notice, the directors and the Chief Financial Officer of Newco shall give a presentation to the Lenders in each financial year after Newco has delivered the audited consolidated financial statements of the Group for the previous financial year pursuant to Clause 19.1 (*Annual financial statements*), about the business, financial performance and prospects

of the Group, and such other material matters as any Mezzanine Finance Party (through the Agent) may reasonably request.

19.6 Information; miscellaneous

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

- (a) copies of all formal documents dispatched by the Company to:
 - (i) its shareholders, in their capacity as shareholders, generally (or any class of them);
or
 - (ii) or its creditors generally (or any class of them);

in each case, at the same time as they are dispatched;

- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group or the Acquired Group, and which would be reasonably likely, if adversely determined, to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any claim, notice or other communication received by it in respect of any actual or alleged breach of or liability under Environmental Law which, if substantiated, would be reasonably expected to have a Material Adverse Effect;
- (d) promptly upon becoming aware of it, any change in the structure of the Group from that set out in the Group Structure Chart which is or would be reasonably likely to be materially adverse to the security interests of the Mezzanine Finance Parties;
- (e) promptly, such further information regarding the Acquisition or the financial condition, business or operations of any member of the Group or the Acquired Group as any Mezzanine Finance Party (through the Agent) may reasonably request (and in determining reasonableness for these purposes, account shall be taken of the cost and time incurred and taken to provide such information); and
- (f) promptly upon receipt, a copy of each document under which an Investor accedes to any Investor Document.

19.7 Notification of Default

- (a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Agent, Newco shall supply to the Agent a certificate signed by the Chief Financial Officer and one of the other directors of the Company certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

19.8 Inspection of books and records

Each Obligor shall (and the Company shall ensure that each member of the Group will) permit the Agent or any of its representatives (including any accountants or other professionals appointed by them for this purpose), at reasonable times and intervals in each calendar year and in circumstances when any Mezzanine Finance Party has reasonable grounds for believing that a Default has occurred or would reasonably be expected to occur, and upon reasonable notice, during normal business hours to visit any of its offices and to inspect any of its books and records. The reasonable cost and reasonable expense of each such visit or inspection shall be borne by Newco, unless in respect of any investigation instigated by the Agent as a result of any Mezzanine Finance Party having reasonable grounds for believing that a Default had occurred or would reasonably be

expected to occur, the investigation shows that no Default has occurred or could reasonably be expected to have occurred.

19.9 Auditors

- (a) The Company shall ensure that the same internationally recognised "big four" firm of accountants is appointed as its auditors and the auditors of each other member of the Group.
- (b) No Obligor shall (and the Company shall ensure that no other member of the Group will) change its auditors without the consent of the Majority Lenders unless the new auditor to be appointed is one of the internationally recognised "big four" firms of accountants.
- (c) The Company shall ensure that the financial year end of the Group and each member of the Group is 31 December.
- (d) No Obligor shall (and the Company shall ensure that no other member of the Group will) change its financial year end or the end of its Accounting Quarter or Accounting Month without the consent of the Majority Lenders, other than to conform its financial year end to that of the Company.

19.10 Use of websites

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

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

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

paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company shall comply with any such request within 10 Business Days.

19.11 Know Your Customer Requirements

- (a) Each Obligor shall promptly upon the request of the Agent or any Lender, and 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 or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective New Lender) in order for the Agent, such Lender or any prospective New Lender to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to the identity of any person that it is required to carry out in relation to the transactions contemplated in the Finance Documents.
- (b) The Company shall, by not less than 10 Business Days' written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 25 (*Changes to the Obligors*).
- (c) Following the giving of any notice pursuant to paragraph (b) above, 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, such Lender or any prospective New Lender to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to the identity of any person that it is required to carry out in relation to the accession of such Additional Obligor to this Agreement.

19.12 Scheme of Arrangement information

- (a) The Company shall use all reasonable endeavours to obtain and shall, upon receipt, promptly supply to the Agent:
 - (i) sufficient copies for the Lenders of all Scheme Documents and each other document relating to the Scheme of Arrangement (including, any petition, any affidavit, any summons, any notice or any order); and
 - (ii) each draft of the Scheme Documents produced on or after the date of the Press Release.
- (b) The Company shall promptly supply to the Agent any information relating to the Scheme of Arrangement which any Lender may reasonably request (but not to the extent access to, or knowledge of, such information would be illegal).

19.13 No personal liability

No director, officer or employee of the Company or any other member of the Group shall be personally liable for any statement made by it in any certificate or other document as required to be delivered pursuant to any Mezzanine Finance Party pursuant to the Mezzanine Finance Documents.

20. FINANCIAL COVENANTS

20.1 Total Net Interest Cover

The Company shall ensure that the ratio of EBITDA to Total Net Interest Payable for each Testing Period ending on a Testing Date set out in column (1) of the table below shall not be lower than the ratio set out in column (2) of the table opposite that date:

(1) - Testing Date	(2) - EBITDA/Total Net Interest Payable
30 June 2004	1.89:1
30 September 2004	1.89:1
31 December 2004	1.89:1
31 March 2005	1.89:1
30 June 2005	1.89:1
30 September 2005	1.89:1
31 December 2005	1.89:1
31 March 2006	1.89:1
30 June 2006	1.94:1
30 September 2006	1.94:1
31 December 2006	1.94:1
31 March 2007	1.98:1
30 June 2007	2.07:1
30 September 2007	2.16:1
31 December 2007	2.25:1
31 March 2008	2.39:1
30 June 2008	2.48:1
30 September 2008	2.48:1
31 December 2008	2.61:1
31 March 2009	2.61:1
30 June 2009	2.61:1
30 September 2009	2.66:1
31 December 2009	2.75:1
31 March 2010	2.84:1
30 June 2010 and thereafter	2.84:1

20.2 Total Net Debt to EBITDA and Senior Net Debt to EBITDA

The Company shall ensure that:

- (a) the ratio of Total Net Debt on a Testing Date set out in column (1) of the table set out below to EBITDA for the Testing Period ending on that Testing Date shall not be higher than the ratio set out in column (2) of the table opposite that date; and
- (b) the ratio of Senior Net Debt on a Testing Date set out in column (1) of the table set out below to EBITDA for the Testing Period ending on that Testing Date shall not be higher than the ratio set out in column (3) of the table opposite that date:

(1) - Testing Date	(2) - Total Net Debt/EBITDA	(3) - Senior Net Debt/EBITDA
30 June 2004	5.83:1	4.18:1
30 September 2004	5.83:1	4.18:1
31 December 2004	5.83:1	4.18:1
31 March 2005	5.83:1	4.18:1
30 June 2005	5.83:1	4.18:1
30 September 2005	5.83:1	4.18:1
31 December 2005	5.83:1	4.18:1
31 March 2006	5.83:1	4.02:1
30 June 2006	5.72:1	3.85:1
30 September 2006	5.61:1	3.69:1
31 December 2006	5.39:1	3.41:1
31 March 2007	5.06:1	3.30:1
30 June 2007	4.62:1	3.08:1
30 September 2007	4.51:1	2.86:1
31 December 2007	4.29:1	2.75:1
31 March 2008	4.29:1	2.75:1
30 June 2008	4.18:1	2.75:1
30 September 2008	4.07:1	2.75:1
31 December 2008	3.85:1	2.75:1
31 March 2009	3.85:1	2.75:1
30 June 2009	3.85:1	2.75:1
30 September 2009	3.85:1	2.75:1
31 December 2009	3.85:1	2.75:1
31 March 2010	3.85:1	2.75:1

30 June 2010 and thereafter	3.85:1	2.75:1
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20.3 Fixed Charge Cover

The Company shall ensure the ratio of Cashflow to Net Debt Service for each Testing Period ending on each Testing Date shall not be less than 1:1.

20.4 I4 Capex limit

The Company shall ensure that during each period set out in column (1) of the table below I4 Capex during that period shall not exceed the amount set out opposite that period in column (2) of the table below.

(1) - Period	(2) - I4 Capex limit
18 months to 31 December 2004	117.5% of the cumulative I4 Capex contemplated in the Financing Case for that period
30 months to 31 December 2005	110% of the cumulative I4 Capex contemplated in the Financing Case for that period
42 months to 31 December 2006	110% of the cumulative I4 Capex contemplated in the Financing Case for that period
12 months to 31 December 2007	The lesser of (A) the cumulative I4 Capex for the 42 months to 31 December 2006 contemplated in the Financing Case minus the actual amount of I4 Capex in that period and (B) \$19,000,000.
Thereafter	Zero

20.5 Other Capex limit

- (a) The Company shall ensure that during each period set out in column (1) of the table below Other Capex during that period shall not exceed the amount set out opposite that period in column (2) of the table below:

(1) - Period	(2) - Other Capex limit
18 months to 31 December 2004	\$45,000,000
12 months to 31 December 2005	\$30,000,000
12 months to 31 December 2006	\$30,000,000
12 months to 31 December 2007	\$40,000,000
12 months to 31 December 2008	\$40,000,000
12 months to 31 December 2009	\$40,000,000

12 months to 31 December 2010	\$40,000,000
12 months to 31 December 2011	\$125,000,000.

- (b) If the amount of Other Capex incurred in any period set out in column (1) of the table above is less than the amount set out opposite that period in column (2) of the table above then 50% of such unspent Other Capex during such period may be carried forward into the next period set out in column (2) of the table above (but into no other such period).
- (c) For the avoidance of doubt, Other Capex may be incurred for the acquisitions of businesses where the assets of such businesses would be treated as capital expenditure if such assets were acquired by a member of the Group and any such incurrence shall count as Capital Expenditure for the purposes of this Agreement.

20.6 Financial covenant calculations

- (a) Capex, Capital Expenditure, Cashflow, EBITDA, Exceptional I4 Development Costs, I4 Capex, Net Debt Service, Other Capex, Senior Net Debt, Thuraya Lease Costs, Total Net Debt, Total Net Interest Payable and Working Capital shall be calculated and interpreted on a consolidated basis in accordance with the Applicable Accounting Principles and shall be expressed in dollars, excluding the impact of any fair value adjustment on any acquisition of shares or a business which is not related to cash.
- (b) Capex, Capital Expenditure, Cashflow, EBITDA, Exceptional I4 Development Costs, I4 Capex, Net Debt Service, Other Capex, Senior Net Debt, Thuraya Lease Costs, Total Net Debt, Total Net Interest Payable and Working Capital shall be determined (except as needed to reflect the terms of this Clause 20 from the financial statements of the Group and Compliance Certificates delivered under Clause 19.1 (*Annual financial statements*), Clause 19.2 (*Monthly financial statements*) and Clause 19.3 (*Compliance Certificate*).
- (c) For the purpose of this Clause 20, no item shall be included or excluded more than once in any calculation.
- (d) For the purpose of this Clause 20, the effect of all unrealised currency exchange gains and losses shall be excluded.
- (e) The tests set out in Clause 20.1 (*Total Net Interest Cover*) to Clause 20.5 (*Other Capex Limit*) shall only apply on the dates specified if such date is at least five calendar months after the Completion Date.
- (f) To the extent that any period prior to the Completion Date is included in any relevant period referred to in Clause 20.1 (*Total Net Interest Cover*) to Clause 20.5 (*Other Capex Limit*):
- (i) all references in the covenant definitions to "Group" shall be deemed to be references to Target and its Subsidiaries; and
 - (ii) for the purpose of calculating the tests under Clause 20.1 (*Total Net Interest Cover*) to Clause 20.5 (*Other Capex Limit*), the term facilities under the Senior Facilities shall be deemed to have been drawn down in full on the Completion Date.
- (g) All references to Tax in this Clause 20 shall include payments in relation to Tax under the Tax and Expenses Indemnity.

20.7 Definitions

In this Clause 20:

"Capex" means, in relation to any period:

- (a) Capital Expenditure incurred on a cash basis during that period (which, for the avoidance of doubt, shall equal reported Capital Expenditure and any movements in payables or accruals relating to Capital Expenditure recorded in the Group's balance sheet);
- (b) less any amounts received from suppliers by way of liquidated damages or otherwise in respect of I4 Capex during that period;
- (c) less retained insurance proceeds in relation to launch or in-orbit insurance of the fleet of I4 Satellites which is reinvested in the Group during that period; and
- (d) plus any deferred satellite incentive payments in relation to the I4 Programme made in that period.

"Cashflow" means, in relation to any Testing Period, EBITDA for that Testing period adjusted:

- (a) by deducting any increase or adding any decrease in Working Capital during that Testing Period;
- (b) by deducting any decrease or adding any increase in accounting provisions made during that Testing Period;
- (c) by excluding any other non-cash items taken into account in calculating EBITDA (other than to the extent already taken into account in movements in Working Capital);
- (d) to the extent included in EBITDA or in any other paragraph of this definition, by excluding the effect of all cash movements associated with the Acquisition and any Acquisition Costs;
- (e) for the cash effect of extraordinary and exceptional items to the extent that cash was actually received or expended during that Testing Period (including any cash costs (i) of any redundancies, (ii) in relation to employee stock options under the Existing Share Option Schemes, (iii) in relation to payments up to an aggregate maximum amount of \$7,000,000 in settlement of the Airia Dispute and (iv) in relation to accounting provisions in respect of user terminals which are held in stock but which the group is contractually committed to provide to customers, in each case to the extent not taken into account in the calculation of EBITDA);
- (f) by adding specific payments from LESOs identified by the Company as receivable during that Testing Period which are not received during that Testing Period but which are received in cash less than 14 days after the end of that Testing Period;
- (g) by adding the net proceeds of sales of assets received during that Testing Period (other than such proceeds derived from a disposal set out in paragraph (a) of the definition of Permitted Disposal);
- (h) by adding the aggregate of the amounts received during the Testing Period, and prior to the delivery of the Compliance Certificate in relation to that Testing Period, in each case after the Completion Date:
 - (i) by way of net proceeds of subscription for the issue of shares by the Company to the Investors and/or the Management; and
 - (ii) by way of Financial Indebtedness from the Investors and/or the Management to the Company or Midco,
 in each case, that has been on-loaned to Newco and subordinated under the Intercreditor Agreement;
- (i) by adding the net proceeds raised from any sale and leaseback of the City Road Property received during that Testing Period;
- (j) by adding the amount of any Overfunding Adjustment during that Testing Period;

- (k) by adding the amount of any Exceptional I4 Development Costs incurred during that Testing Period to the extent included in the calculations of Capex or EBITDA;
- (l) to the extent not included in EBITDA or in any other paragraph of this definition, by deducting the amount of any Thuraya Lease Costs incurred during that Testing Period;
- (m) by deducting amounts paid during the Testing Period by the Group or which falls due for cash payment during that Testing Period in respect of Tax;
- (n) by deducting the amount of any payment made to the Investors under, or in respect of, the Investor Documents during the Testing Period (other than any such payment which is a Permitted Payment and which has been made from Retained Cash);
- (o) by deducting amounts paid during the Testing Period by the Group in respect of Capex;
- (p) by deducting the cash cost of acquisitions made during the Testing Period to the extent not included in EBITDA;
- (q) by deducting an amount equal to that added back under paragraph (f) above for Cashflow in the Testing Period ending on the Testing Date 12 months prior to the relevant Testing Date; and
- (r) by deducting costs incurred in issuing the High Yield Notes (or any other refinancing of the Facility) during that Testing Period (whether or not such issue is successful) unless those costs are financed out of the proceeds of the High Yield Notes (or such other refinance of the Facility, as appropriate).

“EBITDA” means, in relation to any Testing Period, the total consolidated operating profit of the Group for that Testing Period:

- (a) before taking into account:
 - (i) any interest charges, non-cash interest charges or other finance charges in respect of the Total Borrowings, Investor Debt and any other Permitted Financial Indebtedness of the Group, in each case, which would be treated as interest under GAAP;
 - (ii) Tax accrued in respect of profits earned in that Testing Period;
 - (iii) redundancy costs up to an aggregate maximum amount after the Completion Date of \$30,000,000;
 - (iv) costs in relation to employee stock options under the Existing Share Option Schemes;
 - (v) any payment in relation to the settlement of the Airia Dispute up to an aggregate maximum amount after the Completion Date of \$7,000,000;
 - (vi) accounting provisions in respect of user terminals which are held in stock but which the Group is contractually committed to provide to customers up to an aggregate maximum of \$5,000,000;
 - (vii) Acquisition Costs;
 - (viii) profits (or losses) attributable to minority interests in any member of the Group;
 - (ix) any share of the profit or loss of any associated company or undertaking, except for dividends received in cash by any member of the Group;
 - (x) exchange rate gains (or losses) arising due to the re-translation of balance sheet items and mark-to-market adjustments on currency swaps; and

- (xi) all extraordinary and exceptional items;
- (b) after excluding (to the extent included) any gains or losses on the disposal (other than in the ordinary course of trading) or revaluation of assets;
- (c) after adding back:
 - (i) all amounts provided for depreciation and amortisation;
 - (ii) costs incurred in Issuing the High Yield Notes (or any other refinancing of the Loan) during that Testing Period (whether or not such issue is successful);
 - (iii) all amounts provided for write-downs in relation to fixed assets or investments;
 - (iv) the amount of any Thuraya Lease Costs incurred during that Testing Period;
- (d) and including the Subsidiary EBITDA of a Subsidiary of the Group acquired by the Group during that Testing Period for the part of that Testing Period when it was not a Subsidiary of the Group but excluding the Subsidiary EBITDA attributable to any Subsidiary of the Group sold by the Group during that Testing Period.

