
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 6-K

**REPORT OF FOREIGN PRIVATE ISSUER
PURSUANT TO RULE 13a-16 OR 15d-16
UNDER THE SECURITIES EXCHANGE ACT OF 1934**

For the month of March 2021

Commission File Number: 001-38235

RISE EDUCATION CAYMAN LTD

**Room 101, Jia He Guo Xin Mansion,
No. 15 Baiqiao Street Guangqumennei, Dongcheng District
Beijing 100062, People's Republic of China
(Address of principal executive offices)**

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F.

Form 20-F Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Entry into a Credit Facilities Agreement

On March 18, 2021, RISE Education Cayman Ltd (“**RISE**” or the “**Company**”) (NASDAQ: REDU) entered into a facilities agreement with CTBC Bank Co., Ltd., as the lender, providing RISE with credit facilities in an aggregate commitment amount of US\$80,000,000, consisting of a five-year term loan facility of US\$65,000,000 and a revolving credit facility of US\$15,000,000.

The Company will use the funds borrowed under the term loan facility to repay its existing loans under the facilities agreement dated July 14, 2016 and amended and restated on September 19, 2017. The Company will use the funds borrowed under the revolving credit facility to pay fees and expenses relating to the credit facilities and to fund the debt service reserve account as required under the facilities agreement, as well as for general corporate purposes.

SIGNATURE

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

RISE Education Cayman Ltd

By: /s/ Lihong Wang

Name: Lihong Wang

Title: Chairwoman and Chief Executive Officer

Date: March 19, 2021

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
Exhibit 10.1	Facility Agreement between RISE Education Cayman Ltd and CTBC Bank Co., Ltd. dated March 18, 2021

FACILITIES AGREEMENT

dated 18 March 2021

for

RISE EDUCATION CAYMAN I LTD

arranged by
CTBC BANK CO., LTD.
as Mandated Lead Arranger

with

CTBC BANK CO., LTD.
as Facility Agent

and

CTBC BANK CO., LTD.
as Security Agent

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THIS AGREEMENT is dated 18 March 2021 and made between:

- (1) **RISE EDUCATION CAYMAN I LTD** (formerly known as Bain Capital Rise Education Cayman Limited), an exempted company incorporated with limited liability under the laws of the Cayman Islands with registered number 278734 and registered office at Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman KY1-1104, Cayman Islands (the “**Borrower**”);
- (2) **RISE EDUCATION INTERNATIONAL LIMITED** (formerly known as Bain Capital Rise Education (HK) Limited), a company incorporated under the laws of Hong Kong with registration number 1929660 and registered office at Suite 1126, 11th Floor, Ocean Centre, Harbour City, 5 Canton Road, Tsim Sha Tsui, Kowloon, Hong Kong (“**Rise HK**”);
- (3) **EDGE FRANCHISING CO. LIMITED**, a company incorporated under the laws of Hong Kong with registration number 2349854 and registered office at 22/F, The Zoroastrian Building, 101 Leighton Road, Causeway Bay, Hong Kong (“**Edge Franchising**”);
- (4) **EDGE ONLINE CO. LIMITED**, a company incorporated under the laws of Hong Kong with registration number 2349729 and registered office at 22/F, The Zoroastrian Building, 101 Leighton Road, Causeway Bay, Hong Kong (“**Edge Online**” and together with Rise HK and Edge Franchising, the “**HK Guarantors**”);
- (5) **RISE IP (CAYMAN) LIMITED**, an exempted company incorporated with limited liability under the laws of the Cayman Islands with registered number 279695 and registered office at Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman KY1-1104, Cayman Islands (the “**Cayman Guarantor**”, and together with the HK Guarantors, the “**Original Offshore Guarantors**”);
- (6) **CTBC BANK CO., LTD.**, as mandated lead arranger (the “**Mandated Lead Arranger**”);
- (7) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as lenders (the “**Original Lenders**”);
- (8) **CTBC BANK CO., LTD.**, as agent of the other Finance Parties (the “**Facility Agent**”); and
- (9) **CTBC BANK CO., LTD.**, as security trustee for the Secured Parties (the “**Security Agent**”).

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Acceleration Event**” has the meaning given to that term in the Security Trust Agreement.

“**Acceptable Bank**” means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor’s Rating Services or Fitch Ratings Ltd or A3 or higher by Moody’s Investors Service Limited or a comparable rating from an internationally recognised credit rating agency;

- (b) the Mandated Lead Arranger; or
- (c) any other bank or financial institution approved by the Facility Agent.

“**Acceptable Funding Sources**” means:

- (a) New Shareholder Injections;
- (b) amounts received by Group Members from persons that are not Group Members by way of indemnity, compensation or otherwise (in each case, in the nature of insurance, condemnation proceeds or similar payments) and not required to be applied on prepayment of any Facility; and
- (c) (only for the purposes of paragraph (d)(iv) of the definition of “Permitted Acquisition”) proceeds of Permitted Financial Indebtedness (incurred by any Group Member from any person that is not a Group Member) and any Incremental Facility.

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

“**Account Pledge Agreement**” means an account pledge agreement between a Relevant Obligor and the Security Agent, in form and substance satisfactory to the Security Agent.

“**Accounting Principles**” mean generally accepted accounting principles in the US.

“**Additional Guarantor**” means a person which becomes party hereto as a “Guarantor” in accordance with Clause 27 (*Changes to the Obligors*).

“**Additional Guarantor Notice**” has the meaning given to that term in Clause 27 (*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.

“**All-In Yield**” means, as to any Financial Indebtedness, the yield thereof, whether in the form of interest rate, margin, original issue discount, upfront fees or otherwise, in each case, incurred in favour of or payable to any or all of the lenders or creditors (or any class of such lenders or creditors) of such Financial Indebtedness from time to time; **provided that** for the purposes of such calculation, any original issue discount or upfront fees in respect of any Financial Indebtedness shall be equated to interest rate by dividing the amount of such original issue discount or upfront fees by the Weighted Average Life to Maturity in respect of such Financial Indebtedness.

“**Annual Financial Statements**” has the meaning given to that term in Clause 21 (*Information undertakings*).

“**Anti-Bribery and Corruption Laws**” means the FCPA, the UK Bribery Act and all laws, rules and regulations issued, administered or enforced by the United States of America, the United Kingdom, the European Union or any of its member states, the PRC, Hong Kong, Singapore or any other country or Governmental Agency, which laws are applicable from time to time to any Transaction Obligor or any Subsidiary of any Transaction Obligor concerning or relating to bribery or corruption.

“**Anti-Money Laundering Laws**” means all applicable financial recordkeeping and reporting requirements, and the applicable anti-money laundering statutes of jurisdictions where any Transaction Obligor or any Group Member conducts business and/or where any of the foregoing is incorporated or organised, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, which in each case are issued, administered or enforced by any Governmental Authority from time to time.

“**Anti-Terrorism Laws**” means:

- (a) the Executive Order, the U.S. Bank Secrecy Act (31 U.S.C. §§ 5311 et seq.), the U.S. Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 et seq.), the USA Patriot Act of 2001, all as amended from time to time, and any economic or financial sanctions or trade embargo laws, regulations or executive orders administered or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Departments of State or Commerce or any other U.S. government authority;
- (b) the Prevention of Terrorism Act 2005 of the United Kingdom, any economic or financial sanction implemented or effective in the United Kingdom under the United Nations Act 1946 or the Emergency Laws (Re-enactments and Repeals) Act 1964 or the Anti-Terrorism, Crime and Security Act 2001 or under the Treaty establishing the European Community; and
- (c) any similar laws, regulations and/or trade, economic or financial sanctions, embargoes, laws, regulations or restrictive measures enacted, issued, administered and/or enforced by the PRC, the United Kingdom, the European Union (or any member state thereof), the United Nations, the United States, Singapore, Hong Kong and/or the respective governmental institutions and agencies of the foregoing, including the Sanctions Authorities.

“**Assignment Agreement**” means, in relation to any assignment by any Lender of any or all of its rights under this Agreement, an agreement substantially in the form set out in Schedule 6 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and the relevant assignee, provided that if that other form does not contain the undertakings set out in the form set out in Schedule 6 (*Form of Assignment Agreement*) it shall not be a Creditor Accession Undertaking as defined in, and for the purposes of, the Security Trust Agreement.

“**Auditors**” means one of the Big Four or any other auditor approved in writing by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

“**Authorisation**” means:

- (a) an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Authority intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

“**Availability Period**” means:

- (a) in relation to Facility A, the period from and including the date of this Agreement to and including the date falling two Months after the date of this Agreement;

- (b) in relation to Facility B, the period from and including the date of this Agreement to and including the date falling one Month before the Termination Date; or
- (c) in relation to any Incremental Facility, the period from and including the date of the Incremental Facility Notice (with respect to such Incremental Facility) to and including the last day of the “Availability Period” (in respect of such Incremental Facility) specified in such Incremental Facility Notice in accordance with Clause 2.5 (*Incremental Facilities*).

“**Available Commitment**” means at any time in relation to a Lender and a Facility and save as otherwise provided in this Agreement, that Lender’s Commitment in respect of that Facility minus:

- (a) the aggregate amount of its participation in any outstanding Loan under that Facility (for such purpose and in the case of Facility A and an Incremental Facility only, taking into account the principal amount of each Loan under that Facility when it is made and disregarding any subsequent reduction in such principal amount); and
- (b) (in relation to any proposed Utilisation under that Facility) its participation in any Loan(s) (other than the Loan that is the subject of such proposed Utilisation) that are due to be made under that Facility on or before the proposed Utilisation Date,

other than, in relation to any proposed Utilisation under Facility B only, that Lender’s participation in any Facility B Loan that is due to be repaid or prepaid on or before the proposed Utilisation Date for such proposed Utilisation.

“**Available Facility**” means, in relation to a Facility, the aggregate for the time being of each Lender’s Available Commitment in respect of that Facility.

“**Base Case Model**” means the financial model including profit and loss, balance sheet and cashflow projections in agreed form relating to the Group delivered or to be delivered by the Borrower to the Facility Agent pursuant to Clause 4.1 (*Initial conditions precedent*).

“**Base Financial Statements**” has the meaning given to that term in Clause 21.3 (*Requirements as to financial statements*).

“**Big Four**” means PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche (or any local affiliate or amalgamation of the same or their successors).

“**Borrowings**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

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

- (a) the interest (excluding any portion thereof attributable to the Margin) which a Lender should have received for the period from the date of such receipt or recovery of all or any part of its participation in a Loan or an Unpaid Sum to the last day of the current Interest Period in respect of that Loan or that Unpaid Sum, had the principal amount of that Lender’s participation in that Loan or that Unpaid Sum received or recovered 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 of that Lender’s participation in that Loan or that Unpaid Sum received or recovered by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following such receipt or recovery and ending on the last day of the current Interest Period for that Loan or that Unpaid Sum.

“**Business Day**” means:

- (a) for the purpose of determining LIBOR, a day (other than a Saturday or Sunday) on which banks are open for transaction of domestic and foreign exchange business in London;
- (b) for the purpose of payment of amounts under the Finance Documents, a day (other than a Saturday or Sunday) on which banks are open for the transaction of domestic and foreign exchange business in New York; and
- (c) for all purposes, a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong, Taipei and the PRC.

“**Capital Expenditure**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Cash**” means, at any time, cash in hand or at bank and (in the latter case) credited to an account in the name of a Group Member with an Acceptable Bank and to which a Group Member is alone (or together with other Group Members) beneficially entitled and for so long as:

- (a) that cash is repayable within 30 days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other Financial Indebtedness of any Group Member or of any other person whatsoever or on the satisfaction of any other condition outside the control of the Group Members;
- (c) there is no Security or Quasi-Security over that cash except for (i) any Permitted Security falling under any of paragraphs (a), (b), (c), (d), (j) and (k) of the definition of Permitted Security or (ii) any other Permitted Security securing any Permitted Financial Indebtedness constituting part of the Borrowings of the Group; and
- (d) that cash is denominated in US dollars, RMB, or other freely transferable and freely convertible currency and (except as mentioned in paragraphs (a) and/or (c) above) immediately available to the applicable Group Member (or, in the case of any term deposit, available at the expiry of the applicable term of such deposit or at any time subject to any loss of interest upon breaking the applicable term of such deposit),

and shall include cash in tills and cash in transit.

“**Cash Equivalent Investments**” means at any time of determination:

- (a) deposits, certificates of deposit or bankers’ acceptances, in each case, maturing within one year after the date of such determination and made with or issued by an Acceptable Bank;
- (b) securities and other investments in marketable debt obligations issued by or guaranteed by the government of the United States of America, the United Kingdom, Hong Kong, Japan or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the date of such determination and not convertible or exchangeable to any other security;

- (c) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom or any Participating Member State;
 - (iii) which matures within one year after the date of such determination; and
 - (iv) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited, or, if no rating is available in respect of that commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);
- (e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, (ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (iii) can be turned into cash on not more than 90 days' notice; or
- (f) any other investment approved by the Majority Lenders (acting reasonably),

in each case to which any Group Member is alone (or together with other Group Members) beneficially entitled at that time and which is not issued or guaranteed by any Transaction Obligor or any Group Member or subject to any Security or Quasi-Security (other than Security arising under the Transaction Security Documents).

“**CEO**” means the chief executive officer of the Group for the time being (or such person(s) undertaking such equivalent role from time to time).

“**Change of Control**” means:

- (a) at any time:
 - (i) the Sponsor does not or ceases to beneficially own, directly or indirectly, at least 25 per cent. of the voting share capital in the Borrower; or
 - (ii) any person or persons acting in concert beneficially own or acquire, directly or indirectly, (A) an aggregate percentage of issued shares (of any class) in the Borrower that is equal to or greater than the aggregate percentage of issued shares (of such class) in the Borrower beneficially owned, directly or indirectly, by the Sponsor or (B) an aggregate percentage of voting interests in the Borrower that is equal to or greater than the aggregate percentage of voting interests in the Borrower beneficially owned, directly or indirectly, by the Sponsor;
- (b) at any time, the Parent:
 - (i) does not or ceases to directly beneficially own 100% of the Equity Interests in the Borrower;

- (ii) does not or ceases to directly beneficially own 100% of the voting interests in the Borrower; or
 - (iii) does not or ceases to have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise), to directly appoint all of the directors or other equivalent officers of the Borrower;
- (c) at any time, the Borrower:
- (i) does not or ceases to directly beneficially own 100% of the Equity Interests in each of Rise HK and the Cayman Guarantor;
 - (ii) does not or ceases to directly beneficially own 100% of the voting interests in each of Rise HK and the Cayman Guarantor; or
 - (iii) does not or ceases to have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise), to directly appoint all of the directors or other equivalent officers of each of Rise HK and the Cayman Guarantor;
- (d) at any time, Rise HK:
- (i) does not or ceases to directly beneficially own 100% of the Equity Interests in the WFOE Guarantor;
 - (ii) does not or ceases to directly beneficially own 100% of the voting interests in the WFOE Guarantor; or
 - (iii) does not or ceases to have the power (whether by way of ownership of equity interests, proxy, contract, agency or otherwise), to directly appoint all of the directors or other equivalent officers of the WFOE Guarantor; or
- (e) at any time, the VIE Nominees, in the aggregate:
- (i) do not or cease to directly beneficially own 100% of the Equity Interests in the VIE Entity;
 - (ii) do not or cease to directly beneficially own 100% of the voting interests in the VIE Entity; or
 - (iii) do not or cease to have the power (whether by way of ownership of equity interests, proxy, contract, agency or otherwise), to directly appoint all of the directors or other equivalent officers of the VIE Entity,
- (in each case) subject to the VIE Structure Documents.

“**Charged Property**” means all of the assets of the Transaction Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

“**Chief Financial Officer**” means the chief financial officer (or equivalent officer, as appropriate) from time to time of the Borrower.

“**Code**” means the U.S. Internal Revenue Code of 1986.

“**Commitment**” means any Facility A Commitment, Facility B Commitment or Incremental Facility Commitment (and “**Commitment**” in respect of (a) Facility A means a Facility A Commitment, (b) Facility B means a Facility B Commitment, or (c) any Incremental Facility means an Incremental Facility Commitment in respect of such Incremental Facility).

“**Competitor**” means any person or entity (other than a Group Member) principally engaged in the business of providing after-school English language and STEAM (Science, Technology, Engineering, the Arts and Mathematics) education and training in Greater China and each Affiliate of such person or entity engaged in such activities. “**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*) or any other form agreed between the Facility Agent and the Borrower.

“**Confidential Information**” means all information relating to the Sponsor, the Parent, any Transaction Obligor, the Group, the Finance Documents or any Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or any Facility from either:

- (a) the Sponsor, any Transaction Obligor or any Group Member or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from the Sponsor, any Transaction Obligor or any Group Member or any of its advisers,

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 38 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by the Sponsor, any Transaction Obligor or any Group Member or any of its advisers; or
- (iii) is known by that Finance Party before the date such information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with any Transaction Obligor or the Group and which, in either case, has not been obtained by that Finance Party pursuant to or in connection with that Finance Party’s evaluation of the Finance Documents and as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality with respect to such information.

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 9 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Facility Agent.

“**Conflicted Lender**” means any Lender (which term, for the purposes of this definition shall include any Affiliate of that Lender) which is or is acting on behalf of (including in its capacity as the grantor of Voting Participation or any other agreement pursuant to which voting rights of such Lender under the Finance Documents may pass):

- (a) a Competitor;

- (b) an investor or equity holder in a Competitor which (in each case) has Control over such Competitor; or
- (c) an adviser to any such person referred to in paragraphs (a) or (b) above,

in each case whether before or after such person becomes a Lender and including where a Lender notifies the Facility Agent that it is such (in a Transfer Certificate or otherwise) and where it has been notified as such to the Facility Agent by the Borrower (acting reasonably and in good faith), **provided that** a Lender will not be deemed to be a Conflicted Lender solely by virtue of that Lender:

- (i) dealing in shares in or securities of a Competitor, where the relevant teams and employees of that Lender engaged in such dealings operate on the public side of an Information Barrier;
- (ii) becoming an investor or equity holder in a Competitor as a consequence of a debt-for-equity swap in, or enforcement of security over shares of, that Competitor; **provided that** the relevant teams and employees of that Lender involved in such transactions are separated from any teams or employees of that Lender working in relation to the Group and the Finance Documents (and related transactions) by way of an Information Barrier;
- (iii) engaging in any merger and acquisition or other advisory activity in relation to or on behalf of a Competitor, **provided that** the relevant teams and employees of that Lender involved in such advisory activity are separated from any teams or employees of that Lender working in relation to the Group and the Finance Documents (and related transactions) by way of an Information Barrier; or
- (iv) being an investor or equity holder in a Competitor through a separately managed private equity investment fund owned or managed by that Lender, **provided that** the relevant teams and employees of that Lender involved in such private equity fund are separated from any teams or employees of that Lender working in relation to the Group and the Finance Documents (and related transactions) by way of an Information Barrier.

“**Consolidated After-Tax Net Income**” means, in respect of any period, the consolidated net income of the Group for that period after taxation.

“**Constitutional Documents**” means, in respect of any person, the certificate of incorporation, the certificate of incorporation on change of name (if relevant), the memorandum of association and articles of association (or the equivalent thereof) and any other constitutional documents of such person, including any amendments and/or supplements thereto.

“**Control**” means, in relation to any person, the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or affairs of such person, whether through the ownership of voting securities, by contract or otherwise (and the term “**Controlled**” shall be construed accordingly).

“**Creditor Accession Undertaking**” has the meaning given to that term in the Security Trust Agreement.

“**Cure Amount**” has the meaning given to that term in Clause 22.4 (*Equity cure*).

“**Cure Amount Account**” means an account:

- (a) held in Taipei or any other jurisdiction reasonably satisfactory to the Facility Agent by the Borrower with the Facility Agent (or an Affiliate thereof specified by the Facility Agent);
- (b) identified in writing (including in a Transaction Security Document) between (i) the Borrower and (ii) the Facility Agent or the Security Agent as a “Cure Amount Account”; and
- (c) (subject to Legal Reservations) subject to fixed Security in favour of the Security Agent which Security is in form and substance satisfactory to the Facility Agent and Security Agent,

(as the same may be re-designated, substituted or replaced from time to time).

“**Debenture**” means a debenture to be entered into by the Borrower and each Original Offshore Guarantor in favour of the Security Agent in respect of assets of the Borrower and each Original Offshore Guarantor, in form and substance satisfactory to the Security Agent.

“**Debt Document**” has the meaning given to that term in the Security Trust Agreement.

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

- (a) purchases or acquires by way of assignment or transfer any rights and/or obligations in respect of;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, any Commitment in respect of any Facility (or any commitment represented thereby) or any amount outstanding under any Finance Document.

“**Debtor**” has the meaning given to that term in the Security Trust Agreement.

“**Default**” means an Event of Default or any event or circumstance specified in Clause 24 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

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

- (a) which has failed to make its participation in a Loan available (or has notified the Facility Agent or the Borrower (which has notified the Facility Agent) that it will not make its participation in a Loan available) by the Utilisation Date for that Loan in accordance with Clause 5.4 (*Lenders' participation*);
- (b) which has otherwise rescinded or repudiated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

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

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made by that Lender within four (4) Business Days of its due date; or
- (ii) that Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

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

“**Designated Proceeds Account (HSBC)**” means an account:

- (a) held in Hong Kong with The Hongkong and Shanghai Banking Corporation by an Offshore Group Member that is a Relevant Obligor;
- (b) existing as at the date of this Agreement and identified in writing between (i) the Borrower and (ii) the Facility Agent or the Security Agent as a “Designated Proceeds Account (HSBC)”; and
- (c) (subject to the Legal Reservations) subject to fixed Security in favour of the Security Agent which Security is in form and substance satisfactory to the Facility Agent and Security Agent,

(as the same may be re-designated, substituted or replaced from time to time).

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with any Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other, Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

“**Distressed Investor**” means a loan to own fund, vulture fund, distressed debt fund or any other entity (including a business group within a bank or financial institution) which is established for or principally invests in distressed debt (or any similar fund or entity).

“**Distribution**” means, in respect of a person:

- (a) declaring, making or paying any dividend, charge, fee or other distribution of any kind (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of any Equity Interest of such person (or any class of any Equity Interest of such person);
- (b) repaying, returning or distributing any dividend or share premium or other reserve;
- (c) paying or allowing any Transaction Obligor or any Group Member to pay any management, advisory or other fee to or to the order of the Parent, any of the shareholder(s) of the Parent or any other Related Person;
- (d) redeeming, repurchasing, defeasing, retiring, repaying, returning, reducing, cancelling or terminating any of its Equity Interest (including any Recapitalisation), or making any payment (including any payment of interest on any unpaid sum relating to any such payment) whether in cash or in kind (and including any payment in any sinking fund or similar deposit) on account of any of the foregoing, or entering into any other arrangement having a similar effect, or resolving to do so; or
- (e) paying, repaying or prepaying any principal, interest or other amount on or in respect of, or redeeming, purchasing, acquiring or defeasing, any Financial Indebtedness (whether on account of principal, interest, fees or otherwise), owed actually or contingently by a Group Member to the Parent, any Subordinated Creditor (as defined in the Security Trust Agreement) or any of the shareholder(s) of the Parent.

“**DSRA**” means a debt service reserve account:

- (a) held in Taipei or any other jurisdiction reasonably satisfactory to the Facility Agent by the Borrower with the Facility Agent (or an Affiliate thereof specified by the Facility Agent);
- (b) subject to fixed Security in favour of the Security Agent which Security is in form and substance satisfactory to the Facility Agent and the Security Agent;
- (c) identified in writing (including in a Transaction Security Document) between (i) the Borrower and (ii) the Facility Agent or the Security Agent as the “DSRA”; and
- (d) from which no withdrawals may be made by any Transaction Obligor or any Group Member except as contemplated by this Agreement, (as the same may be re-designated, substituted or replaced from time to time).

“**DSRA Minimum Balance**” means, at any time, the Interest Reserve Amount as at such time.

“**EBITDA**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Environment**” means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including 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 Claim**” means any claim, proceeding, formal notice or investigation by any person in respect of:

- (a) any breach, or alleged breach, of any Environmental Law; or
- (b) any accident, fire, explosion or other event of any type involving the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including any waste.

“**Environmental Law**” means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace;
- (c) community welfare and/or land or property rights;
- (d) occupational health and safety; or
- (e) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including any waste.

“**Environmental Permits**” means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any Transaction Obligor or any Group Member conducted on or from the properties owned or used by any Transaction Obligor or any Group Member.

“**Equity Interest**” means, in relation to any person:

- (a) any share of any class or capital stock of or equity interest (including any partnership interest) in such person or any depositary receipt in respect of any such share, capital stock or equity interest; or
- (b) any security convertible or exchangeable (whether at the option of the holder thereof or otherwise and whether such conversion is conditional or otherwise) into any such shares, capital stock, equity interest or depositary receipt, or any depositary receipt in respect of any such security; or
- (c) any option, warrant or other right to acquire any such share, capital stock, equity interest, security or depositary receipt or security referred to in the foregoing paragraphs (a) and/or (b) above.

“**Equity Pledge (WFOE Guarantor)**” means an equity pledge agreement or contract to be entered into by Rise HK in favour of the Security Agent in respect of its equity interests in the WFOE Guarantor, in form and substance satisfactory to the Security Agent.

“**Event of Default**” means any event or circumstance specified as such in Clause 24 (*Events of Default*).

“**Executive Order**” means each of:

- (a) the US Executive Order No. 13224 on Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, which came into effect on 23 September 2001, as amended;
- (b) the US Executive Order No. 13590 of 21 November 2011 authorising the imposition of certain sanctions with respect to the provision of goods, services, technology or support for Iran’s energy and petrochemical sectors; and
- (c) any other US Executive Order issued and in effect in connection with restrictions on the export of goods or economic or trade sanctions from time to time.

“**Existing Facilities**” means the term loan facilities made available to the Borrower pursuant to the Existing Facilities Agreement.

“**Existing Facilities Agreement**” means the facilities agreement dated 14 July 2016 (as amended and restated pursuant to an amendment and restatement agreement dated 19 September 2017 and as further amended pursuant to an amendment request letter dated 30 April 2020) between, among others, the Borrower as borrower and CTBC Bank Co., Ltd. as facility agent and security agent.

“**Existing PRC Security**” means the Security constituted by the pledge of equity interest dated 18 July 2016 between Rise HK as pledgor, the WFOE Guarantor as company and the CTBC Bank Co., Ltd. as security agent (as confirmed pursuant to a confirmation agreement dated 19 September 2017).

“**Existing Security**” means any and all Security and/or Quasi-Security granted by the Parent, any Group Member or the Distribution Account Holder (as defined in the Existing Facilities Agreement) or subsisting over any asset of the Parent, any Group Member, or the Distribution Account Holder (as defined in the Existing Facilities Agreement), as the case may be, in each case securing indebtedness owing under any of the Existing Facilities, the Existing Facilities Agreement or any Finance Document (as defined in the Existing Facilities Agreement).

“**Facility**” means Facility A, Facility B or an Incremental Facility (and “**Facilities**” shall be construed accordingly).

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

“**Facility A Commitment**” means:

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

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

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

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

“**Facility B Commitment**” means:

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

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

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

“**Facility B Reduction Date**” means each of the dates falling 12, 24, 36, 48 and 60 Months after the Initial Utilisation Date.

“**Facility B Reduction Instalment**” means any instalment for reduction of the Total Facility B Commitments on any Facility B Reduction Date as determined in accordance with Clause 6.3 (*Reduction of Facility B*).

“**Facility Office**” means:

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

“**Family Member**” means, in relation to any individual, such individual, his or her parents, brothers, sisters and lineal descendants, and any trust or other similar entity established for the sole benefit of or the sole beneficial owner(s) of which (directly or indirectly) are any or all of the foregoing, any of their respective lineal descendants, estate or any executor of their respective estate, and/or (in the case of any such trust or other similar entity) any trustee in bankruptcy or similar officer in respect of any such trust or such other similar entity.

“**FATCA**” means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States of America and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; and

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (a) or (b) above with the United States Internal Revenue Service, the government of the United States of America or any governmental or taxation authority in any other jurisdiction.

“**FATCA Deduction**” means a deduction or withholding from a payment under a Finance Document required by FATCA.

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

“**FCPA**” means the United States Foreign Corrupt Practices Act 1977, as amended, and the rules and regulations thereunder.

“**Fee Letter**” means (as applicable):

- (a) the fee letter dated on or about the date of this Agreement between the Mandated Lead Arranger and the Borrower;
- (b) any agreement setting out fees payable to a Finance Party referred to in Clause 13 (*Fees*) or paragraph (f) of Clause 2.2 (*Increase*); and/or
- (c) any agreement setting out any other fees payable to a Finance Party referred to in this Agreement or under any other Finance Document.

“**Finance Document**” means this Agreement, any Accession Deed, any Fee Letter, any Hedging Agreement, the Security Trust Agreement, any Incremental Amendment, the Syndication Letter, any Transaction Security Document, any Guarantee, any Transfer Certificate, any Increase Confirmation, any Incremental Facility Notice, any Incremental Facility Increase Confirmation and any other document designated as a “Finance Document” by the Facility Agent and the Borrower, **provided that** where the term “Finance Document” is used in, and construed for the purposes of, this Agreement or the Security Trust Agreement, a Hedging Agreement shall be a Finance Document only for the purposes of :

- (a) the definition of “Material Adverse Effect”;
- (b) paragraph (a) of the definition of “Permitted Transaction”;
- (c) the definition of “Transaction Document”;
- (d) the definition of “Transaction Security Document”;
- (e) paragraph (a)(iv) of Clause 1.2 (*Construction*);
- (f) Clause 2.3 (*Finance Parties’ rights and obligations*);
- (g) Clause 2.4 (*Obligors’ Agent*);
- (h) Clause 19 (*Guarantee and indemnity*);
- (i) the definition of “Guarantees”;
- (j) Clause 24 (*Events of Default*) (other than Clause 24.19 (*Acceleration*));
- (k) Clause 32 (*Set-off*); and

(l) describing the secured obligations under any Transaction Security Document.

“**Finance Lease**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Finance Party**” means the Facility Agent, a Mandated Lead Arranger, the Security Agent, a Lender or a Hedge Counterparty **provided that** where the term “Finance Party” is used in, and construed for the purposes of, this Agreement or the Security Trust Agreement, a Hedge Counterparty shall be a Finance Party only for the purposes of:

- (a) the definition of “Secured Parties”;
- (b) paragraph (c) of the definition of “Material Adverse Effect”;
- (c) paragraph (a)(i) of Clause 1.2 (*Construction*);
- (d) Clause 19 (*Guarantee and indemnity*);
- (e) the definition of “Guarantees”;
- (f) Clause 2.3 (*Finance Parties’ rights and obligations*);
- (g) Clause 2.4 (*Obligors’ Agent*);
- (h) Clause 29 (*Conduct of business by the Finance Parties*); and
- (i) Clause 32 (*Set-off*).

“**Financial Indebtedness**” means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds (but not Trade Instruments), notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution (but not, in any case, Trade Instruments) in respect of any underlying liability of an entity which is not a Group Member;
- (h) any amount raised by the issue of shares or Equity Interests which are redeemable (other than at the option of the issuer thereof) before the Termination Date or are otherwise classified as borrowings under the Accounting Principles;

- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into that agreement is to raise finance or to finance the acquisition or construction of the applicable asset or service in question or (ii) that agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of such supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing (excluding any such transaction which is expressly excluded under another paragraph of this definition) or are otherwise classified as borrowings under the Accounting Principles; and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above,

provided that where the amount of Financial Indebtedness is to be calculated in relation to any bank accounts of Group Members that are subject to netting, cash cooling, net balance, balance transfer or similar arrangements, only the net balance of the Financial Indebtedness in respect of such arrangements shall be taken in to account.

“**Financial Half-Year**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Financial Quarter**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Financial Year**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**First Test Date**” means 31 March 2021.

“**Future Acquisition**” means the acquisition by a Group Member of Equity Interest(s) in a company, corporation or entity which is not already a Group Member as at the date of this Agreement and which becomes a Group Member after such acquisition, **provided that** such acquisition is a Permitted Acquisition falling within paragraph (d) of the definition of “Permitted Acquisition” (such company, corporation or entity being the “**Future Target**” in respect of such Future Acquisition).

“**Future Target Group**” means:

- (a) any Future Target (in respect of any Future Acquisition) and its Subsidiaries from time to time; and
- (b) any Future Acquisition SPV (as defined in the definition of “Permitted Acquisition”) and its Subsidiaries from time to time, excluding any member of any Future Target Guarantor Group.

“**Future Target Group Member**” means any member of any Future Target Group.

“**Future Target Guarantor Group**” means (a) each of (i) any Future Target (in respect of any Future Acquisition) and (ii) its Subsidiaries that are incorporated or established outside the PRC that has (in each case under (i) and (ii)) become a Guarantor in accordance with Clause 27.2 (*Additional Guarantors*) and (b) Subsidiaries of such Future Target that are incorporated or established in the PRC.

“**Governmental Authority**” means any government or any governmental agency, semi-governmental or judicial entity or authority (including any stock exchange or any self-regulatory organisation established under statute).

“**Greater China**” means the People’s Republic of China, Hong Kong, the Special Administrative Region of Macau and Taiwan.

“**Group**” means the Borrower and its Subsidiaries from time to time, and the VIE Entity and its Subsidiaries from time to time.

“**Group Member**” means any member of the Group.

“**Group Structure Chart**” means the group structure chart for the Group set out in Schedule 13 (*Group Structure Chart*).

“**Guarantee (WFOE Guarantor)**” means the guarantee to be entered into between the WFOE Guarantor and the Security Agent.

“**Guarantee Effective Date**” means the date on which the Existing Facilities (and all other sums payable under or in connection with the Existing Facilities Agreement and related finance documents) are repaid and discharged in full.

“**Guarantee (VIE Entity)**” means the guarantee to be entered into between the VIE Entity and the Security Agent.

“**Guarantees**” means:

- (a) any guarantee or indemnity given by any Obligor under Clause 19 (*Guarantee and indemnity*);
- (b) the Guarantee (WFOE Guarantor);
- (c) the Guarantee (VIE Entity); and
- (d) any guarantee or indemnity given by any person (other than a Finance Party) in favour of the Facility Agent, the Security Agent or all of the Finance Parties (in each case in form and substance satisfactory to the Facility Agent) in respect of the obligations of the Borrower under the Finance Documents,

(each a “**Guarantee**”).

“**Guarantors**” means the Original Offshore Guarantors and each Additional Guarantor (each a “**Guarantor**”).

“**Hedge Counterparty**” means any entity which (a) has become a Party as a “Hedge Counterparty” in accordance with Clause 25.8 (*Accession of Hedge Counterparties*) and (b) is or has become, a party to the Security Trust Agreement as a “Hedge Counterparty” (as defined in the Security Trust Agreement) in accordance with the provisions of the Security Trust Agreement.

“**Hedging Agreement**” means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by the Borrower and a Hedge Counterparty for the purpose of hedging the types of liabilities and/or risks in relation to any or all of the Facilities which complies with (1) the Hedging Principles and (2) the Security Trust Agreement.

“**Hedging Principles**” means the requirements set out in Schedule 14 (*Hedging Principles*).

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

“**Hong Kong**” means the Hong Kong Special Administrative Region of the PRC.

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

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

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

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within five (5) Business Days of its due date; or
- (ii) the Facility Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

“**Increase Confirmation**” means a confirmation substantially in the form set out in Schedule 11 (*Form of Increase Confirmation*) or any other form agreed between the Facility Agent and the Borrower.

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

“**Incremental Amendment**” has the meaning given to that term in Clause 2.5 (*Incremental Facilities*).

“**Incremental Facility**” has the meaning given to that term in Clause 2.5 (*Incremental Facilities*).

“**Incremental Facility Commitment**” means, in relation to any Incremental Facility:

- (a) in relation to any Incremental Facility Original Lender that is party to any Incremental Facility Increase Confirmation (relating to such Incremental Facility), the aggregate amount of “Relevant Commitment” in respect of such Incremental Facility as specified in each Incremental Facility Increase Confirmation (relating to such Incremental Facility) to which it is a party and the amount of any other Incremental Facility Commitment (in respect of such Incremental Facility) transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*); and

(b) in relation to any other Lender, the amount of any Incremental Facility Commitment (in respect of such Incremental Facility) transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*),

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

“**Incremental Facility Increase Confirmation**” means a confirmation substantially in the form set out in Schedule 15 (*Form of Incremental Facility Increase Confirmation*).

“**Incremental Facility Loan**” means a loan made or to be made under any Incremental Facility or the principal amount outstanding for the time being of that loan, **provided that** any reference to any “Incremental Facility Loan” under or in respect of any Incremental Facility means a loan made or to be made under such Incremental Facility or the principal amount outstanding for the time being of that loan.

“**Incremental Facility Notice**” has the meaning given to that term in Clause 2.5 (*Incremental Facilities*).

“**Incremental Facility Original Lender**” has the meaning given to that term in Clause 2.5 (*Incremental Facilities*).

“**Indebtedness for Borrowed Money**” means, at any time, Financial Indebtedness other than any Financial Indebtedness falling within (a) paragraph (f) of the definition of “Financial Indebtedness” or (b) paragraph (k) of the definition of “Financial Indebtedness” (to the extent related to Financial Indebtedness falling within paragraph (f) of the definition of “Financial Indebtedness”).

“**Indirect Tax**” means any value added tax, goods and services tax, consumption tax, business tax or any Tax of a similar nature.

“**Information Barrier**” means, in relation to a Lender, a system of controls and monitoring (including, but not limited to, physical segregation of employees and restrictions on access to and flow of information) sufficient to ensure that:

- (a) information relating to the Group and the Finance Documents (and related transactions) held by that Lender is not disclosed to any person who is or who is acting on behalf of either a Competitor or an investor or equity holder in a Competitor (that has Control over such Competitor) or who is engaged in any merger and acquisition or other advisory activity in relation to or on behalf of a Competitor; and
- (b) information available to any team or employee of that Lender who is or who is acting on behalf of either a Competitor or an investor or equity holder in a Competitor (that has Control over such Competitor) or who is engaged in any merger and acquisition or other advisory activity in relation to a Competitor is not disclosed to any team or employee of that Lender acting in relation to the Group or the Finance Documents (and related transactions).