“Exceptional I4 Development Costs” means in any Testing Period up to and including the Testing Period ending on 31 March 2006, the higher of:

- (a) costs relating to the I4 Programme which are capitalised in accordance with GAAP; and
- (b) the aggregate of (i) professional fees in relation to the I4 Programme and (ii) the advanced networks staff and related costs,

incurred during that Testing Period.

“I4 Capex” means, in relation to any period falling on or before 31 December 2007, Capex incurred during that period which relates to the I4 Programme (including capitalised costs in relation thereto, where such costs have been capitalised on a basis consistent with the methodology used in the Financing Case).

“Net Debt Service” means, in respect of any Testing Period:

- (a) Total Net Interest Payable for that Testing Period; plus
- (b) the amount of all scheduled repayments of principal due during that Testing Period under the term facilities under the Senior Facilities, the capex facility under the Senior Facilities, the Loan and the High Yield Notes (or any other refinancing of the Loan); plus
- (c) the amount of any prepayment of the Senior Facilities or the Facility which the Group is required to make from the Proceeds of a sale and leaseback of the City Road Property.

“Other Capex” means, in relation to any period, Capex during that period less, in relation to any such period falling on or before 31 December 2007, I4 Capex during that period but for the period ending on 31 December 2007 including I4 Satellite performance incentives.

“Overfunding Adjustment” means, in respect of any Testing Period, an amount equal to the aggregate of (A) the amount of Capex during that Testing Period which has been funded by withdrawal of credit balances from the Overfunding Account (but, for the avoidance of doubt, excluding amounts withdrawn from the Overfunding Account for any other purpose) and (B) the amount of any loans under the capex facility of the Senior Facilities made during the Testing Period, provided that:

- (a) such amount shall be deemed never to exceed \$344,000,000;

- (b) the cumulative amount of Capex funded by withdrawal of credit balances from the Overfunding Account shall never exceed the amount of the Overfunding; and
- (c) if any credit balance is withdrawn from the Overfunding Account and redeposited in the Overfunding Account then that amount shall be deemed not to have been applied in funding Capex.

"Senior Net Debt" means as at any particular time, the aggregate outstanding principal, capital or nominal amount outstanding (other than fixed or minimum premium payable on prepayment or redemption) under the Senior Facilities and the Ancillary Facilities (as defined in the Senior Facilities Agreement):

- (a) plus any amounts drawn from the Overfunding Account to fund the working capital requirements of the Group at that time;
- (b) plus any Financial Indebtedness incurred under paragraphs (f), (j), (k) and (l) of the definition of Permitted Financial Indebtedness outstanding at that time; and
- (c) minus Cash and Cash Equivalent Investments at that time (but excluding any amount of the Overfunding retained by the Group in Cash or Cash Equivalent Investments at that time).

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

"Testing Period" means the period of 12 months ending on the relevant Testing Date provided that:

- (a) in respect of the Testing Periods ending on the Testing Dates of 30 June 2004 and 30 September 2004 and the calculation of EBITDA, Cashflow, Total Net Interest Payable and Net Debt Service for the purposes of Clause 20.1 (*Total Net Interest Cover*) and 20.3 (*Fixed Charge Cover*), it shall mean the period from the Completion Date to that Testing Date; and
- (b) in respect of any Testing Period ending less than 12 months after the Completion Date in respect of Clause 20.2 (*Total Net Debt to EBITDA and Senior Net Debt to EBITDA*) the calculation of EBITDA shall be made for the period of 12 months ending on the Testing Date relating to that Testing Period.

"Thuraya Lease Costs" means, in relation to a Testing Period, costs for leasing transponder capacity on the Thuraya 1 and 2 satellites during that Testing Period provided that:

- (a) for the Testing Period ending on 31 December 2004 such costs shall not exceed an aggregate amount of \$27,000,000;
- (b) for the Testing Period ending on 31 December 2005 such costs shall not exceed an aggregate amount of \$36,000,000; and
- (c) for the Testing Period ending on 31 December 2006 such costs shall not exceed an aggregate amount of \$18,000,000.

"Total Net Debt" means, as at any particular time, Senior Net Debt at that time plus the aggregate outstanding principal, capital or nominal amount (other than fixed or minimum premium payable on prepayment or redemption) under:

- (a) the Loan (but not, for the avoidance of doubt, under the Mezzanine Subordinated Preference Certificates and the Mezzanine Subordinated Preference Certificates Instrument); and
- (b) the High Yield Notes (or any other refinancing of the Loan),

at that time.

"Total Net Interest Payable" means, in relation to any Testing Period, the aggregate amount of interest (other than capitalised interest) and any other finance charges payable in cash by the Group in that Testing Period in respect of Total Borrowings including commitment fees, commissions and guarantee fees and agency fees (except any which are payable prior to the Completion Date) but adjusted by:

- (ii) deducting the net amount of interest receivable in cash by any member of the Group in that Testing Period on credit balances or under interest or (insofar as they relate to interest) currency hedging arrangements; and
- (iii) excluding any arrangement or underwriting fees in respect of the Senior Facilities, the Facility and the High Yield Notes (or any other refinancing of the Mezzanine Loan).

"Working Capital" means, at any time, the current assets of the Group being realisable within one year (other than Cash and Cash Equivalent Investments) less current liabilities due within one year (other than Financial Indebtedness) but excluding any payables relating to Capital Expenditure recorded as accruals in the Group balance sheet.

For this purpose, any amount outstanding or repayable in a currency other than sterling shall on that day be taken into account:

- (a) if an audited consolidated balance sheet of the Group has been prepared as at that day, in their sterling equivalent at the rate of exchange used for the purpose of preparing that balance sheet; and
- (b) in any other case, in their sterling equivalent at the rate of exchange that would have been used had an audited consolidated balance sheet of the Group been prepared as at that day in accordance with the Applicable Accounting Principles.

21. SYNDICATION AND REFINANCING UNDERTAKINGS

21.1 Accession by Bondco

- (a) The Company shall procure that, as soon as possible after the date of this Agreement but, in any event, no later than one Business Day after the Utilisation Date, Bondco shall become a party to this Agreement for the sole purpose of ensuring compliance with Clause 21 (*Syndication and Refinancing Undertakings*) of this Agreement by executing an Accession Document in the form attached as Schedule 11 hereto.
- (b) When an Accession Document is entered into under this Clause 21.1, Bondco shall deliver to the Agent:
 - (i) the original Accession Document executed by Bondco and the Agent;
 - (ii) the documents listed in paragraph 1 of part III of Schedule 2 hereto;
 - (iii) a legal opinion as to its due organization, capacity and authority,each satisfactory to the Agent (acting reasonably).
- (c) Bondco irrevocably appoints Newco as its agent for the purpose of Clause 38.2 (*Service of Process*) of this Agreement.

21.2 Syndication and Clear Market

- (a) The Facility is being made available by the Lenders with the intention (but not the obligation) that the Mezzanine Loan Arrangers should co-ordinate syndication of the Facility. The Company undertakes, and procures that its Subsidiaries will undertake, to assist and co-operate with the Mezzanine Loan Arrangers in accordance with the Syndication Side Letter.

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- (b) To ensure an orderly and effective Syndication of the Facility from the Notification Date (as defined in the Syndication Side Letter) until the earlier of termination of the Syndication as determined by the Mezzanine Loan Arrangers and 180 days following the Extension Date, the Company will not, and will procure that its Subsidiaries and controlled affiliates do not, syndicate or issue, attempt to syndicate or issue, announce or authorize the announcement of the syndication or issuance of, or engage in discussions concerning the syndication or issuance of, any debt facility or debt or preferred equity security of the Company or any of its Subsidiaries or controlled affiliates (other than pursuant to the Senior Facilities Agreement), including any renewal or refinancing of any existing debt facility (other than the High Yield Notes or the Demand Securities), without the prior written consent of the Mezzanine Loan Arrangers.

21.3 Loan Refinancing

- (a) The Company and Bondco shall, and shall procure that their Subsidiaries shall, use their reasonable efforts to offer and sell High Yield Notes to refinance the Loan as soon as practicable after the date of this Agreement.
- (b) In connection with the foregoing, the Company and Bondco will, and will procure that their Subsidiaries will, use their reasonable efforts to:
- (i) prepare and deliver to the Investment Banks and the Mezzanine Loan Arrangers by no later than November 30, 2003 consolidated audited financial statements of the Target for the three financial years as of and for the period ended December 31, 2002, reconciled to US GAAP and otherwise suitable for use in a registration statement on Form-F1 under the US Securities Act of 1933 (the "**Securities Act**");
 - (ii) prepare and have reviewed pursuant to SAS 100 by no later than November 30, 2003 interim consolidated financial statements of the Target (prepared in accordance with or reconciled to US GAAP on a basis consistent with the audited financial statements referred to above), as of and for the nine month periods ended September 30, 2003 and September 30, 2002; and
 - (iii) prepare and deliver to the Investment Banks and the Mezzanine Loan Arrangers by no later than November 30, 2003 a complete registration statement on Form F-1 or an offering circular for a distribution of the High Yield Notes, in each case, meeting the requirements for a registration statement on Form F-1 (taking into account such modifications and deletions as are customary for offerings of high yield notes in the United States pursuant to Rule 144A under the Securities Act), including the audited and interim financial statements described above, in form and substance reasonably satisfactory to the Investment Banks and the Mezzanine Loan Arrangers, that would be suitable for use on a road show for the sale of the High Yield Notes.
- (c) If an issue of High Yield Notes has not been closed on or before February 13, 2004, then the Company and Bondco undertake that they will use their reasonable efforts (and will procure that their Subsidiaries use their reasonable efforts) as soon as practicable to:
- (i) prepare and deliver to the Investment Banks by no later than March 15, 2004, audited consolidated financial statements of Midco (as the successor of Target) for the financial year ended December 31, 2003, reconciled to US GAAP and otherwise suitable for use in a registration statement on Form F-1;
 - (ii) prepare and deliver to the Investment Banks and the Mezzanine Loan Arrangers by no later than March 15, 2004 an updated, complete registration statement on Form F-1 or an offering circular for a distribution of the High Yield Notes, in each case, meeting the requirements for a registration statement under the Securities Act on Form F-1 (taking into account such modifications and deletions as are customary for offerings of high yield notes in the United States pursuant to Rule 144A under the Securities Act), including the audited financial statements described above, in form and substance reasonably satisfactory to the Investment Banks and the Mezzanine Loan Arrangers, that would be suitable for use on a road show for the sale of the High Yield Notes;

- (iii) prepare and deliver to the Investment Banks and the Mezzanine Loan Arrangers by no later than April 15, 2004 updated audited consolidated financial statements of Midco and Target for each financial year in the three year period ended December 31, 2003, which contain an audited footnote setting out condensed consolidating financial information in respect of each of the guarantors of the High Yield Notes in accordance with Regulation S-X;
 - (iv) if so requested by the Investment Banks and the Mezzanine Loan Arrangers at any time on or after April 15, 2004, prepare and have reviewed pursuant to SAS 100, interim consolidated financial statements of Midco (including a condensed, consolidating footnote as described above) (in each case prepared in accordance with or reconciled to US GAAP on a basis consistent with the audited financial statements referred to above), as of and for any interim period following the date of the audited financial statements referred to above (together with the same period in the prior year) if, in the reasonable judgment of the Investment Banks and the Mezzanine Loan Arrangers a review of such financial statements would be required to obtain a SAS 72 comfort letter with negative assurances (that is, if the closing of the issuance of the High Yield Notes occurs or is scheduled to occur more than 135 days after the date of the audited financial statements referred to above).
- (d) In connection with Clauses (b) and (c) above, the Company and Bondco undertake to use their reasonable efforts (and to procure that their Subsidiaries use their reasonable efforts), as soon as practicable, to:
- (i) prepare and participate in a presentation to Standard & Poor's and Moody's in respect of the High Yield Notes; and
 - (ii) provide all information to the Investment Banks, the Mezzanine Loan Arrangers and their advisors as the Investment Banks and the Mezzanine Loan Arrangers shall reasonably request in connection with legal and business due diligence; and
 - (iii) following any request from the Investment Banks or the Mezzanine Loan Arrangers, undertake a roadshow with respect to an offering of High Yield Notes, causing its senior management and senior management of its subsidiaries to participate in such road show.
- (e) The High Yield Notes shall be issued on terms and conditions and pursuant to arrangements that are reasonably satisfactory to the Investment Banks and the Company and shall reflect the transactions contemplated by this Agreement, prevailing market conditions and the financial condition and prospects of the Group at the time of issuance (but in no event shall be worse in any material respect than the terms set out in Schedule 10).

21.4 Demand Securities

- (a) At any time during the period beginning on the date which is five months following the Completion Date (such date, the "**Demand Date**"), and ending on the earlier of the date of repayment in full of the Facility and two weeks prior to the Extension Date, the Mezzanine Loan Arrangers may require (a "**Demand**") Bondco to issue, at any time following a date which is six months after the Completion Date and after a bona fide offer to third parties, the Demand Securities (a "**Demand Issuance**"), in an amount not greater than the amount required to enable the Group to repay all amounts outstanding under this Agreement and finance the fees and expenses related to the Demand Securities in full.
- (b) The Demand Securities will incorporate the provisions specified in the Demand, which terms shall be determined by the Mezzanine Loan Arrangers or the Investment Banks, in consultation with the Company, in light of the then prevailing market conditions for comparable securities (but in no event shall be worse in any material respect than the terms set out in Schedule 10); **provided that**, in any event, (i) the interest rate on the Demand Securities shall be determined by the Mezzanine Loan Arrangers or the Investment Banks in consultation with the Company, in light of the then prevailing market conditions for comparable securities, but in no event shall the aggregate weighted average cash interest rate exceed the Maximum High Yield Cash Rate (as defined in the High Yield Notes Side Letter) and the total weighted average interest rate or yield exceed the Maximum High Yield Rate (as defined in the High Yield Notes Side Letter); (ii) all guarantee and security arrangements relating to the Demand Securities, shall comply with the requirements set forth in Schedule 10 and

(iii) the Demand Securities shall have the maturity and redemption provisions specified in Schedule 10. Subject to the foregoing, the Mezzanine Lead Arrangers or the Investment Banks shall, in their sole discretion after consultation with the Company, determine whether and in which amounts, each tranche of Demand Securities shall be issued, the yield applicable to the Demand Securities and the ranking of Demand Securities.

- (c) In connection with a Demand Issuance, the Company and Bondco shall use their reasonable efforts, as soon as practicable, to issue and sell the Demand Securities.
- (d) In connection with a Demand Issuance, the Company shall:
- (i) as soon as reasonably practicable following the Demand (but not later than the later of (i) one month following the Demand or (ii) if financial statements for the most recently completed accounting period are not available on the Demand Date, within 45 days following the end of such accounting period, upon request of the Mezzanine Loan Arrangers or the Investment Banks, provide a final form of preliminary offering circular or prospectus, as applicable, meeting the requirements of Clause 21.3 (*Loan Refinancing*) and upon request of the Investment Banks, provide a final offering circular or prospectus, as applicable meeting the requirements of Clause 21.3 (*Loan Refinancing*) within two Business Days after the pricing (or earlier to the extent required by law or regulation in a registered public offering); and
 - (ii) comply with the other provisions of Clause 21.3 (*Loan Refinancing*) as if such provisions were directly applicable to the offer and sale of the Demand Securities (it being understood that the age of the financial statements included in any offering memorandum (or registration statement) shall meet the requirements of the Securities Act for a registered public offering and necessary for the delivery of a SAS 72 comfort letter meeting the requirements of Clause 21.3 (*Loan Refinancing*)), such compliance being subject to the availability of appropriate interim financial statements, if required, which the Company and its Subsidiaries shall use reasonable efforts to prepare, deliver and have reviewed as soon as practicable.

22. GENERAL UNDERTAKINGS

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

Authorisations and Compliance with Laws

22.1 Authorisations

- (a) Each Obligor shall (and the Company shall ensure that each other member of the Group which is a party to a Transaction Document will) promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required:
- (i) to enable it to perform its obligations under the Transaction Documents;
 - (ii) to ensure the legality, validity or, subject to the Reservations, enforceability or admissibility in evidence of, any Transaction Document; and
 - (iii) to enable it to carry on its business if failure to obtain, comply with or maintain any such Authorisation would reasonably be expected to have a Material Adverse Effect.
- (b) The Company shall ensure that the Perfection Requirements are promptly complied with as soon as reasonably practicable and in any event:
- (i) in relation to Obligors which are incorporated in England and Wales, within 21 days of the date on which the relevant Security is granted or, if sooner, before the final date on which any such Perfection Requirement needs to be fulfilled in order to achieve the relevant perfection, protection or priority; and

- (ii) in relation to Obligors which are incorporated in any other jurisdiction or assets over which Security must be perfected in any other jurisdiction, before the final date on which any such Perfection Requirement needs to be fulfilled in order to achieve the relevant perfection, protection or priority.

22.2 Compliance with laws

Each Obligor shall (and the Company shall ensure that each other member of the Group will) comply in all respects with all laws to which it may be subject (including the Outer Space Act 1986, the Wireless Telegraphy Act 1949 and the Communications Act 2003 (and any equivalent or analogous laws in any relevant jurisdiction)), if failure so to comply would reasonably be expected to have a Material Adverse Effect.

22.3 Environmental undertakings

Each Obligor shall (and the Company shall ensure that each other member of the Group will):

- (a) comply with all Environmental Laws to which it may be subject;
- (b) obtain all Environmental Licences required in connection with its business; and
- (c) comply with the terms of all those Environmental Licences,

in each case where failure to do so would reasonably be expected to have a Material Adverse Effect.

22.4 Taxes

- (a) Each Obligor shall (and shall ensure that each of the other Material Subsidiaries will) pay all material Taxes required to be paid by it when due or within any applicable grace period (or, if earlier, before any material penalty is or could be imposed, and before any Security is or could be imposed ranking in priority to the claims of any Mezzanine Finance Party or to any Security created pursuant to the Security Documents other than any Permitted Security).
- (b) Paragraph (a) above does not apply to any Taxes:
 - (i) being contested by the relevant member of the Group in good faith and in accordance with the relevant procedures;
 - (ii) which have been adequately disclosed in its financial statements, and for which adequate reserves are being maintained in accordance with GAAP; and
 - (iii) where payment can be lawfully withheld and will not result in the imposition of any material penalty or Security as described in paragraph (a) above.

22.5 Financial assistance

- (a) The Company shall ensure that all payments between members of the Group, and any Security created pursuant to any Finance Document by any member of the Group, are made or created in compliance with any applicable law or regulation in any relevant jurisdiction concerning financial assistance by a company for the acquisition of or subscription for shares or concerning the protection of shareholders' capital.
- (b) The Company shall ensure that the procedures set out in sections 155 to 158 of the Companies Act 1985 required to be implemented to permit each member of the Acquired Group to comply with its obligations under Clause 22.23 (*Security and guarantees*) and the Whitewash Intra-Group Loan Agreement to which it is a party are so implemented and shall deliver to the Agent evidence that those procedures have been completed, including:
 - (i) copies of the relevant directors' statutory declarations and auditors' reports;

- (ii) a certified copy of the relevant up-to-date register of directors;
- (iii) a letter from the auditors addressed to the Mezzanine Loan Finance Parties certifying that section 155(2) of the Companies Act 1985 has been complied with substantially in the form set out in Technical Release FRAG 26/94 issued in September 1994 by the Council of the Institute of Chartered Accounts in England and Wales;
- (iv) confirmation that the relevant directors' statutory declarations have been filed at Companies House; and
- (v) if the Additional Obligor is a public limited company, a certificate of re-registration as a private limited company from the Registrar at Companies House.

22.6 Acquisitions and Investments

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will):
 - (i) invest in or acquire any share in or any security issued by any person, or any interest therein or in the capital of any person, or make any capital contribution to any person; or
 - (ii) invest in or acquire any business or going concern, or the whole or substantially the whole of the assets or business of any person, or any assets that constitute a division or operating unit of the business of any person.
- (b) Paragraph (a) above does not apply to any acquisition or investment which is a Permitted Acquisition.

22.7 Joint Ventures

- (a) No Obligor shall (and the Company shall ensure that no member of the Group will) acquire or agree to acquire any shares, stock, securities or other interest in any Joint Venture or transfer any assets or lend or give a guarantee or indemnity for or give Security or Quasi Security for the obligations of a Joint Venture (or agree to transfer, lend, guarantee, indemnify or give Security or Quasi Security for the obligations of a Joint Venture).
- (b) Paragraph (a) does not apply to a Permitted Joint Venture.

22.8 Change of business

The Company shall ensure that no material change is made to the general nature of the business of the Company or the Group or the Obligors taken as a whole from that carried on by the Acquired Group at the date of this Agreement.

22.9 Merger

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction.
- (b) Paragraph (a) above does not apply to any amalgamation, demerger, merger, consolidation or corporate reconstruction which is a Permitted Merger.

22.10 Holding company

The Company shall not carry on any business, own any asset other than Cash or Cash Equivalent Investments or incur any liability other than:

- (a) holding shares in any member of the Group;

- (b) making loans to, or receiving loans from, another member of the Group, pursuant to the Intercompany Loan Agreements, the High Yield Inter-Company Loan Agreement, the Working Capital Support Letter or the Whitewash Intra-Group Loan Agreement, for the purpose of the Acquisition and/or as provided for in the Funds Flow Memorandum or to fund its working capital requirements or its obligations under the Finance Documents;
- (c) providing administrative services to other members of the Group and employing employees whose services are required for the operation of the Group;
- (d) liabilities, including Acquisition Costs, incurred and Security created under the Transaction Documents; or
- (e) as a consequence of or in connection with a Permitted Payment.

22.11 Dormant Companies

The Company shall ensure that as from the Completion Date:

- (a) no member of the Group shall, while it is a Dormant Company:
 - (i) carry on any business or incur any liability; or
 - (ii) demand or accept payment of any indebtedness owing to it by any Obligor; and
- (b) no Obligor shall pay any indebtedness owing to any Dormant Company.

Restrictions on dealing with assets and security

22.12 Arm's length terms

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any contract or arrangement with or for the benefit of any other person which is not an Obligor (including any disposal to that person) other than in the ordinary course of business and on arm's length, or better than arm's length, terms.
- (b) Paragraph (a) above does not apply to a Permitted Transaction.

22.13 Assets

Each Obligor shall (and the Company shall ensure that each other member of the Group will) maintain all its material assets necessary for the conduct of its business as conducted from time to time in good working order and condition, ordinary wear and tear excepted.

22.14 Pari passu

Each Obligor shall ensure that its obligations under this Agreement rank at all times at least *pari passu* in right of priority and payment with the claims of all its other unsecured and unsubordinated creditors, except for its payment obligations under the Senior Finance Documents (to the extent provided for in the Intercreditor Agreement) and other obligations mandatorily preferred by law applying to companies generally and except as expressly provided for in the Intercreditor Agreement.

22.15 Negative pledge

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security or Quasi Security over any of its assets.
- (b) Paragraph (a) above does not apply to any Security or Quasi Security which is a Permitted Security.

22.16 Disposals

- (a) 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 (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is a Permitted Disposal.

Restrictions on movement of cash

22.17 Loans or Credit

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) be a creditor in respect of Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Permitted Loans.

22.18 Guarantees

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) issue any guarantee, indemnity, bond or letter of credit to or for the benefit of, or in respect of liabilities or obligations of, any other person or voluntarily assume any liability (whether actual or contingent) of any other person.
- (b) Paragraph (a) above does not apply to Permitted Guarantees.

22.19 Restricted payments

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will):
 - (i) pay, repay or prepay any principal, interest or other amount on or in respect of, or redeem, purchase or defease, any Investor Debt;
 - (ii) pay, repay or prepay any principal, interest or other amount on or in respect of, or redeem, purchase or defease, any Financial Indebtedness owing to any Restricted Person;
 - (iii) make any investment in, or pay any fee or make any Loan or other kind of payment to, any Restricted Person; or
 - (iv) pay any fee or commission to any Restricted Person.
- (b) The Company shall not:
 - (i) declare, pay or make any dividend or other payment or distribution of any kind on or in respect of any of its shares; and
 - (ii) reduce, return, purchase, repay, cancel or redeem any of its shares.
- (c) Paragraphs (a) and (b) above do not apply to a payment which is a Permitted Payment.

22.20 Financial Indebtedness

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) incur (or agree to incur) or have outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness that is Permitted Financial Indebtedness.
- (c) The Company shall ensure that, on the date of first Utilisation under this Agreement, all Existing Debt (including any undrawn facilities) except for Permitted Financial Indebtedness is prepaid,

repaid or cancelled in full (except to the extent that to do so would contravene any applicable law or regulation in any relevant jurisdiction concerning financial assistance by a company for the acquisition of or subscription for shares or concerning the protection of shareholders' capital) and any Security in relation to it is released.

22.21 **Bank accounts**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will) open or maintain any account with any bank or other financial institution other than the Security Trustee or a Lender.
- (b) Each Obligor shall (and the Company shall ensure that each other member of the Group will) pay all sums received by it into a bank account permitted by paragraph (a) above.

22.22 **Issue of shares**

- (a) No Obligor shall (and the Company shall ensure that no other member of the Group will):
 - (i) issue any share; or
 - (ii) grant to any person any conditional or unconditional option, warrant or other right to call for the issue or allotment of, subscribe for, purchase or otherwise acquire any share capital of any member of the Group (including any right of pre-emption, conversion or exchange), or alter any right attaching to any share capital of any member of the Group.
- (b) Paragraph (a) above does not apply to a Permitted Share Issue.

Security and hedging

22.23 **Security and guarantees**

- (a) The Company shall ensure that as soon as practicable after the Completion Date and in any event within 15 days of the Completion Date, each Acquired Group Member shall become an Additional Guarantor in accordance with Clause 25 (*Changes to the Obligors*) and shall execute and deliver a Debenture 2 and the documents and other evidence listed in Part III of Schedule 2 (*Conditions precedent required to be delivered by an Additional Obligor*), other than paragraph 2.
- (b) If:
 - (i) any new member of the Group is incorporated which is a Borrower or a Material Subsidiary; or
 - (ii) any member of the Group becomes a Material Subsidiary,

then the Company shall promptly notify the Agent and shall ensure that the relevant member of the Group will, within 14 days of such notice, become an Additional Guarantor under Clause 25.2 (*Additional Guarantors*) (unless (A) it is not legally permissible for such member of the Group to become an Additional Guarantor under applicable law **provided** that, in the case of a financial assistance or similar prohibition, each Obligor will use all reasonable endeavours to procure that such member of the Group will undertake all whitewash or similar procedures which are possible, or (B) the Majority Lenders agree that such relevant member of the Group need not become an Additional Guarantor because such relevant member of the Group becoming an Additional Guarantor would result in a material Tax liability for the Group) and shall execute and deliver a Debenture 2 or, if that member of the Group is incorporated other than in England and Wales, other Security (to the extent available) which provides the Senior Finance Parties with substantially the same Security over that member of the Group as a Debenture 2 would provide if that member of the Group were incorporated in England and Wales provided that such Security need not be given to the extent that the Majority Lenders are satisfied (acting reasonably) that:

- (A) taking such Security would incur excessive expense for the Group relative to the value to the Mezzanine Loan Finance Parties of such Security;

- (B) taking such Security would result in a material Tax liability for the Group;
- (C) the value of such Security would be immaterial to the Senior Finance Parties in the context of the other Security provided to them at that time; and/or
- (D) giving such Security would not be legally permissible,

and the documents and other evidence listed in Part III of Schedule 2 (*Conditions precedent required to be delivered by an Additional Obligor*), other than paragraph 2.

- (c) Each Obligor shall (and the Company shall ensure that each other member of the Group will), at its own expense, promptly take all such action as the Agent or the Security Trustee may reasonably require:
 - (i) for the purpose of creating, perfecting and protecting the Finance Parties' rights under, and preserving the Security intended to be created or evidenced by, any of the Finance Documents; and
 - (ii) for the purpose of facilitating the realisation of any of that Security,

including the execution of any transfer, conveyance, assignment or assurance of any asset and the giving of any notice, order or direction and the making of any registration which the Agent or the Security Trustee may reasonably require.

- (d) The Company shall ensure that within 15 days of the Completion Date:
 - (i) the aggregate of the unconsolidated turnover of the Guarantors (without double counting and excluding any interests in any Subsidiaries which are Guarantors) exceeds 90 per cent. of the consolidated turnover of the Group; and
 - (ii) the aggregate of the unconsolidated Subsidiary EBITDA of the Guarantors (without double counting and excluding any dividends or other distributions from Subsidiaries which are Guarantors) exceeds 90 per cent. of the consolidated EBITDA of the Group,

in each case calculated by reference to the then most recent audited consolidated financial statements of each Guarantor.

22.24 Hedging

- (a) The Company shall ensure that the Hedging Documents implementing the Hedging Policy are entered into within 30 days of the date of the first Utilisation of the Facility.
- (b) At or before the time that any member of the Group enters into any Hedging Document with a Hedging Bank, the Company shall ensure that the counterparty accedes as a Hedging Bank to the Intercreditor Agreement.
- (c) No Obligor shall (and the Company shall ensure that no other member of the Group will) enter (or agree to enter) into any swap, cap, floor, collar, option, futures transaction, forward rate agreement, foreign exchange transaction or other treasury transaction or any similar instrument or any combination of the foregoing other than a Permitted Hedging Transaction.

22.25 Insurance

- (a) Each Obligor shall (and the Company shall ensure that each other Material Subsidiary will), after the Completion Date, maintain insurances on and in relation to its business and insurable assets with reputable underwriters or insurance companies as follows:
 - (i) against those risks, and to the extent, usually insured against by prudent companies located in the same or a similar location and carrying on a similar business;
 - (ii) against those risks, and to the extent, required by applicable law or by contract;

- (iii) in-orbit insurance for the fleet of I3 Satellites where the annual premium for such insurance does not exceed \$3,000,000 provided that:
 - (A) if the rating of the Senior Facilities is less than BB- (as rated by Standard & Poor's Rating Services) and Ba3 (as rated by Moody's Investor Services) or the rating of the High Yield Notes is less than B (as rated by Standard & Poor's Rating Services) and B2 (as rated by Moody's Investor Services) due to the inadequacy of such insurance then in-orbit insurance for the fleet of I3 Satellites will be obtained that will take those ratings to those levels subject to a maximum annual premium payable of \$5,700,000; and
 - (B) no such in-orbit insurance for the fleet of I3 Satellites will be required once one I4 Satellite has been accepted in-orbit; and
- (iv) launch and in-orbit insurance cover (for an initial period of not less than six months) on all three I4 Satellites with partial cover of not less than \$100,000,000 for the first loss and net book value cover for all subsequent losses, and, upon expiration of such initial launch and in-orbit policy, in-orbit insurance for a minimum of two I4 Satellites at net book value cover at all times.

The insurances in paragraphs (i) and (ii) above shall cover those risks recommended to be covered in, and at commercially prudent levels no lower than those recommended in, the Insurance Report provided that it shall not be required to implement any such recommendations to the extent that it has considered each of them in good faith and has concluded (acting reasonably) that there are sound commercial reasons for not implementing those recommendations.

- (b) Each Obligor shall (and the Company shall ensure that each other member of the Group will) promptly pay premiums and do all things necessary to maintain insurances required of it by paragraphs (a) above.
- (c) Each Obligor shall (and the Company shall ensure that each other member of the Group will):
 - (i) promptly supply to the Agent on request copies of each Group insurance policy required by this Clause 22.25; and
 - (ii) use reasonable endeavours to procure that the insurer under each such policy undertakes to the Security Trustee to notify the Security Trustee should any renewal, premium or other sum payable by any member of the Group not be paid when due and, if requested, confirm that such policies are in place.
- (d) Each Obligor shall (and the Company shall ensure that each other member of the Group will) procure that each insurance policy required by this Clause 22.25 (except for public liability, employer's liability, third party liability or professional indemnity insurance policies) notes the Security Trustee's interest in that policy.
- (e) No Obligor shall (and the Company shall ensure that no other member of the Group will) do or omit to do anything which might render any insurance required by this Clause 22.25 void, voidable or unenforceable.