“**Initial Facility**” means Facility A or Facility B.

“**Initial Facility Loan**” means the Facility A Loan or a Facility B Loan.

“**Initial Utilisation Date**” means the Utilisation Date under Facility A.

“**Insolvency Event**” in relation to a Finance Party or an Acceptable Bank means that Finance Party or Acceptable Bank:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009 or in each case, any equivalent legislation in any relevant jurisdiction;
- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (i) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains such possession, or any such distress, execution, attachment, sequestration or other legal process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (j) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above; or

(k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“**Intellectual Property**” means all right, title and interest from time to time in and to:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use any or all of the rights and/or items referred to paragraph (a) from time to time and which may now or in the future subsist,

and in each case including any related lease, licences and sub-licences of the same.

“**Interest Period**” means:

- (a) in relation to the Facility A Loan or a Facility B Loan, each period determined in accordance with Clause 11 (*Interest Periods*);
- (b) in relation to any Incremental Facility Loan under any Incremental Facility, each period determined in accordance with the Incremental Facility Notice in respect of such Incremental Facility (subject to Clause 2.5 (*Incremental Facilities*)); and/or
- (c) in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (*Default interest*).

“**Interest Reserve Amount**” means, as at any date, the aggregate amount of:

- (a) interest accruing on the Facility A Loan during the period of six (6) Months from such date;
- (b) interest accruing on all Facility B Loans (outstanding as at such date) during the period of six (6) Months from such date; and
- (c) (in relation to any Incremental Facility Loan under any Incremental Facility) interest reserve requirement determined in accordance with the Incremental Facility Notice in respect of such Incremental Facility (subject to Clause 2.5 (*Incremental Facilities*))

(taking into account the effect of any interest rate hedging under any Hedging Agreement that is in force, provided that evidence of such interest rate hedging and the applicable rate(s) involved have been disclosed to the Facility Agent in writing).

For the purposes of such calculation as at any date, it shall be assumed that:

- (i) (in the case of a Term Loan) the amount of such Term Loan shall not be reduced or repaid at any time during such period (other than repayment of such Loan in accordance with Clause 6 (*Repayment*));
- (ii) (in the case of a Facility B Loan) such Facility B Loan will remain outstanding throughout and will not be repaid at any time during such period (other than repayment on the Termination Date in respect of Facility B); and

- (iii) the rate of interest applicable to each Loan throughout such period shall be the rate of interest applicable to such Loan as at such date of calculation.

“**Interpolated Screen Rate**” means, in relation to LIBOR for any Loan or any Unpaid Sum and any Interest Period relating thereto, the rate (rounded to the same number of decimal places as the two Screen Rates referred to below) which results from interpolating on a linear basis between:

- (a) the rate per annum that is equal to the applicable Screen Rate (for the currency of such Loan or such Unpaid Sum) for the longest period (for which that Screen Rate is available) which is less than the length of such Interest Period; and
- (b) the rate per annum that is equal to the applicable Screen Rate (for the currency of such Loan or such Unpaid Sum) for the shortest period (for which that Screen Rate is available) which exceeds the length of such Interest Period,

each as of the Specified Time on the Quotation Day (for the currency of such Loan or Unpaid Sum and for such Interest Period).

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

“**Legal Opinion**” means any legal opinion delivered to the Facility Agent under Clause 4.1 (*Initial conditions precedent*) or Clause 27 (*Changes to the Obligors*).

“**Legal Reservations**” means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of a court, the principle of reasonableness and fairness, the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and secured creditors;
- (b) the time barring of claims under applicable limitation laws and defences of acquiescence, set-off or counterclaim (including the Limitation Acts) and the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void;
- (c) the principle that in certain circumstances security granted by way of fixed charge may be recharacterised as a floating charge or that security purported to be constituted as an assignment may be recharacterised as a charge;
- (d) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (e) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (f) the principle that the creation or purported creation of security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of such contract or agreement over which security has purportedly been created;
- (g) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and

- (h) any other general principles which are set out as qualifications or reservations (howsoever described) as to matters of law of general application in the Legal Opinions.

“**Lender**” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a “Lender” in accordance with Clause 2.2 (*Increase*), paragraph (e) of Clause 2.5 (*Incremental Facilities*) or Clause 25 (*Changes to the Lenders*),

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

“**Liabilities**” has the meaning given to that term in the Security Trust Agreement.

“**LIBOR**” means, in relation to any Loan or any Unpaid Sum and any Interest Period relating thereto, the rate per annum equal to:

- (a) the applicable Screen Rate as of the Specified Time on the Quotation Day for the currency of such Loan or such Unpaid Sum and for a period equal in length to such Interest Period;
- (b) (if a Screen Rate is available for the currency of such Loan or such Unpaid Sum but is not available for such Interest Period (**provided that** a Screen Rate is available for such currency for both a period longer and a period shorter than such Interest Period)) the Interpolated Screen Rate in respect of such Loan or such Unpaid Sum and such Interest Period; or
- (c) (if (i) no Screen Rate is available for the currency of such Loan or such Unpaid Sum and (ii) no Screen Rate is available for such currency for both a period longer and a period shorter than such Interest Period) the Reference Bank Rate in respect of such Loan or such Unpaid Sum and such Interest Period,

provided that (in each case) if that rate is below zero, LIBOR for such Loan or such Unpaid Sum and such Interest Period will be deemed to be zero.

“**Licence and Consultancy Fees**” means:

- (a) any licence fees (whether in respect of Intellectual Property or otherwise), consultancy fees, service fees or other fees from time to time payable by any Onshore Group Member (including any VIE Group Member) to or to the order of any Group Member (that is not a VIE Group Member); and
- (b) any amount from time to time payable by any Onshore Group Member (including any VIE Group Member) to or to the order of any Group Member (that is not a VIE Group Member) under or pursuant to the Licence Documents.

“**Licence Documents**” means:

- (a) the consulting service agreement dated 28 June 2019 between Rise HK and the WFOE Guarantor;
- (b) the license agreement dated 5 October 2011 between the Cayman Guarantor and the WFOE Guarantor;

- (c) the license agreement dated 28 June 2019 between the WFOE Guarantor and the VIE Entity;
- (d) the service agreement dated 28 June 2019 between the VIE Entity and the WFOE Guarantor; and
- (e) any other agreement or contract pursuant to which any Group Member (that is not a VIE Group Member) grants any licence or provides any service to any Onshore Group Member (including any VIE Group Member) or is entitled to receive any licence fee, consultancy fee, service fee or other fee or payment in connection with any such licence or service,

including (in each case and for the avoidance of doubt) any renewal thereof.

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

“**Listco**” means RISE Education Cayman Ltd, an exempted company incorporated with limited liability under the laws of the Cayman Islands with registered number 279511 and registered office at Maples Corporate Services Limited, P.O. Box 309, Uglan House, Grand Cayman KY1-1104, Cayman Islands.

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

“**Loan**” means an Initial Facility Loan or an Incremental Facility Loan (and any reference to a Loan (or the Loan) under or in respect of a Facility shall be a reference to any Loan (or the Loan) under or in respect of such Facility).

“**Majority Lenders**” means, at any time:

- (a) (for the purposes of paragraph (a) of Clause 37.2 (*Required consents*) in the context of a waiver in relation to a proposed Utilisation of Facility B (other than the Initial Utilisation Date) of the condition in Clause 4.2 (*Further conditions precedent*)), a Lender or Lenders whose Facility B Commitments aggregate more than $66\frac{2}{3}$ per cent. of the Total Facility B Commitments; and
- (b) (in any other case), a Lender or Lenders whose Commitments aggregate more than $66\frac{2}{3}$ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $66\frac{2}{3}$ per cent. of the Total Commitments immediately prior to that reduction).

“Margin” means, in relation to an Initial Facility Loan or any Unpaid Sum relating to an Initial Facility, 3.00% per annum, **provided that** if:

- (a) no Event of Default is continuing;
- (b) a period of at least six (6) Months has expired since the Initial Utilisation Date;
- (c) Leverage in respect of the then Most Recent Relevant Period is within a range set out below; and
- (d) the last day of such Most Recent Relevant Period falls on a date after the Initial Utilisation Date,

then the Margin for each Initial Facility Loan will be the percentage per annum set out below in the column opposite that range:

<u>Leverage</u>	<u>Margin (% per annum)</u>
Greater than or equal to 3.00:1	3.00
Less than 3.00:1 but greater than or equal to 2.00:1	2.50
Less than 2.00:1	2.00

provided further that:

- (i) (in the case of the Facility A Loan) any increase or decrease in the Margin for the Facility A Loan shall take effect on the date which is the first day of the next Interest Period for the Facility A Loan after receipt by the Facility Agent of the Compliance Certificate for that Most Recent Relevant Period pursuant to Clause 21.2 (*Provision and contents of Compliance Certificate*);
- (ii) (in the case of a Facility B Loan) any increase or decrease in the Margin shall take effect only in respect any Facility B Loan which Utilisation Date (including the Utilisation Date for any Rollover Loan made pursuant to automatic rollover) occurs after receipt by the Facility Agent of the Compliance Certificate for that Most Recent Relevant Period pursuant to Clause 21.2 (*Provision and contents of Compliance Certificate*);
- (iii) while an Event of Default is continuing, the Margin for any Initial Facility Loan shall be the highest percentage per annum set out above for such Initial Facility Loan; and
- (iv) for the purpose of determining the Margin, Leverage and Relevant Period shall be determined in accordance with Clause 22.1 (*Financial definitions*).

“**Material Adverse Effect**” means a material adverse effect (after taking into account all resources, insurance, indemnity, and assurance available to the Group and the timing and likelihood of receipt and recovery of the foregoing) on:

- (a) the business, assets or financial condition of the Group (taken as a whole);
- (b) the ability of the Obligors (taken as a whole) to perform their payment obligations under any Finance Document; or

- (c) subject to the applicable Legal Reservations and any Perfection Requirements (that are not overdue), the validity or the enforceability of any Finance Document (in each case, in accordance with its terms) in a manner which would be materially adverse to the interests of the relevant Finance Parties under the Finance Documents taken as a whole, provided that, in each case under this paragraph (c), if capable of remedy, the applicable event or circumstance giving rise to such material adverse effect is not remedied within 20 Business Days of an Obligor first becoming aware of such event or circumstance or being given notice of such event or circumstance by the Facility Agent.

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

- (a) (subject to paragraph (c) below) if such 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 in that calendar month in which that period is to end;
- (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 in which that period is to end; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

“**Material Event of Default**” means any Event of Default under Clause 24.1 (*Non-payment*), Clause 24.6 (*Insolvency*), Clause 24.7 (*Insolvency proceedings*) or Clause 24.8 (*Creditors process*).

“**Most Recent Relevant Period**” means, at any time, the most recently elapsed Relevant Period (as at such time), in respect of which the consolidated financial statements of the Group for a period ending on the last day of such Relevant Period, and the accompanying Compliance Certificate, have been delivered to the Facility Agent, **provided that** if such time falls prior to the time when the first set of the consolidated financial statements of the Group and the accompanying Compliance Certificate are delivered to the Facility Agent, the “Most Recent Relevant Period” at such time shall be deemed to be the Relevant Period ending on 30 September 2020.

“**Nei Bao Wai Dai Transaction**” means any transaction involving any guarantee and/or security where (a) the provider of such guarantor or security is incorporated or organised in the PRC and (b) any debtor (including any person in respect of whose obligations or liabilities such guarantee or security is provided) or any creditor (including any person for whose benefit such guarantee or security is provided) in such transaction is incorporated or organised outside the PRC.

“**New Lender**” has the meaning given to that term in Clause 25.1 (*Assignments and transfers by the Lenders*).

“**New Shareholder Injections**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Non-Consenting Lender**” has the meaning given to that term in Clause 37.6 (*Replacement of Lender*).

“**Notifiable Debt Purchase Transaction**” has the meaning given to that term in paragraph (b) of Clause 26.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*).

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

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

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

“**Offshore Group**” means the Offshore Group Members.

“**Offshore Group Member**” means a Group Member which is incorporated or established outside of the PRC.

“**Onshore Distributions**” means (without duplication):

- (a) any Distribution by any or all of the Onshore Group Members paid or made by one or more of the Onshore Group Members to or in favour of any or all of the other Transaction Obligors, the Offshore Group Members and the holders of Equity Interests in any or all of the Onshore Group Members; and
- (b) any amount paid or made available by any or all of the Onshore Group Members to or in favour of any or all of the Transaction Obligors, the Offshore Group Members and/or the holders of Equity Interests in any or all of the Onshore Group Members by way of loans, advances, cash pooling and/or other equivalent means.

“**Onshore Group**” means the Onshore Group Members.

“**Onshore Group Member**” means a Group Member which is established or incorporated in the PRC.

“**Onshore Guarantors**” means the WFOE Guarantor and the VIE Entity (each an “**Onshore Guarantor**”).

“**Original Financial Statements**” means:

- (a) the unaudited consolidated financial statements of the Listco for the Financial Quarter ended 30 September 2020;
- (b) the unaudited consolidated financial statements of the Group for the Financial Quarter ended 30 September 2020;
- (c) the unaudited combined consolidated financial statements of the WFOE Guarantor for the Financial Quarter ended 30 September 2020; and
- (d) the financial statements (if any) of any Additional Guarantor delivered pursuant to Part II of Schedule 2 (*Conditions Precedent*).

“**Original Jurisdiction**” means:

- (a) in relation to each of the Parent, the Borrower and the Cayman Guarantor, the Cayman Islands;
- (b) in relation to each of Rise HK, Edge Franchising and Edge Online, Hong Kong;
- (c) in relation to each of the WFOE Guarantor and the VIE Entity, the PRC;
- (d) in relation to an Additional Guarantor, the jurisdiction under whose laws that Additional Guarantor is incorporated or established as at the date on which that Additional Guarantor becomes party hereto as a Guarantor; or
- (e) in relation to any other Transaction Obligor, the jurisdiction under whose laws that Transaction Obligor is incorporated or established as at the date on which that Transaction Obligor becomes a Transaction Obligor.

“**Ownership Percentage**” means, at any time, (a) in relation to any Group Member (that is not the Borrower or a VIE Group Member), the aggregate direct and indirect equity interest (expressed as a percentage) of the Borrower in such Group Member, (b) in relation to a VIE Group Member, the VIE Economic Interest Percentage (multiplied, in the case of a VIE Group Member that is not the VIE Entity, by the aggregate direct and indirect equity interest (expressed as a percentage) of the VIE Entity in such VIE Group Member) or (c) in relation to the Borrower, 100%.

“**Parent**” means RISE Education Cayman III Ltd (formerly known as Bain Capital Rise Education III Cayman Limited), an exempted company incorporated with limited liability under the laws of the Cayman Islands with registered number 279811 and registered office at Maples Corporate Services Limited, P.O. Box 309, Uglund House, Grand Cayman KY1-1104, Cayman Islands.

“**Parent Loan**” means any loan made by the Parent to the Borrower and outstanding from the Borrower to the Parent from time to time, **provided that** such loan is subordinated to the Secured Obligations pursuant to the Security Trust Agreement.

“**Participant**” means any person to whom a Lender has assigned, transferred or disposed of all or any of its obligations, economic interest or other interest under any of the Finance Documents by way of Participation.

“**Participation**” means, in relation to a person, a transaction where such person:

- (a) enters into any sub-participation in respect of;
- (b) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of; or
- (c) enters into a credit derivative (including a credit default swap or credit linked note), total return swap in respect of,

any Commitment in respect of any Facility (or any commitment represented thereby) or any amount outstanding under any Finance Document.

“**Participation Agreement**” means each agreement or letter between a Lender and a Participant under which the Lender has assigned, transferred or disposed of all or any of its obligations, economic interest or other interest under any of the Finance Documents, directly or indirectly, whether by Participation or in any other way but excluding any assignment, transfer or novation of any of a Lender’s Commitment in respect of any Facility and/or rights and/or obligations under any Finance Document in accordance with Clause 25 (*Changes to the Lenders*).

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

“**PBOC**” means the central bank of the People’s Republic of China (中国人民银行) (including its successors).

“**Perfection Requirements**” means the making of the appropriate registrations, filings, notifications and/or other perfection actions and steps required to be made or taken in any jurisdiction pursuant to applicable law in order to perfect the Transaction Security Documents and/or the Security created thereunder.

“**Permitted Acquisition**” means:

- (a) an acquisition by a Group Member of an asset sold, leased, transferred or otherwise disposed of by another Group Member in circumstances constituting a Permitted Disposal or Permitted Transaction;
- (b) the making or purchase of any Cash Equivalent Investments;
- (c) the acquisition by a Group Member of the issued share capital of a limited liability company (including by way of formation) which has not traded prior to the date of such acquisition, provided that (i) such limited liability company becomes wholly-owned by Group Member upon such acquisition and (ii) the aggregate consideration for such acquisition shall be nominal;
- (d) an acquisition by a Group Member of (1) the issued voting share capital or other applicable ownership interests of a person (incorporated with limited liability) following which more than 50% of the aggregate voting share capital or other applicable ownership interests in such person is or are beneficially owned by such Group Member or (2) more than 50% of the beneficial ownership of any business or undertaking carried on as a going concern (such person referred to in (1) or such business or undertaking referred to in (2) being the “**Future Acquisition Target**”), in each case subject to the following conditions:
 - (i) no Event of Default is continuing or would occur as a result of such acquisition, as at the closing date of such acquisition;
 - (ii) the Future Acquisition Target and its Subsidiaries (if any) (taken as a whole):
 - (A) is engaged in a business the general nature of which is substantially the same as or complementary to that carried on by the Group or a material part of the Group; and
 - (B) was not a Group Member and was not owned by a Group Member prior to such acquisition;
 - (iii) (in the case of (2) above) such acquisition is made by a Group Member that is set up (pursuant to paragraph (c)) specifically for the purpose of such acquisition and does not have any assets (other than such interest in the Future Acquisition Target to be acquired) (a “**Future Acquisition SPV**”);

- (iv) the earnings before Tax, depreciation and amortisation of such Future Acquisition Target (calculated on the same basis as EBITDA (applying *mutatis mutandis*, as if any reference in the definition of EBITDA and/or any related definition to (A) the Borrower were a reference to such Future Acquisition Target or (B) the Group were a reference to such Future Acquisition Target and its Subsidiaries (if any)), and (in the case of a Future Acquisition Target that is a business or undertaking) as if such Future Acquisition Target constituted a separate legal entity)) (the “**Target EBITDA**” in respect of such Future Acquisition Target) for the 12-month period immediately prior to such acquisition are positive, or, if such Target EBITDA in respect of such Future Acquisition Target is negative, (X) it is not negative by more than U.S.\$3,000,000 (or its equivalent) or (Y) such acquisition is entirely funded from Acceptable Funding Sources that have not been applied towards other purposes (except for being injected or made available to the applicable Group Member) and the directors of the Borrower are of the reasonable opinion that the Target EBITDA in respect of such Future Acquisition Target will, within the 18-month period following such acquisition, be positive;
- (v) the Borrower would have remained in compliance with its obligations under Clause 22.2 (*Financial condition*) if the requirements thereunder were re-calculated on a *pro forma* basis for the Most Recent Relevant Period ending immediately prior to the closing date of such acquisition and, for the purposes of such re-calculation, consolidating the financial statements of such Future Acquisition Target (consolidated if it has Subsidiaries and (in the case where such Future Acquisition Target is a business or undertaking) prepared as if such Future Acquisition Target constituted a separate legal entity) with the consolidated financial statements of the Group for such Most Recent Relevant Period on a *pro forma* basis and as if (A) the Total Purchase Price in respect of such acquisition had been paid and incurred and such acquisition had been consummated at the start of that Most Recent Relevant Period and (B) (if that Most Recent Relevant Period ends prior to the First Test Date) the financial covenants under Clause 22.2 (*Financial condition*) applicable to that Most Recent Relevant Period were the financial covenants under Clause 22.2 (*Financial condition*) applicable to the First Test Date;
- (vi) if the Total Purchase Price of that acquisition (except to the extent funded from Acceptable Funding Sources (that do not, for the avoidance of doubt, include any proceeds of any Permitted Financial Indebtedness or any Incremental Facility)) is greater than an amount equal to 30 per cent. of EBITDA of the Group (excluding, for the avoidance of doubt, the Target EBITDA in respect of such Future Acquisition Target and Relevant Synergies) for the Most Recent Relevant Period ending immediately prior to the closing date of such acquisition, (A) formal due diligence reports (on a non-reliance basis) in respect of such acquisition and/or such Future Acquisition Target (and/or its Subsidiaries) and (B) copies of board papers (if any) of any Group Member prepared in connection with such acquisition are delivered to the Facility Agent (provided that, irrespective of the Total Purchase Price of that acquisition, if any formal due diligence report is actually prepared in respect of that acquisition, copies of such due diligence report (on a non-reliance basis) shall be delivered to the Facility Agent);

- (vii) if such Future Acquisition Target or Future Acquisition SPV is incorporated or established outside the PRC, either (A) such Future Acquisition Target or Future Acquisition SPV and each of its Subsidiaries which are incorporated or established outside the PRC shall become party to this Agreement as an Additional Guarantor in accordance with Clause 27.2 (*Additional Guarantors*) or (B) the Group Member making such acquisition (in the case of (1) above) or each of the holder(s) and beneficial owner(s) of Equity Interest in such Future Acquisition SPV (in the case of (2) above) is the Cayman Guarantor or a HK Guarantor or a Subsidiary of the Cayman Guarantor or a HK Guarantor;
- (viii) if such Future Acquisition Target or Future Acquisition SPV is incorporated or established in the PRC, the Group Member making such acquisition (in the case of (1) above) or each of the holder(s) and beneficial owner(s) of Equity Interest in such Future Acquisition SPV (in the case of (2) above) is the Cayman Guarantor or a HK Guarantor or a Subsidiary of the Cayman Guarantor or a HK Guarantor;
- (ix) (unless (i) the Group Member making such acquisition (in the case of (1) above) or each of the holder(s) and beneficial owner(s) of Equity Interest in such Future Acquisition SPV (in the case of (2) above) is the Cayman Guarantor or a HK Guarantor or a Subsidiary of the Cayman Guarantor or a HK Guarantor and (ii) no Additional Guarantor Notice is or will be given in respect of such Future Acquisition Target or any of its Subsidiaries) less than 50% of the assets of such Future Acquisition Target and its Subsidiaries (if any, on a consolidated basis) comprise minority interests in any other entity or asset; and
- (x) the Borrower shall deliver to the Facility Agent not later than 15 Business Days after the closing date of that acquisition a certificate signed by a director of the Borrower in form and substance satisfactory to the Facility Agent confirming or demonstrating (with calculations giving reasonable detail) that each of the conditions set out in paragraphs (d)(iv) and (d)(v) have been met and to which is attached a copy of the latest audited accounts of such Future Acquisition Target or, if such accounts are not available, evidence (in the form of financial due diligence report or similar materials prepared by independent third parties on a non-reliance basis) demonstrating the amounts relating to such Future Acquisition Target and/or its Subsidiaries used in the computations under paragraphs (d)(iv) and (d)(v) (in the case where such Future Acquisition Target is a business or undertaking, as if such Future Acquisition Target had constituted a separate legal entity);
- (e) an acquisition by the Parent of ordinary shares in the Borrower pursuant to a Permitted Share Issue by the Borrower;
- (f) an acquisition by a Group Member of Equity Interests in a Group Member (other than the Borrower) pursuant to a Permitted Share Issue by such latter-mentioned Group Member;
- (g) an acquisition by the WFOE Guarantor of Equity Interests in the VIE Entity pursuant to the terms of the VIE Contracts; and/or
- (h) an acquisition with the prior consent of the Majority Lenders.

“**Permitted Disposal**” means any sale, lease, licence, transfer or other disposal:

- (a) of assets by any Group Member in its ordinary course of day-to-day business;

- (b) of assets (other than any Equity Interests, businesses, Real Property, Intellectual Property, any right under any VIE Contract or any interest in any of the foregoing) by any Group Member in exchange for other assets comparable or superior as to type, value or quality;
- (c) of surplus, obsolete or redundant assets (other than any Equity Interests, businesses or undertakings, Real Property, Intellectual Property, any right under any VIE Contract or any interest in any of the foregoing) by any Group Member for cash;
- (d) of cash not otherwise prohibited under the Finance Documents;
- (e) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
- (f) constituted by the making of any Permitted Loan or Permitted Distribution or arising as the result of any Permitted Security;
- (g) that is made with the prior consent of the Majority Lenders;
- (h) of Equity Interests in the VIE Entity to the WFOE Guarantor pursuant to the terms of the VIE Contracts;
- (i) of any asset by a Group Member (the “**Disposing Company**”) to another Group Member (the “**Acquiring Company**”), **provided that**:
 - (i) if the Disposing Company had given Transaction Security over that asset, the Acquiring Company gives equivalent Transaction Security over that asset;
 - (ii) (A) if the Disposing Company is not a Future Target Group Member, the Acquiring Company is not a Future Target Group Member and (B) if the Disposing Company is a Future Target Group Member, the Acquiring Company is a Future Target Group Member;
 - (iii) if the Disposing Company is not a VIE Group Member, the Acquiring Company is not a VIE Group Member; and
 - (iv) the Ownership Percentage in respect of the Acquiring Company is not less than the Ownership Percentage in respect of the Disposing Company;
- (j) constituted by (i) any licence of Intellectual Property in the ordinary course of day-to-day business, (ii) any licence of Intellectual Property by (A) a Group Member (that is not a VIE Group Member) in favour of the WFOE Guarantor or a VIE Group Member pursuant to any VIE Contract or (B) a VIE Group Member in favour of another VIE Group Member pursuant to any VIE Contract or (iii) termination of any licence of Intellectual Property no longer required for the Group’s business;
- (k) constituted by a disposal of assets by an Onshore Group Member pursuant to a sale and leaseback or similar arrangement to facilitate a Finance Lease (in respect of such assets) of such Onshore Group Member permitted under paragraph (d) of the definition of “Permitted Financial Indebtedness” where such assets disposed of are leased or acquired by an Onshore Group Member pursuant to such Finance Lease;
- (l) of assets which are seized or nationalised or any disposal of any asset made to comply with an order of any Governmental Authority or any applicable law or regulation, **provided that**, in each case, such seizure, nationalisation or disposal would not constitute or give rise to any event or circumstance set out in Clause 24.8 (*Creditors’ process*) and/or Clause 24.14 (*Expropriation*);

- (m) constituted by any close out or other disposal of an interest in any hedging transaction effected (if applicable), in each case, in compliance with the Security Trust Agreement; and/or
- (n) of assets by any Onshore Group Member (that is not permitted by any of paragraphs (a) to (m) above, and that does not constitute any sale, lease, licence, transfer or other disposal (i) by a Group Member (that is not a Future Target Group Member) to a Future Target Group Member or (ii) by a Future Target Group Member to a Group Member that is not a Future Target Group Member) for cash where the higher of the market value and consideration (net of applicable costs and Taxes) receivable in respect of such sale, lease, licence, transfer or other disposal (when aggregated with the higher (in each case) of the market value and consideration (net of applicable costs and Taxes) receivable for any and all other sales, leases, licences, transfers and/or other disposals by any or all Onshore Group Members made on or after the date of this Agreement and not falling within any of paragraphs (a) to (m) above) does not exceed U.S.\$8,000,000 (or its equivalent),

but notwithstanding any of the foregoing, none of the assets that is subject to any such sale, lease, licence, transfer or other disposal (except any sale, lease, licence, transfer or other disposal made pursuant to paragraph (i)) shall include any of the following (or any right, title or interest to or in any of the following):

- (A) any Equity Interest in any Transaction Obligor or any Group Member (other than a Future Target Group Member) or any Intellectual Property (except, in the case of Intellectual Property, for any disposal falling within paragraph (j));
- (B) any rights in respect of, or any amount standing to the credit of the DSRA (excluding any application of any such amount in accordance with the provisions of the Finance Documents); or
- (C) any right to receive any Onshore Distributions or any Licence and Consultancy Fees or any right or claim under, or the proceeds of any right or claim under, any VIE Contract.

“**Permitted Distribution**” means the making of a Distribution:

- (a) by a Group Member (other than the Borrower and the VIE Entity) to the holders of equity interests in such Group Member in cash, **provided that** the amount of any such Distribution to any such holder (that is not a Group Member that is wholly-owned directly or indirectly by the Borrower) does not exceed such holder’s proportionate share of such equity interests in the Group Member making such Distribution;
- (b) by the Parent to its shareholders, provided that such Distribution is not in breach of the Security Trust Agreement;
- (c) by a VIE Group Member in favour of another Group Member (that is not a VIE Group Member and that is not a Future Target Group Member) pursuant to the terms of the applicable VIE Contracts;

- (d) by a Group Member to any Holding Company of any Group Member for (i) the payment of any administrative costs and office expenses, directors remuneration and fees, professional fees or regulatory costs (in each case relating to any Group Member or any such Holding Company) or (ii) the payment of any Taxes incurred and payable by such Group Member or such Holding Company, provided that (in each case) the aggregate amount of any and all Distributions made or to be made by any or all Group Members pursuant to this paragraph (d) shall not exceed U.S.\$800,000 (or its equivalent) in aggregate in any Financial Year of the Borrower;
- (e) in cash by the Borrower to the Parent or a Holding Company of the Parent from distributable profits of the Borrower after the expiry of 12 months after the Initial Utilisation Date, and subject to the conditions that (i) no Event of Default is continuing at the time of declaration of such Distribution or would result from that Distribution being made, (ii) the aggregate amount of such Distributions in any Financial Year (“**Relevant Financial Year**”) shall not exceed the amount equal to (A) the Consolidated After-Tax Net Income for the Financial Year immediately prior to such Relevant Financial Year less (B) a percentage of the Consolidated After-Tax Net Income for that immediately prior Financial Year (as set out in the table below beside the Leverage for the Relevant Period ending on the last day of such immediately prior Financial Year) (the amount under (B) being the “**Required Prepayment Amount**”) and (iii) such Required Prepayment Amount has been applied towards voluntary prepayment of the Loans in accordance with Clause 7.3 (*Voluntary prepayment*) during such Relevant Financial Year and no later than the time of such Distribution:

<u>Leverage</u>	Percentage of Consolidated After-Tax Net Income to be applied in voluntary prepayment
Equal to or less than 2.0:1	0%
Greater than 2.0:1 but equal to or less than 3.0:1	25%
Greater than 3.0:1	50%

- (f) constituted by the payment in cash by any Group Member (or a Holding Company of a Group Member) to the Sponsor of a management fee per annum plus any Indirect Tax thereon (if applicable) plus reasonable expenses incurred by the Sponsor in connection with the Group (collectively “**Management Fees**”) not exceeding US\$1,000,000 (or its equivalent) in aggregate in any Financial Year; and/or
- (g) with the prior written consent of the Majority Lenders.

“**Permitted Financial Indebtedness**” means:

- (a) any Financial Indebtedness:
- (i) arising under any of the Finance Documents (as defined in the Existing Facilities Agreement), **provided that** such Financial Indebtedness is discharged in full on or prior to the Initial Utilisation Date;

(ii)

(A) arising under any Finance Document or a Parent Loan; or

(B) constituting New Shareholder Injections,

in each case, subject to the terms of this Agreement and the Security Trust Agreement;

(b) any Financial Indebtedness:

(i) arising under a Permitted Loan (excluding paragraph (b) of the definition of “Permitted Loan”);

(ii) arising under a Permitted Guarantee (excluding paragraph (e) of the definition of “Permitted Guarantee”); or

(iii) constituted by any Permitted Hedging Transaction;

(c) any Financial Indebtedness of any person that becomes a Group Member pursuant to a Future Acquisition, which Financial Indebtedness is incurred under arrangements in existence at the date of such Permitted Acquisition, but not incurred or increased (other than pursuant to the accrual of interest) or having its maturity date extended in contemplation of, or since, that Permitted Acquisition, and outstanding only for a period of not more than three months following the date of such Permitted Acquisition, unless such Financial Indebtedness is permitted to remain outstanding pursuant to another paragraph of this definition;

(d) any Indebtedness for Borrowed Money of any Onshore Group Member (owing to a person that is not a Group Member) under finance or capital leases by such Onshore Group Member of vehicles, plant, equipment or computers, and any renewals and/or replacements thereof (each in the form of a finance or capital lease) by such Onshore Group Member, **provided that** the aggregate outstanding capital value and/or amount of any and all such leases (including any renewals and/or replacements thereof) by Onshore Group Members does not exceed U.S.\$1,600,000 (or its equivalent in other currencies) at any time;

(e) any Indebtedness for Borrowed Money of any Group Member (other than the Borrower) (i) constituting any earn out or deferred consideration payable by such Group Member to the seller in respect of a Permitted Acquisition by such Group Member (where payment of such earn out or deferred consideration is based on performance of the applicable business (the subject of such Permitted Acquisition)) so long as such earn out or such deferred consideration is permitted (and included in the calculation of the Total Purchase Price in respect of such Permitted Acquisition) pursuant to, and such Permitted Acquisition falls within, paragraph (d) of the definition of “Permitted Acquisition” or (ii) arising in connection with any other deferred consideration in connection with any Permitted Acquisition by such Group Member, **provided that** such deferral is not made or entered into for the purpose of raising Financial Indebtedness and such deferral is for less than 120 days;

- (f) any Indebtedness for Borrowed Money of any Onshore Group Member (owing to a person that is not a Group Member), **provided that** the aggregate outstanding principal amount of such Indebtedness for Borrowed Money when aggregated with the aggregate outstanding principal amount of any and all other Indebtedness for Borrowed Money of any or all Onshore Group Members (other than any permitted under any of paragraphs (a) to (e) above), (i) does not exceed U.S.\$8,000,000 (or its equivalent in other currencies) at any time and (ii) the Borrower would have remained in compliance with its obligations under Clause 22.2 (*Financial condition*) if the requirements thereunder were re-calculated on a *pro forma* basis for the Most Recent Relevant Period (as at the incurrence of such Indebtedness for Borrowed Money) taking into account the incurrence of such Indebtedness for Borrowed Money (as if (A) such Indebtedness for Borrowed Money were incurred as at the commencement of and remained outstanding throughout such Most Recent Relevant Period and (B) (if that Most Recent Relevant Period ends prior to the First Test Date) the financial covenants under Clause 22.2 (*Financial condition*) applicable to that Most Recent Relevant Period were the financial covenants under Clause 22.2 (*Financial condition*) applicable to the First Test Date); and/or
- (g) any Financial Indebtedness incurred with the prior written consent of the Majority Lender.

“**Permitted Guarantee**” means:

- (a) any guarantee arising under:
- (i) any of the Finance Documents; or
 - (ii) any of the Finance Documents (as defined in the Existing Facilities Agreement) **provided that** all of the Financial Indebtedness thereunder is discharged in full on or prior to the Initial Utilisation Date;
- (b) any guarantee by any Group Member constituted by any performance or similar bond guaranteeing the performance by such Group Member (or counter-indemnifying any financial institution which has guaranteed such performance by such Group Member) under any contract entered into by such Group Member in the ordinary course of day-to-day business and not relating to Financial Indebtedness, provided that the maximum aggregate liabilities (actual or contingent) of any and all Group Members under any or all such guarantees and counter-indemnities do not at any time exceed U.S.\$1,600,000 (or its equivalent in other currencies);
- (c) the endorsement of negotiable instruments by any Onshore Group Member in the ordinary course of its day-to-day business;
- (d) a guarantee by any Onshore Group Member (the “**Guarantor Company**”) in respect of obligations or Financial Indebtedness (which obligations or Financial Indebtedness are permitted to subsist pursuant to the terms of this Agreement) of an Onshore Group Member (the “**Guaranteed Company**”) (including any performance or similar bond given by the Guarantor Company guaranteeing performance by the Guaranteed Company under any contract), but **provided that** the maximum aggregate liabilities (actual or contingent) of the Guarantor Company under such guarantee, when aggregated with the maximum aggregate liabilities (actual or contingent) of any and all Group Members under any or all other guarantees falling within this paragraph (d), do not exceed U.S.\$8,000,000 (or its equivalent in other currencies) at any time;
- (e) any guarantee constituted by Permitted Financial Indebtedness (other than paragraph (b)(ii) of the definition of “Permitted Financial Indebtedness”);
- (f) any guarantee granted with the prior written consent or approval of the Majority Lenders;

- (g) any customary indemnity given by a Group Member in favour of the applicable hedging counterparty in respect of a Permitted Hedging Transaction entered into by such Group Member;
- (h) any indemnity (not constituting Financial Indebtedness) given by a Group Member (other than the Borrower) in the ordinary course of the documentation of an acquisition or disposal transaction by such Group Member which is a Permitted Acquisition or Permitted Disposal which indemnity is in a customary form and subject to customary limitations;
- (i) customary indemnities (not constituting Financial Indebtedness) given by a Group Member in favour of directors and officers of such Group Member in their capacity as such and in connection with the performance of their duties to the Group;
- (j) customary indemnities (not constituting Financial Indebtedness) to (i) professional advisers and consultants under their standard terms of business or (ii) other service providers subject to customary limitations;
- (k) a guarantee by a Group Member of another Group Member (that is incorporated in the same jurisdiction or Tax resident in the same jurisdiction as such first-mentioned Group Member) mandatorily arising under Tax or corporate legislation and not as a result of any default or omission by any Group Member;
- (l) customary indemnities (not constituting Financial Indebtedness) given by a Group Member in mandate, engagement and commitment letters entered into in respect of Permitted Financial Indebtedness to be incurred by such Group Member;
- (m) any guarantee granted by any person that becomes a Group Member (pursuant to a Permitted Acquisition) after the Initial Utilisation Date, where that guarantee:
 - (i) is granted prior to the date of that Permitted Acquisition;
 - (ii) is not granted, and the aggregate liability thereunder is not increased, and its maturity or expiry date (if any) is not extended, in contemplation of, or since, that Permitted Acquisition; and
 - (iii) is released within three months of the date of that Permitted Acquisition (unless such guarantee is permitted to subsist pursuant to another paragraph of this definition); or
- (n) any customary indemnities given by a Group Member in favour of its landlords pursuant to the terms of the applicable lease of Real Property entered into by such Group Member on arm's length terms and in the ordinary course of business and not relating to Financial Indebtedness;
- (o) any guarantee or indemnity given by any Group Member in favour of another Group Member pursuant to any VIE Contract; and/or
- (p) any guarantee granted with the prior written consent or approval of the Majority Lenders,

provided that (in each case) none of the guarantees or indemnities given by any Group Member and falling within any of paragraphs (a) to (p) above comprises or includes any guarantee or indemnity given by any Group Member (that is not a Future Target Group Member) in respect of any Future Target Group Member or any obligations or liabilities of any Future Target Group Member.