22.26 Intellectual Property

Each Obligor shall (and the Company shall ensure that each other member of the Group will):

- (a) take all reasonable action to obtain, safeguard, maintain in full force and effect and preserve its ability to enforce all Intellectual Property Rights necessary for the conduct of its business as conducted from time to time, including:
 - (i) paying all applicable renewal fees, licence fees and other outgoings; and

- (ii) performing and complying with all material laws and material obligations to which it is subject as registered proprietor, beneficial owner, user, licensor or licensee of any such Intellectual Property Rights;
- (b) promptly notify the Agent of any material infringement or threatened or suspected material infringement of or any challenge to the validity of any Intellectual Property Rights owned by or licensed to it which may come to its notice and supply the Agent (if requested) with all information in its possession relating thereto;
- (c) take all necessary steps (including the institution of legal proceedings) to prevent third parties infringing any such material Intellectual Property Rights; and
- (d) take all necessary steps (including legal proceedings) to enforce the confidentiality of and prevent any improper use of any trade secret which is an Intellectual Property Right,

in the case of paragraphs (a), (c) and (d) above, where failure to do so would reasonably be expected to have a Material Adverse Effect.

22.27 Pension schemes

The Company shall ensure that all pension schemes maintained by or for the benefit of any member of the Group and/or any of its employees:

- (a) are maintained and operated in all material respects in accordance with all applicable laws and contracts and their governing provisions; and
- (b) are funded substantially in accordance with the governing provisions of the scheme with any funding shortfall advised by actuaries of recognised standing being rectified in accordance with those governing provisions.

Acquisition related undertakings

22.28 Scheme of Arrangement

The Company shall (and shall procure that Newco shall):

- (a) ensure that the Offer Circular contains all of the material terms and material conditions of the Acquisition and corresponds to the Press Release in all material respects;
- (b) ensure that the Press Release is not issued in any form other than the Agreed Form;
- (c) comply with the Code, the Financial Services and Markets Act 2000, the Companies Act 1985, all other applicable laws material to the Scheme of Arrangement and all court orders relating to the Scheme of Arrangement;
- (d) not without the consent of the Agent (acting on the instructions of the Majority Lenders):
 - (i) agree to amend, waive, revise, withdraw or agree to decide not to enforce in whole or in part any material term or material condition of the Scheme of Arrangement where its agreement is required for such amendment, waiver, revision, withdrawal or decision;
 - (ii) agree to change the date of any meeting of shareholders or class of shareholders of the Target to be held to consider the Scheme of Arrangement where its agreement is required for such a change; or
 - (iii) issue (or allow to be issued on its behalf) any press release or other publicity which refers to the Facility, the Mezzanine Loan Arrangers, the Original Lenders or the Bookrunners unless such press release or publicity is required by law, the Code or the Panel (in which event Newco shall if practicable consult with the Agent as to the terms of such press release or publicity);

- (e) promptly inform and consult with the Mezzanine Loan Arrangers as to any assurance or undertaking proposed to be given in relation to obtaining any Authorisation necessary in connection with the Scheme of Arrangement and shall ensure that no such assurance or undertaking is given if the Mezzanine Loan Arrangers believe that the same might have a Material Adverse Effect; and
- (f) if a circumstance or event occurs which is or could reasonably be construed to be covered by a condition of Newco's offer for the Target which, if not waived, would entitle Newco (with the Panel's consent, if needed) not to proceed with the Acquisition:
 - (i) at the request of the Lenders following consultation with the Company, promptly request (and use all reasonable endeavours to persuade) the Panel to agree to Newco not proceeding with the Acquisition as a result of the non-satisfaction of that condition; and
 - (ii) if the Panel so agrees, not waive that condition or treat it as satisfied and shall declare Newco's offer for the Target as being lapsed at the earliest opportunity.

22.29 Rule 9 bid

The Company shall ensure that no action is taken by any person which:

- (a) would trigger a mandatory offer by Newco for the Target under Rule 9 of the Code;
- (b) would require the price to be paid to the shareholders of the Target under the Scheme of Arrangement to be increased from that set out in the Press Release; or
- (c) would result in the Panel requiring Newco to do something prohibited by (a) and (b) above.

22.30 Registration as private limited company

The Company shall ensure that within one Business Day of the Completion Date the Target is re-registered as a private limited company.

22.31 Veto Rights

Newco shall, and the Company shall procure that Newco shall (in each case subject to any conflicting fiduciary duties of the directors thereof), during the period from the date of this Agreement until the Completion Date, not direct any member of the Target Group (so far as it is able), under Clause 2.4.1 of clause 2 (*Conditions*) of the Shareholders' Agreement, to carry out any of the acts specified in schedule 5 (*Veto rights of investors*) of the Shareholders' Agreement where the carrying out of any such act would reasonably be expected to give rise to a Default.

Miscellaneous

22.32 Amendments of Investor Documents, Senior Finance Documents and High Yield Notes Finance Documents

Neither the Company nor any relevant Obligor shall (and the Company shall ensure that no other member of the Group shall) amend, vary, novate, supplement or terminate any of the Investor Documents, any of the Senior Finance Documents or any of the High Yield Notes Finance Documents (once entered into) other than:

- (a) any amendment, variation, novation or supplement which is of a minor or technical nature;
- (b) any amendment, variation, novation or supplement thereto which is not expressly prohibited under the terms of the Intercreditor Agreement; or
- (c) as expressly permitted or required pursuant to the Intercreditor Agreement or this Agreement.

22.33 Publicity

No Obligor shall (and the Company shall ensure that no other member of the Group will) issue or allow to be issued on its behalf any press release or other publicity which refers to the Facility or any Mezzanine Finance Party unless the publicity is required by law, the Code, the Panel or any stock exchange. In that case the Company shall notify the Agent as soon as practicable upon becoming aware of the requirement, shall consult with the Agent on the terms of the reference and shall have regard to any timely comments of the Agent.

22.34 Anti-money laundering

No Obligor will, and each Obligor will procure that none of its Subsidiaries will, fund all or part of any payment under a Mezzanine Finance Document out of proceeds derived from any unlawful activity which would result in any violation of any applicable anti-money laundering law or regulation.

22.35 Employment Contracts

The company shall deliver to the Agent, as soon as practicable after the same become available, a copy of each additional employment contract of each of the Chief Executive Officer and the Chief Financial Officer.

22.36 Material Contracts

Each member of the Group shall comply with the terms of the Material Contracts and do all that is necessary to maintain all Material Contracts in full force and effect save to the extent that any such non-compliance or failure to maintain a Material Contract in full force and effect would not be reasonably be expected to have a Material Adverse Effect.

22.37 Overfunding

- (a) On the date of the first Utilisation of the Facilities, the Company shall ensure that an amount equal to the Overfunding less the Overfund Deduction is deposited into the Overfunding Account, which shall be charged in favour of the Security Trustee, for and on behalf of the Mezzanine Loan Finance Parties, on terms satisfactory to it (acting reasonably), **provided** that:
- (i) the amount of the Overfund Deduction must be applied in payment of consideration to shareholders of the Target for the Acquisition; and
 - (ii) an amount equal to the Overfund Deduction must be paid into the Overfunding Account within 15 days of the Completion Date.
- (b) The Company may withdraw funds from the Overfunding Account if:
- (i) the balance of the Overfunding Account after such withdrawal is in excess of two-thirds of the amount of the Overfunding; or
 - (ii) the Company has certified to the Agent and the Security Trustee that such amounts will be applied to fund Capital Expenditure in relation to the I4 Programme.

22.38 Board Observers

(a) Representation

The Lenders will be entitled, from and after the Extension Date, to appoint a representative to attend and observe meetings of the board of directors of each Holdco (in each case, to the extent that operational decisions relating to the Group are made by such board) on behalf of the Lenders in the capacity of observer (the "Observer"), **provided**, that no person shall be appointed as an Observer of a Holdco, if the board of directors of such Holdco, acting reasonably, resolves that such person has, or is reasonably likely to have, a significant conflict of interest with the commercial interests of such Holdco, or its Subsidiaries or controlled affiliates, and **provided**, further that no officer, director or employee of any bona fide financial institution or financial investor with at least €50,000,000 in

capital or €50,000,000 of assets under management (including, without limitation, any bank, investment fund, hedge fund, CDO fund or other similar institution or division of a corporation) fulfilling such criteria (each, an "Eligible Observer") will be deemed to have such a conflict so long as such Eligible Observer does not have control or management information and/or access rights relating to a competitor of the Target. Prior to resolving whether a proposed Observer which has control or management rights with respect to any competitor of the Target can be appointed, the Company will consider all confidentiality arrangements and Chinese walls in place at such Eligible Observer.

(b) **Information**

Each Holdco will ensure and procure that at all times whilst the Lenders are entitled to exercise their rights under Clause 22.38(a) (*Representation*):

- (i) the Agent is given at least as much notice of the date, time and place of, and agenda for, all board meetings as is given to every member of each Holdco's board, as applicable; and
- (ii) the Agent is supplied with copies of all such notices, reports, written presentations, board papers and other written information (collectively, "**Board Papers**") as are supplied or distributed to other members of each Holdco's board, as applicable, at the same time such notices, reports, written presentations, board papers and other written information are supplied to such other members.

(c) **Observer**

- (i) the Observer will attend board meetings as an observer only, and shall have no rights or liabilities with regard to the direction and/or conduct of the management of any Holdco, and will not have a vote at board meetings and will not be, or be entitled to be, counted in the quorum for any board meeting by virtue of being entitled to attend, and attending, board meetings as an Observer; and
- (ii) the Lenders shall use all reasonable endeavours to cause each Observer to keep confidential all non-public information received by such Observer in its capacity as such, **provided** that such Observer may disclose such non-public information on a confidential basis to the Lenders.

(d) **Executive Sessions**

Each Observer shall, upon request by the board of directors of any Holdco, be required to excuse himself from all or any part of a board meeting which is designated by the applicable board of directors as an "executive session" in which confidential information will be discussed where the applicable board of directors determines in good faith that such confidential information is of such sensitivity that it would not be in the best interests of such Holdco, that such confidential information be disclosed to the Observer.

(e) **VCOC Requirements**

In addition to the foregoing, in order to satisfy the venture capital investment or venture capital operating company requirements set forth in the United States Department of Labor Regulation Section 2510.3-101 (the "**VCOC Requirements**"), any individual Lender may request the benefit of certain "management rights" in respect of any Holdco (to the extent that operational decisions relating to the Group are made by such board) on the terms set out in Schedule 9 hereto with such changes thereto as the Lender may reasonably request in order to comply with the VCOC Requirements. In addition, should any such Lender (or potential Lender) conclude in good faith and acting upon legal advice (which may be the advice of in-house legal counsel) that it cannot satisfy the VCOC Requirement without the right to appoint an Observer then each Holdco, as applicable, shall (subject to Clauses 22.38(a) and (d) of this Agreement) agree to the appointment of an Observer by such Lender, **provided**, however, that the maximum number of Observers appointed by the Lenders shall be three.

(f) **Expenses**

The reasonable expenses of each Observer in attending board meetings shall be for the account of the Borrower and shall be discharged by the Borrower promptly upon demand being made therefore.

23. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 23 is an Event of Default.

23.1 Non-payment

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

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

23.2 Financial covenants

Any requirement of Clause 20 (*Financial covenants*) is not satisfied.

23.3 Other obligations

- (a) Any person (other than a Finance Party) does not comply with Clause 22.6 (*Acquisitions and investments*), Clause 22.7 (*Joint Ventures*), Clause 22.9 (*Merger*), paragraph (b) of Clause 22.10 (*Holding Company*), Clause 22.15 (*Negative pledge*), Clause 22.17 (*Loans or Credit*) (other than in relation to any loan to a member of the Group), Clause 22.19 (*Restricted payments*), Clause 22.20 (*Financial Indebtedness*), Clause 22.22 (*Issue of shares*), paragraph (a) of Clause 22.23 (*Security and guarantees*), Clause 22.28 (*Scheme of Arrangement*), Clause 22.30 (*Registration as private limited company*) or Clause 22.31 (*Veto Rights*).
- (b) Any Obligor does not comply with any provision of the Mezzanine Finance Documents other than those referred to in Clause 23.1 (*Non-payment*), Clause 23.2 (*Financial covenants*) or in paragraph (a) above unless such failure to comply is capable of remedy and is remedied within 15 Business Days of the earlier of the Agent giving notice to the Company or the Company becoming aware of the failure to comply.

23.4 Misrepresentation

Any representation or written statement made or deemed to be made by an Obligor in the Mezzanine Finance Documents is or proves to have been incorrect or misleading when made or deemed to be made by reference to the facts and circumstances then existing unless the facts or circumstances underlying such misrepresentation are capable of remedy and are remedied within 15 Business Days of the earlier to occur of the date of the Agent giving notice to the Company or the Company becoming aware of the misrepresentation.

23.5 Cross default

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any creditor of any member of the Group becomes entitled to declare any Financial 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), provided, that a default under the Senior Facilities caused by a breach of Clause 24 thereof which does not result in any action referred to in Clauses (a) or (b) of this Clause 23.5 being taken shall not constitute an Event of Default under this Clause 23.5.

- (d) No Event of Default will occur under this Clause 23.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (c) above is less than \$3,000,000 (or its equivalent in another currency or currencies).

23.6 Insolvency

- (a) A Key Company is unable or admits in writing its inability to pay its debts as they fall due, suspends, or threatens to suspend, making payments on all or any class of its debts or, by reason of actual financial difficulties, commences negotiations with one or more classes of its creditors (other than the Finance Parties or the Investors) with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of any Key Company.

23.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or step is taken 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 Key Company;
 - (ii) a composition, assignment or arrangement with any creditor of any Key Company;
 - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Key Company or any of its assets; or
 - (iv) the enforcement of any Security over any assets of any Key Company,
- or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) shall not apply to:
- (i) any legal proceedings or other procedure which is part of a solvent reorganisation permitted under this Agreement; or
 - (ii) proceedings for or presentation of a petition or application for winding-up, which are frivolous or vexatious and where the proceedings are dismissed, stayed or discharged within 21 days of commencement and in any event prior to the advertisement of such proceedings.

23.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Key Company having an aggregate value of \$1,000,000 or its equivalent in another currency or currencies and is not discharged within 10 Business Days.

23.9 Ownership

After the Completion Date, any Key Company is not or ceases to be a wholly-owned Subsidiary (as such term is defined in section 736 of the Companies Act 1985) of the Company.

23.10 Unlawfulness

It is or becomes unlawful for any Obligor to perform any of its material obligations under any Mezzanine Finance Document to which it is a party.

23.11 Repudiation

Any person (other than a Finance Party) repudiates a Transaction Document or evidences an intention to repudiate a Mezzanine Finance Document.

23.12 Security and guarantees

Any Security Document or any guarantee or indemnity in, or any subordination under, any Mezzanine Finance Document is not in full force and effect or any Security Document does not create in favour of the Security Trustee, for the benefit of the Finance Parties, the Security which it is expressed to create, subject to any applicable Reservations, fully perfected in a manner and to an extent reasonably considered by the Majority Lenders to be materially adverse to the interests of the Lenders under the Mezzanine Finance Documents.

23.13 Breach of Intercreditor Agreement and other relevant agreements

Any party (other than a Finance Party) fails to comply with its obligations under the Intercreditor Agreement or the Investor Documents and the interests of the Lenders under the Mezzanine Finance Documents or any of them is reasonably likely to be materially prejudiced by such failure.

23.14 Cessation of business

Any Key Company suspends or ceases (or threatens to suspend or cease) to carry on all or a material part of its business, other than where such suspension or cessation arises as a result of a transfer of such business which is a Permitted Disposal.

23.15 Nationalisation

Any step is taken by any person with a view to the seizure, compulsory acquisition, expropriation or nationalisation of all or any of the shares, or all or any material part of the assets of any Key Company.

23.16 Audit qualification

The auditors qualify their report on any audited consolidated financial statement of the Group in a manner which, in the opinion of the Majority Lenders (acting reasonably), is material in the context of the Mezzanine Finance Documents.

23.17 Litigation

Any litigation, arbitration, proceeding or dispute is started or formally threatened which is reasonably likely to be adversely determined and would reasonably be expected to have a Material Adverse Effect.