“**Permitted Hedging Transaction**” means any Treasury Transaction:

- (a) contemplated by the Hedging Principles;
- (b) entered into in the ordinary course of business of a Group Member (other than the Borrower) for the purpose of hedging anticipated exposures of such Group Member and not for speculative purposes; and/or
- (c) approved by the Majority Lenders.

“**Permitted Loan**” means:

- (a) any trade credit extended by a Group Member to its customers, and any advance payment by a Group Member (for goods and services supplied to it) to its suppliers, (in each case) on normal commercial terms and in the ordinary course of its day-to-day business;
- (b) any loan constituted by the making available of Financial Indebtedness by a Group Member to a Group Member, which Financial Indebtedness constitutes Permitted Financial Indebtedness (excluding any Financial Indebtedness falling within paragraph (b)(i) of the definition of “Permitted Financial Indebtedness”);
- (c) a loan or credit by a Group Member (the “**Creditor Company**”) to another Group Member (the “**Debtor Company**”), but **provided that** (i) (if the Creditor Company is a Relevant Obligor) the Debtor Company shall be a Relevant Obligor, (ii) (if the Creditor Company is not a Future Target Group Member) the Debtor Company is not a Future Target Group Member, (iii) (if the Creditor Company is an Onshore Group Member) the Debtor Company is an Onshore Group Member and (iv) the aggregate outstanding principal amount of such loan or credit, when aggregated with the outstanding principal amount of any and all such other loans and credits by any or all Group Members falling within this paragraph (c), does not exceed U.S.\$8,000,000 (or its equivalent in other currencies) at any time;
- (d) any Parent Loan;
- (e) a loan made by the Borrower to the Parent to the extent that the amount so lent would have been a Permitted Distribution if distributed by way of dividend, **provided that** the making of such loan shall be deemed to constitute a dividend by the Borrower to the Parent for the purposes of Clause 23.16 (*Dividends and share redemption*) and the definition of “Permitted Distribution”;
- (f) any loan made by the Parent to its shareholders, **provided that** such Distribution is not in breach of the Security Trust Agreement;
- (g) any loan or credit constituted by any deferred consideration payable by a purchaser in respect of any Permitted Disposal by a Group Member to such purchaser made on arm’s length terms;
- (h) any loan or credit constituted by the VIE Nominees Loan(s) or any Permitted Transaction;

- (i) any loan made by a Group Member to an employee or director of a Group Member, **provided that** (i) the amount of that loan when aggregated with the amount of all other loans by any or all of Group Members under this paragraph (i) does not exceed U.S.\$800,000 (or its equivalent in other currencies) at any time and (ii) no such loan may be made by a Group Member (that is not a Future Target Group Member) to any employee or director of a Future Target Group Member (but this shall not prevent any loan to any employee or director of a Future Target Group Member that is also an employee or a director of a Group Member that is not a Future Target Group Member);
- (j) a loan or credit owing by a Group Member (the “**Group Cash Debtor**”) to another Group Member (the “**Group Cash Creditor**”) constituted by cash pooling arrangements entered into between such Group Members, **provided that**:
 - (i) (A) if the Group Cash Creditor is not a Future Target Group Member, the Group Cash Debtor is not a Future Target Group Member and (B) if the Group Cash Creditor is a Future Target Group Member, the Group Cash Debtor is a Future Target Group Member;
 - (ii) if the Group Cash Creditor is not a VIE Group Member, the Group Cash Debtor is not a VIE Group Member; and
 - (iii) the Ownership Percentage in respect of the Group Cash Debtor is not less than the Ownership Percentage in respect of the Group Cash Creditor;
- (k) a loan or credit made by a Group Member to any of its franchisees, **provided that** the amount of that loan when aggregated with the amount of all other loans by any or all of Group Members under this paragraph (l) does not exceed U.S.\$8,000,000 (or its equivalent) at any time; and/or
- (l) any loan which is approved by the Majority Lenders.

“**Permitted Security**” means:

- (a) (i) any Transaction Security, (ii) any Existing Security (other than the Existing PRC Security) **provided that** such Existing Security is released by no later than the Initial Utilisation Date, and (iii) any Existing PRC Security **provided that** such Existing PRC Security is released by no later than the Initial Utilisation Date and de-registered with the applicable governmental authority of PRC by no later than the time specified in Clause 23.29 (*Conditions subsequent*);
- (b) any lien arising by operation of law and in the ordinary course of day-to-day business and not as a result of any default or omission by any Transaction Obligor or any Group Member;
- (c) any netting or set-off arrangement entered into by any Group Member in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of Group Members but only so long as:
 - (i) such arrangement does not permit credit balances or rights of:
 - (A) any Future Target Group Member to be netted or set off against debit balances or liabilities of any Group Member (that is not a Future Target Group Member);
 - (B) any Group Member (that is not a VIE Group Member) to be netted or set off against debit balances or liabilities of any VIE Group Member; or

- (C) any Group Member to be netted or set off against debit balances or liabilities of any other Group Member the Ownership Percentage in relation to which is less than the Ownership Percentage in relation to such first-mentioned Group Member; and
- (ii) such arrangement does not give rise to other Security or Quasi-Security over the assets of:
 - (A) any Group Member (that is not a Future Target Group Member) in support of liabilities of any Future Target Group Member;
 - (B) any Group Member (that is not a VIE Group Member) in support of liabilities of any VIE Group Member; or
 - (C) any Group Member in support of liabilities of any other Group Member the Ownership Percentage in relation to which is less than the Ownership Percentage in relation to such first-mentioned Group Member;
- (d) any payment or close out netting or set-off arrangement pursuant to any Permitted Hedging Transaction entered into by a Group Member, **provided that** the requirements under paragraphs (c)(i) and (c)(ii) are complied with *mutatis mutandis* in respect of such netting or set-off arrangement and such arrangement does not include any Security or Quasi-Security under a credit support arrangement;
- (e) any Security or Quasi-Security over or affecting any asset acquired by a Group Member (from a person that is not a Group Member) after the Initial Utilisation Date if:
 - (i) such Security or Quasi-Security was subsisting as at the time of such acquisition and was not created in contemplation of the acquisition of that asset by a Group Member;
 - (ii) the principal amount secured by such Security or Quasi-Security has not been increased (other than by reason of capitalised interest) in contemplation of or since such acquisition of that asset by a Group Member; and
 - (iii) such Security or Quasi-Security is removed or discharged within three months of the date of such acquisition of such asset;
- (f) any Security or Quasi-Security over or affecting any asset of any person which becomes a Group Member after the Initial Utilisation Date, where such Security or Quasi-Security is created prior to the date on which that person becomes a Group Member and:
 - (i) such Security or Quasi-Security was not created in contemplation of such person's becoming a Group Member;
 - (ii) the principal amount secured by such Security or Quasi-Security has not increased (other than by reason of capitalised interest) in contemplation of or since that person's becoming a Group Member; and
 - (iii) such Security or Quasi-Security is removed or discharged within three months of that person's becoming a Group Member;

- (g) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Group Member in the ordinary course of business and on the supplier's standard or usual terms and not arising as a result of any default or omission by any Group Member;
- (h) any Security or Quasi-Security arising (as a consequence of any finance or capital lease of an Onshore Group Member permitted pursuant to paragraph (d) of the definition of "Permitted Financial Indebtedness") over the assets to which such lease relate;
- (i) any Security or Quasi-Security constituted by rental deposits made by any Group Member and arising in the ordinary course of its day-to-day business in respect of any property leased or licensed by such Group Member on arm's length terms (and not in connection with the incurrence of any Financial Indebtedness);
- (j) any Security or Quasi-Security constituted by any deposit or pledge of cash by any Group Member in the ordinary course of day-to-day business and on arm's length basis (and not in connection with the incurrence of any Financial Indebtedness) to secure the performance of bids, trade contracts, performance bonds and other obligations of a similar nature incurred by such Group Member;
- (k) any Security or Quasi-Security over bank accounts (other than any bank account that is, or is expressed to be, subject to Transaction Security) arising by operation of law or granted as part of the standard terms and conditions of the applicable bank or financial institution (with which such bank account is held); or
- (l) any Security granted with the prior written consent or approval of the Majority Lenders,

provided that (in each case under paragraphs (b) to (l)) none of such Security or Quasi-Security subsists over or in respect of any of the following assets (or any right, title or interest to or in any of the following): (A) any Equity Interest in any Transaction Obligor or Group Member (other than any Future Target Group Member), (B) any Intellectual Property, (C) any account that is subject to or expressed to be subject to any Transaction Security (other than any netting or set-off arrangement falling within paragraph (c), which arrangement is waived by the applicable account bank to the fullest extent permitted by law in the case of any Proceeds Account or the DSRA), or (D) any right to receive any Onshore Distributions or any Licence and Consulting Fees or any right or claim under, or the proceeds of any right or claim under, any VIE Contract.

"**Permitted Share Issue**" means an issue of:

- (a) Equity Interests by the Parent (paid for in full in cash upon issue and which by their terms are not redeemable), **provided that** such issue does not lead to a Change of Control;
- (b) ordinary shares by the Borrower to the Parent (paid for in full in cash upon issue and which by their terms are not redeemable) (including by way of New Shareholder Injections), **provided that** all of such shares become subject to Transaction Security upon the issuance thereof and such issue does not lead to a Change of Control;
- (c) Equity Interests by a Group Member (other than the Borrower and the VIE Entity) (the "**Investee**") to any other Group Member (the "**Investor**"), **provided that**:
 - (i) (if any existing Equity Interests of the Investee are the subject of any Transaction Security) all of such newly-issued Equity Interests also become subject to Transaction Security on the same terms;

- (ii) (A) if the Investor is a Group Member that is not a Future Target Group Member, the Investee is a Group Member that is not a Future Target Group Member and (B) if the Investor is a Future Target Group Member, the Investee is a Future Target Group Member;
- (iii) (A) if the Investor is a VIE Group Member, the Investee is a VIE Group Member (that is not the VIE Entity) and (B) if the Investor is not a VIE Group Member, the Investee is not a VIE Group Member; and
- (iv) the Ownership Percentage of the Investee is not less than the Ownership Percentage of the Investor;
- (d) (upon any substitution of an existing VIE Nominee by a new VIE Nominee pursuant to a VIE Nominee Transfer) shares by the VIE Entity to such new VIE Nominee, **provided that** (i) such shares so issued are fully paid-up and (ii) the shares in the VIE Entity that are held or owned by such existing VIE Nominee are cancelled in connection with such issuance; and
- (e) Equity Interests issued with the prior written consent of the Majority Lenders.

“**Permitted Transaction**” means:

- (a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;
- (b) any VIE Nominee Transfer;
- (c) any payment of cash by a Group Member in favour of a Group Member (that is not a VIE Group Member) pursuant to any VIE Contract;
- (d) an amalgamation, demerger, merger, consolidation or corporate reconstruction (in each case) on a solvent basis of a Group Member (other than the Borrower), **provided that:**
 - (i) all of the business and assets of that Group Member remain solely held and beneficially owned by and are distributed to other Group Members;
 - (ii) none of such business or assets are held or beneficially owned by, or distributed to, any Group Member the Ownership Percentage of which is less than the Ownership Percentage (immediately prior to such amalgamation, demerger, merger, consolidation or corporate reconstruction) of such first-mentioned Group Member;
 - (iii) (if such first-mentioned Group Member is not a VIE Group Member) none of its business or assets are or become held or beneficially owned by, or distributed to, any VIE Group Member;

- (iv) (A) all of the assets that are subject to any Transaction Security prior to such amalgamation, demerger, merger, consolidation or corporate reconstruction shall continue to be subject to equivalent Transaction Security after such amalgamation, demerger, merger, consolidation or corporate reconstruction and (B) if any Equity Interests in any Group Member (that is involved in such amalgamation, demerger, merger, consolidation or corporate reconstruction) are subject to Transaction Security prior to such amalgamation, demerger, merger, consolidation or corporate reconstruction, the Equity Interests in each surviving or resulting entity shall be subject to equivalent Transaction Security with effect from such amalgamation, demerger, merger, consolidation or corporate reconstruction;
- (v) if any Group Member involved in such amalgamation, demerger, merger, consolidation or corporate reconstruction is a Transaction Obligor, (A) each surviving or resulting entity shall be a Transaction Obligor (which shall be a Relevant Obligor if such Group Member is a Relevant Obligor prior to such amalgamation, demerger, merger, consolidation or corporate reconstruction) and (B) all of its obligations under the Transaction Documents shall continue to be legal, valid, binding upon and enforceable against each such surviving or resulting entity with effect from such amalgamation, demerger, merger, consolidation or corporate reconstruction; and
- (vi) such amalgamation, demerger, merger, consolidation or corporate reconstruction does not involve any person that is not a Group Member and does not involve the amalgamation, merger or consolidation (or similar arrangement) between a Future Target Group Member and any person that is not a Future Target Group Member, and (A) none of the business or assets of any Future Target Group Member may be or become held or beneficially owned by, or distributed to, any Group Member (that is not a Future Target Group Member) as a result of or in connection with such amalgamation, demerger, merger, consolidation or corporate reconstruction and (B) none of the business or assets of any Group Member (that is not a Future Target Group Member) may be or become held or beneficially owned by, or distributed to, any Future Target Group Member as a result of or in connection with such amalgamation, demerger, merger, consolidation or corporate reconstruction;
- (e) any transaction (other than (i) any sale, lease, licence, lending, transfer or other disposal, (ii) the granting or creation of Security or the granting, incurring or permitting to subsist of Financial Indebtedness or guarantee and (iii) any acquisition of any Equity Interest or business or undertaking) conducted in the ordinary course of trading on arm's length terms;
- (f) the solvent liquidation of any Group Member (which is not a Transaction Obligor) so long as and all any payments or assets distributed as a result of such liquidation are distributed to other Group Members that are the holders of Equity Interests in such first-mentioned Group Member pro rata according to their respective Equity Interests in such first-mentioned Group Member, and are not distributed, paid or transferred to any person that is not a Group Member, and such liquidation would not reasonably be expected to have a Material Adverse Effect; and/or
- (g) any other transaction entered into with the prior written consent of the Majority Lenders.

“**Permitted Transferee**” means, in relation to a Transfer, any bank, financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in syndicated loans **but excluding** any such entity which is, to the knowledge of the Existing Lender or Lender making such Transfer, a Conflicted Lender or a Distressed Investor.

“**PRC**” means the People’s Republic of China (which, for the purposes of this Agreement, does not include Hong Kong, the Special Administrative Region of Macau or Taiwan).

“**PRC Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Beijing.

“**Proceeds Account**” means an interest-bearing account:

- (a) held in Taipei or any other jurisdiction reasonably satisfactory to the Facility Agent by an Offshore Group Member (that is a Relevant Obligor) with the Facility Agent (or an Affiliate thereof specified by the Facility Agent);
- (b) identified in writing (including in a Transaction Security Document) between (i) the Borrower and (ii) the Facility Agent or the Security Agent as a “Proceeds Account”; and
- (c) (subject to Legal Reservations) subject to fixed Security in favour of the Security Agent which Security is in form and substance satisfactory to the Facility Agent and Security Agent,

(as the same may be re-designated, substituted or replaced from time to time).

“**Quarter Date**” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“**Quasi-Security**” has the meaning given to that term in Clause 23.11 (*Negative pledge*).

“**Quotation Day**” means:

- (a) in relation to any period for which an interest rate is to be determined for any amount denominated in any currency, two Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market for such currency, in which case the Quotation Day for that currency will be determined by the Facility Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days); and
- (b) in relation to any Interest Period the duration of which is selected by the Facility Agent pursuant to Clause 10.3 (*Default interest*), such date as may be reasonably determined by the Facility Agent.

“**Real Property**” means:

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

“**Recapitalisation**” means any return of capital, repayment of capital contribution or other redemption, repurchase, retirement or reduction of Equity Interests of any Onshore Group Member.

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

“Reference Bank Rate” means, in relation to any Loan or any Unpaid Sum and any Interest Period relating thereto, the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by each of the Reference Banks, as the rate at which such Reference Bank could borrow funds in the London interbank market, in the currency of such Loan or such Unpaid Sum and for such Interest Period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in such currency and for such Interest Period.

“Reference Banks” means the principal London offices of HSBC Bank plc, Standard Chartered Bank and JPMorgan Chase Bank, N.A. or such other banks as may be appointed by the Facility Agent in consultation with the Borrower.

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

“Related Persons” means:

- (a) (i) any Sponsor Affiliate, any Related Fund relating to any of the foregoing, or (ii) any VIE Nominee, any Family Member or any Affiliate of any of the foregoing;
- (b) any holder or beneficial owner of any Equity Interest of any Group Member, the Parent, or any Affiliate of any such holder or beneficial owner; or
- (c) any Joint Venture in which any person referred to in paragraph (a) or (b) above or any Group Member is a member or is party,

provided that “Related Persons” shall not include Group Members.

“Relevant Guarantors” means the Guarantors and the Onshore Guarantors (each a **“Relevant Guarantor”**).

“Relevant Obligors” means the Borrower and the Relevant Guarantors (each a **“Relevant Obligor”**).

“Relevant Interbank Market” means the London interbank market.

“Relevant Jurisdictions” means, in relation to any Transaction Obligor or any Group Member:

- (a) (in respect of any Transaction Obligor) its Original Jurisdiction and (in respect of any Group Member that is not a Transaction Obligor) its jurisdiction of incorporation or establishment;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated; and
- (c) any jurisdiction where it conducts its business.

“Relevant Period” has the meaning given to that term in Clause 22.1 (*Financial definitions*).

“Repayment Date” means:

- (a) (in respect of Facility A) each of the dates falling 12, 24, 36, 48 and 60 Months after the Initial Utilisation Date; or
- (b) (in respect of any Incremental Facility) a date for scheduled repayment of such Incremental Facility as set out in the Incremental Facility Notice relating to such Incremental Facility (subject to Clause 2.5 (*Incremental Facilities*)).

“Repayment Instalment” means:

- (a) in relation to Facility A, any instalment for the repayment of the Facility A Loan on any Repayment Date (in respect of Facility A) as determined in accordance with Clause 6.1 (*Repayment of the Facility A Loan*); or
- (b) in relation to any Incremental Facility, any instalment for the repayment of Incremental Facility Loan(s) under such Incremental Facility on any Repayment Date (in respect of such Incremental Term Facility) as determined in accordance with the Incremental Facility Notice relating to such Incremental Facility (subject to Clause 2.5 (*Incremental Facilities*)).

“Repeating Representations” means each of the representations set out in Clause 20.2 (*Status*) to Clause 20.7 (*Governing law and enforcement*), Clause 20.10 (*No default*), paragraph (a) of Clause 20.11 (*No misleading information*) (with respect to any information provided since the last time such representation or warranty was made), paragraph (c) of Clause 20.12 (*Original Financial Statements*), paragraph (c) of Clause 20.18 (*Security, Financial Indebtedness and guarantees*), Clause 20.19 (*Good title to assets*), Clause 20.21 (*Shares*) and paragraph (a) of Clause 20.24 (*VIE Contracts*).

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

“Restricted Party” means a person that is:

- (a) listed on, or owned or controlled (directly or indirectly) by a person listed on, or acting on behalf of a person listed on, any Sanctions List;
- (b) operating in, located in, resident in, organised or incorporated under the laws of, or owned or controlled (directly or indirectly) by, or acting on behalf of, a person operating in, located in, resident in, organised or incorporated under the laws of any Sanctioned Jurisdiction; or
- (c) otherwise a target of Sanctions or owned or controlled (directly or indirectly) by or acting on behalf of a target of Sanctions.

“Rollover Loan” means one or more Facility B Loans:

- (a) made or to be made on the same day that a maturing Facility B Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the amount of that maturing Facility B Loan; and
- (c) made or to be made to the Borrower for the purpose of refinancing that maturing Facility B Loan (as specified in the Utilisation Request(s) delivered (or deemed delivered) for such first-mentioned Facility B Loan(s).

For the purpose of any Facility B Loan, if:

- (i) the Utilisation Request for such Facility B Loan (an “**original Facility B Loan**”) specifies that such original Facility B Loan shall be subject to automatic rollover and the number of such automatic rollovers;
- (ii) the number of automatic rollovers will result in such automatic rollover to apply for a period of no less than six Months (such period (including the Interest Period for such original Facility B Loan) being the “**Automatic Rollover Period**”),

then automatic rollover shall apply to such original Facility B Loan (and each subsequent Rollover Loan) during the Automatic Rollover Period as follows:

- (A) a Rollover Loan (in the amount equal to, and with an Interest Period of the same duration as, such original Facility B Loan) shall be deemed to have been requested by the Borrower (provided that, for an Interest Period which would extend beyond the Termination Date in respect of Facility B, such Interest Period shall end on such Termination Date); and
- (B) a Utilisation Request to such effect shall be deemed to have been delivered by the Borrower by the Specified Time in accordance with the terms of this Agreement,

each time prior to such original Facility B Loan or any subsequent Rollover Loan made pursuant to such automatic rollover during the Automatic Rollover Period, is due to be repaid.

“**SAFE**” means the State Administration of Foreign Exchange of the PRC (国家外汇管理局) (including its successors), or its local branch.

“**SAFE Circular 37**” means the Circular on Related Issues concerning Foreign Exchange Administration for Domestic Residents to Engage in Overseas Investment and Financing and in Roundtrip Investment via Special Purpose Companies (国家外汇管理局关于境内居民通过特殊目的公司境外投融资及返程投资外汇管理有关问题的通知) (Hui Fa [2014] No. 37), issued by SAFE on 4 July 2014, effective from 4 July 2014, and any implementation, successor rule or regulation which is effective from time to time relating thereto under PRC law.

“**SAFE Rules**” means:

- (a) the Circular on Further Simplifying and Improving Policies for the Foreign Exchange Administration of Direct Investment (国家外汇管理局关于进一步简化和改进直接投资外汇管理政策的通知) (Hui Fa [2015] No. 13), issued by SAFE on 13 February 2015 and amended by SAFE on 30 December 2019, which amendment became effective on 30 December 2019, and any implementation, successor rule or regulation which is effective from time to time relating thereto under PRC law;
- (b) SAFE Circular 37; and
- (c) the Notice of the State Administration of Foreign Exchange on Issues concerning the Foreign Exchange Administration of Domestic Individuals’ Participation in Equity Incentive Plans of Overseas Listed Companies (国家外汇管理局关于境内个人参与境外上市公司股权激励计划外汇管理有关问题的通知) (Hui Fa [2012] No. 7) issued by SAFE on 15 February 2012, effective from 15 February 2012, and any implementation, successor rule or regulation which is effective from time to time relating thereto under PRC law.

“**SAMR**” means the State Administration for Market Regulation of the PRC (中华人民共和国国家市场监督管理总局) (including its successors), or its local counterpart.

“**Sanctioned Jurisdiction**” means any country, region, territory or jurisdiction that is, or any Governmental Agency of which that is, the target of any Sanctions (including, as at the date of this Agreement, Cuba, Iran, North Korea, Sudan, Syria and the Crimea region).

“**Sanctions**” means any trade, economic, financial and/or other sanctions, embargoes, laws, regulations or restrictive measures administered, enacted or enforced from time to time by:

- (a) the European Union (or any member state thereof);
- (b) the United Kingdom;
- (c) the United Nations;
- (d) the U.S.;
- (e) Hong Kong;
- (f) the PRC;
- (g) Singapore; and/or
- (h) any jurisdiction where any Transaction Obligor or any Group Member conducts business or is incorporated and/or any Relevant Jurisdiction of any Transaction Obligor,

and/or the respective governmental institutions and agencies of any of the foregoing, including, without limitation, OFAC, the United States Department of State, the United States Department of the Treasury, Her Majesty’s Treasury (“**HMT**”), the United Nations Security Council, the Monetary Authority of Singapore and the Hong Kong Monetary Authority (together the “**Sanctions Authorities**” and each a “**Sanction Authority**”).

“**Sanctions List**” means the “Specially Designated Nationals and Blocked Persons” list maintained by OFAC and the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by HMT, or any similar list maintained by, or any public announcement of Sanctions designation made by, any of the Sanctions Authorities.

“**Screen Rate**” means, in relation to LIBOR for any Loan and any Unpaid Sum and any Interest Period relating thereto, the London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the currency of such Loan or such Unpaid Sum and such Interest Period displayed on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters, or if such page or service ceases to be available, on such other page or service displaying such rate as specified by the Facility Agent after consultation with the Borrower.

“**Secured Obligations**” has the meaning given to it in the Security Trust Agreement.

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

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

“**Security Trust Agreement**” means the security trust agreement dated on or about the date of this Agreement and made between, among others, the Parent, the Borrower, the HK Guarantors, the Cayman Guarantor, the Security Agent, the Facility Agent and the Mandated Lead Arranger.

“**Selection Notice**” means a notice substantially in the form set out in Part II of Schedule 3 (*Request and Notices*).

“**Semi-Annual Financial Statements**” has the meaning given to that term in Clause 21 (*Information undertakings*).

“**Share Charge (Borrower)**” means a share charge to be entered into by the Parent in favour of the Security Agent in respect of shares in the Borrower, in form and substance satisfactory to the Security Agent.

“**Share Charge (Cayman Guarantor)**” means a share charge to be entered into by the Borrower in favour of the Security Agent in respect of shares in the Cayman Guarantor, in form and substance satisfactory to the Security Agent.

“**Share Charge (HK Guarantors)**” means a share charge to be entered into by the Borrower in favour of the Security Agent in respect of shares in each HK Guarantor, in form and substance satisfactory to the Security Agent.

“**Specified Time**” means a time determined in accordance with Schedule 10 (*Timetables*).

“**Sponsor**” means Bain Capital Private Equity, LP, any funds, co-investment vehicles, limited partnerships or other similar vehicles managed or advised by Bain Capital Private Equity, LP, or by any of their Affiliates (but excluding, in each case, any portfolio companies or portfolio entities of any of the foregoing and any Subsidiary of any such portfolio company or portfolio entity).

“**Sponsor Affiliate**” means the Sponsor, any Affiliate of the Sponsor, any trust of which the Sponsor or any of its Affiliates is a trustee, any partnership of which the Sponsor or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, the Sponsor or any of its Affiliates, **provided that**:

- (a) any such trust, fund or other entity (which is not itself a Group Member, any Transaction Obligor or the Sponsor) which has been established for at least six months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by the Sponsor or any of its Affiliates which have been established for the primary or main purpose of investing in the share capital of and/or equity interests in companies and/or entities; or
- (b) any banking arm, branch or Affiliate of the Sponsor which (i) has the Authorisation to engage in financial services and businesses (including lending and investment banking), (ii) is separated by information barriers from the Sponsor (and any team or part of the Sponsor that is engaged in or involved in relation to any Finance Document or any transactions contemplated thereby) and (iii) (in the case of an Affiliate of the Sponsor) is not itself a Group Member or any Transaction Obligor,

shall not constitute a Sponsor Affiliate.

“**Sponsor Change of Control Release Condition**” has the meaning given to that term in Clause 1.7 (*Change of Control Disapplication*).

“**Subsidiary**” means in relation to any company, corporation or entity, a company, corporation or entity:

- (a) which is controlled, directly or indirectly, by the first mentioned company, corporation or entity;
- (b) more than half the issued share capital, registered capital or equity interest of which is beneficially owned, directly or indirectly by the first mentioned company, corporation or entity; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company, corporation or entity,

and for this purpose, a company, corporation or entity shall be treated as being controlled by another if that other company, corporation or entity is able to direct its affairs and/or to control the majority of the composition of its board of directors or equivalent body, **provided that** (without prejudice to the foregoing) each VIE Group Member shall be deemed to be a “Subsidiary” of the Borrower for the purposes of the Finance Documents.

“**Syndication Date**” has the meaning given to that term in the Syndication Letter.

“**Syndication Letter**” means the syndication letter dated on or about the date of this Agreement from the Mandated Lead Arranger to the Borrower.

“**Target EBITDA**” has the meaning given to that term in paragraph (d) of the definition of “Permitted Acquisition”.

“**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).

“**Term Facilities**” means Facility A or any Incremental Facility and “**Term Facility**” means any one of them.

“**Term Loan**” means the Facility A Loan or any Incremental Facility Loan.

“**Termination Date**” means:

- (a) in respect of each Initial Facility, the date which is 60 Months after the Initial Utilisation Date;
- (b) in respect any Incremental Facility, the date set out in the Incremental Facility Notice in respect of such Incremental Facility (subject to Clause 2.5 (*Incremental Facilities*)).

“**Test Date**” has the meaning given to it in Clause 22.2 (*Financial condition*).

“**Total Commitments**” means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments and the Incremental Facility Commitments in respect of each Incremental Facility, being U.S.\$80,000,000 at the date of this Agreement.

“**Total Facility A Commitments**” means the aggregate of the Facility A Commitments, being U.S.\$65,000,000 at the date of this Agreement.

“**Total Facility B Commitments**” means the aggregate of the Facility B Commitments, being U.S.\$15,000,000 at the date of this Agreement.

“**Total Purchase Price**” means, in respect of any acquisition of any interest in any Future Acquisition Target, the consideration (including associated costs and expenses) for that acquisition and any Financial Indebtedness or other assumed actual or contingent liability, in each case, remaining in such Future Acquisition Target and/or its Subsidiaries at the time of such acquisition.

“**Trade Instruments**” means any performance bonds, advance payment bonds or documentary letters of credit issued in respect of the obligations of any Group Member (which obligations do not constitute Financial Indebtedness) arising in the ordinary course of trading of that Group Member.

“**Transaction Costs**” means costs, fees, commissions and expenses payable by any Group Member (to a person that is not a Group Member) in connection with any Permitted Acquisition, Permitted Disposal, Permitted Share Issue or Permitted Transaction (other than, in each case, in the ordinary course of trading).

“**Transaction Documents**” means the Finance Documents and the VIE Contracts.

“**Transaction Obligors**” means:

- (a) each Relevant Obligor;
- (b) each person (that is not a Secured Party) that gives or purports to give any guarantee or indemnity pursuant to a Guarantee; and
- (c) each person (that is not a Secured Party) that grants or purports to grant any Security pursuant to a Transaction Security Document, (each, a “**Transaction Obligor**”).

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

“**Transaction Security Documents**” means:

- (a) the Share Charge (Borrower);
- (b) the Share Charge (Cayman Guarantor);
- (c) the Share Charge (HK Guarantors);
- (d) the Debenture;
- (e) each Account Pledge Agreement;
- (f) the Equity Pledge (WFOE Guarantor); and

(g) any other document entered into by any person creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Relevant Obligor under any of the Finance Documents.

“**Transfer**” means a Debt Purchase Transaction entered into by a Lender as assignor or transferor or by way of Voting Participation.

“**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 Facility Agent and the Borrower.

“**Transfer Date**” means, in relation to an assignment or a transfer by a Lender of any or all of its rights and/or obligations under this Agreement, the later of:

- (a) the proposed “Transfer Date” specified in the relevant Assignment Agreement or Transfer Certificate relating to such assignment or transfer; and
- (b) the date on which the Facility Agent executes such Assignment Agreement or Transfer Certificate.

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

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

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

“**Utilisation**” means any utilisation of any Facility.

“**Utilisation Date**” means the date of a Utilisation, being the date on which the Loan (the subject of such Utilisation) is made or to be made, **provided that** any reference to “Utilisation Date” in respect of (a) any Facility shall be a reference to the date on which the Loan under such Facility is made or to be made or (b) any Loan shall be a reference to the date on which such Loan is made or to be made.

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

“**VIE Contracts**” means the VIE Structure Documents and the Licence Documents.

“**VIE Economic Interest Percentage**” means the aggregate of the direct or indirect economic interest (expressed as a percentage) in the VIE Entity the benefit of which belongs to, is given or transferred to, a Group Member (that is not a VIE Group Member) pursuant to the VIE Contracts, multiplied by the Ownership Percentage in relation to such Group Member.

“**VIE Entity**” means Beijing Step Ahead Education Technology Development Co., Ltd. (北京領語堂教育科技發展有限公司), a company incorporated under the laws of the PRC with registered number 91110105670561149N.

“**VIE Entity Equity Pledge**” means (a) the pledge of equity interests in the VIE Entity granted by Zhang Peng (张鹏) and Sun Yi Ding (孙一丁) in favour of the WFOE Guarantor pursuant to the equity pledge agreement dated 8 June 2017 between the WFOE Guarantor as pledgee, the VIE Nominees as pledgors and the VIE Entity or (b) (upon any VIE Nominee Transfer) any pledge of equity interests in the VIE Entity granted by each of the VIE Nominees (including the VIE Nominee to which such VIE Nominee Transfer is made) in favour of the WFOE Guarantor as contemplated by the VIE Nominee Transfer Conditions.

“**VIE Group Members**” means the VIE Entity and its Subsidiaries from time to time (each a “**VIE Group Member**”).

“**VIE Nominees**” means:

- (a) Zhang Peng (张鹏);
- (b) Sun Yi Ding (孙一丁); and
- (c) (following the occurrence of a VIE Nominee Transfer) any other individual appointed as a “VIE Nominee” by the Sponsor or the Borrower after the date of this Agreement with written notice to the Facility Agent and to whom all of the equity interests in the VIE Entity held by an existing VIE Nominee is transferred,

which in each case has not ceased to be the registered holder of equity interests in the VIE Entity as the result of a VIE Nominee Transfer.

“**VIE Nominees Loans**” means:

- (a) the RMB1,600,000 loan granted by the WFOE Guarantor to Zhang Peng (张鹏) pursuant to a loan agreement dated November 11, 2016 between the WFOE Guarantor as lender and Zhang Peng (张鹏) as borrower;
- (b) the RMB400,000 loan granted by the WFOE Guarantor to Sun Yi Ding (孙一丁) pursuant to a loan agreement dated June 8, 2017 between the WFOE Guarantor as lender and Sun Yi Ding (孙一丁) as borrower; and
- (c) (following the occurrence of a VIE Nominee Transfer in favour of a VIE Nominee appointed by the Sponsor or the Borrower after the date of this Agreement) such other loan granted by the WFOE to such VIE Nominee in connection with such VIE Nominee Transfer and in compliance with the VIE Nominee Transfer Conditions,

(which in each case has not been discharged, terminated or ceased to be in effect as the result of a VIE Nominee Transfer), **provided that** (in each case) (i) the aggregate amount of any and all such loan(s) is not increased at any time after the date of this Agreement except for a VIE Nominee Transfer Loan Increase and (ii) no Group Member makes or is liable to make any payment in respect of any such loan on or after the date of this Agreement (except for (A) a VIE Nominee Transfer Loan Increase and (B) (in the case of a VIE Nominee Transfer from an existing VIE Nominee to a new VIE Nominee) any such payment in respect of the making of a VIE Nominee Loan to such new VIE Nominee upon such VIE Nominee Transfer, to the extent that such payment is funded from the repayment of the VIE Nominee Loan made to such existing VIE Nominee.

“**VIE Nominee Transfer**” means the transfer of all the equity interest in the VIE Entity held by an existing VIE Nominee to such person appointed as a new VIE Nominee by the Sponsor (or, after the Sponsor Change of Control Release Condition is satisfied, the Borrower) after the date of this Agreement, **provided that** the VIE Nominee Transfer Conditions are satisfied with respect to such transfer and such new VIE Nominee complies with the “know your customer” and similar requirements of the Finance Parties.

“**VIE Nominee Transfer Conditions**” means, in connection with any transfer by a VIE Nominee (“**VIE Nominee Transferor**”) of any equity interest in the VIE Entity to any person (“**VIE Nominee Transferee**”):

- (a) such VIE Nominee Transferor transfers all of the equity interests in the VIE Entity that are held by it to such VIE Nominee Transferee;
- (b) together with such transfer:
 - (i) such VIE Nominee Transferee, the VIE Entity, the WFOE Guarantor and each other VIE Nominee enter into VIE Structure Documents that have the effect of substituting such VIE Nominee Transferor with such VIE Nominee Transferee but are otherwise on substantially the same terms as the VIE Structure Documents that are in existence immediately prior to such transfer (and the obligations of such VIE Nominee Transferor under the VIE Structure Documents shall terminate or be discharged upon such transfer);
 - (ii) the WFOE Guarantor makes a loan to such VIE Nominee Transferee, **provided that** (A) the amount of such loan to such VIE Nominee Transferee is equal to the amount of such VIE Nominee Loan owing by such VIE Nominee Transferor (except for any increase to the extent that the amount of such increase is solely for the purpose of and is entirely applied towards the payment of any relevant PRC tax payable in respect of such VIE Nominee Transfer and other ancillary fees and costs payable to any Governmental Agency in the PRC in respect of such VIE Nominee Transfer (such increase upon a VIE Nominee Transfer being a “**VIE Nominee Transfer Loan Increase**”)) and such VIE Nominee Loan owing by such VIE Nominee Transferor is reduced, repaid or discharged in the same amount and (B) no cash is paid or required to be paid by any Group Member in respect of the consideration for such transfer or the making of such loan (except for (1) payment of the amount of any such VIE Nominee Transfer Loan Increase and (2) any payment in respect of the making of such loan to such VIE Nominee Transferee, to the extent that such payment is funded from the repayment of the VIE Nominee Loan made to such VIE Nominee Transferor); and
 - (iii) (without prejudice to paragraph (b)(i)) such VIE Nominee Transferee pledges all of the equity interests in the VIE Entity transferred to it in favour of the WFOE Guarantor, and that such pledge is recorded in the register of shareholders of the VIE Entity and is (within 30 Business Days of such transfer) duly registered with applicable Governmental Agency or Governmental Agencies in the PRC; and
- (c) none of the VIE Structure Documents is discharged, terminated or ceases to be in effect as the result of such transfer, except to the extent that they are replaced by substantially equivalent VIE Structure Documents as contemplated by paragraph (b)(i).