23.18 [intentionally deleted]

23.19 Number of satellites

The Group ceases to have at least three I3 Satellites or 14 Satellites in orbit which are capable of operating for the estimated life, and with the estimated capacity, shown for those I3 Satellites or 14 Satellites (as appropriate) in the Technical Report, **provided** that no Event of Default shall occur where such cessation lasts for less than 24 hours.

23.20 Material adverse change

A Material Adverse Effect exists or has occurred.

23.21 Warrants

- (a) The Warrants are for any reason not exercisable in accordance with their terms unless such failure to be so exercisable is capable of remedy and is remedied within 15 Business Days of the earlier of the Agent giving notice to the Company or the Company becoming aware of the failure to be so exercisable; or
- (b) The Company fails to comply with the terms of the Warrants unless such failure to comply is capable of remedy and:

- (i) in the case of a payment default is remedied within three Business Days; and
- (ii) in the case of any other default is remedied within 15 Business Days;

of the earlier of the Agent giving notice of such failure to comply to the Company or the Company becoming aware of the failure to comply.

23.22 Fee Letter and Engagement Letter

Any default by any member Group under the Fee Letter or the Engagement Letter occurs unless such default is capable of remedy and is remedied within three Business Days of the earlier of the Agent giving notice to the Company of such default or the Company becoming aware of the default.

23.23 Acceleration

- (a) Subject to Clause 4.3 (*Certain Funds Period*) and Clause 23.24 (*Clean-up Period*), on and at any time after the occurrence of an Event of Default (while it is continuing) the Agent shall if so directed by the Majority Lenders, by notice to the Company:
 - (i) cancel the Total Commitments whereupon they shall immediately be cancelled;
 - (ii) declare that all or part of the Loans, together with accrued interest and prepayment fees, and all other amounts accrued or outstanding under the Mezzanine Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
 - (iii) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders.

23.24 Clean-up Period

If, during the Clean-up Period, any event or circumstance with respect to any member of the Acquired Group occurs which would constitute a Default (the "**Potential Event of Default**"), then:

- (a) the Company promptly after becoming aware shall notify the Agent of that fact in writing, giving a reasonable description of:
 - (i) the Potential Event of Default and its causes; and
 - (ii) the remedial action in relation to that Potential Event of Default which the Company and/or the Acquired Companies propose to take; and
- (b) that Potential Event of Default shall not constitute a Default, and the Agent shall not with respect to that Potential Event of Default (but, for the avoidance of doubt, not so as to restrict the Agent's rights to take such action with respect to any other Event of Default which is not a Potential Event of Default) be entitled to take any of the actions set out in Clause 23.23 (*Acceleration*), until (assuming that the Potential Event of Default is then continuing) the earlier of the date:
 - (i) immediately following the end of the Clean-up Period; and
 - (ii) the date (if any) on which a Material Adverse Effect occurs,

provided that the foregoing shall not apply with respect to any Potential Event of Default under Clause 23.7 (*Insolvency proceedings*) to the extent such Potential Event of Default occurs in relation to a Material Subsidiary which either (A) is not capable of remedy or (B) is capable of remedy and is not remedied within 14 days of the Material Subsidiary becoming aware of the occurrence of the Potential Event of Default, whether from receipt of notification of such occurrence by the Agent or otherwise.

**SECTION 9
CHANGES TO PARTIES**

24. CHANGES TO THE LENDERS

24.1 Assignments and transfers by the Lenders

Subject to this Clause 24, a Lender (the “Existing Lender”) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “New Lender”).

24.2 Conditions of assignment or transfer

- (a) An assignment or transfer by a Lender as part of Syndication shall (unless an Event of Default is continuing) be made following consultation with the Company (as Obligor's Agent) but, for the avoidance of doubt, the consent of the Obligors is not required.

- (b) 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 Mezzanine Loan Finance Parties as it would have been under if it was an Original Lender; and
- (ii) the satisfaction of the Agent with the results of all “know your customer” or other checks relating to the identity of any person that it is required to carry out in relation to such assignment to a New Lender, which the Agent shall promptly notify to the Lender and the New Lender.

- (c) (i) A transfer will only be effective if the procedure set out in Clause 24.5 (*Procedure for transfer*) is complied with.

- (d) If:

- (i) a Lender assigns or transfers any of its rights or obligations under the Mezzanine Finance Documents or changes its Facility Office; and
- (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 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, transfer or change had not occurred.

- (e) Unless:

- (i) otherwise agreed between the Company and the relevant Existing Lender; or
- (ii) the New Lender is a Lender, an Affiliate of a Lender or a Related Fund,

the facilities may be transferred in any amount provided that the aggregate of the Commitment and participation of each Lender, the Affiliates of that Lender and any Related Funds will, after such transfer, be equal to or greater than \$1,000,000 or nil.

- (f) If the New Lender to whom the assignment or transfer is being made is not party to the Intercreditor Agreement as a Lender then it shall duly execute and deliver to the Security Trustee and the Agent a deed of accession in the form required under the Intercreditor Agreement so as to become a Lender (as defined in the Intercreditor Agreement) under the Intercreditor Agreement.

24.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect (other than pursuant to the Syndication), pay to the Agent (for its own account) a fee of £2,000.

24.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- (i) the legality, validity, effectiveness, adequacy or enforceability of the Mezzanine Finance Documents or any other documents;
- (ii) the financial condition of any Obligor or other person;
- (iii) the performance and observance by any Obligor or other person of its obligations under the Mezzanine Finance Documents or any other documents; or
- (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Mezzanine 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 Mezzanine Loan 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 Mezzanine Finance Document; and
- (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities and any other person whilst any amount is or may be outstanding under the Mezzanine Finance Documents or any Commitment is in force.

- (c) Nothing in any Mezzanine Finance Document obliges an Existing Lender to:

- (i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 24; or
- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor or other person of its obligations under the Mezzanine Finance Documents or otherwise.

24.5 Procedure for transfer

- (a) Subject to the conditions set out in this Clause 24 a transfer is effected in accordance with paragraph (b) 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 upon its satisfaction with the results of all "know your customer" or

other checks relating to the identity of any person that it is required to carry out 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 transfer by novation its rights and obligations under the Mezzanine Finance Documents, each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Mezzanine Finance Documents and their respective rights against one another under the Mezzanine 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 Mezzanine Loan Arrangers, the Security Trustee, 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 transfer and to that extent the Agent, the Mezzanine Loan Arrangers, the Security Trustee and the Existing Lender shall each be released from further obligations to each other under the Mezzanine Finance Documents; and
 - (iv) the New Lender shall become a Party as a "Lender".

24.6 Disclosure of information

- (a) Any Lender may (and as otherwise agreed between the Company and that Lender) disclose
- (i) to any of its Affiliates, any Related Funds and any other person:
 - (A) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;
 - (B) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor;
 - (ii) to a rating agency;
 - (iii) to its professional advisers; or
 - (iv) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about any Obligor, the Group, any other person and the Transaction Documents as that Lender shall consider appropriate if, in relation to paragraphs (i) to (iii) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking. This Clause supersedes any previous agreement relating to the confidentiality of this information.

- (b) The Parties do not expect that any statements will be provided by or on behalf of any Party to another Party (or such other Party's employees, representatives or agents) as to the potential United States federal income tax consequences of the Facility. If any such statements are made, then notwithstanding anything in this Agreement to the contrary, the Party to whom the statement is made (and each of its employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Facility and all materials of any kind (including opinions or other tax analyses) that are provided to such Party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the

foregoing sentence shall not apply) to the extent reasonably necessary to enable the Parties, their respective Affiliates, and their respective Affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax treatment" and "tax structure" means any facts relevant to the United States federal income tax treatment applicable to the Facility but does not include information relating to the identity of the Parties, provided that with respect to any document or similar item that contains information concerning the tax treatment or tax structure of the Facility as well as other information, this paragraph shall only apply to such portions of such document or similar item that relate to the tax treatment or tax structure of the Facility.

24.7 Assignment by way of Security

In addition to the other assignment rights provided in this Clause 24, each Lender may assign, as collateral or otherwise, any of its rights under this Agreement (including rights to payments of principal or interest on the Loans) to any trustee for the benefit of the holders of such Lender's securities, provided that no such assignment shall release the assigning Lender from any of its obligations under this Agreement.

24.8 Sub-participations

A Lender may sub-participate or sub-contract any of its rights or obligations under this Agreement provided that such Lender remains liable under this Agreement in relation to such obligations.

25. CHANGES TO THE OBLIGORS

25.1 Assignments and transfer by Obligors

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

25.2 Additional Guarantors

(a) Subject to compliance with the provisions of paragraphs (b) and (c) of Clause 19.11 (*Know Your Customer Requirements*), the Company may request that any of its wholly-owned Subsidiaries become an Additional Guarantor. That Subsidiary, and/or any Subsidiary which is required by this Agreement to become an Additional Guarantor, shall become an Additional Guarantor if:

- (i) the Company delivers to the Agent a duly completed and executed Accession Letter; and
- (ii) the Agent has received all of the documents and other evidence listed in Part III of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor (other than those referred to in paragraph 3 of Part III of Schedule 2 (*Conditions precedent*) where that Additional Guarantor is not required to execute and deliver a Debenture 2), each in form and substance reasonably 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 such documents and other evidence listed in Part III of Schedule 2 (*Conditions precedent*).

25.3 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations and each of the representations set out in Clause 18.5 (*Validity and admissibility in evidence*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

25.4 Release of Guarantors and Security

(a) If a Guarantor ceases to be a member of the Group in accordance with this Agreement, that Guarantor shall be released from all its obligations under the Mezzanine Finance Documents.

- (b) If all of the Mezzanine Loan Finance Parties agree in writing with the Company that a Guarantor may cease to be a Guarantor, that Guarantor shall be released from all its obligations under the Mezzanine Finance Documents.
- (c) The Security Trustee shall, at the request and cost of the Company, execute such documents as may be required to release that Guarantor pursuant to paragraph (a) above.
- (d) The Security Trustee is authorised to release any Security created by the Security Documents over assets disposed of to a person or persons outside the Group where such disposal is a Permitted Disposal or where such disposal is being effected in circumstances where the Security Trustee is enforcing any of the Security created by the Security Documents as permitted in accordance with the terms of the Intercreditor Agreement.

SECTION 10
THE FINANCE PARTIES

26. ROLE OF THE AGENT, THE MEZZANINE LOAN ARRANGERS AND THE BOOKRUNNERS

26.1 Appointment of the Agent

- (a) Each other Mezzanine Finance Party appoints the Agent to act as its agent under and in connection with the Mezzanine Finance Documents.
- (b) Each other Mezzanine Finance Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the Mezzanine Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) Each other Mezzanine Finance Party authorises the Agent to execute the Intercreditor Agreement and the Agency Arrangement on its behalf.
- (d) Each other Mezzanine Finance Party agrees that, in the absence of fraud, bad faith or manifest error, the terms of any Exhibit B Notice (as defined in the Agency Arrangement) delivered by the Agent in accordance with the terms of the Agency Arrangement shall be final and binding on it.
- (e) Each other Mezzanine Finance Party authorises each of the Agent and the Mezzanine Loan Arrangers to agree, accept and sign on its behalf the terms of any reliance or engagement letter in relation to any Report or any other report or letter provided by any person in connection with the Mezzanine Finance Documents and Transaction Documents or the transactions contemplated in them (including any net asset letter in connection with financial assistance procedures) and, by becoming a party to this Agreement, ratifies the terms of any such letter which has been entered into before the date of this Agreement in contemplation of this Agreement.

26.2 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 Mezzanine 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 Mezzanine Loan Finance Parties.
- (d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Mezzanine Finance Party (other than the Agent or the Mezzanine Loan Arrangers) under this Agreement, it shall promptly notify the other Mezzanine Loan Finance Parties.
- (e) The duties of the Agent under the Mezzanine Finance Documents are solely mechanical and administrative in nature.

26.3 Role of the Mezzanine Loan Arrangers and the Bookrunners

Except as specifically provided in the Mezzanine Finance Documents, neither the Mezzanine Loan Arrangers nor the Bookrunners have any obligations of any kind to any other Party under or in connection with any Mezzanine Finance Document.

26.4 No fiduciary duties

- (a) Nothing in this Agreement constitutes the Agent or the Mezzanine Loan Arrangers or the Bookrunners as a trustee or fiduciary of any other person.

- (b) Neither the Agent nor the Mezzanine Loan Arrangers nor the Bookrunners 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.

26.5 **Business with the Group**

The Agent, the Mezzanine Loan Arrangers and the Bookrunners may accept deposits from, lend money to and generally engage in any kind of Banking or other business with any member of the Group or any other person.

26.6 **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 23.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Mezzanine 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) Notwithstanding any other provision of any Mezzanine Finance Document to the contrary, neither the Agent nor the Mezzanine Loan Arrangers nor the Bookrunners are obliged to do or omit to do anything if it would or might in their reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

26.7 **Majority Lenders' instructions**

- (a) Unless a contrary indication appears in a Mezzanine 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 Mezzanine Finance Document, any instructions given by the Majority Lenders will be binding on all the Mezzanine Loan 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 Mezzanine Finance Document.

26.8 Responsibility for documentation

Neither the Agent nor the Mezzanine Loan Arrangers nor the Bookrunners:

(a) are responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Mezzanine Loan Arrangers, the Bookrunners, an Obligor or any other person given in or in connection with any Mezzanine Finance Document or any of the Information Package; or

(b) are responsible for the legality, validity, effectiveness, adequacy or enforceability of any Mezzanine Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Mezzanine Finance Document.

26.9 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 Mezzanine Finance Document, unless directly caused by its gross negligence 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 Mezzanine Finance Document and any officer, employee or agent of the Agent may rely on this Clause.
- (c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Mezzanine Finance Documents to be paid by it if it 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 it for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or any Arranger to carry out any "know your customer" or other checks in relation to the identity of any person on behalf of any Lender and each Lender confirms to the Agent and each 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 any other person.

26.10 Lenders' indemnity to the Agent

- (a) Subject to paragraph (b) below, each Lender shall (in proportion to its Commitment and participation in the Loan then outstanding to the Total Commitments and Loans then outstanding) indemnify the Agent, within 3 Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of its gross negligence or wilful misconduct) in acting as Agent under the Mezzanine Finance Documents (unless it has been reimbursed by an Obligor pursuant to a Mezzanine Finance Document).
- (b) If the Total Commitment is zero, each Lender's indemnity under paragraph (a) above shall be in proportion to its Commitments to the Total Commitment immediately prior to its reduction to zero, unless there are then any Loans outstanding, in which case it shall be in proportion to its participation in the Loans then outstanding to the amount of the Loan then outstanding.

26.11 Resignation of the Agent

- (a) The Agent may, after consultation with the Company, resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the other Mezzanine Loan Finance Parties and the Company.
- (b) Alternatively the Agent may resign by giving notice to the other Mezzanine Loan Finance Parties and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the Agent (after consultation with the Company) may appoint a successor Agent (acting through an office in the United Kingdom).
- (d) The retiring Agent shall, at its own cost, make available to its successor such documents and records and provide such assistance as its successor may reasonably request for the purposes of performing its functions as Agent under the Mezzanine Finance Documents.
- (e) The resignation notice of the Agent 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 Mezzanine Finance Documents but shall remain entitled to the benefit of this Clause 26. Its 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) After consultation with the Company, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.

26.12 Confidentiality

- (a) The Agent (in acting as agent for the Mezzanine Loan Finance Parties) shall be regarded as acting through its respective agency or trustee division which in each case 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.

26.13 Relationship with the Lenders

The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office 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.

26.14 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Mezzanine Finance Document, each Lender confirms to the Agent, the Mezzanine Loan Arrangers and the Bookrunners 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 Mezzanine Finance Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group and the Acquired Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Mezzanine Finance Document and any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Mezzanine 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 Mezzanine Finance Document, the transactions contemplated by the Mezzanine Finance Documents or any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Mezzanine Finance Document; and
- (d) the adequacy, accuracy and/or completeness of the Information Package and any other information provided by the Agent, any Party or by any other person under or in connection with any Mezzanine Finance Document, the transactions contemplated by the Mezzanine Finance Documents or any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Mezzanine Finance Document.

26.15 Reference Banks

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

26.16 Management time of the Agent

Any amount payable to the Agent under Clause 14.3 (*Indemnity to the Agent*), Clause 16 (*Costs and expenses*) and Clause 26.10 (*Lenders' indemnity to the Agent*) shall include the cost of utilising its management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as it may notify to the Company and the Lenders, and is in addition to any fee paid or payable to it under Clause 11 (*Fees*).

26.17 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Mezzanine 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 Mezzanine Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Mezzanine Finance Documents, that Party shall be regarded as having received any amount so deducted.