“**VIE Structure Documents**” means:

- (a) the business co-operation agreement dated 8 June 2017 between, among others, the WFOE Guarantor, the VIE Entity and the VIE Nominees;
- (b) the loan agreement dated 11 November 2016 between the WFOE Guarantor as lender and Zhang Peng (张鹏) as borrower;

- (c) the loan agreement dated 8 June 2017 between the WFOE Guarantor as lender and Sun Yi Ding (孙一丁) as borrower;
- (d) the VIE Entity Equity Pledge;
- (e) the proxy agreement dated 8 June 2017 between the WFOE Guarantor, the VIE Nominees and the VIE Entity;
- (f) the call-option agreement dated 8 June 2017 between the WFOE Guarantor, the VIE Nominees and the VIE Entity in respect of equity interests in the VIE Entity; and
- (g) any other arrangement, instrument or agreement that constitutes, or forms part of, any contractual arrangements enabling a Group Member (that is not a VIE Group Member) to exercise Control over a VIE Group Member or consolidate the financial condition or results of operation of any VIE Group Member for the purposes of the consolidated financial statements of the Group or any Group Member (that is not a VIE Group Member) (including such other arrangement, instrument or agreement resulting from a VIE Nominee Transfer after the date of this Agreement),

including (in each case and for the avoidance of doubt) any renewal or replacement thereof, which in each case has not been discharged, terminated or ceased to be in effect as the result of a VIE Nominee Transfer.

“**VIE Termination Event**” means each of the following events or circumstances:

- (a) any material provision of a VIE Contract (or any material arrangements or transactions contemplated by the VIE Contracts or any part thereof) (i) is or becomes or (ii) is expressly declared by any Government Agency or any court to be, illegal, invalid, non-binding or unenforceable, or any VIE Contract is not or ceases to be in full force and effect, or any security expressed to be granted by or pursuant to the VIE Entity Equity Pledge is not or ceases to be valid and effective (it being acknowledged that any person to which equity interests in the VIE Entity are to be transferred upon enforcement of the VIE Entity Equity Pledge (including the identity and qualifications of such person) shall be required to comply with applicable requirements under the laws of the PRC in order for such transfer to be effective) or does not or ceases to have the priority that it is expressed to have;
- (b) any party to a VIE Contract shall have failed to comply with any material provision of or perform any of its material obligations under any VIE Contract to which it is a party and (if such failure is capable of being remedied) such failure is not remedied within 20 Business Days;
- (c) any party to any VIE Contract repudiates or purports in writing to repudiate any VIE Contract;
- (d) any VIE Contract is terminated, rescinded, superseded or cancelled or any party to any VIE Contract purports in writing to terminate, rescind, supersede or cancel any VIE Contract;
- (e) any VIE Contract expires (except where such VIE Contract is (i) simultaneously renewed on substantially the same terms on or prior to the expiry of such VIE Contract or (ii) (in the case of a Licence Document only) renewed within 30 days of such expiry on substantially the same terms);

- (f) any transfer of any equity interest in the VIE Entity occurs (except for any transfer in favour of the WFOE Guarantor) and such transfer does not constitute a VIE Nominee Transfer or the VIE Nominee Transfer Conditions are not satisfied with respect to such transfer;
- (g) the WFOE Guarantor does not, or ceases to have Control over the VIE Group (taken as a whole); or
- (h) (i) any of the VIE Nominees dies, is of unsound mind, or becomes mentally incapacitated or unable to manage his affairs or (ii) any Event of Default under Clause 24.6 (*Insolvency*) or 24.7 (*Insolvency proceedings*) occurs with respect to any VIE Nominee (as if any reference therein to any Transaction Obligor or any Group Member were a reference to such VIE Nominee), unless (in each case) such VIE Nominee is replaced by another individual nominated by the Sponsor or the Borrower as a VIE Nominee and a VIE Nominee Transfer (in respect of all of the equity interests held by such first-mentioned VIE Nominee to such individual) has been validly made in compliance with the VIE Nominee Transfer Conditions no later than 60 days after the occurrence of (i) or (ii) (as the case may be).

“**Voting Participation**” means a Debt Purchase Transaction under paragraph (b) or (c) of the definition of “Debt Purchase Transaction” which involves a transfer of any voting rights, directly or indirectly, under, or in relation to, the Finance Documents (including arising as a result of being able to direct the way that another person exercises its voting rights).

“**Weighted Average Life to Maturity**” means, in respect of any Financial Indebtedness, at any date of determination, the quotient obtained by dividing:

- (a) the sum of the products of (i) the number of years from such date of determination to the date of each successive scheduled principal repayment or redemption of such Financial Indebtedness and (ii) the amount of such scheduled principal repayment or redemption; by
- (b) the sum of all such scheduled principal repayments or redemptions falling after the date of such date of determination.

“**WFOE Guarantor**” means Rise (Tianjin) Education Information Consulting Co., Ltd. (瑞思(天津)教育信息咨询有限公司), a company incorporated under the laws of the PRC with registered number 9112011606124835XE.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the **Facility Agent**, any **Mandated Lead Arranger**, any **Finance Party**, any **Hedge Counterparty**, any **Lender**, any **Obligor**, any **Relevant Obligor**, any **Transaction Obligor**, any **Party**, any **Secured Party**, the **Security Agent** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
 - (ii) a document in the “**agreed form**” is a document which is previously agreed in writing (including via email) by or on behalf of the Borrower and the Facility Agent;

- (iii) “**assets**” includes present and future properties, revenues and rights of every description;
- (iv) a “**certified copy**” means a copy certified by a director of the Borrower as being true, accurate and complete copy of the original;
- (v) a **Finance Document** or a **Transaction Document** or any other agreement or instrument is a reference to that Finance Document, Transaction Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document, Transaction Document or other agreement or instrument;
- (vi) a “**group of Lenders**” includes all the Lenders (and/or any group of less than all of the Lenders);
- (vii) “**guarantee**” means (other than in Clause 19 (*Guarantee and indemnity*) or any Guarantee) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (viii) “**including**” (or similar expressions) means including without limitation;
- (ix) “**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;
- (x) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, Joint Venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (xi) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, with which compliance is customary) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xii) one person is “**acting in concert**” with another person in relation to any Equity Interests in any entity if, whether pursuant to any agreement or understanding, formal or informal or otherwise, such persons actively co-operate to obtain, maintain, consolidate or exercise Control over that entity or control of the voting rights attaching to Equity Interests in that entity to a greater extent than would be possible by reason of each such person’s individual holding of Equity Interests in such entity alone;
- (xiii) any **Utilisation Request** includes a Utilisation Request deemed delivered under the definition of “Rollover Loan”;
- (xiv) a provision of law is a reference to that provision as amended or re-enacted;
- (xv) a time of day is a reference to Taipei time.

- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default or an Event of Default is “**continuing**” if it has not been waived or remedied. In addition, if a Default (including an Event of Default) occurs for a failure to deliver a required certificate, notice or other similar document in connection with another Default (such other Default being an “**Initial Default**”) then at the time such Initial Default is remedied or waived, such Default (including an Event of Default) for a failure to report or deliver a required certificate, notice or other similar document in connection with the Initial Default will also be cured without any further action, save in circumstances where the matters contemplated by the foregoing have given rise to an Acceleration Event.
- (e) In the event that any amount or transaction satisfies the criteria of more than one of the baskets or exceptions set out in Clause 23 (*General undertakings*), the Borrower may classify and may from time to time reclassify that amount or transaction to a particular basket or exception set out in Clause 23 (*General undertakings*) (and, for the avoidance of doubt, an amount or transaction may be at the option of the Borrower be split between different baskets or exceptions set out in Clause 23 (*General undertakings*) in each case, without double counting).
- (f) If, as shown by the most recent Compliance Certificate delivered with the Quarterly Financial Statements, Semi-Annual Financial Statements or Annual Financial Statements, any Group Member makes any Future Acquisition and on the last day of the Relevant Period in which completion of that Relevant Acquisition occurs, such Future Acquisition results in Adjusted EBITDA for such Relevant Period (calculated without giving effect to paragraph (b)(i)(C) of Clause 22.3 (*Financial testing*) or any Relevant Synergies) (“**Adjusted Non-Synergy EBITDA**” for such Relevant Period) exceeding EBITDA for such Relevant Period (the percentage by which (i) the amount by which Adjusted Non-Synergy EBITDA for such Relevant Period exceeds EBITDA for such Relevant Period solely as a result of that Future Acquisition bears to (ii) the EBITDA for such Relevant Period being the “**Relevant Increase**”), each of the Relevant Baskets shall be permanently increased by the same percentage as such Relevant Increase, **provided that** for such purposes, “**Relevant Baskets**” means each of the threshold amounts set forth in paragraph (n) of the definition of “Permitted Disposal”, paragraphs (d) and (f) of the definition of “Permitted Financial Indebtedness”, paragraphs (b) and (d) of the definition of “Permitted Guarantee” and paragraphs (c) and (i) of the definition of “Permitted Loan”.
- (g) 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 Facility Agent’s spot rate of exchange (or, if no such spot rate of exchange is available, such prevailing rate of exchange selected by the Facility Agent, acting reasonably) for the purchase of the first currency with the second currency at or about 11:00 a.m. on a particular day (or at or about such time and on such date as the Facility Agent may from time to time reasonably determine to be appropriate in the circumstances), **provided that** for purposes of any calculation under this Agreement requiring the conversion of RMB amounts into U.S.\$, such conversion will be made at the officially published PBOC exchange rate (if any) for purchasing U.S.\$.

1.3 Currency symbols and definitions

- (a) Any reference in this Agreement to “US\$”, “U.S.\$”, “USD” and “U.S. dollars” is to the lawful currency of the United States of America.
- (b) Any reference in this Agreement to “RMB” is to the lawful currency of the PRC.

1.4 Currency fluctuations

- (a) For the purpose of determining compliance with any basket amount, thresholds and other exceptions to the representations and warranties in Clause 20 (*Representations*), undertakings in Clause 23 (*General undertakings*) and Events of Default in Clause 24 (*Events of Default*) that are determined by reference to amounts in U.S. dollars, the equivalent amount in U.S. dollars shall be calculated as at the date on which the applicable Transaction Obligor or Group Member incurs, commits to or makes the applicable Financial Indebtedness, acquisition, disposal, investment or other action.
- (b) No breach of any representation and warranty in Clause 20 (*Representations*), general undertaking under Clause 23 (*General undertakings*) or Events of Default under Clause 24 (*Events of Default*) (other than an Event of Default under Clause 24.2 (*Financial covenants*)) shall arise merely as a result of a subsequent change in the U.S. dollar equivalent of any relevant amount due to fluctuation in exchange rates.
- (c) This Clause 1.4 shall not apply to Clause 22 (*Financial covenants*) and Clause 23.27 (*DSRA*).

1.5 Third party rights

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

1.6 Security Trust Agreement

This Agreement is subject to, and has the benefit of, the Security Trust Agreement. In the event of any inconsistency between this Agreement and the Security Trust Agreement, the Security Trust Agreement shall prevail.

1.7 Change of Control Disapplication

- (a) Notwithstanding anything to the contrary in this Agreement or in any other Finance Document, if the Sponsor Change of Control Release Condition (as defined in paragraph (b) below) is satisfied, the occurrence of any Change of Control falling within paragraph (a) of the definition of “Change of Control” shall cease to give rise to any requirement for prepayment pursuant to Clause 8.1 (*Exit*), **provided that** if, at any time after such disapplication, the Sponsor Change of Control Release Condition is no longer satisfied, the requirement for prepayment pursuant to Clause 8.1 (*Exit*) arising from the occurrence of any Change of Control falling within paragraph (a) of the definition of “Change of Control” shall re-apply with immediate effect.
- (b) For the purposes of this Clause 1.7, the “**Sponsor Change of Control Release Condition**” means Leverage for the Relevant Period ending on the most recent Quarter Date for which a Compliance Certificate has been or is required to be delivered is less than 2.00:1.

SECTION 2
THE FACILITIES

2. THE FACILITIES

2.1 The Facilities

Subject to the terms of this Agreement, the Lenders make available to the Borrower:

- (i) a USD term loan facility in an aggregate amount equal to the Total Facility A Commitments; and
- (ii) a USD revolving credit facility in an aggregate amount equal to the Total Facility B Commitments.

2.2 Increase

- (a) The Borrower may by giving prior notice to the Facility Agent by no later than the date falling five Business Days after the effective date of a cancellation of:
 - (i) the Available Commitment of a Defaulting Lender in respect of any Facility in accordance with Clause 7.5 (*Right of cancellation in relation to a Defaulting Lender*); or
 - (ii) the Commitment of a Lender in respect of any Facility in accordance with:
 - (A) Clause 7.1 (*Illegality*); or
 - (B) paragraph (a) of Clause 7.4 (*Right of cancellation and repayment in relation to a single Lender*),

(such Available Commitment or Commitment so cancelled being the “**Cancelled Commitment**”) request that the aggregate Commitments under such Facility be increased (and the aggregate Commitments under such Facility shall be so increased) in an aggregate amount in USD of up to the amount of such Cancelled Commitment as follows (**provided that** the Availability Period shall not have expired by the time when such increase is to take effect):

- (iii) such increased Commitments under such Facility will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an “**Increase Lender**”) selected by the Borrower (each of which shall not be a Sponsor Affiliate, a Transaction Obligor or a Group Member and which satisfies the criteria applicable to a New Lender set out in Clause 25.1 (*Assignments and transfers by the Lenders*)) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of such increased Commitments which it is to assume (the “**Assumed Commitment**” of such Increase Lender), as if it had been an Original Lender (for the avoidance of doubt, the aggregate Assumed Commitments of all of the Increase Lenders shall not exceed such Cancelled Commitment);

- (iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as that Obligor and that Increase Lender would have assumed and/or acquired had that Increase Lender been an Original Lender (with such Assumed Commitment so assumed by it, in addition to any other Commitment in respect of any Facility which that Increase Lender may otherwise have in accordance with this Agreement);
- (v) each Increase Lender which is not already party hereto as a Lender shall become a Party as a "Lender" (with such Assumed Commitment so assumed by it, in addition to any other Commitment in respect of any Facility which that Increase Lender may otherwise have in accordance with this Agreement), and any Increase Lender and each of the other Finance Parties and the Hedge Counterparties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties and Hedge Counterparties would have assumed and/or acquired had that Increase Lender been an Original Lender;
- (vi) the Commitments of the other Lenders (in respect of any or all of the Facilities) shall continue in full force and effect; and
- (vii) any such increase in the Commitments under such first-mentioned Facility shall take effect on the later of (A) the date specified by the Borrower in the notice referred to above and (B) the date on which the conditions set out in paragraph (b) below are satisfied in respect of such increase.

In the case of cancellation of the Available Commitment (in respect of any Facility) of a Defaulting Lender referred to in paragraph (i), the Commitment of such Defaulting Lender under such Facility shall be permanently cancelled and reduced by the aggregate Assumed Commitment (in respect of such Facility) of each such Increase Lender upon the effectiveness of such increase in the Commitments under such Facility. For the avoidance of doubt, no Lender has any obligation to agree to be an Increase Lender.

- (b) An increase in the Commitments under any Facility pursuant to paragraph (a) will only be effective on:
 - (i) the execution by the Facility Agent of an Increase Confirmation from each Increase Lender in respect of such increase (setting out the Assumed Commitment in respect of such Facility which such Increase Lender is assuming in accordance with paragraph (a)) **provided that** the requirements set out in paragraph (ii)(B) below have been satisfied in the case of an Increase Lender which is not a Lender immediately prior to such increase; and
 - (ii) in relation to an Increase Lender which is not a Lender immediately prior to such increase:
 - (A) that Increase Lender entering into the documentation required for it to accede as a party to the Security Trust Agreement as a "Senior Lender" (as defined in the Security Trust Agreement); and
 - (B) the Facility Agent being satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of such Assumed Commitment by that Increase Lender. The Facility Agent shall promptly notify the Borrower and that Increase Lender upon being so satisfied.

- (c) Each Increase Lender, by executing an Increase Confirmation, confirms (for the avoidance of doubt) that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with any Finance Document on or prior to the date on which the increase in Commitments (to which such Increase Confirmation relates) becomes effective.
- (d) The Borrower shall promptly on written demand pay the Facility Agent and the Security Agent the amount of all reasonable and documented costs and expenses (including legal fees, subject to any agreed cap) incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.
- (e) An Increase Lender shall (or the Borrower shall on its behalf), on the date upon which such increase takes effect, pay to the Facility Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 25.3 (*Assignment or transfer fee*) if such increase was a transfer to such Increase Lender pursuant to Clause 25.5 (*Procedure for transfer*) and if such Increase Lender was a New Lender.
- (f) The Borrower may pay to an Increase Lender a fee in the amount and at the times agreed between the Borrower and such Increase Lender in a Fee Letter.
- (g) Clause 25.4 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
 - (i) an “**Existing Lender**” were references to each of the Lenders immediately prior to any increase in Commitment(s) in respect of any Facility or the assumption of any Assumed Commitment by that Increase Lender;
 - (ii) the “**New Lender**” were references to that “**Increase Lender**”; and
 - (iii) a “**re-transfer**” and “**re-assignment**” were references to respectively a “**transfer**” and “**assignment**”.

2.3 Finance Parties’ rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from a Transaction Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c). Any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of any Loan or any other amount owed by a Transaction Obligor which relates to a Finance Party’s participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf), is a debt owing to that Finance Party by that Transaction Obligor.

- (c) Subject to paragraph (d) below, a Finance Party may, except as specifically provided in the Finance Documents (excluding the Hedging Agreements), separately enforce its rights under or in connection with the Finance Documents and, except as specifically provided in the Finance Documents (excluding the Hedging Agreements), shall be entitled to separately enforce its rights under the Finance Documents against each of the Transaction Obligors to recover any amount that is due and payable to it under any Finance Document (or to recover its share of any amount that is due and payable under any Finance Document) without the consent of any other Party; and nothing shall prejudice the rights of a Finance Party from separately enforcing its rights in relation to any debt arising under any Finance Document owing to it (or its share of any debt arising under a Finance Document), which debt is due and payable.
- (d) In connection with any Transaction Security being granted, or being expressed to be granted, over assets in Taiwan from time to time (the “**Taiwanese Transaction Security**”), the Parties hereby agree that each of the Finance Parties shall be deemed a creditor jointly and severally with each other with respect to their rights and claims hereunder and the other Finance Documents against the Transaction Obligors pursuant to Article 283 of the R.O.C. Civil Code and shall be entitled to pursue all such claims against the Transaction Obligors and that the security interests with respect to the Taiwanese Transaction Security shall be created in favour of the Security Agent in its capacity as a joint and several creditor and for the joint and several benefit of the Finance Parties; provided, however, that, each Finance Party agrees not to claim or enforce such rights (insofar as they relate to the Taiwanese Transaction Security) unilaterally but shall appoint the Security Agent to exercise and enforce the Finance Parties’ rights arising out of the Finance Documents (insofar as they relate to the Taiwanese Transaction Security) and share among themselves any risks and benefits in relation thereto as provided under this Agreement and the Security Trust Agreement and none of the Finance Parties shall take any action (insofar as it relates to the Taiwanese Transaction Security) requiring authorisation of the Majority Lenders, the Majority Senior Creditors (as defined in the Security Trust Agreement) or any group of Senior Creditors (as defined in the Security Trust Agreement) except in accordance with such authorisation.

2.4 **Obligors’ Agent**

- (a) Each Obligor (other than the Borrower) by its execution of this Agreement or an Accession Deed irrevocably appoints the Borrower (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Borrower on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and the Hedge Counterparties and to give all notices, consents, and instructions, to agree, accept and execute on its behalf any Accession Deed or any other Finance Document, to make such agreements and to effect all amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect that Obligor’s obligations or otherwise affect that Obligor, and to give confirmations as to the continuation of guarantee obligations, in each case, without further reference to or the consent of that Obligor; and
 - (ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower,

and in each case that Obligor shall be bound as though that Obligor itself had supplied such information, given such notices, consents and instructions (including, without limitation, any Utilisation Request and any Selection Notice) or agreed, accepted and executed such Accession Deed or such other Finance Document, made such agreements or effected such amendments, supplements and variations, given such confirmations and received such notice, demand or other communication.

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

2.5 Incremental Facilities

- (a) The Borrower may at any time after the Initial Utilisation Date notify the Facility Agent by delivery of a written notice (an "**Incremental Facility Notice**") that it wishes to establish a new term loan facility in US dollars (being an "**Incremental Facility**"), whereupon the Facility Agent shall promptly deliver a copy of such Incremental Facility Notice to each of the Lenders.
- (b) Any Incremental Facility (the subject of any Incremental Facility Notice) shall be established upon the countersignature by the Facility Agent of such Incremental Facility Notice delivered by the Borrower to the Facility Agent pursuant to paragraph (a), **provided that**:
 - (i) the requirements under this Clause 2.5 with respect to such Incremental Facility are satisfied and the Borrower shall have certified in such Incremental Facility Notice that all of such requirements are satisfied with respect to such Incremental Facility including reasonable particulars thereof (including computations demonstrating satisfaction of the requirements under paragraph (d)(i));
 - (ii) the Borrower shall have, together with the delivery of such Incremental Facility Notice, delivered to the Facility Agent Incremental Facility Increase Confirmations (with respect to such Incremental Facility) executed by one or more persons (each of whom satisfies the criteria applicable to New Lenders set out in Clause 25.1 (*Assignments and transfers by the Lenders*) and is not a Transaction Obligor, a Group Member, any Affiliate of any of the foregoing or any Sponsor Affiliate) (each such person being an "**Incremental Facility Original Lender**" in respect of such Incremental Facility) selected by the Borrower, pursuant to which Incremental Facility Increase Confirmations each such Incremental Facility Original Lender agrees to assume an Incremental Facility Commitment in respect of such Incremental Facility as set out in such Incremental Facility Increase Confirmation to which it is a party;
 - (iii) the aggregate Incremental Facility Commitments (in respect of such Incremental Facility) specified in any and all such Incremental Facility Increase Confirmations must not exceed the aggregate Incremental Facility Commitments (in respect of such Incremental Facility) specified in such Incremental Facility Notice;

- (iv) such Incremental Facility Notice (in respect of such Incremental Facility) specifies:
 - (A) the aggregate Incremental Facility Commitments in respect of such Incremental Facility;
 - (B) the Availability Period with respect to such Incremental Facility;
 - (C) the pricing terms with respect to such Incremental Facility;
 - (D) the repayment terms with respect to such Incremental Facility; and
 - (E) any other administrative requirements with respect to such Incremental Facility (including with respect to any Utilisation thereunder);
- (v) no Incremental Facility Notice may be delivered and no Incremental Facility may be established at any time prior to the later of (A) the time when the Initial Utilisation Date has occurred and (B) the time when all of the requirements under Clause 22.2 (*Financial condition*) have been tested at least once after the date of this Agreement; and
- (vi) no Event of Default is continuing or would arise after giving effect to such Incremental Facility.
- (c) No consent of any Lender is required to establish an Incremental Facility (other than, for the avoidance of doubt, any Lender which is to assume or provide any Incremental Facility Commitment in respect of such Incremental Facility), **provided that** the requirements of this Clause 2.5 are complied with in respect of such Incremental Facility.
- (d) Each Incremental Facility shall comply with the following requirements (unless otherwise agreed by all of the Lenders):
 - (i) the aggregate principal amount of such Incremental Facility, when aggregated with the aggregate principal amount of any and all other Incremental Facilities established or incurred since the date of this Agreement (or to be simultaneously established or incurred) by the Borrower, shall be the maximum amount of additional Total Net Debt that can be incurred by the Group (as at the establishment of such first-mentioned Incremental Facility) without the Leverage for the Most Recent Relevant Period (as at the establishment of such first-mentioned Incremental Facility, calculated on a pro forma basis giving effect to (A) the incurrence by the Borrower of such first-mentioned Incremental Facility and any and all other Incremental Facilities established or incurred since the last day of such Most Recent Relevant Period (or to be simultaneously established or incurred together with such first-mentioned Incremental Facility) (collectively “**Other Incremental Facilities**”) and (B) the application of the proceeds of such first-mentioned Incremental Facility and Other Incremental Facilities, but without giving effect to any increase in Cash and Cash Equivalent Investments of Group Members resulting from the proceeds of any such Incremental Facility or Other Incremental Facilities), exceeding 3.50 to 1. For the purposes of such pro forma calculation in respect of such first-mentioned Incremental Facility:
 - (A) it shall be assumed that such first-mentioned Incremental Facility and each such Other Incremental Facility are fully utilised and remain outstanding as at the end of such Most Recent Relevant Period; and

- (B) such calculations shall be made without giving effect to any reduction in the amount of such first-mentioned Incremental Facility or any such Other Incremental Facility through repayment, prepayment or otherwise; and
- (ii) such Incremental Facility:
 - (A) shall be granted exclusively for the purposes specified in paragraph (c) of Clause 3.1 (*Purpose*);
 - (B) shall rank equal in priority in right of payment with the Initial Facilities and shall rank equal or junior in right of security with the Initial Facilities or be unsecured, **provided that** in the event of any Incremental Facility that is to rank junior in right of security to the Initial Facilities or that is unsecured, such Incremental Facility may not be established (and no Incremental Facility Notice may be delivered in respect thereof) unless amendments to this Agreement, the Security Trust Agreement and other Finance Documents (each in form and substance satisfactory to the Facility Agent, acting on the instructions of the Lenders) shall have been entered into to reflect such Incremental Facility and related intercreditor arrangements with the Initial Facilities;
 - (C) shall not mature earlier than the Termination Date in respect of the Initial Facilities and shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of Facility A as at the date of establishment of such Incremental Facility;
 - (D) is denominated in US dollars;
 - (E) is incurred by the Borrower only; and
 - (F) shall not have the benefit of any guarantee by any person other than a Relevant Guarantor (the extent of whose guarantee in respect of the Initial Facilities is not less than the extent of whose guarantee in respect of such Incremental Facility) and shall not have the benefit of any security (other than Transaction Security), except where the benefit of such guarantee and security is extended rateably to all of the Secured Parties (including the Lenders in respect of the Initial Facilities) on a *pari passu* basis;
- (iii) there shall not be any other mandatory prepayment, redemption, purchase, defeasance or discharge, or sinking fund (or similar obligation) in respect of such Incremental Facility, other than (1) scheduled repayments in accordance with paragraph (d)(ii)(C) and (2) mandatory prepayments on the same terms and conditions as those applicable to the Initial Facilities under this Agreement;

- (iv) subject to the foregoing, the amortisation schedule applicable to such Incremental Facility and the All-In Yield applicable to such Incremental Facility shall be determined by the Borrower and the applicable Incremental Facility Original Lenders with respect to such Incremental Facility and shall be set forth in the Incremental Facility Notice relating to such Incremental Facility; **provided that** with respect to any Incremental Facility established or incurred within twelve (12) months after the date of this Agreement, the All-In Yield applicable to such Incremental Facility shall not be greater than the applicable All-In Yield with respect to Facility A pursuant to the terms of this Agreement (as amended from time to time) plus 0.50 per cent. per annum, unless the interest rate with respect to Facility A is increased so as to cause the then All-In Yield applicable to Facility A under this Agreement to equal the All-In Yield applicable to such Incremental Facility minus 0.50 per cent. per annum (and, in such case, such increase in interest rate with respect to Facility A shall also apply to Facility B);
 - (v) the administrative requirements with respect to such Incremental Facility (including with respect to any Utilisation thereunder) shall be agreed between the Facility Agent, the Borrower and the Incremental Facility Original Lenders in respect of such Incremental Facility (each acting reasonably) and set out in the Incremental Facility Notice in respect of such Incremental Facility;
 - (vi) except as otherwise expressly provided under paragraphs (d)(i) to (v), the terms and conditions of such Incremental Facility shall be the substantially same as those applicable to the Initial Facilities (unless otherwise agreed to by all of the Lenders); and
 - (vii) the Borrower may not deliver an Incremental Facility Notice in respect of any Incremental Facility, if as a result of the proposed establishment of such Incremental Facility, more than two (2) Incremental Facilities would have been established since the date of this Agreement.
- (e) Provided that the requirements of this Clause 2.5 are complied with respect to an Incremental Facility, an Incremental Facility Original Lender with respect to such Incremental Facility shall become party hereto as a “Lender” with an Incremental Facility Commitment in respect of such Incremental Facility specified in the Incremental Facility Increase Confirmation to which it is a party, upon (but only upon):
- (i) the execution by the Facility Agent of such Incremental Facility Increase Confirmation; and
 - (ii) in relation to an Incremental Facility Original Lender which is not already a Lender immediately prior to the delivery of such Incremental Facility Increase Confirmation:
 - (A) that Incremental Facility Original Lender entering into the documentation required for it to accede to the Security Trust Agreement as a “Senior Lender” (as defined in the Security Trust Agreement); and
 - (B) the performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assumption of such Incremental Facility Commitment by that Incremental Facility Original Lender (which is not already a Lender immediately prior to the delivery of such Incremental Facility Increase Confirmation), the completion of which the Facility Agent shall promptly notify the Borrower and that Incremental Facility Original Lender.

- (f) The Facility Agent shall, as soon as reasonably practicable after receipt by it of a duly completed Incremental Facility Notice delivered to the Facility Agent by the Borrower with respect to any Incremental Facility or a duly completed Incremental Facility Increase Confirmation delivered to the Facility Agent by any Incremental Facility Original Lender with respect to any Incremental Facility, (in each case) appearing on its face to comply with the terms of this Agreement and delivered in accordance with this Agreement, execute that Incremental Facility Notice or (as the case may be) Incremental Facility Increase Confirmation, **provided that**:
- (i) (in the case of an Incremental Facility Notice) no Lender shall have notified the Facility Agent within ten Business Days of such Incremental Facility Notice that such Incremental Facility (the subject of such Incremental Facility Notice) does not comply with the provisions of this Clause 2.5, specifying the reasons therefor (in which case the Facility Agent shall promptly notify the Borrower); and
 - (ii) in the case of an Incremental Facility Increase Confirmation with respect to any Incremental Facility:
 - (A) the Incremental Facility Notice with respect to such Incremental Facility is simultaneously duly delivered to the Facility Agent and is countersigned by the Facility Agent in accordance with this Clause 2.5; and
 - (B) the Facility Agent shall have satisfactorily completed all “know your customer” and other similar checks referred to in paragraph (e)(ii)(B) with respect to such Incremental Facility Original Lender (if it is not already a Lender immediately prior to the delivery of such Incremental Facility Increase Confirmation).
- (g) Each Incremental Facility Original Lender in respect of an Incremental Facility, by executing any Incremental Facility Increase Confirmation, confirms (for the avoidance of doubt) that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with any Finance Document on or prior to the date on which such Incremental Facility Original Lender assumes any Incremental Facility Commitment (in respect of such Incremental Facility) as specified in such Incremental Facility Increase Confirmation.
- (h) Clause 25.4 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.5 in relation to each Incremental Facility Original Lender (with respect to any Incremental Facility) as if references in that Clause to:
- (i) an “**Existing Lender**” were references to each of the Lenders immediately prior to the establishment of such Incremental Facility;
 - (ii) the “**New Lender**” were references to that “**Incremental Facility Original Lender**”; and
 - (iii) a “**re-transfer**” and “**re-assignment**” were references to respectively a “**transfer**” and “**assignment**”.

- (i) For the avoidance of doubt, each Incremental Facility established pursuant to this Clause 2.5 shall constitute a separate Facility.
- (j) The Facility Agent may (without the consent of any other Finance Party) for and on behalf of the Finance Parties, together with the Borrower, effect such amendments to this Agreement and the other Finance Documents as may be necessary or appropriate, in the reasonable opinion of the Facility Agent and the Borrower, to give effect to the provisions of this Clause 2.5 (each such amendment being an “**Incremental Amendment**”).
- (k) In connection with the establishment of any Incremental Facility and/or any amendment referred to in paragraph (j), each Obligor shall (and shall procure that each Transaction Obligor shall), if requested by the Facility Agent or the Security Agent (acting reasonably), execute and deliver customary reaffirmation agreements and/or such amendments to the Transaction Security Documents as may be reasonably requested by the Facility Agent or the Security Agent in order to ensure that the Transaction Security continues in full force and effect and extends to secure such Incremental Facility on the basis contemplated in this Clause 2.5.

3. **PURPOSE**

3.1 **Purpose**

- (a) The Borrower shall apply all amounts borrowed by it under Facility A towards repayment of amounts owing by it under or in connection with the Existing Facilities.
- (b) The Borrower shall apply all amounts borrowed by it under Facility B towards:
 - (i) payment of all fees, costs, expenses and registration taxes in relation to the Facilities;
 - (ii) funding the DSRA with the required DSRA Minimum Balance; and
 - (iii) general corporate purposes of the Group, including, but not limited to, Capital Expenditure and Permitted Acquisitions.
- (c) The Borrower shall apply all amounts borrowed by it under an Incremental Facility towards financing:
 - (i) Permitted Acquisitions (falling within paragraph (d) of the definition of “Permitted Acquisition”);
 - (ii) costs and expenses incurred with respect of any such Permitted Acquisition within 12 months of such Permitted Acquisition;
 - (iii) refinancing Financial Indebtedness of any Future Target acquired by any Group Member pursuant to any such Permitted Acquisition; and
 - (iv) Capital Expenditure or working capital requirements of any Future Target acquired by a Group Member pursuant to any such Permitted Acquisition.

3.2 **Monitoring**

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

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Loan if on or before the date on which the first Utilisation Request is delivered, the Facility Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Facility Agent (acting reasonably). The Facility Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Mandated Lead Arranger notifies the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Further conditions precedent

Subject to Clause 4.1 (*Initial conditions precedent*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to a Loan if:

- (a) on the date of the Utilisation Request (in respect of such Loan) and on the proposed Utilisation Date (in respect of such Loan):
 - (i) (in the case of a Rollover Loan) no Material Event of Default is continuing or would result from such proposed Loan or (in the case of any other Loan) no Default is continuing or would result from the proposed Loan; and
 - (ii) all the representations and warranties to be repeated by any or all of the Transaction Obligors under any or all of the Finance Documents on the date of any Utilisation Request or any Utilisation Date are true in all material respects (whether before or after giving effect to such proposed Loan); and
- (b) on or prior to the date occurring one Business Day prior to the proposed Utilisation Date, the Facility Agent has received evidence satisfactory to it that the aggregate amount standing to the credit of the DSRA is (or, in respect of any Utilisation proposed to be made on the Initial Utilisation Date, will on the Initial Utilisation Date be) not less than the DSRA Minimum Balance (calculated as of the proposed Utilisation Date).

4.3 Maximum number of Utilisations

- (a) Facility A may only be utilised in a single Facility A Loan.
- (b) The Borrower may not deliver a Utilisation Request in respect of Facility B if as a result of the proposed Utilisation, more than 15 Facility B Loans would be outstanding.
- (c) Each Incremental Facility may be utilised in a single or (with the consent of the Facility Agent) more than one Incremental Facility Loan(s) thereunder. The Facility Agent shall be entitled to give such consent under this paragraph (c) without any need to seek instructions or consent from any Lender.

(d) The Borrower may not request that a Loan be divided.

**SECTION 3
UTILISATION**

5. UTILISATION

5.1 Delivery of a Utilisation Request

The Borrower may utilise a Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time (or such later time as all of the Lenders may agree).

5.2 Completion of a Utilisation Request

- (a) The Utilisation Request for a Loan under a Facility is irrevocable and will not be regarded as having been duly completed unless:
 - (i) it identifies the Facility under which such Loan is to be made;
 - (ii) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
 - (iii) the currency and amount of such Loan comply with Clause 5.3 (*Currency and amount*); and
 - (iv) the proposed Interest Period complies with Clause 11 (*Interest Periods*).
- (b) Only one Loan under each Initial Facility may be requested in the first Utilisation Request. Only one Loan may be requested in each subsequent Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be USD.
- (b) The amount of any proposed Loan under any Term Facility must be an amount that does not exceed the Available Facility for that Term Facility.
- (c) The amount of any proposed Facility B Loan must be a minimum of US\$250,000 or, if less, the Available Facility for Facility B.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date (for such Loan) through its Facility Office.
- (b) The amount of each Lender's participation in each Loan under a Facility will be equal to a proportion of such Loan, which proportion is equal to the proportion borne by such Lender's Available Commitment (in respect of that Facility) to the Available Facility (in respect of that Facility) immediately prior to making that Loan.
- (c) The Facility Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 Limitations on Utilisation: Facility B

Facility B shall not be utilised unless Facility A has been utilised or will be utilised on the same date.

5.6 **Cancellation of Commitment**

In respect of each Facility, upon the expiry of the Availability Period in relation to such Facility, the Commitment of each Lender under such Facility which, at that time, is unutilised (that is, in an amount equal to that Lender's Available Commitment under such Facility at that time) shall be immediately cancelled, and then that Lender's Available Commitment under such Facility shall be immediately reduced to zero.

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of the Facility A Loan

- (a) The Borrower shall repay the Facility A Loan in instalments by repaying on each Repayment Date in respect of Facility A an amount which reduces the outstanding Facility A Loan by an amount equal to a percentage of the outstanding Facility A Loan (as at the close of business in New York City) on the Initial Utilisation Date, which percentage is set out opposite that Repayment Date below:

<u>Number of Months from the Initial Utilisation Date</u>	<u>Percentage</u>
12	5%
24	12.5%
36	17.5%
48	25%
60	40%

- (b) On the Termination Date in respect of Facility A, the Borrower shall repay any and all outstanding amounts under the Facility A Loan in full.
- (c) The Borrower may not reborrow any part of Facility A which is repaid.