27. CONDUCT OF BUSINESS BY THE MEZZANINE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Mezzanine Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Mezzanine 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 Mezzanine Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

28. SHARING AMONG THE MEZZANINE FINANCE PARTIES

28.1 Payments to Mezzanine Finance Parties

Subject to the provisions of the Intercreditor Agreement, if a Mezzanine Finance Party (a "**Recovering Mezzanine Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 29 (*Payment mechanics*) and applies that amount to a payment due under the Mezzanine Finance Documents then:

- (a) the Recovering Mezzanine 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 Mezzanine Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 29 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

(c) the Recovering Mezzanine 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 Mezzanine Finance Party as its share of any payment to be made, in accordance with Clause 29.5 (*Partial payments*).

28.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Mezzanine Loan Finance Parties (other than the Recovering Mezzanine Finance Party) in accordance with Clause 29.5 (*Partial payments*).

28.3 Recovering Mezzanine Finance Party's rights

(a) On a distribution by the Agent under Clause 28.2 (*Redistribution of payments*), the Recovering Mezzanine Finance Party will be subrogated to the rights of the Mezzanine Loan Finance Parties which have shared in the redistribution.

(b) If and to the extent that the Recovering Mezzanine Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Mezzanine Finance Party for a debt equal to the Sharing Payment which is within three Business Days of demand.

28.4 Reversal of redistribution

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

(a) each Mezzanine Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 28.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Mezzanine 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 Mezzanine Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Mezzanine Finance Party is required to pay); and

(b) that Recovering Mezzanine Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Mezzanine Finance Party for the amount so reimbursed.

28.5 Exceptions

(a) This Clause 28 shall not apply to the extent that the Recovering Mezzanine Finance Party would not, after making any payment pursuant to this Clause 28, have a valid and enforceable claim against the relevant Obligor.

(b) A Recovering Mezzanine Finance Party is not obliged to share with any other Mezzanine Finance Party any amount which the Recovering Mezzanine Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(i) it notified that other Mezzanine Finance Party of the legal or arbitration proceedings; and

(ii) that other Mezzanine Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

SECTION 11
ADMINISTRATION

29. PAYMENT MECHANICS

29.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor (subject to the terms of the Intercreditor Agreement) or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency with such bank as the Agent specifies.

29.2 Distributions by the Agent

Each payment received by the Agent under the Mezzanine Finance Documents for another Party shall, subject to Clause 29.3 (*Distributions to an Obligor*) and Clause 29.4 (*Clawback*) and to the terms of the Intercreditor Agreement, be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than 5 Business Days' notice with a bank in the principal financial centre of the country of that currency.

29.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 30 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Mezzanine Finance Documents or in or towards purchase of any amount of any currency to be so applied.

29.4 Clawback

- (a) Where a sum is to be paid to the Agent under the Mezzanine 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 it had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid 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 it to reflect its cost of funds.

29.5 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 Mezzanine Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Mezzanine Finance Documents in the following order:
 - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent, the Security Trustee, the Mezzanine Loan Arrangers or the Bookrunners under the Mezzanine 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 Mezzanine Finance Documents.**
- (b) The Agent shall, if so directed by the Majority Lenders vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

29.6 No set-off by Obligors

All payments to be made by an Obligor under the Mezzanine Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

29.7 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 an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

29.8 Currency of account

- (a) Subject to paragraphs (b) to (d) below, dollars is the currency of account and payment for any sum due from an Obligor under any Mezzanine Finance Document.
- (b) A repayment of a Loan or an Unpaid Sum or a part of a Loan or an Unpaid Sum shall be made in the currency in which that Loan 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.

29.9 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 Mezzanine Finance Documents to, and any obligations arising under the Mezzanine 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 InterLender Market and otherwise to reflect the change in currency.

30. SET-OFF

Subject to the terms of the Intercreditor Agreement, a Mezzanine Finance Party may set off any matured obligation due from an Obligor under the Mezzanine Finance Documents (to the extent beneficially owned by that Mezzanine Finance Party) against any matured obligation owed by that Mezzanine 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 Mezzanine Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

31. NOTICES

31.1 Communications in writing

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

31.2 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 Mezzanine Finance Documents is:

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of each Lender or any other Original Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, the Issuing Bank and the Security Trustee, that identified with its name below,

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

31.3 Delivery

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

and, if a particular department or officer is specified as part of its address details provided under Clause 31.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or the Security Trustee will be effective only when actually received by it and then only if it is expressly marked for the attention of the department or officer identified with its signature below (or any substitute department or officer as it shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

31.4 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 31.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

31.5 Electronic communication

- (a) Any communication to be made between the Agent and a Lender under or in connection with the Mezzanine Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Lender:
- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Agent and a Lender will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

31.6 English language

- (a) Any notice given under or in connection with any Mezzanine Finance Document must be in English.
- (b) All other documents provided under or in connection with any Mezzanine 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 or a Security Document.

32. CALCULATIONS AND CERTIFICATES

32.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Mezzanine Finance Document, the entries made in the accounts maintained by a Mezzanine Finance Party are *prima facie* evidence of the matters to which they relate.

32.2 Certificates and Determinations

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

32.3 Day count convention

Any interest, commission or fee accruing under a Mezzanine Finance Document will accrue from day to day (including the first day of an Interest Period) and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

33. PARTIAL INVALIDITY

If, at any time, any provision of the Mezzanine Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

34. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Mezzanine Finance Party, any right or remedy under the Mezzanine Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

35. AMENDMENTS AND WAIVERS

35.1 Required consents

- (a) Subject to Clause 35.2 (*Exceptions*) any term of the Mezzanine Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligor's Agent and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Mezzanine Finance Party, any amendment or waiver permitted by this Clause 35.2 (*Exceptions*).

35.2 Exceptions

- (a) An amendment or waiver that has the effect of changing or which relates to:
 - (i) the definition of "Certain Funds Default", "Certain Funds Period" or "Majority Lenders" in Clause 1.1 (*Definitions*);
 - (ii) an extension to the date of payment of any amount under the Mezzanine Finance Documents other than a prepayment under Clauses 7.5 (*Mandatory prepayment from Net Sale Proceeds*), 7.6 (*Mandatory prepayment from Insurance Proceeds*), 7.7 (*Mandatory prepayment from Net Recovery Proceeds*) or 7.8 (*Mandatory prepayment from Surplus Cashflow*);
 - (iii) a reduction in the Applicable Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
 - (iv) an increase in or an extension of any Commitment;
 - (v) a change to the Borrowers or Guarantors other than in accordance with Clause 25 (*Changes to the Obligors*);
 - (vi) any provision which expressly requires the consent of all the Lenders;
 - (vii) Clause 2.2 (*Mezzanine Loan Finance Parties' rights and obligations*), Clause 24 (*Changes to the Lenders*), Clause 28 (*Sharing among the Mezzanine Loan Finance Parties*) or this Clause 35;
 - (viii) the amendment or waiver of provisions in this Agreement or in the Intercreditor Agreement relating to the release of any Security over Charged Assets created pursuant to any Security Document (except to the extent provided for in that Security Document or this Agreement or as required in connection with any Permitted Disposal);
 - (ix) a change in the ranking, subordination or priority of outstandings under the Mezzanine Finance Documents as provided for in the Intercreditor Agreement;
 - (x) Clause 7.10 (*Application of Proceeds*);

- (xi) Clause 37 (*Governing Law*); or
- (xii) Clause 22.28 (*Scheme of Arrangement*); or
- (xiii) any extension of the Extension Date or amendment or waiver to the definition of Extension Date,

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

- (b) An amendment or waiver which relates to the rights or obligations of the Agent, the Security Trustee, the Mezzanine Loan Arrangers or the Bookrunners may not be effected without its consent.

36. COUNTERPARTS

Each Mezzanine Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Mezzanine Finance Document.

SECTION 12
GOVERNING LAW AND ENFORCEMENT

37. GOVERNING LAW

This Agreement is governed by English law.

38. ENFORCEMENT

38.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 38.1 is for the benefit of the Mezzanine Loan Finance Parties only. As a result, no Mezzanine 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 Mezzanine Loan Finance Parties may take concurrent proceedings in any number of jurisdictions.

38.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

- (a) irrevocably appoints Newco as its agent for service of process in relation to any proceedings before the English courts in connection with any Mezzanine Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

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

SCHEDULE 1
The Original Parties
Part I
The Original Obligors

Name of Original Borrower	Jurisdiction of Incorporation	Registration number (or equivalent, if any)
Newco	England and Wales	4886096

Name of Original Guarantor	Jurisdiction of Incorporation	Registration number (or equivalent, if any)
None		

Part II
The Original Lenders (other than UK Non-Bank Lenders)

Name of Original Lender	Commitment
Barclays Bank PLC	\$91,250,000
Credit Suisse First Boston	\$182,500,000
The Royal Bank of Scotland plc	\$91,250,000

Part III
The Original Lenders – UK Non-Bank Lenders

Name of Original Lender	Commitment
None	

SCHEDULE 2
Conditions precedent

Part I

Conditions precedent to signing

1.. Original Obligors

- (a) A copy of the constitutional documents of each Holdco and each Original Obligor which is not a Holdco (if any).
- (b) A copy of a resolution of the board of directors or equivalent body of each Holdco and each Original Obligor which is not a Holdco (if any):
 - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute the Transaction Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Transaction 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 and selection notice) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of the Company (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on any Original Obligor to be exceeded.
- (e) A certificate of an authorised signatory of each Holdco and each Original Obligor which is not a Holdco (if any) (without personal liability) certifying that each copy document relating to it specified in this Part I is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. Security at signing

Confirmation from the Security Trustee that it has received each of the following documents in form and substance satisfactory to it:

- (a) an original of Debenture 1 in the Agreed Form, duly executed and delivered by Newco and the Security Trustee;
- (b) forms of notice of charge or assignment of the Receiving Agent Account and the Overfunding Account, in each case signed by Newco, as required by Debenture 1; and with irrevocable authorization to the Security Trustee to complete the account details therein once such accounts have been opened; and
- (c) the Agreed Form of Debenture 2.

3. Intercreditor Agreement

An original of the Intercreditor Agreement in the Agreed Form, duly executed by the parties to it.

4. Other Original Mezzanine Finance Documents

An original of each of the following documents in the Agreed Form:

- (a) this Agreement duly executed by the parties to it;
- (b) the Fee Letter duly executed by the parties to it;
- (c) The Engagement Letter duly executed by the parties to it;
- (d) the Syndication Side Letter duly executed by the parties to it;
- (e) the High Yield Notes Side Letter duly executed by the parties to it; and
- (f) the Agreed Form Warrant Instrument, Mezzanine Subordinated Preference Certificates Instrument, Mezzanine Subordinated Preference Certificates, Agency Arrangements and Articles of Association of the Company to be adopted on the Completion Date.

5. Senior Finance Documents

- (a) A copy of the Senior Facility Agreement in the Agreed Form, duly executed by the parties to it.
- (b) Confirmation from the Senior Agent that it has received each of the documents specified as being conditions precedent to signing the Senior Facility Agreement, except the confirmation required by paragraph 5(b) of Part 1 of Schedule 2 to the Senior Facility Agreement.

6. Investor Documents

Unexecuted copies of the Shareholders' Agreement and the Subordinated Preference Certificates Instruments pursuant to which shares in the Company and Subordinated Preference Certificates will be subscribed for by:

- (a) the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors in an amount equal to at least 15 per cent. of the peak funding requirement for the Acquisition (including refinancing of Existing Debt but excluding (i) the Revolving Facility (as defined in the Senior Facility Agreement) and (ii) undrawn commitments under existing Target Group bank facilities) (the "**Total Funding Requirement**") and for at least 50.1 per cent. of the voting shares in the Company (excluding any shares to be issued under the Warrant Instrument); and
- (b) the Original Investors and Management in an amount equal to at least 30 per cent. of the Total Funding Requirement.

7. Intra-Group Documents

- (a) A copy of the Intercompany Loan Agreements in the Agreed Form;
- (b) A copy of the Whitewash Intra-Group Loan Agreement in the Agreed Form; and
- (c) A copy of the Working Capital Support Letter in the Agreed Form.

8. Legal opinion

A legal opinion of Latham & Watkins, legal advisers to the Mezzanine Loan Arrangers, the Bookrunners, the Security Trustee and the Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

9. Scheme Documents

- (a) A copy of the draft Press Release to be issued on behalf of Newco.
- (b) The Mezzanine Loan Arrangers being satisfied that the Receiving Agent Letter has been executed and delivered by Newco to the Receiving Agent.

10. **Financial information and documentation**

- (a) The Original Financial Statements.
- (b) The Reports.

11. **Group Structure Chart and Material Subsidiaries**

A copy of the Group Structure Chart and list of the Subsidiaries of the Target which will, when the Target becomes a member of the Group, be Material Subsidiaries.

12. **Know Your Customer Requirements**

Evidence satisfactory to the Mezzanine Loan Arrangers that all applicable anti-money laundering and "know your customer" laws and regulations relating to the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors and each Holdco have been complied with, including receipt of the following documentation and confirmations in relation to the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors and each Holdco:

- (a) identification acceptable to the Agent from two directors of the company (one containing photo identification and one containing proof of address);
- (b) a letter from the legal advisers to the company confirming:
 - (i) the company's name;
 - (ii) the company's registered number;
 - (iii) the company's registered office;
 - (iv) the company's directors; and
 - (v) the company's shareholding (names, number of shares, percentage shareholding);
- (c) evidence satisfactory to the Agent of the link from each company referred to in paragraph (b) above to the relevant Original Investors set out in the definition of paragraphs (a) and (b) of the definition of Original Investors regulated by the Financial Services Authority;
- (d) all other information reasonably required by the Agent for the purposes of identification of the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors and each Holdco as may be required by the Agent in order for it to comply with its (or any Lenders') "Know Your Client" procedures or in order to comply with any United Kingdom money laundering regulations.

Part II
Conditions precedent to initial utilisation

1. Warrant and Subordinated Preference Certificates Authorisations and documents

- (a) A copy of a resolution of the Company's shareholders adopting the Memorandum and Articles of Association of the Company (delivered in the Agreed Form at signing) and increasing the authorised share capital of the Company to an amount sufficient to cover all ordinary shares of the Company to be issued on the Completion Date and under the Warrant Instrument;
- (b) A copy of a resolution of the board of directors of the Company and DDBCo:
 - (i) approving the terms of, and the transactions contemplated by the Unit Documents; and
 - (ii) authorising a specified person or persons to execute the Unit Documents.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of an authorised signatory of the Company (without personal liability) certifying that each copy document relating to it specified in this Part II, paragraph 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (e) A certified copy of each Unit Document duly executed by the parties to it.

2. Regulatory Authorisations

Copies of any regulatory, competition or anti-trust Authorisations required in connection with the Acquisition.

3. Investor funding

Copies of the duly executed Shareholders' Agreement, the Intercompany Loan Agreements and the Subordinated Preference Certificates Instruments and confirmation that the Company has received the amounts referred to in paragraph 6 (*Investor Documents*) of part I of Schedule 2 (*Conditions precedent to signing*) and has contributed or on-lent the same to Newco.

4. Senior Facility proceeds

Confirmation that Newco has received the full amount of the Senior Facility (being \$975,000,000) or evidence that Newco will receive the same on the date of First Utilisation date (as defined in the Senior Facilities Agreement) of the Senior Facilities.

5. Fees

Evidence that all fees, costs and expenses due or to become due and payable by the Company on or before the Utilisation Date pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or, in the case of costs and expenses only, will be paid within three Business Days of that date.

6. Offer documents

- (i) A copy of the Press Release in the Agreed Form to be issued by or on behalf of Newco

- (ii) A copy of the Offer Circular (including the recommendation of the independent directors of the Target in respect of the Acquisition), in a form which complies with the Press Release in all material respects.

7. Approval of the Scheme of Arrangement

An office copy of the order of the High Court of Justice of England and Wales sanctioning the Scheme of Arrangement and evidence that such order has been registered with the Registrar of Companies of England and Wales.

8. Funds Flow Memorandum

The Funds Flow Memorandum (containing a summary of the Acquisition Costs).

9. Receiving Agent Acknowledgement

A copy of the acknowledgement from the Receiving Agent that it has received the Receiving Agent Letter and has acknowledged it and is bound by its terms.

Part III
Conditions precedent required to be
delivered by an Additional Obligor

1. Additional Obligors

- (a) An Accession Letter and an Accession Deed (as defined in and pursuant to the Intercreditor Agreement), in each case duly executed by the Additional Obligor and the Company.
- (b) A copy of the constitutional documents of the Additional Obligor.
- (c) A copy of a resolution of the board of directors of the Additional Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Accession Letter and each Mezzanine Finance Document to which it is a party and resolving that it execute the Accession Letter and each Mezzanine Finance Document to which it is a party;
 - (ii) authorising a specified person or persons to execute the Accession Letter and each Mezzanine Finance Document 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 other documents and notices to be signed and/or despatched by it under or in connection with the Mezzanine Finance Documents to which it is a party.
- (d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above.
- (e) In the case of an Additional Guarantor incorporated in England and Wales or if so required by the Agent, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Mezzanine Finance Documents to which the Additional Guarantor is a party.
- (f) A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded.
- (g) A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part III is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.

2. Debenture 2

Confirmation from the Security Trustee that it has received each of the following documents in form and substance satisfactory to it:

- (a) An original of Debenture 2 in the Agreed Form, duly executed and delivered by each Additional Obligor and the Security Trustee.
- (b) All title deeds and documents relating to Mortgaged Property (if any) over which legal mortgages are expressed to be created by Debenture 2.
- (c) The share certificates (and blank executed stock transfer forms or equivalent means of transferring the shares) in relation to all shares over which Security is expressed to be created by Debenture 2.

-
- (d) Notices of charge or assignment of Insurances and Assigned Agreements signed by each Additional Obligor and an acknowledgement of each such Notice signed by the person to whom that Notice was addressed, all as required by Debenture 2.
 - (e) Deeds of release in relation to existing security and guarantees of each Additional Obligor not falling within Permitted Security or Permitted Guarantees, as relevant, in form and substance satisfactory to the Security Trustee (acting reasonably).
 - (f) The constitutive documents of any member of the Group whose shares are subject to Security under any of the Security Documents referred to above in the form required by the Security Trustee together with any resolutions of the shareholders of such member of the Group adopting such changes to the constitutive documents of such member of the Group as the Security Trustee shall have reasonably required to, among other things, remove any restriction on any transfer of shares or partnership interests (or equivalent) in such member of the Group pursuant to any enforcement of any such Security Documents, to the extent legally possible.
 - (g) All other documentation, and/or evidence of all other steps, required to perfect Debenture 2 as advised to the Security Trustee by its legal advisers in England and Wales.

In this paragraph 2, the terms "Assigned Agreement", "Bank Account", "Investment" and "Mortgaged Property" have the meanings given to them in Debenture 2.

3. Financial assistance

In relation to the granting of a guarantee of, and Security for, all the obligations of the Obligors under the Finance Documents, in respect of any Additional Obligor which is a member of the Acquired Group that is incorporated in England and Wales, evidence of compliance by that Additional Obligor with the procedures set out in Sections 155 to 158 of the Companies Act 1985 for permitting the financial assistance constituted by this Agreement and/or under the other Mezzanine Finance Documents to which it is a party and/or under any intercompany loan agreements required to enable loans to be made from that Additional Obligor to other members of the Group to enable funding of payments due under the Mezzanine Finance Documents, including:

- (a) certified copies of the relevant directors' statutory declarations and auditors' reports;
- (b) a letter from the auditors addressed to the Mezzanine Finance Parties for the purpose of section 155(2) of the Companies Act 1985 substantially in the form set out in Technical Release FRAG 26/94 issued in September 1994 by the Council of the Institute of Chartered Accountants in England and Wales;
- (c) confirmation that the relevant directors' statutory declarations have been filed at Companies House; and
- (d) in relation to the Target, a certificate of re-registration as a private limited company from the Registrar at Companies House.

4. Authorisations

A copy of any other Authorisation or other document, opinion or assurance which the Agent (acting reasonably) considers to be necessary in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Mezzanine Finance Document.

5. Financial statements

If available, the latest audited financial statements of the Additional Obligor.

6. Legal opinions

- (a) A legal opinion of Latham & Watkins, legal advisers to the Mezzanine Loan Arrangers, the Bookrunners and the Agent in England.
- (b) If the Additional Obligor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Mezzanine Loan Arrangers, the Bookrunners and the Agent in the jurisdiction in which the Additional Obligor is incorporated.

7. Appointment of agent for service of process

If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 38.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

8. Know Your Customer Requirements

Evidence satisfactory to the Mezzanine Loan Arrangers that all applicable anti-money laundering and "know your customer" laws and regulations relating to the Additional Obligor have been complied with, including receipt of the following documentation and confirmations in relation to each Additional Obligor:

- (a) identification acceptable to the Agent from two directors of the company (one containing photo identification and one containing proof of address);
- (b) a letter from the legal advisers to the company confirming:
 - (i) the company's name;
 - (ii) the company's registered number;
 - (iii) the company's registered office;
 - (iv) the company's directors; and
 - (v) the company's shareholding (names, number of shares, percentage shareholding);
- (c) evidence satisfactory to the Agent of the link from each company referred to in paragraph (b) above to the relevant Investor regulated by the Financial Services Authority;

all other information required by the Agent for the purposes of identification of each Additional Obligor as may be required by the Agent in order for it to comply with its (or any Lenders') "Know Your Client" procedures or in order to comply with any United Kingdom money laundering regulations.

SCHEDULE 3
Utilisation Request

From: Grapeclose Limited

To: [●]

Dated:

Dear Sirs

Duchessgrove Limited and Grapeclose Limited – \$365,000,000 Mezzanine Loan Facility Agreement
dated 10 October 2003 (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 borrow a Loan on the following terms:

Proposed Utilisation Date:	[_____] (or, if that is not a Business Day, the next Business Day)
Purpose:	[_____]
Currency of Loan:	U.S. Dollars
Amount:	[\$ _____]
Account Details:	[_____]
3. [We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.]**
4. The proceeds of this Loan should be credited to [account].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for
Grapeclose Limited

* Not less than \$200,000,000.

** Delete for Scheme of Arrangement Utilisation

SCHEDULE 4
[Intentionally deleted]

SCHEDULE 5
Form of Transfer Certificate

To: [●] as Agent

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

Dated:

**Duchessgrove Limited and Grapeclose Limited – \$365,000,000 Mezzanine Loan Facility
Agreement
dated 10 October 2003 (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 24.5 (*Procedure for transfer*):
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 24.5 (*Procedure for transfer*).
 - (b) The proposed Transfer Date is [_____].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 31.2 (*Addresses*) are set out in the Schedule.
 - (d) The New Lender agrees to be bound by the terms of the Intercreditor Agreement as a [Mezzanine Lender].
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 24.4 (*Limitation of responsibility of Existing Lenders*).
4. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an Loan under a Mezzanine Finance Document is either:
 - (i) a company resident in the United Kingdom, or a partnership each member of which is a company resident in the United Kingdom, for United Kingdom tax purposes; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a branch or agency and interest payable in respect of an Loan under a Mezzanine Finance Document falls to be brought into account in computing the chargeable profits of that company for the purposes of section 11(2) of the Taxes Act.]*
5. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
6. This Transfer Certificate is governed by English law.

**Include if New Lender comes within paragraph (ii) of the definition of Qualifying Lender in Clause 12.1 (Definitions)*

The Schedule

Commitment/rights and obligations to be transferred

[insert relevant details]

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

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as

[].

[•]

By:

SCHEDULE 6
Form of Accession Letter

To: Credit Suisse First Boston, as Agent

From: [Subsidiary] and [Company]

Dated:

Dear Sirs

**Duchessgrove Limited and Grapeclose Limited – \$365,000,000 Mezzanine Loan Facility
Agreement
dated 10 October 2003 (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:
 - (a) to become an Additional Guarantor and to be bound by the terms of the Agreement as an Additional Guarantor pursuant to Clause 25.2 (*Additional Guarantors*) of the Agreement; and
 - (b) to be bound by the terms of the Intercreditor Agreement as an Additional Guarantor.
3. [Subsidiary] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
[Subsidiary's] administrative details are as follows:
Address:
Fax No:
Attention:
4. This Accession Letter is governed by English law.
5. [This Guarantor Accession Letter is entered into by deed.]
[Company] [Subsidiary].

SCHEDULE 7
Form of Compliance Certificate

To: Credit Suisse First Boston as Agent

From: [Company]

Dated:

Dear Sirs

Duchessgrove Limited and Grapeclose Limited – \$365,000,000 Mezzanine Loan Facility Agreement dated 10 October 2003 (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) the ratio of EBITDA to Total Net Interest Payable for the Testing Period ended on [] (the "Test Date") was [] to 1;
 - (b) the ratio of Total Net Debt on the Test Date to EBITDA for that Testing Period was [] to 1;
 - (c) the ratio of Senior Net Debt on the Test Date to EBITDA for that Testing Period was [] to 1;
 - (d) the ratio of Cashflow to Net Debt Service for that Testing Period was [] to 1;
 - (e) I4 Capex for [insert relevant period] was \$[];¹
 - (f) Other Capex for [insert relevant period] was \$[]
3. [We confirm that the Material Subsidiaries are:
 - (a) [];
 - (b) []; and
 - (c) [].]

[We confirm that no Default is continuing.]²

Signed:.....

.....

Director

Director

of

of

[Company]

[Company]

¹ For Compliance Certificates in relation to Testing Periods ending on 31 December only.

² If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

[insert applicable certification language]

.....

for and on behalf of
[name of auditors of the Company]

SCHEDULE 8

Timetables

Part I

Loans

"D - " refers to the number of Business Days before the relevant Utilisation Date/the first day of the relevant Interest Period.

	Loans in dollars
Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>))	D - 3 10:00 a.m.
Agent notifies the Lenders of the Loan in accordance with Clause 5.5 (<i>Lenders' participation in a Loan</i>)	D - 3 11:00 a.m.
LIBOR is fixed	Quotation Day as of 11:00 a.m.

SCHEDULE 9
MANAGEMENT RIGHTS

The following management rights that may be requested by an individual Lender (the "VCOC Lender") in the circumstances specified in clause 22.38(e).

1. The VCOC Lender shall receive copies of any notices, reports, written presentations, board papers, minutes of meetings of the board of directors (or comparable policy-making bodies) and other written information distributed to members of the board of directors (or comparable policy-making bodies) of the Company or to the members of the executive or similar committee of the board of directors of the Company (collectively, "Board Papers") at the same time as such Board Papers are made available to the board for purposes of regular board meetings or to the members of the executive or similar committee of the board for purposes of such committee meetings.
2. The Company will deliver to the VCOC Lender: (i) as soon as practicable, and in any event within 120 days after the end of each financial year, copies of the audited consolidated financial statements including the consolidated balance sheet and consolidated statements of income and cash flows of the Company, the Target, and each of their subsidiaries for that financial year prepared in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted therein, together with an auditor's report thereon of a firm of established reputation; (ii) as soon as practicable, and in any event within 45 days of the end of each Accounting Quarter, copies of the consolidated management accounts of the Company, the Target, and each of their subsidiaries at the end of and for that Accounting Quarter, (including a profit and loss account, balance sheet and a cashflow statement) prepared in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted therein; and (iii) true and correct copies of all documents, reports, financial data and such additional information as such VCOC Lender may at any time reasonably request.
3. The VCOC Lenders shall have the right to meet from time to time with such management personnel of the Company, the Target, and each of their Subsidiaries (including all members of the Group), upon reasonable notice to the Company for the purpose of consulting with, and advising the management, obtaining information on all matters relating to the operation of the Company, the Target or any of their Subsidiaries (including any member of the Group) or expressing the views of the VCOC Lender on such matters and, as may be reasonably requested and on reasonable notice, to visit and inspect any of the properties of the Company, the Target and each of their Subsidiaries (including all members of the Group), including inspecting and copying the books of account and records of the Company, the Target and their Subsidiaries and to discuss its and their affairs, finances and accounts with the Company's, the Target's or the subsidiary's (or such member of the Group's) management personnel at such times as the VCOC Lender reasonably requests. The Company agrees, and shall cause each of its and the Target's subsidiaries (including all members of the Group), to give due consideration to any advice given and proposals made by such VCOC Lender; **provided** that such entity shall not be obligated to follow any such advice or proposals.
4. The parties agree that if legal counsel for a VCOC Lender reasonably concludes that the rights granted herein should be altered to preserve the qualification of such Lender's investments as a venture capital investment under the VCOC Requirements, the parties hereto will agree to consider amendments to this Schedule 9 to effect such alterations; **provided**, however that no such alterations would result in a material adverse effect on the operation, business or the prospect of the Company.

SCHEDULE 10

Issuer:	Bondco the direct subsidiary of Midco (the " Issuer ").
Issue:	Senior Notes and/or, at the option of the Investment Banks or the Mezzanine Loan Arrangers, Senior Subordinated or Discount Notes (the " High Yield Notes ").
Gross Proceeds:	Such amount as is sufficient to enable the Group to repay the Loans in full and finance the fees and expenses in connection with the issue of the High Yield Notes, provided that in no event shall such amount exceed \$375.0 million
Use of Proceeds:	To make a shareholder loan (the " Shareholder Loan ") to Newco, such Shareholder Loan to be used to repay the Loan.
Ranking of Shareholder Loan:	The Shareholder Loan will rank junior to the Senior Facilities and in connection therewith the HY Guarantee of Newco and will be subordinated pursuant to the terms of the intercreditor deed.
Currency:	The High Yield Notes will be denominated in US Dollars.
Maturity:	<p>The Senior Notes will have a maturity of eight years from issuance.</p> <p>The Senior Subordinated or Discount Notes will have a maturity of eight years and nine months from issuance.</p>
Listing:	Luxembourg Stock Exchange or another mutually acceptable stock exchange.
Offering:	The High Yield Notes will be issued under Rule 144A and Regulation S.
Ratings:	The High Yield Notes will be rated by both Moody's and S&P.
Registration Rights:	<p>The High Yield Notes will benefit from US registration rights.</p> <p>The Issuer and the HY Guarantors (as defined below) will agree to use their commercially reasonable efforts to file pursuant to the Securities Act by no later than 180 days after the issuance of the High Yield Notes and cause to become effective by no later than 240 days after the issuance of the High Yield Notes, in each case, a registration statement on Form F-4 relating to an "A/B exchange offer" for the High Yield Notes. The Issuer and the HY Guarantors will also agree to complete the "A/B exchange offer" on or prior to 270 days after issuance of the High Yield Notes.</p> <p>If, in certain circumstances the Issuer has not filed or caused to become effective the "A/B exchange offer" registration statement, the Issuer and HY Guarantors will agree to use their best efforts to file a shelf registration statement pursuant to Rule 415 under the Securities Act and cause it to become effective. The Issuer and the HY Guarantors will also agree to use their commercially reasonable efforts to keep any shelf registration statement continuously effective for a period of at least two years following the date of issuance of the High Yield Notes, or such shorter period as will terminate when all the securities covered by such shelf registration statement have been sold pursuant thereto.</p> <p>If a registration statement is not filed or does not become effective on or prior to the dates specified above or in the registration rights agreement in respect of the shelf registration statement, or the Issuer fails to complete the A/B exchange offer on or prior to 270 days after the issuance of the High Yield Notes, or a registration statement ceases to be effective or useable in connection with its specified purpose (subject to customary exceptions), cash interest will accrue and be payable (in addition to interest otherwise accruing) on the High Yield Notes at a rate of 0.25% per annum until the relevant default is cured, increasing by 0.25% per annum at the</p>

end of each 90-day period after the date of the relevant default; **provided that** in no event shall the interest rate in relation to the High Yield Notes increase as a result of all such defaults by more than 1.0% per annum.

Following the cure of all such defaults, the accrual of additional interest will cease and the interest will revert to the original rate.

Optional Redemption:

At any time, the Issuer may redeem all or a part of the High Yield Notes at a redemption price equal to 100% of principal plus a make-whole premium computed:

- (i) for the Senior Notes, using a discount rate equal to the rate on eight year US treasuries plus 50 bps, plus accrued and unpaid interest, if any; and
- (ii) for the Senior Subordinated or Discount Notes using a discount rate equal to the rate on the US treasuries with a maturity date closest to the maturity of the Senior Subordinated Notes or the Discount Notes, as applicable, plus 50 bps, plus accrued and unpaid interest, if any.

After the 4th anniversary of the date of issue, the Issuer may redeem all or a part of the High Yield Notes at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest, if any, to the applicable redemption date, if redeemed during the twelve-month period beginning on the anniversary dates of issue indicated below:

<u>Date from Issue</u>	<u>Percentage</u>
4 th anniversary	1/2 Coupon + 100.0%
5 th anniversary	1/3 Coupon + 100.0%
6 th anniversary	1/6 Coupon + 100.0%
7 th anniversary and thereafter	100.0%

Equity Claw:

The High Yield Notes will provide an "equity claw" redemption until the third anniversary of the date of issue covering up to 35% of the original principal amount of the issue, using the net proceeds of specified equity transactions, at a redemption price (expressed as a percentage of principal amount) of 100% plus the coupon rate, plus accrued and unpaid interest; **provided that** at least 65% of the original principal amount of the issue remains outstanding.