6.2 Repayment of Facility B Loans

- (a) The Borrower shall repay each Facility B Loan on the last day of its Interest Period.
- (b) Without prejudice to the Borrower's obligation under paragraph (a) above, if:
- (i) one or more Facility B Loans ("**New Facility B Loans**") are to be made available to the Borrower:
 - (A) on the same day that a maturing Facility B Loan is due to be repaid by the Borrower; and
 - (B) in whole or in part for the purpose of refinancing that maturing Facility B Loan (as specified in the Utilisation Request(s) for such New Facility B Loans or pursuant to automatic rollover contemplated in the definition of "Rollover Loan"); and
 - (ii) the proportion borne by each Lender's participation in that maturing Facility B Loan to the amount of that maturing Facility B Loan is the same as the proportion borne by that Lender's aggregate participation in such New Facility B Loans to the aggregate amount of such New Facility B Loans,

the aggregate amount of such New Facility B Loans shall, unless the Borrower notifies the Facility Agent to the contrary in the Utilisation Request(s) for such New Facility B Loans, be treated as if applied in or towards repayment of that maturing Facility B Loan so that:

- (A) if the amount of that maturing Facility B Loan exceeds the aggregate amount of such New Facility B Loans:
 - (1) the Borrower will only be required to make a payment under Clause 31.1 (*Payments to the Facility Agent*) (in respect of repayment of that maturing Facility B Loan) in an amount in the currency of that maturing Facility B Loan equal to that excess; and
 - (2) each Lender's participation in such New Facility B Loans shall be treated as having been made available by such Lender and applied by the Borrower in or towards repayment of that Lender's participation in that maturing Facility B Loan and that Lender will not be required to make a payment under Clause 31.1 (*Payments to the Facility Agent*) in respect of its participation in such New Facility B Loans; and
- (B) if the amount of that maturing Facility B Loan is equal to or less than the aggregate amount of such New Facility B Loans:
 - (1) the Borrower will not be required to make a payment under Clause 31.1 (*Payments to the Facility Agent*) in respect of repayment of that maturity Facility B Loan; and
 - (2) each Lender will be required to make a payment under Clause 31.1 (*Payments to the Facility Agent*) in respect of its participation in such New Facility B Loans only to the extent that its aggregate participation in such New Facility B Loans exceeds that Lender's participation in that maturing Facility B Loan and the remainder of that Lender's aggregate participation in such New Facility B Loans shall be treated as having been made available by such Lender and applied by the Borrower in or towards repayment of that Lender's participation in that maturing Facility B Loan.
- (c) Notwithstanding paragraph (a) and (b) above, each Facility B Loan must be repaid in full on or prior to the Termination date.
- (d) The Borrower may, subject to the terms of this Agreement, reborrow any part of Facility B which is repaid during the Availability Period in respect of Facility B.

6.3 Reduction of Facility B

- (a) The Total Facility B Commitments shall be reduced in instalments on each Facility B Reduction Date by an amount equal to the applicable percentage of the Total Facility B Commitments (as at the date of this Agreement), which percentage is set out opposite that Facility B Reduction Date below:

<u>Number of Months from the Initial Utilisation Date</u>	<u>Percentage</u>
12	5%
24	12.5%
36	17.5%
48	25%
60	40%

- (b) The Borrower shall ensure that sufficient Facility B Loans are repaid on each Facility B Reduction Date to the extent necessary so that the aggregate amount of the outstanding Facility B Loans (after such repayment) does not exceed the reduced amount of the Total Facility B Commitments.
- (c) Any reduction of the Total Facility B Commitments shall reduce rateably the Facility B Commitment of each Lender.

6.4 Repayment of Incremental Facility Loans

Each Incremental Facility Loan in respect of any Incremental Facility shall be repaid in accordance with the scheduled repayments terms set out in the Incremental Facility Notice (relating to such Incremental Facility) in accordance with Clause 2.5 (*Incremental Facilities*).

6.5 Effect of cancellation and prepayment on scheduled repayments and reductions

- (a) If any Term Loan is repaid or prepaid or any Facility B Commitment is cancelled in accordance with Clause 7.4 (*Right of cancellation and repayment in relation to a single Lender*) or Clause 7.1 (*Illegality*) then, other than to the extent that the Commitments in respect of the relevant Facility are subsequently increased pursuant to Clause 2.2 (*Increase*):
 - (i) (in the case of a repayment or prepayment of a Term Loan) the amount of the Repayment Instalment for each Repayment Date (in each case in respect of the relevant Term Facility) falling after that repayment or prepayment will reduce *pro rata* by the amount of such Term Loan so repaid or prepaid; and
 - (ii) (in the case of a cancellation of any Facility B Commitment) the amount of the Facility B Reduction Instalment for each Facility B Reduction Date falling after that cancellation will reduce *pro rata* by the amount of such Facility B Commitment so cancelled.
- (b) If any Term Loan is prepaid in accordance with Clause 7.3 (*Voluntary prepayment*) or any Facility B Commitment is cancelled in accordance with Clause 7.2 (*Voluntary cancellation*):
 - (i) (in the case of a repayment or prepayment of a Term Loan) such prepayment shall be applied to reduce the Repayment Instalments for Repayment Dates (in each case in respect of the relevant Term Facility) falling after the date of that prepayment in such order as the Borrower may specify at the time of such prepayment, **provided that** the aggregate amount of such reduction for all such Repayment Instalments shall not exceed the amount of that prepayment; and

- (ii) (in the case of a cancellation of any Facility B Commitment) such cancellation shall be applied to reduce the Facility B Reduction Instalments for Facility B Reduction Dates falling after the date of that cancellation in such order as the Borrower may specify at the time of such cancellation, **provided that** the aggregate amount of such reduction for all such Facility B Reduction Instalments shall not exceed the amount of that cancellation.
- (c) If any Term Loan is repaid or prepaid or any Facility B Commitment is cancelled in accordance with Clause 8.1 (*Exit*) or Clause 8.2 (*VIE Termination Event*) then:
 - (i) (in the case of a repayment or prepayment of a Term Loan) the amount of the Repayment Instalment for each Repayment Date (in each case in respect of the relevant Term Facility) falling after that repayment or prepayment will reduce *pro rata* by the amount of such Term Loan so repaid or prepaid; and
 - (ii) (in the case of a cancellation of any Facility B Commitment) the amount of the Facility B Reduction Instalment for each Facility B Reduction Date falling after that cancellation will reduce *pro rata* by the amount of such Facility B Commitment so cancelled.

7. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

7.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Loan (or it becomes unlawful for any Affiliate of a Lender if that Lender were to do so):

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event and the Facility Agent shall, upon receipt of notice from that Lender, promptly notify the Borrower of the same;
- (b) upon the Facility Agent notifying the Borrower, the Commitment of that Lender in respect of each Facility shall be reduced by an amount equal to the Available Commitment of that Lender in respect of that Facility (immediately prior to such reduction), and then the Available Commitment of that Lender in respect of that Facility shall immediately be reduced to zero; and
- (c) to the extent that such Lender's participation in any Loan has not been transferred to another person pursuant to Clause 37.6 (*Replacement of Lender*), the Borrower shall repay in full that Lender's participation in such Loan on the last day of the Interest Period for such Loan occurring after the Facility Agent has notified the Borrower or, if earlier, the date specified by that Lender in such notice delivered by that Lender to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.

7.2 Voluntary cancellation

- (a) The Borrower may, if it gives the Facility Agent not less than three 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 U.S.\$1,000,000 and an integral multiple of U.S.\$500,000) of the Available Facility in relation to an Initial Facility.

- (b) Any cancellation under this Clause 7.2 in respect of any Initial Facility shall reduce the Commitments of the Lenders rateably under such Initial Facility.

7.3 Voluntary prepayment

- (a) Subject to paragraph (c) below, the Borrower may, if it gives the Facility Agent not less than three Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Initial Facility Loan (but, if in part, being an amount that reduces that Initial Facility Loan by a minimum amount of U.S.\$1,000,000 and is an integral multiple of U.S.\$500,000).
- (b) Subject to paragraph (c) below, the Borrower may voluntarily prepay all or a part of an Incremental Facility Loan under any Incremental Facility in accordance with the terms of the Incremental Facility Notice (in respect of such Incremental Facility), **provided that** (if the Facility A Loan or any part thereof is outstanding) the Borrower shall simultaneously make a voluntary prepayment of the Facility A Loan such that the proportion borne by (i) the aggregate amount of such prepayment of the Facility A Loan to (ii) the aggregate amount of the Facility A Loan immediately prior to such prepayment is not less than the proportion borne by (i) the aggregate amount of such prepayment of Incremental Facility Loan(s) under any Incremental Facility to (ii) the aggregate amount of Incremental Facility Loan(s) under such Incremental Facility immediately prior to such prepayment.
- (c) A Term Loan may only be prepaid pursuant to this Clause 7.3 after the last day of the Availability Period in respect of the relevant Term Facility (or, if earlier, the day on which the Available Facility in respect of the relevant Term Facility is zero).

7.4 Right of cancellation and repayment in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (c) of Clause 14.2 (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from the Borrower under Clause 14.3 (*Tax indemnity*) or Clause 15.1 (*Increased costs*),the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Facility Agent notice of cancellation of the Available Commitment of that Lender in respect of each Facility and its intention to procure the repayment of that Lender's participation in the Loans.
- (b) On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment of that Lender in respect of each Facility shall be reduced by an amount equal to the Available Commitment of that Lender in respect of such Facility (immediately prior to such reduction), and then the Available Commitment of that Lender in respect of such Facility shall immediately be reduced to zero.
- (c) On the last day of the Interest Period for any Loan which ends after the Borrower has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in such Loan in full together with all interest and other amounts accrued in relation to such repaid amount under the Finance Documents.

7.5 Right of cancellation in relation to a Defaulting Lender

- (a) If any Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Facility Agent five Business Days' notice of cancellation of the Available Commitment of that Lender in respect of each Facility.
- (b) On the notice referred to in paragraph (a) above becoming effective, the Commitment of that Defaulting Lender in respect of each Facility shall be reduced by an amount equal to the Available Commitment of that Defaulting Lender in respect of such Facility (immediately prior to such reduction), and then the Available Commitment of that Defaulting Lender in respect of such Facility shall immediately be reduced to zero.
- (c) The Facility Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

8. MANDATORY PREPAYMENT AND CANCELLATION

8.1 Exit

Upon the occurrence of:

- (a) a Change of Control; or
- (b) the sale of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions,

then:

- (i) the Borrower shall promptly notify the Facility Agent upon becoming aware of that event;
- (ii) (irrespective of whether the Borrower has complied with paragraph (i)) no Lender shall be obliged to fund or maintain its participation in any Loan or any part thereof; and
- (iii) (irrespective of whether the Borrower has complied with paragraph (i)) if a Lender so requires by notice in writing to the Facility Agent:
 - (A) the Available Commitment of that Lender in respect of each Facility shall be immediately reduced to zero (and its Commitment in respect of such Facility shall be reduced by the amount of such reduction in its Available Commitment in respect of such Commitment); and
 - (B) that Lender's participation in each Loan, together with accrued interest and all other amounts accrued under the Finance Documents thereon, shall become immediately due and payable to that Lender on the date specified in such notice (which date must be at least twenty (20) Business Days after the date of such notice); and
- (iv) the Facility Agent shall promptly notify the Borrower upon receipt of any such notice of any Lender.

8.2 VIE Termination Event

Upon the occurrence of a VIE Termination Event:

- (a) the Borrower shall promptly notify the Facility Agent upon becoming aware of such VIE Termination Event;
- (b) (irrespective of whether the Borrower has complied with paragraph (a)) none of the Lenders shall be obliged to fund or maintain its participation in any Loan or any part thereof; and
- (c) (irrespective of whether the Borrower has complied with paragraph (a)) the Available Facility in respect of each Facility will immediately be cancelled (and the Available Commitment of each Lender in respect of each Facility shall immediately be reduced to zero) and each Loan, together with accrued interest and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

9. RESTRICTIONS

9.1 Notices of cancellation or prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (*Illegality, voluntary prepayment and cancellation*) shall (subject to the terms of that Clause) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment, **provided that** in the case of any notice of voluntary prepayment under Clause 7.3 (*Voluntary prepayment*), (a) the Borrower shall be permitted to specify the conditions precedent to such prepayment in such notice of voluntary prepayment under Clause 7.3 (*Voluntary prepayment*), and (b) if the Borrower shall have specified such conditions and any such condition is not satisfied, the Borrower may by a notice of cancellation to the Facility Agent (on or prior to the date on which such prepayment is to be made) revoke such notice of voluntary prepayment, and the Borrower shall, within five Business Days of demand, pay any and all Break Costs and indemnify each of the Finance Parties against any cost, loss or liability (excluding any loss of Margin) incurred by such Finance Party as a consequence of such notice of voluntary prepayment being revoked or any condition in such notice of voluntary prepayment not being satisfied or such prepayment not occurring on the relevant date specified in such notice of voluntary prepayment.

9.2 Interest and other amounts

Any prepayment (including, for the avoidance of doubt, any voluntary prepayment) under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

9.3 No reborrowing of Term Facility

The Borrower may not reborrow any part of any Term Facility which is prepaid.

9.4 Reborrowing of Facility B

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

9.5 Prepayment in accordance with Agreement

The Borrower shall not repay or prepay all or any part of any Loan or cancel all or any part of the Commitments of all or any of the Lenders in respect of any Facility except at the times and in the manner expressly provided for in this Agreement.

9.6 No reinstatement of Commitments

Subject to Clause 2.2 (*Increase*), no amount of the Total Commitments (or the Commitment of any Lender in respect of any Facility) cancelled under this Agreement may be subsequently reinstated.

9.7 Facility Agent's receipt of notices

If the Facility Agent receives a notice under Clause 7 (*Illegality, voluntary prepayment and cancellation*), it shall promptly forward a copy of that notice or election to either the Borrower or the affected Lender(s), as appropriate.

9.8 Prepayment elections

The Borrower shall (through the Facility Agent) notify the Lenders as soon as practicable of any proposed prepayment of any Loan under Clause 8 (*Mandatory prepayment and cancellation*).

9.9 Effect of repayment and prepayment on Commitments

If all or part of any Lender's participation in a Loan under a Facility is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of that Lender's Commitment in respect of that Facility (equal to the amount of such participation which is repaid or prepaid) will be deemed to be cancelled on the date of such repayment or prepayment.

9.10 Application of prepayments

Any prepayment of a Loan under a Facility (other than a prepayment pursuant to Clause 7.1 (*Illegality*), Clause 7.4 (*Right of cancellation and repayment in relation to a single Lender*), Clause 8.1 (*Exit*) or Clause 8.2 (*VIE Termination Event*)) shall be applied *pro rata* to each Lender's participation in such Loan.

**SECTION 5
COSTS OF UTILISATION**

10. INTEREST

10.1 Calculation of interest

- (a) The rate of interest on an Initial Facility Loan for each day during each Interest Period relating thereto is the percentage rate per annum which is the aggregate of the applicable:
 - (i) Margin; and
 - (ii) LIBOR (for such Initial Facility Loan and such Interest Period).
- (b) The rate of interest on each Incremental Facility Loan under an Incremental Facility (including any applicable market disruption mechanism relating to such interest) shall be determined in accordance with the terms of the Incremental Facility Notice in respect of such Incremental Facility.

10.2 Payment of interest

- (a) The Borrower shall pay accrued interest on the Facility A Loan on the last day of each Interest Period relating thereto.
- (b) The Borrower shall pay accrued interest on a Facility B Loan on the last day of the Interest Period relating thereto.
- (c) Interest on each Incremental Facility Loan under any Incremental Facility shall be paid in accordance with the terms of the Incremental Facility Notice relating to such Incremental Facility.

10.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on that overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 1% per annum higher than the rate which would have been payable if that overdue amount had, during the period of such non-payment, constituted a Loan (under the Facility to which such overdue amount relates, or if such overdue amount is not specifically related to any Facility, under Facility A) in the currency of such overdue amount for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by that Obligor on demand by the Facility Agent.
- (b) If any overdue amount under any Finance Document consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to that overdue amount during that first Interest Period shall be 1% per annum higher than the rate which would have applied if that overdue amount had not become due.

- (c) Default interest (if unpaid) arising on an overdue amount under any Finance Document will be compounded with that overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- (d) The determination of the Facility Agent (in good faith) as to whether any amount payable under any Finance Document is specifically related to any Facility shall, in the absence of manifest error, be conclusive and binding on the Parties.

10.4 Notification of rates of interest

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

11. INTEREST PERIODS

11.1 Interest Period

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for such Loan or (in the case of a Term Loan which has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with paragraph (b) above in respect of an Interest Period for a Term Loan, that Interest Period will, subject to this Clause 11, be (in the case of the Facility A Loan) three Months or (in the case of an Incremental Facility Loan under an Incremental Facility) such duration as determined in accordance with the Incremental Facility Notice in respect of such Incremental Facility.
- (d) Subject to this Clause 11, the Borrower may select an Interest Period for a Loan of one, two, three or six Months or any other period agreed between the Borrower and the Facility Agent (acting on its own discretion if less than six Months, or on the instructions of all the Lenders if more than six Months).
- (e) The Borrower may select an Interest Period for a Loan under any Term Facility of less than one Month, if necessary to ensure that there are sufficient Loans under such Term Facility (with an aggregate amount which is equal to or greater than the Repayment Instalment for such Term Facility relating to a Repayment Date) which have an Interest Period ending on such Repayment Date in order for the Borrower to repay such Repayment Instalment on such Repayment Date.
- (f) The Borrower may select an Interest Period for a Facility B Loan of less than one Month, if necessary to ensure that there are sufficient Facility B Loans (with an aggregate amount which, when aggregated with the Available Facility in relation to Facility B, is equal to or greater than the Facility B Reduction Instalment relating to any Facility B Reduction Date) which have an Interest Period ending on or prior to such Facility B Reduction Date in order for Facility B to be reduced in accordance with Clause 6.2 (*Repayment of Facility B Loans*) on such Facility B Reduction Date.
- (g) An Interest Period for an Initial Facility Loan shall not extend beyond the Termination Date.

- (h) Each Interest Period for a Loan shall start on the Utilisation Date (in respect of such Loan) or (in the case of each subsequent Interest Period of a Term Loan) on the last day of the preceding Interest Period relating to such Loan.
- (i) A Facility B Loan has one Interest Period only which shall start on the Utilisation Date of that Facility B Loan.
- (j) Interest Periods for each Incremental Facility Loan under any Incremental Facility shall be determined in accordance with the terms of the Incremental Facility Notice relating to such Incremental Facility.

11.2 Changes to Interest Periods

- (a) Prior to determining the interest rate for a Loan under a Term Facility for any Interest Period relating thereto, the Facility Agent may shorten such Interest Period for such Loan to ensure there are sufficient Loans under such Term Facility (with an aggregate amount equal to or greater than the Repayment Instalment for such Term Facility falling due on any Repayment Date) which have an Interest Period ending on that Repayment Date for the Borrower to repay such Repayment Instalment due on that Repayment Date.
- (b) Prior to determining the interest rate for any Facility B Loan for any Interest Period relating thereto, the Facility Agent may shorten such Interest Period for such Facility B Loan to ensure that there are sufficient Facility B Loans (with an aggregate amount which, when aggregated with the Available Facility in relation to Facility B, is equal to or greater than the Facility B Reduction Instalment relating to any Facility B Reduction Date) which have an Interest Period ending on or prior to such Facility B Reduction Date in order for Facility B to be reduced in accordance with Clause 6.2 (*Repayment of Facility B Loans*) on such Facility B Reduction Date.
- (c) If the Facility Agent makes any change to an Interest Period referred to in this Clause 11.2, it shall promptly notify the Borrower and the Lenders.

11.3 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).

12. CHANGES TO THE CALCULATION OF INTEREST

12.1 Absence of quotations

Subject to Clause 12.2 (*Market disruption*), if LIBOR for any Loan and any Interest Period relating thereto is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day for the currency of such Loan and such Interest Period, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

12.2 Market disruption

- (a) If a Market Disruption Event occurs in relation to an Initial Facility Loan for any Interest Period relating thereto, then the rate of interest on each Lender's share of that Initial Facility Loan for each day during that Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the applicable Margin; and

- (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event by close of business in Taipei on the date falling two Business Days after the Quotation Day for that Initial Facility Loan and that Interest Period (or, if later, on the date falling three Business Days prior to the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Initial Facility Loan from whatever source it may reasonably select, **provided that** if such rate is below zero, such rate will be deemed to be zero.
- (b) If:
- (i) the percentage rate per annum notified by a Lender pursuant to paragraph (a)(ii) above in relation to an Initial Facility Loan and any Interest Period relating thereto is less than LIBOR in relation to that Initial Facility Loan and such Interest Period; or
 - (ii) a Lender has not notified the Facility Agent of a percentage rate per annum pursuant to paragraph (a)(ii) above in respect of an Initial Facility Loan and any Interest Period relating thereto,
- the cost to that Lender of funding its participation in that Initial Facility Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR for that Initial Facility Loan and such Interest Period (and that Lender shall be deemed to have so notified the Facility Agent).
- (c) If a Market Disruption Event occurs in relation to an Initial Facility Loan and any Interest Period the Facility Agent shall, as soon as is reasonably practicable, notify the Borrower and the Lenders.
- (d) In this Agreement:
- “**Market Disruption Event**” means, in relation to an Initial Facility Loan and any Interest Period relating thereto:
- (i) at or about noon (London time) on the Quotation Day for that Initial Facility Loan and such Interest Period LIBOR (for that Initial Facility Loan and such Interest Period) is to be determined by reference to the Reference Banks and none or only one of the Reference Banks supplies a rate to the Facility Agent to determine LIBOR for that Initial Facility Loan and such Interest Period; or
 - (ii) before close of business in Taipei on the Business Day immediately following the Quotation Day for that Initial Facility Loan and such Interest Period, the Facility Agent receives notification(s) from a Lender or Lenders (whose participations in that Initial Facility Loan exceed 40 % of that Initial Facility Loan) that the cost to it or them of funding its or their participation in that Initial Facility Loan from whatever source it may reasonably select would be in excess of LIBOR for that Initial Facility Loan and such Interest Period.

12.3 **Alternative basis of interest or funding**

- (a) If a Market Disruption Event occurs in relation to an Initial Facility Loan and any Interest Period relating thereto and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower 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 applicable to that Initial Facility Loan.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (c) For the avoidance of doubt, in the event that no alternative basis is agreed at the end of such 30 day period, the rate of interest applicable to that Initial Facility Loan shall be determined in accordance with Clause 12.1 (*Absence of quotations*) and Clause 12.2 (*Market disruption*).

12.4 **Break Costs**

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

13. **FEES**

13.1 **Commitment fee: Facility B**

- (a) The Borrower shall, in respect of Facility B, pay to the Facility Agent (for the account of each Lender with a Facility B Commitment) a commitment fee in U.S. dollars computed and accruing on a daily basis at the rate which is 30% of the applicable Margin as at such date on the undrawn and uncanceled amount of that Lender's Available Commitment in respect of Facility B on each day of the Availability Period (in relation to Facility B). For such purposes, such Lender's commitment fee for Facility B in respect of any day during the Availability Period (in relation to Facility B) shall be calculated on such Lender's Available Commitment in respect of Facility B as at 5 p.m. (Taipei time) on such day (or, if any such day is not a Business Day, the immediately preceding Business Day).
- (b) The accrued commitment fee in respect of Facility B is payable:
 - (i) on the last day of each successive period of three Months which ends during the relevant Availability Period;
 - (ii) on the last day of the relevant Availability Period; and
 - (iii) if a Lender's Facility B Commitment is reduced to zero before the last day of the relevant Availability Period, the accrued commitment fee for the account of such Lender shall be payable on the day on which such reduction to zero becomes effective.

13.2 **Arrangement fee**

The Borrower shall pay to the Mandated Lead Arranger (for its own account) the arrangement fee in the amount and at the times agreed in a Fee Letter.

13.3 **Facility agency fee**

The Borrower shall pay to the Facility Agent (for its own account) a facility agency fee in the amount and at the times agreed in a Fee Letter.

13.4 **Security agency fee**

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

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

14. TAX GROSS-UP AND INDEMNITIES

14.1 Definitions

(a) In this Agreement:

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

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

“**Tax Deduction**” means a deduction or withholding for or on account of Tax from a payment under a Finance Document (other than a FATCA Deduction).

“**Tax Payment**” means either the increase in a payment made by a Transaction Obligor to a Finance Party under Clause 14.2 (*Tax gross-up*) or a payment under Clause 14.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 14 a reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

14.2 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 Borrower shall promptly upon becoming aware that a Transaction Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrower and that Transaction 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 (to which such Tax Deduction relates) shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to such payment which would have been due if no Tax Deduction had been required.

(d) 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.

(e) 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 Facility Agent for the Finance Party entitled to the payment (to which such Tax Deduction relates) evidence reasonably satisfactory to that Finance Party that that Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

14.3 Tax indemnity

- (a) The Borrower shall (within five Business Days of demand by the Facility Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party or the Facility Office of that Finance Party; or
 - (ii) to any loss, liability or cost to the extent that:
 - (A) it is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*); or
 - (B) it relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to such claim, following which the Facility Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify the Facility Agent.

14.4 Tax Credit

If an Obligor makes a Tax Payment in respect of a Finance Party and that Finance Party determines that:

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

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

14.5 Stamp taxes

The Borrower shall pay and, within five Business Days of demand, indemnify each of the Secured Parties and the Mandated Lead Arranger against any cost, loss or liability that Secured Party or the Mandated Lead Arranger incurs in relation to any or all stamp duty, registration and other similar Taxes payable in respect of any Finance Document (except any such Tax payable in connection with the entry into of a Transfer Certificate).

14.6 Indirect Tax

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by any Finance Party to any Party under or in connection with a Finance Document, that Party must pay to such Finance Party (in addition to and at the same time as paying the consideration for such supply) an amount equal to the amount of that Indirect Tax.
- (b) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any costs or expenses, that Party shall at the same time pay and indemnify such Finance Party against all Indirect Tax incurred by such Finance Party in respect of such costs or expenses, except to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such Indirect Tax.

14.7 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within 10 Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is a FATCA Exempt Party or not a FATCA Exempt Party;
 - (ii) supply to that requesting Party such forms, documentation and other information relating to its status under FATCA as that requesting Party reasonably requests for the purposes of that requesting Party's compliance with FATCA; and
 - (iii) supply to that requesting Party such forms, documentation and other information relating to its status as that requesting Party reasonably requests for the purposes of that requesting Party's compliance with any other law, regulation or exchange of information regime.
- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.

- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments thereunder) as if it is not a FATCA Exempt Party, until such time as that Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If a Lender fails to supply any forms, documentation and other information in accordance with paragraph (a) above, or any forms, documentation and other information provided by a Lender to the Facility Agent is or becomes materially inaccurate or incomplete, then such Lender shall indemnify the Facility Agent, within three Business Days of demand, against any cost, loss, Tax or liability (including for negligence or any other category of liability whatsoever) incurred by the Facility Agent (including any related interest and penalties) in acting as Facility Agent under the Finance Documents as a result of such failure, inaccuracy or incompleteness.

14.8 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of that payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the Party to whom it is making the payment (to which such FATCA Deduction relates) and, in addition, shall notify the Borrower, the Facility Agent and the other Finance Parties.

15. INCREASED COSTS

15.1 Increased costs

- (a) Subject to Clause 15.3 (*Exceptions*) the Borrower shall, within five Business Days of demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates (on or after the date on which that Finance Party becomes a Finance Party) as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement ;
 - (ii) compliance with any law or regulation made, enacted, issued or put into effect after the date of this Agreement; or
 - (iii) the implementation or application of, or compliance with, Basel III or any law or regulation that implements or applies Basel III.
- (b) In this Agreement:
 - “**Basel III**” means:
 - (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated (as at the date of this Agreement);

- (ii) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated (as at the date of this Agreement); and
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III” and subsisting as at the date of this Agreement.

“**Increased Costs**” means:

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

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

15.2 **Increased cost claims**

- (a) A Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased costs*) shall notify the Facility Agent of the claim as soon as reasonably practicable after becoming aware of the event giving rise to that claim, following which the Facility Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.
- (c) A claim pursuant to Clause 15.1 must contain reasonable details of the event giving rise to that claim, the amount of that claim and the basis of computation of that claim.

15.3 **Exceptions**

- (a) Clause 15.1 (*Increased costs*) does not apply to any Increased Cost to the extent that such Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor or attributable to a Tax which 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 the relevant Finance Party or the Facility Office of the relevant Finance Party claiming such Increased Cost;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;

- (iii) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 14.3 (*Tax indemnity*) applied);
 - (iv) incurred by a Finance Party or an Affiliate of a Finance Party and is attributable to the wilful breach by such Finance Party or such Affiliate of any treaty, law or regulation, or the terms of any Finance Document;
 - (v) attributable to any penalty having been imposed by the relevant central bank or monetary or fiscal authority upon the relevant Finance Party that is claiming such Increased Cost (or any Affiliate of it) by virtue of its having exceeded any country or sector borrowing or breached any directives imposed upon it (of which it is aware);
 - (vi) attributable to the implementation or application of, or compliance with, the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement (“**Basel II**”) or any law or regulation that implements or applies Basel II (whether by a government, regulatory, Finance Party or any of its Affiliates);
 - (vii) attributable to the implementation or application of, or compliance with, Basel III (in each case in the form subsisting as at the date of this Agreement) or any law or regulation that implements or applies Basel III (in each case in the form subsisting as at the date of this Agreement) but (for the avoidance of doubt) the exclusion pursuant to this paragraph (vii) shall not apply to any Increased Cost that is attributable to any amendment or supplement to Basel III (or any change in the interpretation, administration or application of Basel III) after the date of this Agreement and/or the introduction of or compliance with any amendment or supplement to Basel III after the date of this Agreement; or
 - (viii) incurred by any Finance Party but such Finance Party has not made a claim pursuant to Clause 15.2 (*Increased cost claims*) in respect of such Increased Cost on or prior to the date falling 120 days after the later of (A) the date on which such Increased Cost is incurred by such Finance Party and (B) such Finance Party becomes aware of the event or circumstance giving rise to such Increased Cost and is able to determine the amount of such Increased Cost, except to the extent that the event or circumstance giving rise to that Increased Cost or claim has retrospective effect.
- (b) In this Clause 15.3 reference to a “**Tax Deduction**” has the same meaning given to the term in Clause 14.1 (*Definitions*).

16. OTHER INDEMNITIES

16.1 Currency indemnity

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

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

that Obligor shall as an independent obligation, within five Business Days of receipt of demand, indemnify each of the Mandated Lead Arranger and each other Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of that 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 or recovery of that Sum.

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

16.2 Other indemnities

The Borrower shall (or shall procure that an Obligor will), within five Business Days of receipt of demand (which demand must be accompanied by reasonable details and calculations of the amount demanded), indemnify each of the Mandated Lead Arranger and each other Secured Party against any cost, loss or liability incurred by it:

- (a) as a result of the occurrence of any Event of Default;
- (b) as a result of any enquiry, investigation, subpoena (or similar order) or legal or arbitral proceedings with respect to any Transaction Obligor or any Group Member or with respect to any transactions contemplated or financed under any Finance Document (other than by reason of wilful default or gross negligence by that Secured Party);
- (c) in relation to the arranging or syndication of any Facility (or any part thereof) (including any action, claim, investigation or proceeding commenced or threatened in connection therewith) (other than by reason of wilful default or gross negligence by that Secured Party);
- (d) in relation to the establishment of any Incremental Facility under Clause 2.5 (*Incremental Facilities*);
- (e) as a result of a failure by any Transaction Obligor to pay any amount due under a Finance Document on its due date, including any cost, loss or liability arising as a result of Clause 30 (*Sharing among the Finance Parties*);
- (f) as a result of funding, or making arrangements to fund, its participation in any Loan requested by the Borrower in any 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 wilful default or gross negligence by that Secured Party); or
- (g) as a result of any Loan (or any part of any Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

16.3 Indemnity to the Facility Agent

The Borrower shall promptly (and in any event within five Business Days of demand) (which demand must be accompanied by reasonable details and calculations of the amount demanded) indemnify the Facility Agent against any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default;

- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under any Finance Document.

16.4 Indemnity to the Security Agent

- (a) Each Obligor shall promptly (and in any event within five Business Days of demand) (which demand must be accompanied by reasonable details and calculations of the amount demanded) indemnify each of the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) any failure by the Borrower to comply with its obligations under Clause 18 (*Costs and expenses*);
 - (ii) acting or relying on any notice, request or instruction purported to be given by a Transaction Obligor which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of any Transaction Security;
 - (iv) the exercise or purported exercise of any of the rights, powers, discretions, authorities and remedies vested in any of the Security Agent, any Receiver or any Delegate by the Finance Documents or by law;
 - (v) any default by any Transaction Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or
 - (vi) acting as Security Agent, Receiver or Delegate under or in connection with the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the Security Agent's, such Receiver's or such Delegate's (as the case may be) gross negligence or wilful misconduct).
- (b) Each Obligor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 16.4 will not be prejudiced by any release or disposal under clause 13 (*Distressed Disposals and Appropriation*) of the Security Trust Agreement taking into account the operation of that clause.
- (c) Each of the Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 16.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it under any Finance Document.

17. **MITIGATION BY THE LENDERS**

17.1 **Mitigation**

- (a) Each Finance Party shall, in consultation with the Borrower, 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 14 (*Tax gross-up and indemnities*) or Clause 15 (*Increased costs*) including (in relation to any circumstances which arise after the date of this Agreement) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

17.2 **Limitation of liability**

- (a) The Borrower shall promptly indemnify each Finance Party, within five Business Days of demand, for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so would be reasonably expected to be prejudicial to it.

18. **COSTS AND EXPENSES**

18.1 **Transaction expenses**

The Borrower shall, within five Business Days of written demand (which demand must be accompanied by reasonable details and calculations of the amount demanded), pay each of the Facility Agent, the Mandated Lead Arranger and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of:

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

18.2 **Amendment costs**

If:

- (a) an Obligor requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 31.10 (*Change of currency*) or Clause 37.8 (*Replacement of Screen Rate*),

the Borrower shall, within five Business Days of written demand, reimburse each of the Facility Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Facility Agent or the Security Agent (and/or, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating, complying with or implementing that request or requirement.

18.3 Enforcement and preservation costs

The Borrower shall, within five Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees but excluding the cost of any internal management time of the Facility Agent or Security Agent) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and/or any Transaction Security and/or any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing those rights.

**SECTION 7
GUARANTEE**

19. GUARANTEE AND INDEMNITY

19.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally, with effect from the Guarantee Effective Date:

- (a) guarantees to each Finance Party punctual performance by each other Transaction Obligor of all of that other Transaction Obligor's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever another Transaction Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability which such Finance Party incurs as a result of a Transaction Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by such Transaction Obligor under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 19 if the amount demanded had been recoverable on the basis of a guarantee.

19.2 Continuing Guarantee

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

19.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Transaction Obligor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 19 will continue or be reinstated as if that discharge, release or arrangement had not occurred.

19.4 Waiver of defences

The obligations of each Guarantor under this Clause 19 will not be affected by an act, omission, matter or thing which, but for this Clause 19, would reduce, release or prejudice any of its obligations under this Clause 19 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Transaction Obligor or any other person;

- (b) the release of any other Transaction Obligor or any other person under the terms of any composition or arrangement with any creditor of any Transaction Obligor 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 Transaction 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 any Transaction Obligor or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

19.5 **Guarantor intent**

Without prejudice to the generality of Clause 19.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

19.6 **Immediate recourse**

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 19. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

19.7 **Appropriations**

Until (i) all amounts which may be or become payable by any or all of the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid in full and (ii) no Finance Party is under any actual or contingent obligation to make available any further advance or financial accommodation under any Finance Document, each Finance Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of such amounts referred to in (i), 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 19.

19.8 **Deferral of Guarantors' rights**

Until (i) all amounts which may be or become payable by any or all of the Transaction Obligors under or in connection with the Finance Documents have been irrevocably paid in full and (ii) no Finance Party is under any actual or contingent obligation to make available any further advance or financial accommodation under any Finance Document, unless the Facility Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19:

- (a) to be indemnified by any Transaction Obligor;
- (b) to claim any contribution from any other guarantor of any Transaction Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Transaction Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 19 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Transaction Obligor; and/or
- (f) to claim or prove as a creditor of any Transaction Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to any such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all Secured Obligations to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 31 (*Payment mechanics*) and the Security Trust Agreement.

19.9 **Release of Guarantors' right of contribution**

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and

- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

19.10 Additional security

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

SECTION 8
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

20. REPRESENTATIONS

20.1 General

Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party.

20.2 Status

- (a) It is a limited liability corporation or company, duly incorporated and validly existing (and, if incorporated or established in the Cayman Islands, in good standing) under the law of its Original Jurisdiction.
- (b) Each of it and each Group Member has the power to own its or such Group Member's assets and carry on its or such Group Member's business as it is being conducted, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

20.3 Binding obligations

Subject to the Legal Reservations and, in the case of the Transaction Security Documents, completion of the release and de-registration of the Existing PRC Security and the applicable Perfection Requirements which are not overdue:

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

20.4 Non-conflict with other obligations

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

- (a) any applicable law or regulation;
- (b) the Constitutional Documents of any Transaction Obligor or any Group Member; or
- (c) any agreement or instrument binding upon it or any Group Member or any of its or any Group Member's assets or constitute a default or termination event (however described) under any such agreement or instrument.

20.5 Power and authority

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

- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

20.6 **Validity and admissibility in evidence**

- (a) All Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
 - (ii) to make the Finance Documents to which it is a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect (save for any Authorisation that is not required to be in effect under applicable law or regulation or under the applicable Finance Documents at the time when the representation and warranty under this paragraph (a) is made or deemed to be made, in which case such Authorisation will, by the earlier of the time such Authorisation is required to be obtained or effected under applicable law or regulation and the time required under the applicable Finance Documents, be obtained or effected and will thereafter be in full force and effect).
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of it and/or Group Members have been obtained or effected and are in full force and effect if failure to obtain or effect those Authorisations has or would reasonably be expected to have a Material Adverse Effect.

20.7 **Governing law and enforcement**

- (a) Subject to the Legal Reservations, the choice of governing law of the Finance Documents to which it is a party will be recognised and enforced in its Relevant Jurisdictions.
- (b) Subject to the Legal Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document to which it is a party will be recognised and enforced in its Relevant Jurisdictions.

20.8 **Insolvency**

No:

- (a) corporate action, legal proceeding or other formal procedure or step described in paragraph (a) of Clause 24.7 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 24.8 (*Creditors' process*),

has been taken or, to its knowledge, has been threatened in relation to any Transaction Obligor or any Group Member and none of the circumstances described in Clause 24.6 (*Insolvency*) applies to any Transaction Obligor or any Group Member.

20.9 No filing or stamp taxes

Under the laws of its Relevant Jurisdictions it is not necessary that any of the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to any of the Finance Documents or the transactions contemplated by the Finance Documents, except:

- (a) for any filing, recording or enrolling in relation to any Transaction Security (constituting Perfection Requirements) and the filing of the Guarantee (WFOE) and the Guarantee (VIE Entity) with SAFE, which will be made within the time limits specified in the relevant Transaction Security Document or, as applicable, Guarantee (and in any event by the earlier of (i) the time such filing, recording or enrolling is required to be made under applicable law or regulation and (ii) the time required under the Finance Documents); and
- (b) that Cayman Islands stamp duty will be payable if any Finance Document is executed in, brought into, or produced to a court of, the Cayman Islands.

20.10 No default

To its knowledge after having made due enquiry, no Event of Default and, on the date of this Agreement and on each Utilisation Date, no Default is continuing or would reasonably be expected to result from the making of any Loan or the entry into, the performance of, or any transaction contemplated by, any Finance Document and which has not been notified to the Facility Agent in accordance with Clause 21.6 (*Notification of default*).

20.11 No misleading information

- (a) Any factual information provided by or on behalf of any Transaction Obligor or any Group Member to a Finance Party (or its agents or advisors) is complete and accurate in all material respects and is not misleading in any material respect (in each case) as at the date on which such information is so provided.
- (b) The financial projections or forecasts contained in the Base Case Model have been prepared on the basis of reasonable assumptions (in each case, as at the date of preparation) (it being understood that projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Group and that no assurances can be given that such projections will be realised). All expressions of opinion or intention provided by or on behalf of any Transaction Obligor or any Group Member for the purposes of or contained in the Base Case Model were made after careful consideration and were based on reasonable grounds.
- (c) No event or circumstance has occurred or arisen and, to its knowledge, no material information has been omitted from the information provided by or on behalf of any Transaction Obligor or any Group Member to a Finance Party (or its agents or advisors) and no information has been given or withheld that results in the information, forecasts or projections contained in the information provided by or on behalf of any Transaction Obligor or any Group Member to a Finance Party (or its agents or advisors) being untrue or misleading in any material respect as at their stated date (it being understood that projections are subject to significant uncertainties and contingencies many of which are beyond the control of the Group and that no assurances can be given that such projections will be realised).

20.12 Original Financial Statements

- (a) Each set of the Original Financial Statements and the management accounts delivered pursuant to Clause 4.1 (*Initial conditions precedent*) was prepared in accordance with the Accounting Principles consistently applied, unless disclosed to the Facility Agent in writing to the contrary prior to the date of this Agreement.

- (b) Each set of the Original Financial Statements and the management accounts delivered pursuant to Clause 4.1 (*Initial conditions precedent*) gives a true and fair view of (if audited) or fairly represents (if unaudited) the financial condition and the results of operations of the Listco, the Borrower, the combined consolidated financial condition and combined consolidated results of operations of the WFOE Guarantor or, as the case may be, the financial condition and the results of operations of the applicable Group Member during the period to which such Original Financial Statements or, as the case may be, management accounts relate.
- (c) The most recent financial statements of the Listco, the Group or the WFOE Guarantor delivered pursuant to Clause 21.1 (*Financial statements*):
 - (i) have been prepared in accordance with the Accounting Principles as applied to the Base Financial Statements (in relation to the Listco, the Group or, as the case may be, the WFOE Guarantor); and
 - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) (A) the Listco's consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate, (B) the Group's consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate or, as the case may be, (C) the WFOE Guarantor's combined consolidated financial condition as at the end of, and combined consolidated results of operations for, the period to which they relate.
- (d) Since the date of the Original Financial Statements there has been no material adverse change in the assets, business or financial condition of the Group (taken as a whole).

20.13 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, would reasonably be expected to have a Material Adverse Effect have (its knowledge) been started or threatened against it or any Group Member.

20.14 No breach of laws

- (a) It has not (and no Group Member has) breached any law or regulation (including any SAFE Rules) which breach has or would reasonably be expected to have a Material Adverse Effect (provided that a failure to complete the registration of any Finance Document which constitutes a Nei Bao Wai Dai Transaction with SAFE notwithstanding the use of reasonable endeavours by the relevant Group Member shall not give rise to a breach of the foregoing representation).
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against it or any Group Member which have or would reasonably be expected to have a Material Adverse Effect.
- (c) The business and operations of each Transaction Obligor and Group Member are and have been conducted in compliance with all applicable Anti-Bribery and Corruption Laws, Anti-Money Laundering Laws and Anti-Terrorism Laws and no action, suit or proceeding by or before any court or Governmental Authority or any arbitrator involving any Transaction Obligor or any Group Member with respect to Anti-Bribery and Corruption Laws, Anti-Money Laundering Laws and Anti-Terrorism Laws is pending or to its knowledge, threatened.

20.15 Environmental laws

- (a) Each of it and each Group Member is in compliance with Clause 23.3 (*Environmental compliance*) and to its knowledge no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or would reasonably be expected to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to its knowledge) threatened against it or any Group Member where that claim, if determined against it or that Group Member, has or could reasonably be expected to have a Material Adverse Effect.

20.16 Taxation

- (a) It is not (and no Group Member is) materially overdue in the filing of any Tax returns.
- (b) It is not (and no Group Member is) overdue in payment of Taxes (except where (i) such payment is being contested in good faith and adequate reserves are being maintained for those Taxes and (ii) failure to pay those Taxes does not have and could not reasonably be expected to have a Material Adverse Effect).
- (c) No claims or investigations are being, or are likely to be, made or conducted against it (or any Group Member) with respect to Taxes which would reasonably be expected to have a Material Adverse Effect.

20.17 Ranking

Without limiting Clause 20.18 (*Security, Financial Indebtedness and guarantees*), its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except for those obligations mandatorily preferred by laws of general application to companies.

20.18 Security, Financial Indebtedness and guarantees

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of it or any Group Member other than as permitted by this Agreement.
- (b) Neither it nor any Group Member has any Financial Indebtedness outstanding or any guarantee outstanding other than as permitted by Clause 23.19 (*Financial Indebtedness*) or Clause 23.15 (*No Guarantees or indemnities*).
- (c) Subject to the Legal Reservations, the release and de-registration of the Existing PRC Security and any applicable Perfection Requirements (that are not overdue), each Transaction Security Document creates (or, once entered into, will create), in favour of the Security Agent for the benefit of the Secured Parties, the Security which it is expressed to create with the ranking and priority it is expressed to have and such Security is not subject to any prior ranking or *pari passu* ranking Security.

20.19 Good title to assets

Each of it and each Group Member has a good, valid and marketable title to, or valid leases or licences of, and all necessary Authorisations to use, the assets necessary to carry on its business or such Group Member's business as presently conducted, in each case, where failure to do so has or would reasonably be expected to have a Material Adverse Effect.

20.20 Legal and beneficial ownership

Subject to any Transaction Security (and prior the Initial Utilisation Date, the Existing Security), each Transaction Obligor is the sole legal and beneficial owner of the respective assets over which such Transaction Obligor purports to grant Security.

20.21 Shares

- (a) The Equity Interests in any Transaction Obligor which are subject to Transaction Security or security under the VIE Entity Equity Pledge are (or, at the time such Transaction Security will be granted, will be) fully paid and not subject to any option to purchase or similar rights (other than, (1) in the case of Equity Interests in the VIE Entity held by a VIE Nominee, applicable pre-emption rights of the other VIE Nominee(s) in respect of such Equity Interests under applicable law or regulation and/or under the constitutional documents of the VIE Entity as disclosed to the Finance Parties prior to the date of this Agreement, and (2) in the case of Equity Interests in the WFOE Guarantor held by Rise HK, applicable pre-emption rights of any other shareholder(s) of the WFOE Guarantor (if any) in respect of such Equity Interests under applicable law or regulation).
- (b) There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any Equity Interest in or loan capital of any Transaction Obligor or Group Member (including any option or right of pre-emption or conversion).

20.22 Intellectual Property

- (a) Each of it and each Group Member is the sole legal and beneficial owner of or has licensed to it or such Group Member on normal commercial terms all the Intellectual Property which is material in the context of its or such Group Member's business and which is required by it or such Group Member in order to carry on its or such Group Member's business as it is being conducted and as contemplated in the Base Case Model.
- (b) There has been no infringement or, to its knowledge, threatened or suspected infringement of or challenge to the validity of any Intellectual Property owned by or licensed to it or any Group Member which has or would reasonably be expected to have a Material Adverse Effect.
- (c) Each of it and each Group Member has taken all formal or procedural actions (including payment of fees) required to maintain any Intellectual Property owned by it or such Group Member, saved to the extent failure to do so would not reasonably be expected to have a Material Adverse Effect.

20.23 Group Structure Chart

The Group Structure Chart set out in Schedule 13 (*Group Structure Chart*) is true, complete and accurate in all material respects.

20.24 VIE Contracts

- (a) The VIE Contracts contain all the material terms of any and all agreements and arrangements between any of the VIE Nominees, any VIE Group Member and any Group Member (that is not a VIE Group Member) with respect to voting rights and/or economic interests in respect of a VIE Group Member.
- (b) Subject to the Legal Reservations, the obligations of or expressed to be assumed by each party to a VIE Contract are legal, valid, binding and enforceable obligations, and each VIE Contract is in full force and effect.
- (c) As at the date of this Agreement and as at the Initial Utilisation Date, (i) no party to any VIE Contract is in breach of or non-compliance with its obligations under any VIE Contract in any material respect and (ii) no representation or warranty given or expressed to be given by any part to any VIE Contract under or in respect of any VIE Contract is incorrect or misleading any material respect.
- (d) Except with the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders) or disclosed in writing to the Facility Agent prior to the date of this Agreement:
 - (i) there has been no amendment, variation or supplement of or to, or any material waiver by any Transaction Obligor or any Group Member of, any of the terms of any VIE Contract; and
 - (ii) none of any Transaction Obligor or any Group Member has given any consent (which would reasonably be expected to be materially adverse to the interests of the Finance Parties) under any VIE Contract.
- (e) There has been no termination, expiry, rescission or cancellation of or any assignment or transfer of any rights or obligations under, any of the VIE Contracts.

20.25 Holding Companies

Except as may arise under the Finance Documents, none of the Parent, the Borrower, Rise HK and the Cayman Guarantor has traded or incurred any liabilities or commitments (actual or contingent, present or future) other than as permitted by Clause 23.9 (*Holding Companies*).

20.26 Outbound security for offshore lending

No outstanding debt or payment obligation or other amount (however described) is owed by or outstanding from any person located outside the PRC to any Transaction Obligor that is incorporated or established in the PRC (whether as a subrogated creditor or otherwise) arising from any enforcement of (or, as the case may be, claim under or in respect of) any Nei Bao Wai Dai Transaction under which such Transaction Obligor has provided any guarantee or security.

20.27 Onshore Distribution and Licence and Consultancy Fee

All Onshore Distributions and Licence and Consultancy Fees are only payable to Rise HK or the Cayman Guarantor and no Onshore Distribution or Licence and Consultancy Fee are payable to Edge Franchising or Edge Online.

20.28 Sanctions

- (a) None of any Transaction Obligor or any Group Member (or any director, officer, agent, representative or employee of, or any person acting on behalf of, any Transaction Obligor or any Group Member is, or is owned or controlled (directly or indirectly) by, a Restricted Party.
- (b) None of any Transaction Obligor or any Group Member (or any director, officer, agent, representative or employee of, or any person acting on behalf of, any Transaction Obligor or any Group Member) has violated or is in violation of any Sanctions or is aware of or has engaged or is engaging in any activity or conduct or has taken any action which might result, directly or indirectly, in any violation of any Sanctions or in any Transaction Obligor, any Group Member or any Finance Party being designated as a Restricted Party.

20.29 Times when representations made

- (a) All the representations and warranties in this Clause 20 are made by each Obligor on the date of this Agreement.
- (b) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period. The representations and warranties set out in paragraph (d) of Clause 20.12 (*Original Financial Statements*) and Clause 20.13 (*No proceedings pending or threatened*) are deemed to be made by each Obligor on the date of each Utilisation Request and on each Utilisation Date in respect of a Term Facility. The representations and warranties set out in paragraph (c) of Clause 20.24 (*VIE Contracts*) are deemed to be made by each Obligor on the date of the Utilisation Request (in respect of Facility A) and on the Initial Utilisation Date.
- (c) The representations and warranties set out in paragraph (b) of Clause 20.24 (*VIE Contracts*) are deemed to be made by each Obligor (with respect to any VIE Contract entered into since the last time when such representations and warranties are made) on the date on which such VIE Contract is entered into.
- (d) (i) The Repeating Representations (other than Clauses 20.11 (*No misleading information*)) and (ii) the representations and warranties in Clause 20.9 (*No filing or stamp taxes*) and (insofar as they relate to Original Financial Statements of the applicable Additional Guarantor) paragraphs (a) and (b) of Clause 20.12 (*Original Financial Statements*)) are deemed to be made by each Additional Guarantor on the day on which it becomes (or is to become) an Additional Guarantor.
- (e) The representations and warranties in Clause 20.11 (*No misleading information*) are deemed to be made by each Obligor on the Syndication Date.
- (f) The representations and warranties in Clause 20.26 (*Outbound security for offshore lending*) (insofar as it relates to any Transaction Obligor that is incorporated or established in the PRC) are deemed to be made by each Obligor on the date on which such Transaction Obligor (that is incorporated or established in the PRC) enters into any Guarantee or Transaction Security Document and on the date on which any Incremental Facility is established.
- (g) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date such representation or warranty is deemed to be made.

21. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment in respect of any Facility (or any commitment represented thereby) is in force.

In this Clause 21:

“**Annual Financial Statements**” means any financial statements delivered pursuant to paragraph (a) of Clause 21.1 (*Financial statements*).

“**Quarterly Financial Statements**” means any financial statements delivered pursuant to paragraph (c) of Clause 21.1 (*Financial statements*).

“**Semi-Annual Financial Statements**” means any financial statements delivered pursuant to paragraph (b) of Clause 21.1 (*Financial statements*).

21.1 **Financial statements**

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

- (a) as soon as reasonably practicable, but in any event within 150 days after the end of each of its Financial Years:
 - (i) the audited consolidated financial statements of the Listco for that Financial Year, in each case, audited by an independent firm of certified public accountants (which must be one of the Auditors);
 - (ii) the audited consolidated financial statements of the Group for that Financial Year, in each case, audited by an independent firm of certified public accountants (which must be one of the Auditors); and
 - (iii) the unaudited combined consolidated financial statements of the WFOE Guarantor for that Financial Year prepared by the Group’s auditors (which must be one of the Auditors);
- (b) as soon as reasonably practicable, but in any event within 90 days after the end of each of its Financial Half-Years:
 - (i) the unaudited consolidated financial statements of the Listco for that Financial Half-Year;
 - (ii) the unaudited consolidated financial statements of the Group for that Financial Half-Year; and
 - (iii) the unaudited combined consolidated financial statements of the WFOE Guarantor for that Financial Half-Year; and
- (c) as soon as reasonably practicable, but in any event within 60 days after the end of each Financial Quarter of each of its Financial Years:
 - (i) the unaudited consolidated financial statements of the Listco for that Financial Quarter; and
 - (ii) the unaudited consolidated financial statements of the Group for that Financial Quarter.

21.2 Provision and contents of Compliance Certificate

- (a) The Borrower shall supply a Compliance Certificate to the Facility Agent with each set of the Annual Financial Statements, each set of the Semi-Annual Financial Statements and each set of the Quarterly Financial Statements.
- (b) Each Compliance Certificate shall, amongst other things:
 - (i) set out (in reasonable detail) computations as to:
 - (A) compliance with Clause 22 (*Financial covenants*) (including, where relevant, the effect of any election under Clause 22.4 (*Equity cure*));
 - (B) any amount which is required to be prepaid under Clause 8.1 (*Exit*);
 - (C) the amount of (1) any New Shareholder Injection and (2) any Acceptable Funding Source received by any Group Member since (in the case of the first Compliance Certificate) the date of this Agreement or (in the case of any subsequent Compliance Certificate) the expiry of the period of the Annual Financial Statements, Semi-Annual Financial Statements or Quarterly Financial Statements to which the immediately preceding Compliance Certificate relates; and
 - (D) the amount of any Cure Amount received and the application of any amount standing to the credit of the Cure Amount Account (including particulars of any person in favour of which such amount is withdrawn, transferred or applied and the nature of such withdrawal, transfer or application), since the date of the immediately preceding Compliance Certificate; and
 - (E) compliance with Clause 23.27 (*DSRA*); and
 - (ii) confirm that no Default has occurred and is continuing or, if a Default is continuing, specify the nature of such Default and the steps being taken to remedy such Default,
and shall be otherwise in the form set out in Schedule 8 (*Form of Compliance Certificate*).
- (c) Each Compliance Certificate shall be signed by a director of the Borrower or the Chief Financial Officer.

21.3 Requirements as to financial statements

- (a) The Borrower shall procure that each set of Annual Financial Statements, Semi-Annual Financial Statements and Quarterly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Borrower shall procure that each set of Annual Financial Statements of the Listco or the Group shall be audited by the auditors of the Listco or, as the case may be, the Group (which auditors shall, in each case, be one of the Auditors).

- (b) The Borrower shall procure that each set of financial statements delivered pursuant to Clause 21.1 (*Financial statements*) in respect of the Listco, the Group or the WFOE Guarantor:
- (i) shall be certified by a director of the Borrower as giving a true and fair view of (in the case of any Annual Financial Statements of the Listco or the Group) or fairly representing (in any other case) the consolidated financial condition and operations of the Listco or (as the case may be) the Group or the combined consolidated financial condition and operations of the WFOE Guarantor, as at the end of and during the applicable period to which such financial statements relate; and
 - (ii) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Base Financial Statements (in relation to the Listco, the Group or, as the case may be, the WFOE Guarantor) unless, in relation to any set of financial statements, the Borrower notifies the Facility Agent that there has been a change in the Accounting Principles or the accounting practices applied in the preparation of such financial statements, and the auditors of the Listco, the Group or the WFOE (as applicable) (which auditors shall, in each case, be one of the Auditors) deliver to the Facility Agent:
 - (A) a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the Base Financial Statements (in relation to the Listco, the Group or, as the case may be, the WFOE Guarantor) were prepared; and
 - (B) sufficient information, in form and substance as may be reasonably required by the Facility Agent, to enable the Finance Parties to determine whether Clause 22.2 (*Financial condition*) has been complied with to determine Leverage for any purpose and to make an accurate comparison between the financial position indicated in (1) those financial statements and (2) the Base Financial Statements (relating to the Listco, the Group or, as the case may be, the WFOE Guarantor).

Any reference in this Agreement to any financial statements of (x) the Listco, (y) the Group or (z) the WFOE Guarantor shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Base Financial Statements of the Group or, as the case may be, the WFOE Guarantor were prepared.

For the purposes hereof, "**Base Financial Statements**" means:

- (1) (in relation to the Listco or financial statements of the Listco) the Original Financial Statements of the Listco;
 - (2) (in relation to the Group or financial statements of the Group) the Original Financial Statements of the Borrower; and
 - (3) (in relation to the WFOE Guarantor or financial statements of the WFOE Guarantor) the Original Financial Statements of the WFOE Guarantor.
- (c) In this Agreement, any reference to any combined consolidated financial statements of the WFOE Guarantor means combined consolidated financial statements of the WFOE Guarantor prepared as if the VIE Entity were a direct Subsidiary of the WFOE Guarantor, and any reference to the combined consolidated financial condition or operations of the WFOE Guarantor shall be construed accordingly.

21.4 Year-end and Auditors

- (a) The Borrower shall procure that the last day of each Financial Year of the Listco, of the Group and of each Group Member falls on 31 December.
- (b) Each Obligor shall ensure that the auditors of each of the Listco, the Relevant Obligors and the Group will be one of the Auditors.

21.5 Information: miscellaneous

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

- (a) at the same time as they are dispatched, copies of all material documents dispatched by the Listco, any Relevant Obligor or any Group Member to its shareholders generally (or any class of them) or to its creditors generally (or any class of them);
- (b) promptly upon becoming aware of the same, the details of any litigation, arbitration or administrative proceedings, labour dispute or Environmental Claim which are current, threatened or pending against any Transaction Obligor or any Group Member which have or, if adversely determined, could be reasonably likely to have a Material Adverse Effect;
- (c) details of any Change of Control, VIE Termination Event or any other event or circumstance which will give rise to the requirement of any prepayment of any Loan under Clause 8 (*Mandatory prepayment and cancellation*);
- (d) within a reasonable time after being requested to do so (to the extent permitted by law and any applicable confidentiality requirement binding on the applicable Group Member (which confidentiality requirement is entered into by such Group Member for bona fide purposes prior to the date of such request and not entered into intentionally to circumvent the requirement for disclosure to any Finance Party under any Finance Document)), such further information regarding the financial condition, assets and operations of the Listco, the Group, any Transaction Obligor and/or any Group Member as the Facility Agent (acting on the instructions of the Majority Lenders (acting reasonably)) may reasonably request in connection with any of the Finance Documents or the transactions contemplated thereby; and/or
- (e) promptly, notice of any change in authorised signatories of any Transaction Obligor signed by such Transaction Obligor or a director of such Transaction Obligor accompanied by specimen signatures of any new authorised signatories of such Transaction Obligor.

21.6 Notification of default

- (a) Each Obligor shall notify the Facility 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 such a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Facility Agent, the Borrower shall supply to the Facility Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying such Default and the steps, if any, being taken to remedy it).

21.7 “Know your customer” checks

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of any Transaction Obligor or the composition of the shareholders of any Transaction Obligor after the date of this Agreement ; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement,
- obliges the Facility Agent, the Security Agent or any Lender (or, in the case of paragraph (a)(iii) above, any prospective assignee or transferee of any Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Facility Agent, the Security Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender), the Security Agent (for itself) or any Lender (for itself or, in the case of the event described in paragraph (a)(iii) above, on behalf of any prospective assignee or transferee of any Lender) in order for the Facility Agent, the Security Agent such Lender or, in the case of the event described in paragraph (a)(iii) above, any prospective assignee or transferee of any Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations and internal policies pursuant to the transactions contemplated in the Finance Documents.
- (b) Each Lender shall promptly upon the request of the Facility Agent or the Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself) or the Security Agent (for itself) in order for the Facility Agent or the Security Agent to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations and internal policies pursuant to the transactions contemplated in the Finance Documents.
- (c) The Borrower shall, by not less than five Business Days’ prior written notice to the Facility Agent, notify the Facility Agent (which shall promptly notify the Lenders) of its intention to request that any Group Member becomes an Additional Guarantor pursuant to Clause 27 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Group Member to this Agreement as an Additional Guarantor obliges the Facility Agent, the Security Agent or any Lender (or any prospective assignee or transferee of any Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Facility Agent, the Security Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender), the Security Agent (for itself) or any Lender (for itself or on behalf of any prospective assignee or transferee of any Lender) in order for the Facility Agent, the Security Agent or such Lender or any prospective assignee or transferee of any Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations and internal policies pursuant to the accession of such Group Member to this Agreement as an Additional Guarantor.

22. FINANCIAL COVENANTS

22.1 Financial definitions

In this Agreement:

“**Acquired Entity**” means an entity the subject of a Permitted Acquisition (under paragraph (d) of that definition) which entity was not, and was not owned by, a Group Member prior to such Permitted Acquisition but becomes a Group Member pursuant to such Permitted Acquisition (and for such purpose, where the subject of a Permitted Acquisition is a business, such business shall be deemed to constitute a separate legal entity and become a Group Member upon the date of closing of such Permitted Acquisition, and such separate legal entity shall be an Acquired Entity, and the definition of “Adjusted EBITDA” shall apply accordingly).

“**Adjusted EBITDA**” means, in relation to a Relevant Period, EBITDA for that Relevant Period as adjusted in accordance with paragraphs (b) to (d) of Clause 22.3 (*Financial testing*) below.

“**Borrowings**” means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of Group Members for or in respect of Indebtedness for Borrowed Money but:

- (a) **excluding** any such obligations to any other Group Member;
- (b) **excluding** any such obligations in respect of any Parent Loan and, to the extent they would otherwise constitute Borrowings, any New Shareholder Injections; and
- (c) **including**, in the case of Finance Leases only, their capitalised value,

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

“**Business Acquisition**” means (a) any acquisition by any Group Member (from a person that is not a Group Member) of any Equity Interests in any person (other than any Cash Equivalent Investments or any other cash equivalent investments) or any business or undertaking, or any interest in any of the foregoing, or (b) the incorporation of a company or entity by any Group Member.

“**Capital Expenditure**” means any expenditure or obligation in respect of expenditure (other than expenditure or obligations in respect of Business Acquisitions) which, in accordance with the Accounting Principles, is treated as capital expenditure (including the capital element of any Finance Lease).

“**Cashflow**” means, in respect of any period, EBITDA for that period after:

- (a) **adding** the amount of any decrease (and **deducting** the amount of any increase) in Working Capital for that period;
- (b) **adding** the amount of any cash receipts (and **deducting** the amount of any cash payments) of the Group (on a consolidated basis) during that period in respect of any Exceptional Items not already taken account of in calculating EBITDA for any period (other than, in the case of cash receipts, New Shareholder Injections);

- (c) **adding** the amount of any cash receipts of the Group (on a consolidated basis) during that period in respect of any Tax rebates or Tax credits and **deducting** the amount actually paid or due and payable in respect of Taxes during that period by any Group Member;
- (d) **adding** (to the extent not already taken into account in determining EBITDA) the amount of any dividends or other profit distributions received in cash by any Group Member during that period from any Non-Group Entity and **deducting** (to the extent not already deducted in determining EBITDA) the amount of any dividends or distributions paid in cash by any Group Member (other than the Borrower) during that period to any holder of Equity Interests in such Group Member (which holder is not itself a Group Member);
- (e) **adding** the amount of any increase in provisions, other non-cash debits and other non-cash charges (which are not Current Assets or Current Liabilities) of the Group (on a consolidated basis) during that period and **deducting** the amount of any decrease in provisions or other non-cash credits (which are not Current Assets or Current Liabilities) of the Group (on a consolidated basis) during that period, (in each case) to the extent taken into account in the calculation of EBITDA for that period; and
- (f) **deducting** the amount of:
 - (i) any Capital Expenditure actually made (or due to be made) in cash; and
 - (ii) any cash consideration paid for, or the cash cost incurred in respect of any Business Acquisition,during that period by any Group Member (in favour of any person that is not a Group Member) except (in each case) to the extent funded from (A) New Shareholder Injection or (B) the proceeds of any Permitted Financial Indebtedness (incurred by any Group Member from a person that is not a Group Member that are (in each case under (A) and (B)) not applied towards any other purpose,

and so that no amount shall be added or deducted more than once.

“**Current Assets**” means, at any time, the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of each Group Member including prepayments in relation to operating items and sundry debtors (but excluding cash, Cash Equivalent Investments and other cash equivalent investments) expected to be realised within twelve months from the date of computation but excluding amounts in respect of:

- (a) receivables in relation to Tax;
- (b) Exceptional Items and other non-operating items;
- (c) insurance claims; and
- (d) any interest owing to any Group Member.

“**Current Liabilities**” means, at any time, the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of each Group Member expected to be settled within twelve months from the date of computation but excluding amounts in respect of:

- (a) liabilities for Borrowings and Finance Charges;

- (b) liabilities for Tax;
- (c) Exceptional Items and other non-operating items;
- (d) insurance claims; and
- (e) liabilities in relation to dividends or distributions declared but not paid by a Group Member in favour of a person which is not a Group Member.

“**Debt Service**” means, in respect of any period, the aggregate of:

- (a) Finance Charges for that period;
- (b) all scheduled repayments or scheduled redemptions of Borrowings falling due from any Group Member during that period, provided that such scheduled repayments or scheduled redemptions shall:
 - (i) exclude any scheduled repayments or scheduled redemptions in favour of any Group Member;
 - (ii) exclude any amounts falling due under any overdraft or revolving facility (including, without limitation, any overdraft or revolving facility) and which were available (or available subject to satisfaction of applicable conditions) for simultaneous redrawing according to the terms of that facility; and
 - (iii) be determined after giving effect to any reduction in such scheduled repayments or scheduled redemptions as a result of any mandatory or voluntary prepayments or redemptions actually made (**provided that**, in the case of Facility B, such voluntary prepayment is accompanied by cancellation of the corresponding Facility B Commitment), provided further that in the case of voluntary prepayments or redemptions in respect of any Facility or any part thereof that are made during such period, scheduled repayments or scheduled redemptions of Borrowings falling due from any Group Member during that period shall be determined as if such voluntary prepayments or redemptions had not been made except to the extent that such voluntary prepayments or redemptions are applied to reduce Repayment Instalments or, as applicable, Facility B Reduction Instalments in respect of such Facility on a pro rata basis; and
- (c) the amount of the capital element of any payments in respect of that period payable under any Finance Lease entered into by any Group Member,

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

“**Debt Service Coverage Ratio**” means, in respect of any period, the ratio of Cashflow to Debt Service in respect of that period.

“**Disposed Entity**” means an entity the subject of a Permitted Disposal which entity was a Group Member prior to such Permitted Disposal but ceases to be a Group Member and ceases to be owned by a Group Member pursuant to such Permitted Disposal (and for such purpose, where the subject of a Permitted Disposal is a business, such business shall be deemed to constitute a separate legal entity and cease to be a Group Member upon the date of closing of such Permitted Disposal, and such separate legal entity shall be a “Disposed Entity”, and the definition of “Adjusted EBITDA” shall apply accordingly).

“EBITDA” means, in respect of any period, the consolidated operating profit of the Group for that period before taxation:

- (a) **before deducting** any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments (excluding any such payments in relation to any Excluded Finance Lease) whether accrued, paid, payable or capitalised by any Group Member (calculated on a consolidated basis) in respect of that period;
- (b) **not including** any accrued interest owing to any Group Member (but **including** any Cash Equivalent Investment of any Group Member);
- (c) **after adding back** any amount attributable to the amortisation, depreciation or impairment of assets of Group Members (and taking no account of the reversal of any previous impairment charge), **provided that** such depreciation, amortisation or impairment shall not include any depreciation, amortisation or impairment attributable to any expenses relating to any Excluded Finance Lease (to the extent that such expenses would not have been classified as depreciation, amortisation or impairment pursuant to the Accounting Principles as applied to the Base Financial Statements of the Group);
- (d) **before taking into account** any Exceptional Items;
- (e) **after deducting** (to the extent otherwise included) the amount of any profit of any Non-Group Entity to the extent that the amount of such profit taken into account in the determination of such consolidated operating profit of the Group before taxation for such period exceeds the amount actually received in cash (net of any applicable Taxes) by Group Members during such period through profit distributions by such Non-Group Entity;
- (f) **after deducting** (to the extent otherwise included) any profit attributable to minority interest (that is, any interest of any person that is not a Group Member in any Subsidiary of the Borrower);
- (g) **before taking into account** any unrealised gains or losses on any derivative instrument, including those arising on translation of currency of debt (other than any derivative instrument which is accounted for on a hedge accounting basis);
- (h) **before taking into account** any gain or loss arising from an upward or downward revaluation of any other asset;
- (i) **before taking into account** (to the extent otherwise deducted) any Management Fees paid to the Sponsor during that Relevant Period;
- (j) **after adding back** (to the extent otherwise deducted) Transaction Costs and any other fee, commission, cost, charge or expense payable by any Group Member to a person that is not a Group Member, in each case related to any actual or attempted equity or debt offering or financing, investment (including any Joint Venture investment), Permitted Acquisition, Permitted Disposal or incurrence of Permitted Financial Indebtedness (whether or not, in each case, consummated), other than (in each case) in the ordinary course of trading;

- (k) **excluding** the charge to profit (to the extent non-cash) represented by the expensing of stock options and any other share-based compensation of employees of the Group; and
- (l) **taking into account** any expenses relating to any Excluded Finance Lease (to the extent that such expenses would have been taken into account pursuant to the Accounting Principles as applied to the Base Financial Statements of the Group),

to the extent otherwise added, deducted, included, taken into account or not taken into account (as the case may be) for the purposes of determining operating profits of the Group before taxation.

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

“**Excluded Finance Lease**” means any lease or hire purchase contract which would, in accordance with the Accounting Principles in force as at the date of this Agreement, have been treated as operating lease.

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

- (a) **excluding** any upfront fees;
- (b) **including** the interest (but not the capital) element of payments in respect of Finance Leases;
- (c) **including** any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any Group Member (to or, as the case may be, by any person that is not a Group Member) under any interest rate hedging arrangement during that period;
- (d) **excluding** any interest cost or expected return on plan assets in relation to any post-employment benefit schemes;
- (e) taking no account of any unrealised gains or losses on any derivative instruments other than any derivative instruments which are accounted for on a hedge accounting basis; and
- (f) **excluding**, to the extent otherwise included, any capitalised interest under any New Shareholder Injections to the extent such capitalised interest constitutes Borrowings and is not paid,

and so that no amount shall be added (or deducted) more than once.

“**Finance Lease**” means any lease or hire purchase contract, or a liability under which would, in accordance with the Accounting Principles, be treated as a balance sheet liability (other than an Excluded Finance Lease).

“**Financial Half-Year**” means each semi-annual accounting period of the Group ending on or about each of 30 June and 31 December in each year.

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

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

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

“**New Shareholder Injections**” means the aggregate amount (after deducting applicable costs and Taxes) received by the Borrower from the Parent by way of subscription by the Parent after the Initial Utilisation Date for ordinary shares in the Borrower or the making available by the Parent of Parent Loans to the Borrower after the Initial Utilisation Date, **provided that** for the purposes of Clause 22 (*Financial covenants*) and the related definitions or any permission or usage under or in respect of the Finance Documents, New Shareholder Injections shall exclude any such amount, subscription or Parent Loans (and the proceeds relating thereto) made pursuant to Clause 22.4 (*Equity cure*) or constituting any Cure Amount (except that New Shareholder Injections shall include any such amount that constitutes a Cure Amount only for the purpose of the definition of “Acceptable Funding Sources”).

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

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

“**Relevant Period**” means each period of 12 months ending on each Quarter Date.

“**Total Net Debt**” means, at any time, the aggregate amount of all obligations of Group Members for or in respect of Borrowings at that time (without double counting) but deducting (without duplication):

- (a) the aggregate amount of Cash and Cash Equivalent Investments held by any Offshore Group Member at such time; and
- (b) the amount of cash collateral of Offshore Group Members securing or supporting their Borrowings at that time (including the balance of the DSRA at that time),

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

“**Working Capital**” means, on any date, Current Assets less Current Liabilities.

22.2 Financial condition

The Borrower shall ensure that:

- (a) *Leverage*: Leverage in respect of each Relevant Period ending on a Quarter Date specified in column 1 below (“**Test Date**”) shall not exceed the ratio set out in column 2 below opposite that Relevant Period:

Column 1 Quarter Date	Column 2 Ratio
31 March 2021	4.00x
30 June 2021	4.00x

Column 1 Quarter Date	Column 2 Ratio
30 September 2021	3.50x
31 December 2021	3.25x
31 March 2022	2.75x
30 June 2022	2.75x
30 September 2022	2.50x
31 December 2022	2.50x
31 March 2023	2.25x
30 June 2023	2.25x
30 September 2023	2.00x
31 December 2023	2.00x
31 March 2024	1.75x
30 June 2024 and thereafter	1.50x

- (b) *Debt Service Coverage Ratio*: Debt Service Coverage Ratio in respect of each Relevant Period ending on or after the First Test Date shall exceed 1.10:1.00.

22.3 Financial testing

- (a) The financial covenants set out in Clause 22.2 (*Financial condition*) shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements delivered pursuant to paragraphs (a), (b) and (c) of Clause 21.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 21.2 (*Provision and contents of Compliance Certificate*).

- (b) The financial covenants in this Clause 22 in respect of any Relevant Period and the Adjusted EBITDA in respect of any Relevant Period shall, for all purposes in this Agreement, be calculated giving effect to following *pro forma* adjustments in respect of any Permitted Acquisition of an Acquired Entity or any Permitted Disposal of a Disposed Entity (any such Permitted Acquisition or Permitted Disposal being “**Group Initiatives**”) made during such Relevant Period:
- (i) Adjusted EBITDA for such Relevant Period shall be equal to EBITDA for such Relevant Period calculated to give effect the following pro forma adjustments:
 - (A) the aggregate earnings before interest, tax, depreciation and amortisation of such Acquired Entity (calculated on the same basis as EBITDA applying *mutatis mutandis* as if any reference in the definition of EBITDA and/or related definition to (A) the Borrower were a reference to such Acquired Entity or (B) the Group were a reference to such Acquired Entity and its Subsidiaries (if any)) for such Relevant Period (including the portion of such Relevant Period prior to the consummation of such Permitted Acquisition) shall be added;
 - (B) the aggregate earnings before interest, tax, depreciation and amortisation of such Disposed Entity (calculated on the same basis as EBITDA applying *mutatis mutandis* as if any reference in the definition of EBITDA and/or related definition to (A) the Borrower were a reference to such Disposed Entity or (B) the Group were a reference to such Disposed Entity and its Subsidiaries (if any)) for such Relevant Period (including the portion of such Relevant Period prior to the consummation of such Permitted Disposal) shall be excluded; and
 - (C) (in the case of such Permitted Acquisition of such Acquired Entity only, and subject to paragraph (d) below) reasonably expected net synergies and net cost savings reasonably expected to be obtained by the Group on a consolidated basis (as certified by the CEO or Chief Financial Officer of the Borrower) in the 18 month period immediately following the completion of such Permitted Acquisition of such Acquired Entity (to be included for the entire such Relevant Period if realisable at any time within that Relevant Period but without double counting with any such synergies or cost savings which have been actually realised) shall be added (“**Relevant Synergies**”); and
 - (ii) in the calculation of Cashflow for such Relevant Period, the cashflow of such Disposed Entity (calculated on the same basis as EBITDA applying *mutatis mutandis* as if any reference in the definition of Cashflow and/or related definition to (A) the Borrower were a reference to such Disposed Entity or (B) the Group were a reference to such Disposed Entity and its Subsidiaries (if any)) for the portion of such Relevant Period from the date on which the applicable Group Member shall have contractually committed that such cashflow of such Disposed Entity (as so calculated) is transferred to or held for the benefit of the applicable buyer of such Disposed Entity pursuant to such Permitted Disposal (including under any lock-box arrangements involving an economic transfer occurring prior to a legal transfer of such Disposed Entity but except to the extent that such cashflow of such Disposed Entity (as so calculated) is retained by any Group Member(s)) shall be excluded; and
 - (iii) in the calculation of Debt Service Coverage Ratio for such Relevant Period, Finance Charges for such Relevant Period shall be adjusted to give pro forma effect to any incurrence, assumption or repayment of Financial Indebtedness (including any reduction in Total Net Debt from the proceeds of such Permitted Disposal) arising from such Group Initiative (if a related adjustment has been made in the calculation of the Adjusted EBITDA for such Relevant Period), as if such incurrence, assumption or repayment were made as at the commencement of such Relevant Period.