HY Guarantors:

Each of the Midco, Newco, Target, Inmarsat Ltd (UK) and Inmarsat Leasing (Two) Ltd (the "HY Guarantors") will guarantee the High Yield Notes. The guarantee of Midco is referred to as the "Parent Guarantee" and the guarantees of the other HY Guarantors are referred to as the "Subsidiary Guarantees." The Parent Guarantee and the Subsidiary Guarantees are referred to as the "HY Guarantees."

Prior to the repayment in full of the Senior Term Facilities, the obligations of a HY Guarantor under a Subsidiary Guarantee shall not become due until:

- (1) a default in the payment of principal or interest on the High Yield Notes has occurred; and
- (2) the earlier of (a) 179 days after the default referred to in clause (1) above; (b) the date on which a liquidator or administrator (or equivalent) is appointed to the relevant HY Guarantor; (c) the date upon which an order is made for the dissolution or winding-up of such HY Guarantor; (d) the date upon which the shareholders of such HY Guarantor pass a resolution for the dissolution or winding-up of such HY Guarantor; (e) the date on which the Senior Lenders

demand payment or of prematurely declare payable all or a part of the Senior Facilities or (f) the Senior Lenders take enforcement action and, in each case, the relevant payment default is unremedied.

Security: The High Yield Notes will be secured by second ranking security over 100.0% of the issued share capital of Target and a first ranking pledge over the Shareholder Loan.

Ranking of Guarantees: The Parent Guarantee of the Senior Notes will be the senior obligation of Midco.

The Parent Guarantee of the Senior Subordinated or Discount Notes will be the senior subordinated obligations of Midco.

The Subsidiary Guarantees will be subordinated in right of payment to the payment in full of the senior debt (the "**Senior Debt**") of Newco and each other Subsidiary Guarantor, including all obligations under the Senior Facilities (as refinanced, renewed, replaced, defeased or refunded from time to time in accordance with its terms) and guarantees of the Senior Facilities.

The Subsidiary Guarantees on any Senior Subordinated Notes or Discount Notes may be subordinated to the Subsidiary Guarantees of the Senior Notes.

Change of Control: Typical for high yield securities transactions. For purposes of this provisions, "Change of Control" will mean the occurrence of any of the following:

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger, consolidation or amalgamation), in one or a series of related transactions, of all or substantially all of the properties or assets of each of Midco and its Subsidiaries taken as a whole to any "person" (as that term is used in Section 13(d)(3) of the Exchange Act);
- (2) prior to the initial public offering of the Company, the first date on which the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors, management Investors and certain of their controlled affiliates, taken as a whole, cease to own, legally and beneficially, at least 50.1% of the voting share capital of the Company;
- (3) after the initial public offering of the Company or any of its subsidiaries, the first date on which (a) the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors, management Investors and certain of their controlled affiliates, taken as a whole, cease to be the legal and beneficial owners of at least 30% of the voting share capital of the Company and (b) any "person" (as defined above) other than the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors, management Investors and certain of their controlled affiliates, taken as a whole, is or becomes the legal and beneficial owner of more of the voting share capital of the Company than is legally and beneficially owned by the Original Investors set out in paragraphs (a) and (b) of the definition of Original Investors, management Investors and certain of their controlled affiliates, taken as a whole;
- (4) the first day on which the Company ceases to own, directly or indirectly, 100% of the issued share capital of Midco or Bondco; and
- (5) the first day on which the majority of the members of the board of directors of the Company are not Continuing Directors.

For the purposes of this definition, "**Continuing Directors**" means, as of any date of determination, any member of the board of directors of the Company who:

- (1) was a member of such board of directors on the date of issuance of the

High Yield Notes; or

- (2) was nominated for election or elected to such board of directors with the approval of a majority of the Continuing Directors who were members of such board of directors at the time of such nomination or election.

Tax Gross-up:

All payments under the High Yield Notes and the HY Guarantees shall be made without withholding or deduction for, or on account of, any present or future taxes or duties imposed or levied by or on behalf of any relevant jurisdiction, including any jurisdiction in which the Issuer or a HY Guarantor is resident for tax purposes or any jurisdiction from or through which payment is made, except as required by applicable law. If any such withholding or deduction is required to be made, additional amounts will be required to be paid as will result in holders of the High Yield Notes receiving such amounts as they would have received had no such withholding or deduction been required.

Reporting Covenant:

Customary US reporting requirements for high yield transactions by European issuers, taking into account the fact that the High Yield Notes benefit from US registration rights.

Negative Covenants:

The High Yield Notes will have the following negative covenants, with customary exceptions:

- Incurrence of Indebtedness and Issuance of Preferred Stock
- Restricted Payments;
- Asset Sales;
- Anti-Layering;
- Liens;
- Dividend and Other Payment Restrictions Affecting Subsidiaries;
- Merger, Consolidation or Sale of Assets;
- Transactions with Affiliates;
- Sale and Leaseback Transactions;
- Designation of Restricted and Unrestricted Subsidiaries;
- Additional HY Guarantees;
- Issuances of Guarantees of Indebtedness by Subsidiaries;
- Business Activities;
- Special purpose vehicle covenant with respect to Bondco; and
- Payments for Consents.

Affirmative Covenants:

Typical for high yield securities, including:

- an obligation to ensure that enforceable and perfected liens in respect of the security are created and maintained for the benefit of the Noteholders;

and

- an obligation to maintain insurance.

Threshold for Exercise of Remedies:

Remedies with respect to the High Yield Notes may be exercised by the Trustee or by the holders of not less than 25% of the High Yield Notes, save that the holders of not less than 50.01% of the High Yield Notes may enforce the security over Target's shares.

Amendment and Modification:

Without the written consent of each Noteholder affected, the High Yield Notes Indenture, the High Yield Notes, the HY Guarantees, the Security Documents (to the extent they relate to the High Yield Notes) and the Intercreditor Agreement may not be amended to:

- reduce the principal amount of the High Yield Notes;
- change the maturity of the High Yield Notes;
- amend the ranking of the High Yield Notes or the HY Guarantees;
- decrease the rate of, or change the time for payment of, interest or any other payment on the High Yield Notes;
- waive certain payment Events of Defaults (as defined in the High Yield Indenture);
- make any changes to the provisions of the High Yield Notes Indenture relating to waivers of past defaults or the rights of Noteholders to receive payments of principal of, or interest, premium or liquidated damages (if any) due on the High Yield Notes; or
- amend the amendment and waiver and certain other provisions (including, but not limited to, compliance with the provisions of the Trust Indenture Act) of the Indenture.

In addition, without the written consent of holders of more than 90% the aggregate principal amount of the High Yield Notes, the High Yield Notes Indenture, the High Yield Notes, the HY Guarantees, the Security Documents and the Intercreditor Agreement may not be amended to:

- release any HY Guarantor from any of its obligations under its HY Guarantee (except in accordance with the terms of the indenture); or
- release any security for the High Yield Notes (except in accordance with the Security Documents).

With the written consent of holders of more than 50% of the aggregate principal amount of the outstanding High Yield Notes, any other provision of the High Yield Notes Indenture, High Yield Notes, HY Guarantees, Security Documents and Intercreditor Agreement may be amended, modified or waived.

Governing Law:

New York law.

SCHEDULE 11
Accession Document

THIS DEED is made on •

BETWEEN:

- (a company incorporated in • [with registered number •]) ("**Bondco**");
- 1. Duchessgrove Limited, a company incorporated in England and Wales with registered number 4886072 (the "**Company**");
- 2. Grapeclose Limited, a company incorporated in England and Wales with registered number 4886096 (the "**Borrower**" and "**Newco**") for itself and as agent for the other Obligors; and
- 3. Credit Suisse First Boston, in its capacity as Mezzanine Facility Agent under the Mezzanine Loan Facility Agreement; and

WHEREAS:

- (A) This deed is entered into in connection with a \$365,000,000 mezzanine loan facility agreement (the "**Loan Facility Agreement**") between, amongst others, (1) the Company, (2) the Borrower, (3) the other companies named in the Credit Agreement as Original Guarantors, (4) the banks and financial institutions named in the Mezzanine Credit Agreement as Lenders, (5) Credit Suisse First Boston as Agent and (6) • as Security Agent.
- (B) This deed has been entered into to record the accession of Bondco as a party to Clause 21 (*Syndication and Refinancing Covenants*) under the Loan Facility Agreement.

IT IS AGREED as follows:

1. **DEFINITIONS**

Words and expressions defined in the Loan Facility Agreement have the same meanings when used in this deed.

2. **ADMISSION TO LOAN FACILITY AGREEMENT**

- 2.1 Bondco agrees to become a party to the Facility Agreement solely for purposes of Clause 21 (*Syndication and Refinancing Covenants*).
- 2.2 Bondco confirms the appointment of Newco as its agent on the terms of clause • of the Loan Facility Agreement, as its process agent for the purposes of Clause 38.2 (*Service of Process*) of the Loan Facility Agreement.
- 2.3 Bondco confirms that its address details for notices in relation to Clause 31 (*Notices*) are as follows:
 - Address: •
 - Facsimile: •
 - Attention of: •
- 2.4 The parties to this deed other than Bondco confirm their acceptance of Bondco as a party to Clause 21 (*Syndication and Refinancing Undertakings*) of the Facility Agreement.

REPRESENTATIONS

Bondco represents and warrants in the terms set out in Clauses 18.1 (*Status*) to 18.4 (*Power and Authority*) inclusive and acknowledges that the Agent enters into this Accession Document in full reliance on those representations and warranties.

LAW AND JURISDICTION

This deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this deed) shall be governed by and construed in accordance with English law and, for the benefit of each Mezzanine Finance Party, Bondco irrevocably submits to the jurisdiction of the courts in England in the same terms as set out in Clause 38.1 (*Jurisdiction*) of the Facility Agreement.

IN WITNESS whereof this deed has been executed on the date first above written.

Signatories to Accession Document

Signed as a deed by **[BONDCO]**)
acting by a director and its secretary/two)
directors)

Director
Secretary/Director

Signed as a deed by **DUCHESSGROVE LIMITED)**
acting by a director and its secretary/two)
directors)

Director
Secretary/Director

Signed as a deed by **GRAPECLOSE LIMITED)**
acting by a director and its secretary/two)
directors)

Director
Secretary/Director



The Mezzanine Facility Agent
Credit Suisse First Boston

By:.....

for itself and as Mezzanine Facility Agent
on behalf of the Mezzanine Lenders

SIGNATURE PAGE

The Company



By:  

By:
Address: 10 Upper Bank Street
London
E14 5JJ

Fax No: +44 (0)20 7600 5555

Attention: Company secretaries (with a copy to
Mr Matthew Layton)

Newco

By:  

By:
Address: 10 Upper Bank Street
London
E14 5JJ

Fax No: +44 (0)20 7600 5555

Attention: Company secretaries (with a copy to
Mr Matthew Layton)

The Mezzanine Loan Arrangers

Barclays Capital

By: *anuruphoni*

Address: 5 The North Colonnade
Canary Wharf
London
E14 4BB

Fax No: 020 7773 1840

Attention: Mark Pope

Credit Suisse First Boston

By:

Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 4155

Attention: Kamlesh Vara

The Royal Bank of Scotland plc

By:

Address: 7th Floor
135 Bishopsgate
London
EC2M 3UR

Fax No: 020 7375 5265

Attention: John Elder

The Mezzanine Loan Arrangers

Barclays Capital

By:

Address: 5 The North Colonnade
Canary Wharf
London
E14 4BB

Fax No: 020 7773 1840

Attention: Mark Pope

Credit Suisse First Boston

By:

Address: One Cabot Square
London
E14 4QJ

John P. Bacca
P. BACCA
MD

James F. Amine
J. AMINE
MD

Fax No: 020 7888 4155

Attention: Kamlesh Vora

The Royal Bank of Scotland plc

By:

Address: 7th Floor
135 Bishopsgate
London
EC2M 3UR

Fax No: 020 7375 5265

Attention: John Elder

The Mezzanine Loan Arrangers

Barclays Capital

By:

Address: 5 The North Colonnade
Canary Wharf
London
E14 4BB

Fax No: 020 7773 1840

Attention: Mark Pope

Credit Suisse First Boston

By:

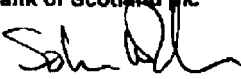
Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 4155

Attention: Kamlesh Vana

The Royal Bank of Scotland plc

By:

Address: 
7th Floor
135 Bishopsgate
London
EC2M 3UR

Fax No: 020 7375 5265

Attention: John Elder

The Bookrunners

Barclays Capital

By: *AMEL MCDONALD*

Address: 6 The North Colonnade
Canary Wharf
London
E14 4BB

Fax No: 020 7773 1840

Attention: Mark Pope

Credit Suisse First Boston

By:

Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 4155

Attention: Kamlesh Vera

The Royal Bank of Scotland plc

By:

Address: 7th Floor
135 Bishopsgate
London
EC2M 3UR

Fax No: 020 7375 5265

Attention: John Elder

The Bookrunners

Barclays Capital

By:

Address: 5 The North Colonnade
Canary Wharf
London
E14 4BB

Fax No: 020 7773 1840

Attention: Mark Pope

Credit Suisse First Boston

By:

Peter Khan
P. KHAN
MD

James A. Amine
J. AMINE
MD

Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 4155

Attention: Kamlesh Vara

The Royal Bank of Scotland plc

By:

Address: 7th Floor
135 Bishopsgate
London
EC2M 3UR

Fax No: 020 7375 5265

Attention: John Elder

The Bookrunners

Barclays Capital

By:

Address: 5 The North Colonnade
Canary Wharf
London
E14 4BB

Fax No: 020 7773 1840

Attention: Mark Pope

Credit Suisse First Boston

By:

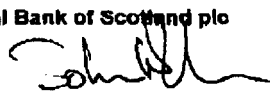
Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 4155

Attention: Kamlesh Vara

The Royal Bank of Scotland plc

By:



Address: 7th Floor
135 Bishopsgate
London
EC2M 3UR

Fax No: 020 7375 5265

Attention: John Elder

The Original Lenders

Barclays Bank PLC

By: *Mark Pope*

Address: 5 North Colonnade
Canary Wharf
London
E14 5BB

Fax No: 020 7773 1840

Attention: Mark Pope

Credit Suisse First Boston

By:

Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 4155

Attention: Kamlesh Vara

The Royal Bank of Scotland plc

By:

Address: Loans Administration Unit
PO BOX 39862
25 Devonshire Square
London EC2M 4XJ

Fax No: 020 7815 0158

Attention: Dave Griffiths

The Original Lenders

Barclays Bank PLC

By:

Address: 5 North Colonnade
Canary Wharf
London
E14 5BB

Fax No: 020 7773 1840

Attention: Mark Pope

Credit Suisse First Boston

By:

Pen AA
P. BROWN
MD

James A. Amive
J. AMIVE
MD

Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 8125

Attention: Loan Services Group

The Royal Bank of Scotland plc

By:

Address: 7th Floor
135 Bishopsgate
London
EC2M 3UR

Fax No: 020 7375 5265

Attention: John Elder

The Original Lenders

Barclays Bank PLC

By:

Address: 5 North Colonnade
Canary Wharf
London
E14 5BB

Fax No: 020 7773 1840

Attention: Mark Pope

Credit Suisse First Boston

By:

Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 4155

Attention: Kamlesh Vara

The Royal Bank of Scotland plc

By:



Address: Loans Administration Unit
PO BOX 39952
25 Devonshire Square
London EC2M 4XJ

Fax No: 020 7616 0158

Attention: Dave Griffiths

The Agent

Credit Suisse First Boston

By:

[Handwritten signature]
P. BACON
MD

[Handwritten signature]
J. H. HINE
MD

Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 4166

Attention: Kamlesh Vara

The Security Trustee

Barclays Bank PLC

By:

Address: 5 North Colonnade
Canary Wharf
London
E14 5BB

Fax No: 020 7773 1840

Attention: Mark Pope

The Agent

Credit Suisse First Boston

By:

Address: One Cabot Square
London
E14 4QJ

Fax No: 020 7888 4155

Attention: Kamlesh Vara

The Security Trustee

Barclays Bank PLC

By: *Mark Pope*

Address: 5 North Colonnade
Canary Wharf
London
E14 5BB

Fax No: 020 7773 1840

Attention: Mark Pope