- (c) To the extent Leverage for any Relevant Period (including on a pro forma basis) is used as the basis (in whole or part) for determining whether any transaction is permitted under this Agreement (but excluding for the purposes of testing actual compliance with Clauses 22.2 (*Financial condition*) and 22.3 (*Financial testing*) or for determining Margin) at any time after the end of such Relevant Period, Total Net Debt as at the last day of such Relevant Period shall (for the purpose of such calculation of Leverage) be reduced to take into account any repayment of Financial Indebtedness made after the last day of such Relevant Period but on or before the relevant date of calculation and shall be increased to take into account any incurrence or assumption of Financial Indebtedness made after the last day of such Relevant Period but on or before the relevant date of calculation.
- (d) In the calculation of Adjusted EBITDA for any Relevant Period, the aggregate Relevant Synergies that may be included or added (whether on account of any one or more Acquired Entity) shall not exceed an amount equal to 10 per cent. of the EBITDA for such Relevant Period (for the avoidance of doubt, such EBITDA shall be calculated without taking into account the effect of any Relevant Synergies).
- (e) For the purpose of this Clause 22, no item shall be included or excluded more than once in any calculation.
- (f) For the purposes of calculations under this Clause 22 in respect of any Relevant Period, where an amount is not denominated in U.S. dollars, that amount shall be converted into U.S. dollars at the exchange rate(s) on the last day of such Relevant Period (in the case of balance sheet items or items required to be determined as at the last day of such Relevant Period) and at the average exchange rate for such Relevant Period (in the case of profit and loss account items or items required to be determined over the course of such Relevant Period), as applicable, in each case used in the preparation of the applicable Annual Financial Statements, Semi-Annual Financial Statements and/or Quarterly Financial Statements delivered under this Agreement in relation to such Relevant Period.

22.4 Equity cure

- (a) If any of the requirements of the financial covenants in paragraphs (a) to (b) of Clause 22.2 (*Financial condition*) are not complied with (or would but for this Clause 22.4 not be complied with) in respect of a Relevant Period (a “**Breach Period**”), but
 - (i) after the expiry of such Breach Period and on or prior to the date falling 20 Business Days after the date on which the Compliance Certificate relating to the relevant Quarterly Financial Statements, Semi-Annual Financial Statements and/or Annual Financial Statements (as applicable) for a period ending on the last day of that Breach Period is delivered (or, if earlier, is due to be delivered) to the Facility Agent under paragraph (a) of Clause 21.2 (*Provision and contents of Compliance Certificate*) (the “**Cure Date**”) a New Shareholder Injection is made available to the Borrower (the proceeds of such New Shareholder Injection so received by the Borrower in cash, after deducting all fees, costs, expenses and/or Taxes incurred therewith, being the “**Cure Amount**”);
 - (ii) the Borrower has elected to apply such Cure Amount to cure the breach of such requirements under paragraphs (a) to (b) of Clause 22.2 (*Financial condition*) for such Breach Period pursuant to paragraphs (b) and (c) below; and

(iii) such Cure Amount is sufficient to cure the breach of such requirements under paragraphs (a) to (b) of Clause 22.2 (*Financial condition*) for such Breach Period (as determined in accordance with paragraph (b)),

then, if, after giving effect to the adjustments under paragraph (c) below, the requirements of the financial covenants in paragraphs (a) to (b) of Clause 22.2 (*Financial condition*) are met in respect of such Breach Period, such requirements shall be deemed to have been satisfied as at the original date of determination of such financial covenants for such Breach Period as though there had been no failure to comply with such financial covenants under paragraphs (a) to (b) of Clause 22.2 (*Financial condition*) for such Breach Period and any Default or Event of Default occasioned thereby shall be deemed to have been remedied for all purposes under the Finance Documents.

(b) Paragraph (a) above will only apply in respect of a Breach Period if each of the following conditions is satisfied:

(i) the Borrower delivers to the Facility Agent a certificate within 20 Business Days after the date on which the relevant Compliance Certificate referred to in paragraph (a) above was (or, if earlier, was due to be delivered) delivered in respect of such Breach Period electing to apply the amount of such Cure Amount so received by the Borrower in accordance with paragraph (c) below for that Breach Period;

(ii) such certificate certifies the aggregate amount of such Cure Amount so received by the Borrower, and is signed by the Chief Financial Officer or a director of the Borrower;

(iii) such certificate shall be accompanied by a revised Compliance Certificate in respect of such Breach Period setting out calculations in reasonable detail indicating compliance with the financial covenants in paragraphs (a) to (b) of Clause 22.2 (*Financial condition*) in respect of such Breach Period after taking into account the amount of such Cure Amount so received and the effect of paragraph (c);

(iv) the Borrower may not make any such election:

(A) more than once in respect of any Relevant Period;

(B) more than four times over the life of the Initial Facilities; or

(C) in respect of consecutive Relevant Periods; and

(v) such Cure Amount must be received in cash by the Borrower on or before such Cure Date.

(c) The Borrower may only elect to apply the amount of such Cure Amount towards curing the non-compliance of the financial covenants under paragraphs (a) to (b) of Clause 22.2 (*Financial condition*) by:

(i) for the purpose of calculating Leverage and Interest Coverage Ratio for such Breach Period, adding such Cure Amount to EBITDA of the Group for such Breach Period (and, for the avoidance of doubt, Total Net Debt as at the last day of such Breach Period shall not be deemed to be decreased by reference to such Cure Amount); and

- (ii) for the purposes of calculating the Debt Service Coverage Ratio for such Breach Period, adding the amount of such Cure Amount to the Cashflow in respect of such Breach Period (and, for the avoidance of doubt, Debt Service in respect of such Breach Period shall not be deemed to be decreased by reference to such Cure Amount).
- (d) Where (A) a Cure Amount is received by the Borrower and applied to cure any financial undertakings under Clause 22.2 (*Financial condition*) in respect of any Breach Period, (B) the Borrower has notified the Facility Agent upon receipt of such Cure Amount that it intends to apply such Cure Amount in accordance with this paragraph (d) and (C) the Borrower has deposited that Cure Amount into the Cure Amount Account prior to the Test Date that immediately follows the last day of such Breach Period and has notified the Facility Agent at the time of such deposit that such deposit is made on account of such Cure Amount for such Breach Period, then for the purposes of calculating the financial undertakings in Clause 22.2 (*Financial condition*) for any Relevant Period that ends after that Breach Period and which overlaps with the Test Date falling on the last day of such Breach Period in respect of which such Cure Amount was applied (such Relevant Period being a “**Subsequent Relevant Period**”), such Cure Amount shall be included in all calculations of the financial undertakings in Clause 22.2 (*Financial condition*) as if such Cure Amount had been added to (for the purposes of Leverage and the Interest Coverage Ratio) the EBITDA of the Group for that Subsequent Relevant Period or (for the purposes of the Debt Service Coverage Ratio) the Cashflow of the Group for that Subsequent Relevant Period **provided that** no double counting should be permitted and:
- (i) to the extent that any Cure Amount is subsequently applied in prepayment of any Borrowings at any time during any such Subsequent Relevant Period shall not be added to EBITDA or Cashflow for any such Subsequent Relevant Period;
 - (ii) to the extent that any Cure Amount is standing to the credit of the Cure Amount Account as at the last day of any such Subsequent Relevant Period, such amount shall not be taken into account or included in any of paragraphs (a) to (b) of the definition of “Total Net Debt” for the purpose of calculating Leverage in respect of any such Subsequent Relevant Period; and
 - (iii) to the extent that any Cure Amount is withdrawn, transferred or applied from the Cure Amount Account for payment to any Group Member or payment or transfer into any account of any Group Member at any time during any such Subsequent Relevant Period (1) such Cure Amount shall not be added to EBITDA for any Subsequent Relevant Period (that ends on or after the date of such withdrawal, transfer or application) pursuant to this paragraph (d) and (2) (for the avoidance of doubt) the amount so withdrawn, transferred or applied in favour of a Group Member shall not be excluded in the calculation of Cash as at the end of any Subsequent Relevant Period (that ends on or after the date of such withdrawal, transfer or application) for the purposes of the definition of “Total Net Debt”, in each case, for the purpose of calculating Leverage in respect of any such Subsequent Relevant Period.
- (e) The application or addition of any Cure Amount, or the inclusion of any Cure Amount in the calculation of any financial undertakings in Clause 22.2 (*Financial condition*), pursuant to paragraphs (a) to (d) shall be solely for the purposes of ascertaining compliance with the financial undertakings in Clause 22.2 (*Financial condition*) in respect of the applicable Breach Period (as re-calculated) or Subsequent Relevant Period and not for the purposes of determining the Margin or any Permitted Acquisition or any other permission or usage under or in respect of the Finance Documents or any other purpose.

- (f) Any Cure Amount received by the Borrower in accordance with this Clause 22.4 may exceed the amount required to rectify any breach or non-compliance with the financial undertakings in Clause 22.2 (*Financial condition*) in respect of any Breach Period. Such Cure Amount may be retained by the Group and may be applied as the Borrower shall determine in its sole discretion, including working capital or operating expenditure of the Group or as an Acceptable Funding Source, but may not be applied to fund any Permitted Distribution to any person that is not a Group Member.

22.5 Deemed remedy of financial covenants

If, on any Test Date or in relation to any Relevant Period ending on a Test Date, the Borrower fails to comply with a requirement of Clause 22.2 (*Financial condition*), but on a subsequent Test Date or in relation to a Relevant Period ending on a subsequent Test Date, the Borrower does comply with that requirement, any non-compliance with such requirement on such first-mentioned Test Date or in relation to such first-mentioned Relevant Period shall be deemed to be waived and remedied for all purposes under the Finance Documents (and shall no longer constitute a Default) unless an Acceleration Event has occurred prior to the delivery of the financial statements of the Group for the period ending on such subsequent Test Date and the accompanying Compliance Certificate to the Facility Agent in accordance with this Agreement.

23. GENERAL UNDERTAKINGS

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment in respect of any Facility (or any commitment represented thereby) is in force.

Authorisations and compliance with laws

23.1 Authorisations

Each Obligor shall (and the Borrower shall ensure that each Group Member will) promptly:

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

any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

- (i) enable it to perform its obligations under any or all of the Finance Documents to which it is a party;
- (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document including the obtaining of any Authorisations contemplated by (and in accordance with) the Perfection Requirements; and
- (iii) carry on its business where failure to do so has or would reasonably be expected to have a Material Adverse Effect.

23.2 Compliance with laws

- (a) Each Obligor shall (and the Borrower shall ensure that each Group Member will) comply in all respects with all laws to which it may be subject (including SAFE Rules) if failure so to comply has or would reasonably be expected to have a Material Adverse Effect (provided that a failure to complete the registration of any Finance Document which constitutes a Nei Bao Wai Dai Transaction with SAFE notwithstanding the use of reasonable endeavours by the relevant Group Member shall not give rise to a breach of the foregoing undertaking).
- (b) Each Obligor shall (and the Borrower shall procure that each Group Member will) comply in all respects, and conduct its business in compliance with all applicable Sanctions, Anti-Bribery and Corruption Laws, Anti-Money Laundering Laws and Anti-Terrorism Laws. No Obligor shall (and the Borrower shall ensure that no Group Member will) directly or indirectly use any of the proceeds of any Facility for any purpose which would breach, or would cause any Finance Party, any Transaction Obligor or any Group Member to be in breach of, any Sanctions, Anti-Bribery and Corruption Laws, Anti-Money Laundering Laws and Anti-Terrorism Laws.

23.3 Environmental compliance

Each Obligor shall (and the Borrower shall ensure that each Group Member will):

- (a) comply with all Environmental Law;
 - (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
 - (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,
- where failure to do so has or could reasonably be expected to have a Material Adverse Effect.

23.4 Taxation

- (a) Each Obligor shall (and the Borrower shall ensure that each Group Member will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them; and
 - (iii) failure to pay those Taxes does not have and would not reasonably be expected to have a Material Adverse Effect.
- (b) No Obligor shall (and the Borrower shall ensure that no Group Member will) change its residence for Tax purposes.

Restrictions on business focus

23.5 Merger

No Obligor shall (and the Borrower shall ensure that no other Group Member will) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction.

23.6 **Change of business**

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

23.7 **Acquisitions and investments**

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other Group Member will):
 - (i) acquire a company, corporation or other legal entity or any shares or Equity Interests or securities or a business or undertaking (or, in each case, any interest in any of them); or
 - (ii) incorporate a company, corporation or other legal entity; or
 - (iii) make, or acquire any interest in, any financial investment (whether in debt or equity securities or other investment products).
- (b) Paragraph (a) above does not apply to an acquisition of a company, corporation or other legal entity, shares, Equity Interests, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company, corporation or legal entity which is:
 - (i) a Permitted Acquisition; or
 - (ii) a Permitted Transaction.

23.8 **Joint Ventures**

- (a) No Obligor shall (and the Borrower shall ensure that no other Group Member will):
 - (i) enter into, invest in or acquire (or agree to acquire) any shares, Equity Interests, stocks, securities or other interest in any Joint Venture; or
 - (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security or Quasi-Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- (b) Paragraph (a) above shall not apply to a Permitted Transaction or a Permitted Acquisition.

23.9 **Holding Companies**

None of the Borrower, Rise HK or the Cayman Guarantor (and each Obligor shall procure that the Parent shall not) shall trade, carry on any business, own any assets or incur any liabilities, indebtedness or commitments (whether actual or contingent) except for:

- (a) the provision and purchase of management, legal, accounting and administrative services (excluding treasury services) to other Group Members of a type customarily provided by a Holding Company to its Subsidiaries and any rights or liabilities in connection therewith;

- (b) ownership of Equity Interests in Group Members, and credit balances in bank accounts, Cash and Cash Equivalent Investments, insurance policies and (in the case of the Cayman Guarantor and Rise HK) Intellectual Property;
- (c) intra-Group debit balances and intra-Group credit balances;
- (d) (in the case of the Borrower) any Financial Indebtedness incurred under any Parent Loan or (in the case of the Parent) ownership of rights in respect of any Parent Loan;
- (e) (in the case of the Parent) any Financial Indebtedness constituted by (i) Subordinated Liabilities (as defined in the Security Trust Agreement) or (ii) any Permitted Loan made by the Borrower in favour of the Parent;
- (f) any rights and obligations (including any performance or enforcement thereof) under the Transaction Documents to which it is a party;
- (g) incurring any liabilities for Taxes, professional fees and administration costs in the ordinary course of business as a Holding Company and any liabilities arising by operation of law in the ordinary course of its business as a Holding Company (which liabilities do not arise as a result of any default or omission any Transaction Obligor or Group Member);
- (h) making any Permitted Loan, Permitted Acquisition or Permitted Disposal, granting Permitted Security, incurring any Permitted Financial Indebtedness, making or benefiting from any Permitted Guarantee, and making, facilitating or receiving any Permitted Share Issue or Permitted Distribution;
- (i) entering into a Permitted Transaction or a Permitted Hedging Transaction;
- (j) non-trading administrative activities desirable to maintain its tax status **provided that** such activities do not involve or result in any incurrence of any material liabilities;
- (k) compliance with reporting and other similar obligations under any applicable laws;
- (l) liabilities under the Existing Facilities Agreement and related finance documents to which it is a party, **provided that** such liabilities are discharged in full on or prior to the first Utilisation Date; and
- (m) any liabilities in any mandate and commitment letters entered into in respect of any Permitted Acquisition or Permitted Disposal (in each case) to be made by it, in each case, to the extent not otherwise prohibited by this Agreement.

Restrictions on dealing with assets and Security

23.10 *Pari passu* ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party or Hedge Counterparty against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

23.11 Negative pledge

In this Clause 23.11, “**Quasi-Security**” means an arrangement or transaction described in paragraph (b) below.

- (a) Except as permitted under paragraph (c) below, no Obligor shall (and the Borrower shall ensure that no other Group Member will) create or permit to subsist any Security over any of its assets.
- (b) Except as permitted under paragraph (c) below, no Obligor shall (and the Borrower shall ensure that no other Group Member will):
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any Transaction Obligor or any Group Member;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,
in circumstances where such arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is:
 - (i) Permitted Security; or
 - (ii) a Permitted Transaction.

23.12 Disposals

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other Group Member 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:
 - (i) a Permitted Disposal; or
 - (ii) a Permitted Transaction.

23.13 Arm's length basis

- (a) Except as permitted by paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other Group Member will) enter into any transaction with any person except on arm's length terms.
- (b) The following transactions shall not be a breach of this Clause 23.13:
 - (i) any transaction between (A) two or more Group Members (none of which is a Future Target Group Member) or (B) two or more Group Members (each of which is a Future Target Group Member) or (C) a Group Member (that is not a Future Target Group Member) and a Future Target Group Member provided that (in the case of (C)) such transaction is on terms that are no less favourable to such Group Member (that is not a Future Target Group Member) than arm's length terms;

- (ii) fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Facility Agent under Clause 4.1 (*Initial conditions precedent*) or agreed by the Facility Agent; and
- (iii) any Permitted Distribution or Permitted Transaction.

Restrictions on movement of cash – cash out

23.14 Loans or credit

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

23.15 No Guarantees or indemnities

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

23.16 Dividends and share redemption

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other Group Member will) declare or make any Distribution.
- (b) Paragraph (a) above does not apply to:
 - (i) a Permitted Distribution; or
 - (ii) a Permitted Transaction (other than one referred to in paragraph (e) of the definition of “Permitted Transaction”).

23.17 Dividends, fee payments and Proceeds Accounts

- (a) Each Obligor shall ensure that each Onshore Group Member shall pay all of the Licence and Consultancy Fees owed or payable by it to the applicable Group Member (that is not a VIE Group Member) in accordance with the terms of the VIE Contracts promptly and in any event on or prior to the last day of the fiscal quarter occurring after the calendar year in which such Licence and Consultancy Fees have accrued, are incurred or are payable.

- (b) Each Obligor shall (and the Borrower shall procure that each other Group Member will) ensure that any and all Onshore Distributions and any and all payments of Licence and Consultancy Fees by any Onshore Group Member to (or to the order of) any or all of the Offshore Group Members, after deducting any applicable PRC withholding tax, shall be deposited into one or more (A) Designated Proceeds Accounts (HSBC) and/or (B) Proceeds Accounts.
- (c) Without prejudice to the rights of the Security Agent under the Transaction Security Documents:
 - (i) none of the amounts standing to the credit of any of the Designated Proceeds Accounts (HSBC) shall be withdrawn, transferred or applied other than:
 - (A) any transfer of such amounts directly into one or more of the Proceeds Accounts;
 - (B) for payment of operating expenses; and/or
 - (C) (at any time prior to the establishment of any Proceeds Account) for any application towards any purpose not otherwise restricted under any Finance Document; and
 - (ii) (with effect from the establishment of any Proceeds Account)] upon the deposit or transfer of any amount into any Designated Proceeds Account (HSBC), each Obligor shall ensure that all of the amounts standing to the credit of such Designated Proceeds Account (HSBC) shall, promptly (and in any event within three Business Days of such deposit or transfer), be transferred into one or more of the Proceeds Accounts, except that (A) the applicable Group Member (that is the holder of such Designated Proceeds Account (HSBC)) may retain in such Designated Proceeds Account (HSBC) amounts reasonably determined by such Group Member to be required to be applied towards payment of operating expenses of the Group and (B) upon the establishment of any Proceeds Account, any and all amounts then standing to the credit of any Designated Proceeds Account (HSBC) shall be deemed to have been deposited in such Designated Proceeds Account (HSBC) on the date of such establishment, and shall be applied accordingly in accordance with this paragraph (ii); and
 - (iii) for the avoidance of doubt, at any time prior to the occurrence of an Acceleration Event, the Borrower may make withdrawals from the Proceeds Account(s) for purposes not restricted under the Finance Documents.
- (d) Each Obligor shall ensure that each other Offshore Group Member (to which any Onshore Distributions or Licence and Consultancy Fees are to be made or paid after the date of this Agreement) shall have established a Proceeds Account (and such Proceeds Account shall have been made subject to Transaction Security pursuant to Transaction Security Documents in agreed form or otherwise in form and substance satisfactory to the Facility Agent (acting reasonably)) prior to the first time when any Onshore Distributions or Licence and Consultancy Fees are made or paid to such Offshore Group Member.

23.18 Subordinated Loans

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other Group Member will):
 - (i) repay or prepay any principal amount (or capitalised interest) outstanding under any ParentCo Liabilities or Subordinated Liabilities (each as defined in the Security Trust Agreement);

- (ii) pay any interest, fee, charge or other amount payable, accrued or due in connection with any ParentCo Liabilities or Subordinated Liabilities (each as defined in the Security Trust Agreement); or
 - (iii) purchase, redeem, defease or discharge any amount outstanding with respect to any ParentCo Liabilities or Subordinated Liabilities (each as defined in the Security Trust Agreement).
- (b) Paragraph (a) above does not apply to a payment, repayment, prepayment, purchase, redemption, defeasance or discharge which is a Permitted Distribution or is otherwise permitted under the Security Trust Agreement.

Restrictions on movement of cash – cash in

23.19 Financial Indebtedness

- (a) Except as permitted under paragraph (b) below, no Obligor shall (and the Borrower shall ensure that no other Group Member will) incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is:
 - (i) Permitted Financial Indebtedness; or
 - (ii) a Permitted Transaction.

23.20 Share capital

- (a) No Obligor shall (and the Borrower shall ensure that no other Group Member will) issue any Equity Interests except pursuant to:
 - (i) a Permitted Share Issue; or
 - (ii) a Permitted Transaction.
- (b) Subject to mandatory requirements of applicable law, no Obligor shall (and the Borrower shall ensure that no Group Member will) at any time enter into or be party to any agreement or arrangement that would restrict the ability of a Group Member (other than the Borrower) to declare or pay:
 - (i) dividends or distributions to the holders of its Equity Interests; or
 - (ii) (in the case of any Onshore Group Member) any Onshore Distributions or Licence and Consultancy Fees, other than (A) restrictions in the Finance Documents and (B) restrictions in the VIE Contracts against the declaration or pay out of any dividends or distributions by any VIE Group Member in favour of any VIE Nominee.
- (c) Each Obligor shall ensure that no Onshore Group Member shall increase the amount of its statutory reserve requirements or the ratio of retained earnings to be contributed towards statutory reserves under its article of associations, except as required under mandatory provisions of applicable laws of the PRC.

Miscellaneous

23.21 Insurance

Each Obligor shall (and the Borrower shall ensure that each other Group Member will) maintain insurances on and in relation to its business and assets against those material risks and to the extent as is usual for companies carrying on the same or substantially similar business, and ensure that all such insurances must be with reputable independent insurance companies or underwriters.

23.22 Access

If a Default is continuing (or the Facility Agent or the Security Agent reasonably suspects a Default has occurred and is continuing), each Obligor shall, and the Borrower shall ensure that each Group Member will, permit each of the Facility Agent and/or the Security Agent and/or accountants and/or other professional advisers and/or contractors of the Facility Agent or Security Agent free access at reasonable times during regular business hours and on reasonable notice at the risk and cost of the Borrower to (a) the premises, assets, books, accounts and records of each Obligor and each Group Member and (b) meet and discuss matters with senior management of each Obligor and each Group Member.

23.23 Intellectual Property

Each Obligor shall (and the Borrower shall procure that each other Group Member will):

- (a) preserve and maintain the subsistence and validity of any and all Intellectual Property necessary for the business and/or activities of any Transaction Obligor or any Group Member where failure to do so has or would reasonably be expected to have a Material Adverse Effect (“**Relevant Intellectual Property**”) (including with respect to any Relevant Intellectual Property that is not owned by it, ensuring that it has valid licences of such Relevant Intellectual Property); and
- (b) in respect of any Relevant Intellectual Property:
 - (i) use reasonable endeavours to prevent any infringement in any material respect of such Relevant Intellectual Property;
 - (ii) make registrations and pay all registration fees and Taxes necessary to maintain such Relevant Intellectual Property in full force and effect and record its interest in such Relevant Intellectual Property;
 - (iii) not use or permit such Relevant Intellectual Property to be used in a way or take any step or omit to take any step in respect of such Relevant Intellectual Property which may materially and adversely affect the existence or value of such Relevant Intellectual Property or imperil the right to use such property; and
 - (iv) not discontinue the use of the Relevant Intellectual Property.

23.24 Treasury Transactions

No Obligor shall (and the Borrower shall procure that no other Group Member will) enter into any Treasury Transaction, other than any Permitted Hedging Transaction.

23.25 Further assurance

- (a) Each Obligor shall (and the Borrower shall procure that each other Transaction Obligor and other Group Member will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify having regard to the rights and restrictions in the Finance Documents (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s):
 - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;
 - (ii) (in the case of a Transaction Obligor or Group Member) to confer on the Security Agent or confer on the Finance Parties and/or Secured Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
 - (iii) upon and after any Transaction Security becoming enforceable, to facilitate the realisation of the assets which are, or are intended to be, the subject of such Transaction Security.
- (b) Each Obligor shall (and the Borrower shall procure that each other Transaction Obligor and other Group Member will) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.
- (c) In respect of any Transaction Security Document executed after the date of this Agreement (other than those falling within Part I of Schedule 2 (*Conditions Precedent*)), each Obligor shall ensure that there shall be delivered to the Facility Agent, promptly upon such execution, all of the documents and evidence specified in Part III of Schedule 2 (*Conditions Precedent*) with respect to such Transaction Security Document and each Transaction Obligor party to such Transaction Security Document (each in form and substance satisfactory to the Facility Agent, acting reasonably).

23.26 VIE Contracts

- (a) Each Obligor shall (and shall procure that each relevant Group Member will) use reasonable endeavors to procure that the Licence Documents between any Onshore Guarantor and any Guarantor be amended (or that new Licence Documents be entered into between any Onshore Guarantor and any Guarantor) so as to ensure that the Guarantors will, in aggregate, receive such after-tax fee income (in the form of fixed royalty or service fees) under the Licence Documents sufficient to enable the Obligors to discharge any scheduled principal, interest, fees and other sums payable under the Finance Documents when due.

- (b) Each Obligor shall (and shall procure that each Group Member shall) promptly pay all amounts payable under the VIE Contracts as and when they become due.
- (c) Without prejudice to paragraph (a) above, each Obligor (that is not a VIE Group Member) shall take (or procure to be taken) all reasonable and practical steps to preserve the rights and remedies of each Group Member (that is not a VIE Group Member) under or in connection with, and pursue any claims arising under, any or all of the VIE Contracts.
- (d) The Borrower shall not (and the Borrower shall procure that no other Group Member will) without the prior written consent of the Facility Agent (acting on the instructions of the Majority Lenders):
- (i) make or agree to any amendment or variation of or supplement to any provision of any of the VIE Contracts;
 - (ii) (subject to paragraph (g) below) terminate or not renew or agree to terminate or not renew any of the VIE Contracts; or
 - (iii) grant or agree to any waiver of any of its rights or remedies under or in connection with any of the VIE Contracts or grant any consent under any of the VIE Contracts,
- provided that** (in each case under (i) or (iii)) such amendment, variation, supplement, waiver or consent is or would reasonably be expected to be materially adverse to the interests of the Finance Parties.
- (e) The Borrower shall as soon as reasonably practicable notify the Facility Agent in writing upon the occurrence of any event or circumstance specified in paragraphs (d)(i) to (d)(iii) above.
- (f) No Obligor shall (and the Borrower shall procure that no other Group Member will):
- (i) assign, transfer, novate or otherwise dispose of any or all of its rights and/or obligations under any of the VIE Contracts, except for any assignment constituted by the creation of any Transaction Security; or
 - (ii) enter into or be party to any VIE Structure Document (other than those subsisting as at the date of this Agreement) or any other arrangement, instrument or agreement that constitutes, or forms part of, any contractual arrangements enabling a Group Member to exercise Control over any person (the Equity Interests in which are not beneficially owned by such Group Member) or consolidate the financial condition or results of operation of any person (the Equity Interests in which are not beneficially owned by such Group Member) for the purposes of the consolidated financial statements of the Group or any Group Member, except for the entry into of VIE Structure Documents in replacement of existing VIE Structure Documents upon a VIE Nominee Transfer as contemplated by the VIE Nominee Transfer Conditions.
- (g) If any VIE Contract is due to expire or expires, each Obligor party to such VIE Contract shall (and the Borrower shall procure that each relevant Group Member party to such VIE Contract shall) ensure that such VIE Contract is renewed on, or replaced with another VIE Contract with, substantially the same terms no later than the time when such first-mentioned VIE Contract is otherwise due to expire or (only in the case of a Licence Document) ensure that such Licence Document is renewed on, or replaced with another Licence Document with, substantially the same terms promptly and in any case within 30 days of the date on such Licence Document expires.

- (h) The Borrower shall ensure that no Group Member or Transaction Obligor will (except with the prior written consent of the Facility Agent acting on the instructions of the Majority Lenders) amend, vary, novate, supplement, supersede, waive or terminate any of the Constitutional Documents of any VIE Group Member over whose shares any security under any VIE Entity Equity Pledge is purported to be granted, where (in the case of any such amendment, variation, superseding, supplement or waiver) such amendment, variation, superseding, supplement or waiver would reasonably be expected to be materially adverse to the interests of the Finance Parties or any enforcement of any VIE Entity Equity Pledge. The Borrower shall promptly supply to the Facility Agent a copy of any amendment, variation, novation, supplement, superseding, waiver or termination of or to any such Constitutional Documents.
- (i) After the occurrence of any VIE Nominee Transfer, the Borrower shall promptly notify the Facility Agent of the same and provide to the Facility Agent copies of the VIE Structure Documents entered into pursuant to or as contemplated by paragraphs (b)(i) to (iii) of the definition of “VIE Nominee Transfer Conditions”) and (after completion of the relevant recordation or registration) evidence of any recordation or registration pursuant to or as contemplated by paragraph (b)(iii) of the definition of “VIE Nominee Transfer Conditions”.

23.27 DSRA

- (a) The Borrower shall, prior to the delivery of the first Utilisation Request, open and thereafter maintain the DSRA.
- (b) The Borrower shall ensure that, at all times with effect from the Initial Utilisation Date and for so long as any Loan (or any part thereof) is outstanding (each a “**DSRA Determination Time**”), the aggregate balance standing to the credit of the DSRA is not less than the DSRA Minimum Balance as at such DSRA Determination Time.
- (c) Each Guarantor shall (and the Borrower shall procure that each relevant Group Member will) use reasonable endeavors to procure the WFOE Guarantor to remit the maximum amount allowed under the relevant Licence Documents to one or more Obligors (for onward transfer to the DSRA) such that the aggregate amount standing to the credit of the DSRA is no less than the aggregate amount of principal and interest payable by the Borrower under this Agreement (except for any Facility B Loan which may be re-borrowed) during the next 12-Month period.
- (d) Without prejudice to the rights of the Security Agent under the Transaction Security Documents:
 - (i) each Obligor shall (and the Borrower shall procure that each other Group Member will) ensure that none of the amounts standing to the credit of the DSRA shall be withdrawn, transferred or applied by the Borrower except pursuant to paragraph (ii) below; and
 - (ii) **provided that** (1) paragraph (b) above would be complied with after such application and (2) no Event of Default is or would be continuing after such application, the Borrower may direct the Security Agent (after having supplied, or procured the supply of, such documentation and other evidence to the Security Agent reasonably satisfactory to it that the conditions set out in the foregoing (1) and (2) are and will be satisfied) to transfer amounts standing to the credit of the DSRA to pay principal and/or interest then due and payable under this Agreement (**provided further that** all of such amounts are directly paid to the Facility Agent for such application) and the Security Agent irrevocably agrees to give effect to such transfer of such amounts standing to the credit of the DSRA in payment of such principal and/or interest then due and payable under this Agreement.

- (e) Notwithstanding and without limitation to the Borrower's obligations under paragraphs (a) and (b) above and the rights of the Security Agent under the Transaction Security Documents, the Borrower irrevocably authorises each of the Facility Agent and the Security Agent (but, except as provided in paragraph (d)(ii) above, neither the Facility Agent nor the Security Agent shall be obliged) to, at any time upon or after the occurrence of an Acceleration Event, apply the moneys standing to the credit of the DSRA towards payment or repayment of any amount of principal or interest outstanding under this Agreement then due and unpaid. The Facility Agent or the Security Agent (as the case may be) must notify the Borrower of any such withdrawal as soon as reasonably practicable upon such withdrawal.
- (f) Where the Borrower is permitted to make a withdrawal from the DSRA pursuant to paragraph (d)(ii) above, the Facility Agent shall, as soon as reasonably practicable following an application from the Borrower to do so, notify the Security Agent that such withdrawal is so permitted.
- (g) Without limiting the obligations of the Borrower under this Clause 23.27, the Facility Agent shall have the right (but shall not be obliged) to monitor the credit balance of the DSRA at all times, except that it will ascertain whether the credit balance of the DSRA complies with paragraph (b) above:
 - (i) pursuant to paragraph (b) of Clause 4.2 (*Further conditions precedent*);
 - (ii) the first day of each Interest Period of each Loan; and
 - (iii) each day on which a transfer is proposed to be made from the DSRA pursuant to paragraph (d) above.

23.28 Cure Amount Account

- (a) The Borrower shall ensure that the Cure Amount Account is established prior to the first time when the Borrower elects to exercise any of its rights under paragraph (d) of Clause 22.4 (*Equity cure*) and that all Cure Amounts which are to be applied in accordance with paragraph (d) of Clause 22.4 (*Equity cure*) to a Subsequent Relevant Period are directly paid into the Cure Amount Account.
- (b) The Borrower shall, upon the establishment of the Cure Amount Account (but in any event prior to the payment of any sum into such account), execute (and complete all necessary Perfection Requirements in respect of) an Account Pledge Agreement (in form and substance satisfactory to the Facility Agent) to confer fixed Security over all its rights, title, interests and benefits in the Cure Amount Account in favour of the Security Agent.
- (c) The Borrower shall be free to withdraw, transfer or apply amounts standing to the credit of the Cure Amount Account in its discretion provided that any amount so withdrawn, transferred or applied is:
 - (i) applied towards prepayment of any Loan, and such amount is directly transferred from the Cure Amount Account to the Facility Agent for the purposes of such prepayment;

(ii) applied towards payment by any Group Member of any amount owing by such Group Member to any third party (that is not a Group Member) in respect of any transaction permitted under the Finance Documents (excluding any Permitted Distribution), provided that such amount is directly transferred from the Cure Amount Account to such third party; or

(iii) transferred into an account of any Group Member,

and details of such withdrawal, transfer or application are included in the Compliance Certificate delivered upon or after such withdrawal, transfer or application. For the avoidance of doubt, paragraphs (d)(i) and (iii) of Clause 22.4 (*Equity cure*) shall apply to any withdrawal, transfer or application pursuant to paragraph (b)(i) or (iii) above.

(d) Any application of any amount standing to the credit of the Cure Amount Account shall be deemed to constitute an application of the Cure Amount(s) that have been paid into the Cure Amount Account in chronological order of payment of such Cure Amount(s) into the Cure Amount Account.

23.29 Conditions subsequent

(a) Each Obligor shall ensure that, by no later than the Initial Utilisation Date, the Existing Facilities (and all other sums payable under or in connection with the Existing Facilities Agreement and related finance documents) are repaid and discharged in full, and reasonable evidence of the same be delivered to the Facility Agent and the Security Agent.

(b) Each Obligor shall ensure that:

(i) all of the documentation (including a global deed of release in respect of the Existing Security and release documents in respect of the Existing PRC Security but excluding, if applicable, the application forms and other documents required to effect deregistration of the Existing PRC Security) effecting release and discharge of the Existing Security (duly executed by the existing security agent and each other party thereto) shall be dated and delivered and become effective no later than the Initial Utilisation Date, and originals thereof are promptly delivered to the Facility Agent or the Security Agent;

(ii) each of the Finance Documents referred to in paragraph 3(a) of Part I of Schedule 2 (*Conditions Precedent*) shall be dated and become effective by no later than the Initial Utilisation Date, and originals thereof are promptly delivered to the Security Agent;

(i) each of the notices and acknowledgements referred to in paragraph 3(b) of Part I of Schedule 2 (*Conditions Precedent*) shall, where appropriate, be dated and become effective by no later than the Initial Utilisation Date, and copies thereof are promptly delivered to the Security Agent;

- (ii) all share certificates in respect of any Equity Interests that are expressed to be subject to Transaction Security pursuant to any Transaction Security Document referred to in paragraph 3(a) of Part I of Schedule 2 (*Conditions Precedent*)) shall be delivered to the Security Agent in accordance with the terms of such Transaction Security Document;
 - (iii) the originals of each of the transfers and share transfer forms or equivalent, and other documents of title and deliverables referred to in paragraph 3(c) of Part I of Schedule 2 (*Conditions Precedent*)) shall be delivered to the Security Agent in accordance with the terms of the relevant Transaction Security Documents; and
 - (iv) within 60 days after the Initial Utilisation Date, the Existing PRC Security shall be de-registered with the SAMR, and reasonable evidence of such de-registration shall be delivered to the Facility Agent and the Security Agent.
- (c) Each of the Borrower and the Rise HK shall procure that each of Rise HK and the WFOE Guarantor shall:
- (i) within 60 days of the date of execution of the Equity Pledge (WFOE Guarantor), apply for; and
 - (ii) within 90 days after the date of execution of the Equity Pledge (WFOE Guarantor), obtain and effect, the requisite Authorisations required under the laws of the PRC (including registration with SAMR) in respect of the Equity Pledge (WFOE Guarantor) and shall promptly upon obtaining or effecting any such Authorisation, deliver reasonable evidence of the same to the Security Agent.
- (d) The Borrower shall procure that the WFOE Guarantor and the VIE Entity shall:
- (i) promptly, and in any event within 15 PRC Business Days of the date of execution of the Guarantee to which it is a party (or, if any transfer, assignment or amendment under or in respect of the Finance Documents, or the establishment of any Incremental Facility, would trigger the requirement to amend the relevant Nei Bo Wai Dai Transaction registration, within 15 PRC Business Days of such transfer, assignment, amendment or establishment), submit an application to SAFE for the Nei Bao Wai Dai Transaction registration (or, as applicable, an application to update or amend such registration) in respect of such Guarantee (each a “**SAFE Application Date**”) (together with the submission of all requisite supporting documents and the payment of any associated fees or charges (if applicable)) in accordance with the applicable PRC laws and regulations (including the SAFE regulations); and
 - (ii) use reasonable endeavours to ensure that such Guarantee is duly registered with SAFE (or, where applicable, such amendment registration is duly made with SAFE) and deliver reasonable evidence of the same to the Facility Agent,

provided that if, notwithstanding the use of reasonable endeavours by the WFOE Guarantor or the VIE Entity (as applicable) to effect such registration or amendment registration, such application is refused by SAFE, the obligations of the Borrower, the WFOE Guarantor and/or the VIE Entity to obtain or effect such registration (and any subsequent amendment registration) or amendment registration (as applicable) shall cease upon the expiry of 180 days from the applicable SAFE Application Date.

24. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 24 is an Event of Default (save for Clause 24.19 (*Acceleration*) and Clause 24.20 (*Clean-Up Period*)).

24.1 Non-payment

Any Transaction Obligor does not pay by the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless such failure to pay is caused by administrative or technical error and payment is made within three Business Days of its due date.

24.2 Financial covenants

Subject to Clause 22.4 (*Equity cure*), any requirement of Clause 22 (*Financial covenants*) is not satisfied.

24.3 Other obligations

- (a) Any Transaction Obligor does not comply with any provision of the Finance Documents to which it is a party (other than those referred to in Clause 24.1 (*Non-payment*), Clause 24.2 (*Financial covenants*) or paragraph (b) below)) unless such failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of (A) the Facility Agent giving written notice of such failure to comply to the Borrower or such Transaction Obligor and (B) the Borrower or a Transaction Obligor becoming aware of such failure to comply; or
- (b) any Transaction Obligor does not comply with any provision of:
 - (i) Clause 23.27 (*DSRA*) unless such failure to comply is capable of remedy and is remedied within 10 Business Days of the earlier of (A) the Facility Agent giving written notice of such failure to comply to the Borrower and (B) the Borrower becoming aware of such failure to comply; or
 - (ii) Clause 23.29 (*Conditions subsequent*).

24.4 Misrepresentation

- (a) Any representation or statement made or deemed to be made by any Transaction Obligor in the Finance Documents or any other document delivered by or on behalf of any Transaction Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect (or, where any representation or statement is already qualified by materiality or Material Adverse Effect, in any respect) when made or deemed to be made.

- (b) No Event of Default under paragraph (a) above will occur in respect of any misrepresentation if the circumstances giving rise to such misrepresentation are capable of remedy and are remedied within 20 Business Days of the earlier of (A) the Facility Agent giving written notice of such misrepresentation to the Borrower or the relevant Transaction Obligor and (B) the Borrower or a Transaction Obligor becoming aware of such misrepresentation (it being understood that the subsequent provision of accurate information shall not in itself be deemed to cure any misrepresentation in respect of the accuracy of previous information provided).

24.5 Cross default

Any:

- (a) Financial Indebtedness of any Transaction Obligor or any Group Member is not paid when due nor within any originally applicable grace period;
- (b) Financial Indebtedness of any Transaction Obligor or any Group Member 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) commitment for any Financial Indebtedness of any Transaction Obligor or any Group Member is cancelled or suspended by a creditor of any Transaction Obligor or any Group Member as a result of an event of default (however described); or
- (d) creditor of any Transaction Obligor or any Group Member becomes entitled to declare any Financial Indebtedness of any Transaction Obligor or any Group Member due and payable prior to its specified maturity as a result of an event of default (however described),

provided that:

- (i) no Event of Default will occur under this Clause 24.5 if the aggregate amount of Financial Indebtedness and/or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above (for any and all of the Transaction Obligors and the Group Members) is less than U.S.\$2,500,000 (or its equivalent in other currencies); and
- (ii) for purpose of determining the amount of Financial Indebtedness under this Clause 24.5 (*Cross default*), Financial Indebtedness shall not include:
 - (A) Financial Indebtedness owing from a Group Member to another Group Member; or
 - (B) Financial Indebtedness constituted by any New Shareholder Injection.

24.6 Insolvency

- (a) any Transaction Obligor or any Group Member:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;

- (iii) by reason of actual or anticipated financial difficulties, suspends or threatens to suspend making payments on any of its debts; or
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding (A) any Finance Party in its capacity as such and (B) any Group Member in its capacity as creditor of any indebtedness owing by such first-mentioned Transaction Obligor or Group Member) with a view to rescheduling any of its indebtedness; or
- (b) a moratorium is declared in respect of any indebtedness of any Transaction Obligor or any Group Member. If a moratorium occurs, the ending of that moratorium will not remedy any Event of Default caused by that moratorium.

24.7 Insolvency proceedings

- (a) Any corporate action, legal proceedings or other procedure or formal step is taken or occurs in relation to:
- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, reorganisation, liquidation or striking off (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Transaction Obligor or any Group Member;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of any Transaction Obligor or any Group Member;
 - (iii) the appointment of a liquidator, receiver, trustee, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Transaction Obligor or any Group Member or any of its assets; or
 - (iv) enforcement of any Security or execution or any form of levy against any assets of any Transaction Obligor or any Group Member where the aggregate value of any and all of the assets of Transaction Obligors and Group Members that are subject to any or all events and/or circumstances of such enforcement and/or execution is more than U.S.\$3,500,000 (or its equivalent in other currencies),
- or any analogous procedure or formal step is taken in any jurisdiction.
- (b) Paragraph (a) above shall not apply to:
- (i) any winding-up petition or petition seeking the appointment of a liquidator, receiver, trustee, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Transaction Obligor or any Group Member or any of its assets, where such petition is (A) contested by such Transaction Obligor or Group Member in good faith or (B) frivolous or vexatious and is (in each case, whether under (A) or (B)) discharged, stayed (without any subsequent re-commencement) or dismissed within 30 days of its commencement; or
 - (ii) any step or procedure contemplated by paragraph (d) of the definition of “Permitted Transaction”.

24.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Transaction Obligor or any Group Member unless (a) the aggregate value of any and all assets of Transaction Obligors and Group Members that are subject to any or all events and/or circumstances of such expropriation, attachment, sequestration, distress, execution and/or any analogous process is less than U.S.\$3,500,000 (or its equivalent in other currencies) or (b) such process is (i) contested by such Transaction Obligor or Group Member in good faith or (ii) frivolous or vexatious and is (in each case, whether under (i) or (ii)) discharged within 30 days after its commencement.

24.9 Final judgment

Any Transaction Obligor or any Group Member fails to comply with or pay any sum due from it under any final judgment or order made or given by any court of competent jurisdiction, except where:

- (a) (i) (in the case of failure to pay) the aggregate amount failed to be paid by any or all of the Transaction Obligors and Group Members under any one or more such judgments or orders is less than U.S.\$5,000,000 (or its equivalent in other currencies) and (ii) such failure is capable of remedy and is remedied (or such judgment or order is set aside) within 30 days; or
- (b) such judgment is appealable and is being appealed by such Transaction Obligor or such Group Member through applicable proceedings, which such proceedings have not been concluded.

24.10 Unlawfulness and invalidity

- (a) It is or becomes unlawful for any Transaction Obligor or any party to the Security Trust Agreement (other than a Finance Party or a Transaction Obligor) to perform any of its material obligations under the Finance Documents, or (subject to the Legal Reservations and the applicable Perfection Requirements that are not overdue under applicable law or regulation) any Transaction Security created or expressed to be created or evidenced by any of the Transaction Security Documents ceases to be effective, or any subordination created under the Security Trust Agreement is or becomes unlawful; or
- (b) any Finance Document or any obligation of any Transaction Obligor under any Finance Document or of any person (other than a Finance Party or a Transaction Obligor) under the Security Trust Agreement, or any Transaction Security created or expressed to be created or evidenced by any of the Transaction Security Documents or any subordination created or expressed to be created under or evidenced by the Security Trust Agreement is or ceases to be legal, valid, binding or (subject to the Legal Reservations and, in the case of the Transaction Security Documents, the applicable Perfection Requirements that are not overdue under applicable law or regulation) enforceable and such event or circumstance individually or cumulatively materially and adversely affects the interests of the Finance Parties under the Finance Documents.

24.11 Security Trust Agreement

- (a) Any party to the Security Trust Agreement (other than a Finance Party or a Transaction Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Security Trust Agreement; or

- (b) any representation or warranty given by any party to the Security Trust Agreement (other than a Finance Party or a Transaction Obligor) under the Security Trust Agreement is incorrect in any material respect;

and, if such non-compliance or the circumstances giving rise to such misrepresentation are capable of remedy, such non-compliance or circumstances are not remedied within 20 Business Days of the earlier of the Facility Agent giving notice to the Borrower or that party or the Borrower or that party becoming aware of such non-compliance or misrepresentation.

24.12 Cessation of business

The Group (taken as a whole) suspends or ceases to carry on all or a material part of its business except as a result of a Permitted Disposal or a Permitted Transaction.

24.13 Audit qualification

The auditors of the Listco or the Group qualify any Annual Financial Statements where that qualification has or would reasonably be expected to be materially adverse to the interests of the Finance Parties.

24.14 Expropriation

The authority or ability of any Transaction Obligor or any Group Member (in each case calculated on a consolidated basis) to conduct its business is materially limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation or other action by or on behalf of any Governmental Authority or any other governmental, regulatory or other authority or other person in relation to any Transaction Obligor or any Group Member or any of the assets of any Transaction Obligor or any Group Member (in each case) where such seizure, expropriation, nationalisation or action has or would reasonably be expected to have a Material Adverse Effect; or

24.15 Repudiation and rescission of agreements

- (a) A Transaction Obligor rescinds or purports in writing to rescind or repudiates or purports to repudiate in writing a Finance Document or any of the Transaction Security or evidences in writing an intention to rescind or repudiate a Finance Document or any Transaction Security; or
- (b) any party to the Security Trust Agreement (other than a Finance Party or a Transaction Obligor) purports to rescind or repudiates in writing or purports to repudiate in writing any of the Security Trust Agreement or evidences an intention to rescind or repudiate in writing the Security Trust Agreement.

24.16 Litigation

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced against any Transaction Obligor or any Group Member by any person which are reasonably likely to be adversely determined, and, if so adversely determined, would reasonably be expected to have a Material Adverse Effect.

24.17 Delisting and suspension of trading

- (a) Listco ceases to be listed on NASDAQ; or

- (b) trading of the shares of Listco on NASDAQ is suspended for a period of more than 15 consecutive days on which NASDAQ is open for trading (for reasons other than there being an imminent announcement of a major acquisition or merger transaction).

24.18 **Material adverse change**

Any event(s) or circumstance(s) occur(s) which has/have or would have a Material Adverse Effect.

24.19 **Acceleration**

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

- (a) cancel the Total Commitments at which time they (and the Commitment of each Lender in respect of each Facility) shall immediately be cancelled and reduced to zero;
- (b) declare that all or part of the Loan(s), together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;
- (c) declare that all or part of the Loan(s) be payable on demand, at which time they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or
- (d) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

24.20 **Clean-Up Period**

- (a) For the purposes of this Clause:

“**Clean-Up Default**” means:

- (i) any Default or Event of Default existing on or after the date of completion of any Future Acquisition other than an Event of Default under Clause 24.1 (*Non-payment*), Clause 24.2 (*Financial covenants*), Clause 24.3 (*Other obligations*), Clause 24.4 (*Misrepresentation*), Clause 24.6 (*Insolvency*), Clause 24.7 (*Insolvency proceedings*), Clause 24.8 (*Creditors process*), Clause 24.10 (*Unlawfulness and invalidity*) and Clause 24.15 (*Repudiation and rescission of agreements*);
- (ii) a Default or an Event of Default falling under Clause 24.3 (*Other obligations*) and constituted by a breach of a Clean-Up Undertaking; or
- (iii) a Default or an Event of Default falling under Clause 24.4 (*Misrepresentation*) and constituted by a breach of Clean-Up Representation,

in each case with respect to any of the Clean-Up Entities of the applicable Future Acquisition.

“**Clean-Up Period**” means, in relation to any Future Acquisition, the period from the date of such Future Acquisition to the date falling 120 days thereafter.

“**Clean-Up Representation**” means any of representations and warranties under Clause 20 (*Representations*), other than Clause 20.2 (*Status*), 20.3 (*Binding Obligations*), Clause 20.5 (*Power and authority*), paragraph (a) of Clause 20.6 (*Validity and admissibility in evidence*), Clause 20.7 (*Governing law and enforcement*), Clause 20.17 (*Ranking*), Clause 20.20 (*Legal and beneficial ownership*), Clause 20.21 (*Shares*) and paragraph (a) of Clause 20.24 (*VIE Contracts*).

“**Clean-Up Undertaking**” means any of the undertakings specified in Clause 21 (*Information Undertakings*) or Clause 23 (*General undertakings*) (other than Clause 21.1 (*Financial statements*) to Clause 21.3 (*Requirements as to financial statements*) (inclusive), Clause 23.1 (*Authorisations*) (excluding paragraph (iii) of Clause 23.1 (*Authorisations*)), Clause 23.10 (*Pari passu ranking*), Clause 23.25 (*Further Assurance*), Clause 23.26 (*VIE Contracts*) and Clause 23.29 (*Conditions subsequent*)).

“**Future Clean-Up Entities**” has the meaning given to that term in paragraph (b).

- (b) Notwithstanding any other provision of any Finance Document, during the Clean-Up Period relating to a Future Acquisition, any event or circumstance which constitutes a (A) breach of a Clean-Up Representation or a Clean-Up Undertaking or (B) any Default or Event of Default which would (but for this Clause 24.20) constitute a Clean-Up Default will be deemed not to be a Default or an Event of Default (as the case may be) if:
- (i) it would have been (if it were not for this Clause 24.20) a Default or an Event of Default only by reason of circumstances relating exclusively to any Future Target in respect of such Future Acquisition or any Subsidiary of or entity directly or indirectly owned by such Future Target that was not a Group Member prior to such Future Acquisition (collectively “**Future Clean-Up Entities**” in respect of such Future Acquisition), or any obligation to procure or ensure in relation to any of such Future Clean-up Entities;
 - (ii) it is capable of remedy and reasonable steps are being taken to remedy it;
 - (iii) the circumstances giving rise to it have not been procured by or approved by any Obligor (with knowledge of the relevant breach, event or circumstance not being interpreted in any way as approval of such breach, event or circumstance in circumstances where such Obligor did not reasonably have the ability to control or prevent such breach, event or circumstance from occurring); and
 - (iv) it does not have a Material Adverse Effect,
- provided that if such event or circumstance (which, but for the foregoing provisions of this Clause 24.20, would constitute a Default or an Event of Default) is continuing on or after the expiry of the Clean-Up Period with respect to such Future Acquisition, there shall be a Default or an Event of Default, as the case may be, notwithstanding the above (and without prejudice to the rights and remedies of the Finance Parties).
- (c) If, on or before the expiry of a Clean-Up Period relating to a Future Acquisition, any event or circumstance has occurred with respect to any of the Future Clean-Up Entities in respect of such Future Acquisition which would constitute a Clean-Up Default have occurred, as soon as reasonably practicable after becoming aware of its occurrence or existence, the Borrower shall notify the Facility Agent of that Clean-Up Default and such event or circumstance (and the steps, if any, being taken to remedy it).

**SECTION 9
CHANGES TO PARTIES**

25. CHANGES TO THE LENDERS

25.1 Assignments and transfers by the Lenders

Subject to this Clause 25 and to Clause 26 (*Debt Purchase Transactions*), a Lender (the “**Existing Lender**”) may only enter into a Transfer under any Finance Document with 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 syndicated loans (the “**New Lender**”).

25.2 Conditions of assignment or transfer

- (a) The consent of the Borrower shall be required in respect of any Transfer by an Existing Lender pursuant to Clause 25.1 (*Assignments and transfers by the Lenders*) unless that Transfer is:
- (i) to another Lender or an Affiliate of a Lender which is, in each case, a Permitted Transferee;
 - (ii) to any person set out in Schedule 4 (*White List*) or any Affiliate of any such person; or
 - (iii) made at a time when an Event of Default under Clause 24.1 (*Non-payment*), Clause 24.6 (*Insolvency*), Clause 24.7 (*Insolvency proceedings*) or Clause 24.8 (*Creditors’ process*) is continuing,
- and provided that (A) (in each case) the person to which such Transfer is made is not a Conflicted Lender and (B) (in the case of paragraphs (i) and (ii)) the person to which such Transfer is made is not a Distressed Investor.
- (b) The consent of the Borrower to any Transfer by a Lender must not be unreasonably withheld or delayed.
- (c) Upon written request by an Existing Lender for the Borrower to confirm whether any proposed New Lender (the “**Proposed New Lender**”) to which such Existing Lender proposes to make or effect a Transfer is a Conflicted Lender or Distressed Investor, the Borrower shall within seven Business Days notify the Facility Agent and such Existing Lender whether such Proposed New Lender is a Conflicted Lender or Distressed Investor for the purposes of this Agreement, provided that such Existing Lender shall have (A) provided (together with such written request) reasonable particulars of such Proposed New Lender and (B) certified in such written request that such Existing Lender is not actually aware that such Proposed New Lender is a Conflicted Lender or a Distressed Investor. If the Borrower confirms that such Proposed New Lender is not a Conflicted Lender or Distressed Investor, such Proposed New Lender shall be deemed not to be a Conflicted Lender or Distressed Investor for the purposes of any Transfer made by such Existing Lender to such Proposed New Lender within 20 Business Days after the date of such confirmation from the Borrower.
- (d) An assignment by an Existing Lender to a New Lender will only be effective:
- (i) on receipt by the Facility Agent (whether in the applicable Assignment Agreement or otherwise) of written confirmation from such New Lender (in form and substance satisfactory to the Facility Agent) that such New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender;

- (ii) on such New Lender entering into the documentation required for it to accede as a “Senior Lender” (as defined in the Security Trust Agreement) to the Security Trust Agreement; and
 - (iii) on the completion by each of the Facility Agent and the Security Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to such New Lender, the completion of which the Facility Agent or, as the case may be, the Security Agent shall promptly notify to such Existing Lender and such New Lender.
- (e) A transfer by an Existing Lender to a New Lender will only be effective if such New Lender enters into the documentation required for it to accede as a “Senior Lender” (as defined in the Security Trust Agreement) to the Security Trust Agreement and if the procedure set out in Clause 25.5 (*Procedure for transfer*) is complied with in respect of such transfer.
- (f) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date on which such assignment, transfer or change occurs, the Borrower would be obliged to make a payment to the New Lender (to which such Lender assigns or transfers such rights or obligations) or such Lender acting through its new Facility Office under Clause 14 (*Tax gross-up and indemnities*) or Clause 15 (*Increased costs*),
- then the entitlement of such New Lender or, as the case may be, such Lender acting through its new Facility Office to receive payment under that Clause by reference to such circumstances existing at the date on which such assignment, transfer or change occurs (or a continuation of such circumstances) shall be limited to the same extent as the entitlement of such first-mentioned Lender or such first-mentioned Lender acting through its previous Facility Office had such assignment, transfer or change not occurred.
- (g) An Existing Lender may not assign or transfer any or all of its rights or obligations under the Finance Documents to a New Lender or change its Facility Office if, by reference to the circumstances subsisting as at the time of such assignment, transfer or change, such assignment, transfer or change would give rise to a requirement to prepay any Loan (or any part thereof) or cancel any Commitment (or any part thereof) in respect of any Facility pursuant to Clause 7.1 (*Illegality*) in relation to such New Lender or, as the case may be, such Existing Lender acting through its new Facility Office.
- (h) An assignment or transfer of part of (instead of all of) an Existing Lender’s participation in respect of a Facility to a New Lender must be in an amount such that, immediately after such assignment or transfer:
- (i) the amount of that Existing Lender’s remaining participation (when aggregated with its Affiliates’ participation) in respect of Commitment and/or the Loan(s) in respect of that Facility is a minimum amount of U.S.\$5,000,000 or its equivalent; and

- (ii) the amount of that New Lender's participation (when aggregated with its Affiliates' participation) in respect of Commitment and/or the Loan(s) in respect of that Facility is a minimum amount of U.S.\$5,000,000 or its equivalent, or such lesser amount with the prior written consent of the Borrower.
- (i) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that each of the Facility Agent and the Security Agent has authority to execute on its behalf any amendment or waiver relating to any Finance Document that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement or requisite party or parties in accordance with the Security Trust Agreement on or prior to the date on which the applicable transfer or assignment from the applicable Existing Lender to such New Lender becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as such Existing Lender would have been had it remained a Lender.
- (j) An Existing Lender shall, simultaneously with the assignment or transfer by it of rights and/or obligations under this Agreement to a New Lender, assign to that New Lender a proportionate share of the rights held by it (in its capacity as Lender) under or in connection with the other Finance Documents.
- (k) Any reference in this Agreement to a Lender includes a New Lender but excludes a Lender if no amount is or may be owed to or by it under any Finance Document.
- (l) If any assignment or transfer by a Lender of its rights and/or obligations under any Finance Document is executed and purported to have effect in breach of the provisions in any Finance Document, that assignment or transfer shall be void and deemed not to have occurred and the right to vote in respect of any of the Commitment (in respect of any Facility) and/or participation in any Loan the subject of such assignment or transfer shall be suspended and such Commitment and participation shall be ignored (and shall be treated as not outstanding) in determining decisions requiring a vote by some or all of the Lenders, or a class or group of them, until such time as the provisions of the Finance Documents with respect to such assignment or transfer shall have been complied with.

25.3 **Assignment or transfer fee**

Unless the Facility Agent otherwise agrees, each New Lender under an assignment or transfer which takes place after the Syndication Date shall, on the date upon which an assignment or transfer by the Existing Lender to the New Lender takes effect, pay to the Facility Agent (for its own account) a fee of U.S.\$5,000.

25.4 **Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;

- (ii) the financial condition of any Transaction Obligor;
 - (iii) the performance and observance by any Transaction Obligor or any other person of its obligations under the Transaction Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender (which makes any assignment or transfer to such New Lender), the other Finance Parties and the Secured Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Transaction Obligor and its related entities in connection with its participation in this Agreement and/or any other Finance Document and has not relied exclusively on any information provided to it by such Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Transaction Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment in respect of any Facility (or any commitment represented thereby) is in force.
 - (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred by such Existing Lender under this Clause 25; or
 - (ii) support any losses directly or indirectly incurred by a New Lender by reason of the non-performance by any Transaction Obligor of its obligations under the Transaction Documents or otherwise.

25.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) a transfer by the Existing Lender of any or all of its rights and obligations under this Agreement to the New Lender is effected on the Transfer Date in respect of such transfer in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender (in respect of such transfer). The Facility 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 Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or similar checks under all applicable laws and regulations in relation to the transfer to such New Lender (the subject of such Transfer Certificate).

- (c) On the Transfer Date in respect of a transfer by the Existing Lender to the New Lender:
 - (i) to the extent that in the Transfer Certificate relating to such transfer the Existing Lender seeks to transfer by novation its rights and obligations under this Agreement, each of the Obligors and the Existing Lender shall be released from further obligations towards one another under this Agreement and their respective rights against one another under this Agreement 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 Facility Agent, the Mandated Lead Arranger, the Security Agent, the New Lender, the other Lenders and the Hedge Counterparties 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 such transfer and to that extent the Facility Agent, the Mandated Lead Arranger, the Security Agent and the Existing Lender shall each be released from further obligations to each other under this Agreement; and
 - (iv) the New Lender shall become a Party as a “Lender”.

25.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*) an assignment by the Existing Lender of any or all of its rights under this Agreement to the New Lender may be effected on the Transfer Date in respect of such assignment in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement (in respect of such assignment) delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
- (b) The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “know your customer” or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender (the subject of such Assignment Agreement).
- (c) On the Transfer Date in respect of an assignment by the Existing Lender to the New Lender:
 - (i) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement relating to such assignment;

- (ii) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in such Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) A Lender may utilise procedures other than those set out in this Clause 25.6 to assign its rights under any Finance Document (but not, without the consent of the relevant Obligor party to such Finance Document or unless in accordance with Clause 25.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by that Lender nor the assumption of equivalent obligations by the applicable New Lender) **provided that** they comply with the conditions set out in Clause 25.2 (*Conditions of assignment or transfer*).

25.7 **Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower**

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

25.8 **Accession of Hedge Counterparties**

Any person which becomes a party to the Security Trust Agreement as a Hedge Counterparty (as defined in the Security Trust Agreement) shall, at the same time, become a Party to this Agreement as a “Hedge Counterparty” in accordance with clause 19.10 (*Creditor Accession Undertaking*) of the Security Trust Agreement.

25.9 **Security over Lenders’ rights**

In addition to the other rights provided to Lenders under this Clause 25, each Lender may without consulting with or obtaining consent from any Transaction Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release such Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or other Security for such Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by any Transaction Obligor or grant to any person any more extensive rights than those required to be made or granted to such Lender under the Finance Documents.

25.10 **Exclusion of Facility Agent's and Security Agent's liabilities**

In relation to any assignment or transfer pursuant to this Clause 25, each Party acknowledges and agrees that neither the Facility Agent nor the Security Agent shall be obliged to:

- (a) enquire as to the accuracy of any representation or warranty made by, or the status of, any person in respect of its eligibility as a Lender;
- (b) attend to any registration or perfection requirements required in connection with such assignment or transfer or to ensure that such registration or perfection requirements are completed; and/or
- (c) provide any New Lender with any information regarding any previous amendments or waivers in relation to any Finance Document.

25.11 **Sub-participation**

For the avoidance of doubt, each Lender may grant a sub-participation which is not a Voting Participation in respect of any or all of its rights and/or obligations under any Finance Document to any person.

25.12 **Change of name**

If a Lender changes its name, then it shall, at its own cost and within 5 Business Days, provide the Facility Agent with an original or certified true copy of a legal opinion issued by the legal advisers to such Lender in the jurisdiction where such Lender is incorporated addressed to the Facility Agent (for and on behalf of the Finance Parties), which is in form and substance satisfactory to the Facility Agent, confirming that (a) such Lender has changed its name; (b) the new name of such Lender; (c) the date from which such change has taken effect; and (d) such Lender's obligations under the Finance Documents remain legal, valid, binding and enforceable on such Lender after its change of name. If such Lender fails to provide the Facility Agent with such legal opinion, it shall, upon the request of the Facility Agent, sign and deliver to the Facility Agent a Transfer Certificate in respect of the transfer of its rights and obligations under this Agreement to the entity with such new name.

25.13 **Re-organisation**

If a Lender becomes subject to a re-organisation, such Lender shall, at its own costs and within 7 Business Days after the effective date of such re-organisation, deliver to the Facility Agent an original or certified true copy of legal opinions, each in form and substance satisfactory to the Facility Agent, addressed to the Facility Agent (as agent for the Finance Parties) and issued by legal advisers to such Lender in each of the jurisdictions (a) where such Lender is incorporated; (b) where such Lender's Facility Office is located, and (c) the law of which governs the Finance Documents such that all such legal opinions taken together provide the Facility Agent with confirmation that such Lender's obligations under the Finance Documents remain legal, valid, binding and enforceable on the surviving entity of such re-organisation after such re-organisation. If such Lender fails to provide the Facility Agent with such legal opinions, it shall, upon the request of the Facility Agent, sign and deliver to the Facility Agent a Transfer Certificate in respect of the transfer of its rights and obligations under this Agreement to the surviving entity of such re-organisation.

26. **DEBT PURCHASE TRANSACTIONS**

26.1 **Debt Purchase Transactions by Group Members**

- (a) None of the Obligors shall, and the Borrower shall procure that each other Group Member shall not, (i) enter into any Debt Purchase Transaction other than in accordance with the other provisions of this Clause 26.1 or (ii) itself be (or beneficially own all or any majority of the share capital of a company or an entity that is) a Lender or a party to a Voting Participation.
- (b) The Borrower may purchase by way of assignment or transfer, pursuant to Clause 25 (*Changes to the Lenders*), a participation in any Term Loan and any related Commitment in respect of any Term Facility where:
 - (i) such purchase is made for a consideration of less than the par value of such Loan;
 - (ii) such purchase is made using of the processes set out in paragraphs below;
 - (iii) such purchase is made at a time when no Default is continuing; and
 - (iv) the consideration for such purchase is entirely funded from Acceptable Funding Sources.
- (c) In relation to any Debt Purchase Transaction (constituted by assignment or transfer of any participation in any Term Loan or Commitment in respect of any Term Facility to the Borrower) made pursuant to this Clause 26.1, notwithstanding any other term of this Agreement or the other Finance Documents:
 - (i) on completion of that assignment or transfer pursuant to Clause 25 (*Changes to the Lenders*), the portions of the Loan(s) to which it relates shall be extinguished and the remaining Repayment Instalments in respect of such Facility will be reduced pro rata accordingly, and the Commitment (in respect of any Facility) to which that assignment or transfer relates shall be cancelled and reduced to zero;
 - (ii) such Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of any of the Term Facilities;
 - (iii) the Borrower which is the assignee or transferee (in respect of such assignment or transfer) shall be deemed to be an entity which fulfils the requirements of Clause 25.1 (*Assignments and transfers by the Lenders*) to be a New Lender (as defined in such Clause);
 - (iv) no Group Member shall be deemed to be in breach of any provision of Clause 23 (*General undertakings*) or any other provision of any Finance Document by reason of such Debt Purchase Transaction;
 - (v) Clause 30 (*Sharing among the Finance Parties*) shall not be applicable to the consideration paid under such Debt Purchase Transaction; and
 - (vi) for the avoidance of doubt, any extinguishment of any part of any Term Loan shall not affect any amendment or waiver which prior to such extinguishment had been approved by or on behalf of the requisite Lender or Lenders in accordance with any Finance Document.

(d)

- (i) A Debt Purchase Transaction referred to in paragraph (b) above may be entered into pursuant to a solicitation process (a “**Solicitation Process**”) which is carried out as follows.
- (ii) Prior to 11.00 am on a given Business Day (the “**Solicitation Day**”) the Borrower or a financial institution acting on its behalf (the “**Solicitation Purchase Agent**”) will approach at the same time each Lender which participates in the applicable Term Facility to enable them to offer to sell to the Borrower an amount of their participation in such Term Facility. Any Lender wishing to make such an offer shall, by 11.00 am on the second Business Day following such Solicitation Day, communicate to the Solicitation Purchase Agent details of the amount of its participations in such Term Facility that it is offering to sell and the price at which it is offering to sell such participations. Any such offer (once so made) shall be irrevocable until 11.00 am on the third Business Day following such Solicitation Day and shall be capable of acceptance by the Borrower on or before such time by communicating its acceptance in writing to the Solicitation Purchase Agent or, if it is the Solicitation Purchase Agent, the applicable Lender making such offer. The Borrower shall ensure that the Solicitation Purchase Agent (or, if the Solicitation Purchase Agent is the Borrower, the Borrower) will communicate to the Lenders whose offers have been so accepted by 12 noon on the third Business Day following such Solicitation Day. In any event by 5.00 pm on the fourth Business Day following such Solicitation Day, the Borrower shall notify the Facility Agent of the amounts of the participations of the Lenders in such Term Facility so purchased through such Solicitation Process, the identity of the Term Facility to which they relate and the average price for the purchase of such participations in such Term Facility. The Facility Agent shall promptly disclose such information to the Lenders.
- (iii) Any purchase of participations in any such Term Facility pursuant to a Solicitation Process shall be completed and settled by the Borrower on or before the fifth Business Day after the Solicitation Day in respect of such Solicitation Process.
- (iv) In accepting any offers made pursuant to a Solicitation Process, the Borrower shall be free to select which offers and in which amounts of participations in respect of the applicable Term Facility that it accepts, but such selection and acceptance must be on the basis that in relation to offers relating to participations in a particular Term Facility, the Borrower must accept such offers in inverse order of the price offered (with the offer or offers at the lowest price being accepted first) and that if in respect of participations in a particular Term Facility it receives two or more offers at the same price it shall only accept such offers on a pro rata basis (according to the respective participations in such Term Facility offered to be sold pursuant to such offers).

(e)

- (i) A Debt Purchase Transaction referred to in paragraph (b) above may also be entered into pursuant to an open order process (an “**Open Order Process**”) which is carried out as follows.

- (ii) The Borrower or a financial institution acting on its behalf (the “**Open Order Purchase Agent**”) may by place an open order (an “**Open Order**”) on behalf of the Borrower to which any Term Loan has been made under any Term Facility to purchase participations in such Term Facility up to a set aggregate amount at a set price by notifying at the same time all the Lenders (with any participation in such Term Facility) of the same. Any Lender wishing to sell pursuant to such Open Order will, by 11.00 am on any Business Day following the date on which such Open Order is placed but no earlier than the first Business Day, and no later than the fifth Business Day, following the date on which such Open Order is placed, communicate to the Open Order Purchase Agent details of the amount of its participations in such Term Facility that it is offering to sell pursuant to and in accordance with the terms of such Open Order. Any such offer by a Lender to sell shall be irrevocable until 11.00 am on the Business Day following the date of such offer from such Lender and shall be capable of acceptance by the Borrower on or before such time by the Borrower’s communicating such acceptance in writing to such Lender.
- (iii) Any purchase of participations in a Term Facility pursuant to an Open Order Process shall be completed and settled by the Borrower on or before the fourth Business Day after the date of the applicable offer by a Lender to sell under such Open Order, which offer is accepted in accordance with (e)(ii).
- (iv) If in respect of participations in a Term Facility the Open Order Purchase Agent receives on the same Business Day two or more offers from Lenders to sell all or part of their participations in such Term Facility pursuant to such Open Offer such that the maximum aggregate participations in such Term Facility to which such Open Order relates (less any such participations in such Term Facility purchased or to be purchased pursuant to offers from Lenders received on any previous Business Day that have already been accepted) would be exceeded if all of such offers were accepted in full, the Borrower shall only accept such offers on a pro rata basis (according to the respective participations in such Facility offered to be sold pursuant to such offers).
- (v) The Borrower shall, by 5.00pm on the sixth Business Day following the date on which an Open Order is placed, notify the Facility Agent of the amounts of the participations in such Term Facility purchased or to be purchased through such Open Order Process in respect of such Open Order and the identity of the Term Facility to which it relates. The Facility Agent shall promptly disclose such information to the Lenders.
- (f) For the avoidance of doubt, there is no limit on the number of occasions a Solicitation Process or an Open Order Process may be implemented.

26.2 **Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates**

- (a) For so long as a Sponsor Affiliate:
 - (i) holds or beneficially owns (or holds the economic benefit or effect of) any Commitment in respect of any Facility (or the rights and/or obligations attributable thereto or any commitment represented thereby) or any participation in any Loan; or

(ii) has entered into a sub-participation agreement relating to any Commitment in respect of any Facility (or the rights and/or obligations attributable thereto or any commitment represented thereby) or any participation in any Loan, or any other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

then notwithstanding any other provision of this Agreement or any other Finance Document, in ascertaining:

- (A) the Majority Lenders; or
- (B) whether the consent of Lenders holding any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments, the Commitments or Available Commitments (in respect of any or all of the Facilities) or participations in any or all of Loans (under any or all of the Facilities) or the agreement of any specified group of Lenders, has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents:
 - (1) such Commitment and such participation in such Loan shall be deemed to be zero **provided that** such consent, waiver, amendment or other vote is not materially detrimental (in comparison to the other Lenders) to the rights and/or interests of that Sponsor Affiliate solely in its capacity as a Lender (and, for the avoidance of doubt, excluding its interests as a holder of equity in the Borrower (whether directly or indirectly)), and each Sponsor Affiliate upon becoming a Party expressly agrees and acknowledges that the operation of this Clause 26.2 shall not of itself be so detrimental to it in comparison to the other Lenders or otherwise; and
 - (2) each of such Sponsor Affiliate, and each person with whom it has entered into such sub-participation, other agreement or arrangement, shall be deemed not to be a Lender for the purposes of paragraphs (A) and (B) above (unless, in the case of a person that is not a Sponsor Affiliate, to the extent that it is a Lender by virtue otherwise than holding or beneficially owning (or holding the economic benefit or effect of) any Commitment in respect of any Facility (or any commitment represented thereby) or any participation in any Loan to which (i) or (ii) applies).

(b) Each Lender shall, unless such Debt Purchase Transaction falls within paragraph (a) of the definition of “Debt Purchase Transaction”, promptly notify the Facility Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Affiliate (a “**Notifiable Debt Purchase Transaction**”), such notification to be substantially in the form set out in Part I of Schedule 12 (*Forms of Notifiable Debt Purchase Transaction Notice*).

(c) A Lender shall promptly notify the Facility Agent if a Notifiable Debt Purchase Transaction to which it is a party:

- (i) is terminated; or

(ii) ceases to be with a Sponsor Affiliate,

such notification to be substantially in the form set out in Part II of Schedule 12 (*Forms of Notifiable Debt Purchase Transaction Notice*).

(d) Each Sponsor Affiliate that is a Lender agrees that:

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

26.3 Sponsor Affiliates' notification to other Lenders of Debt Purchase Transactions

Any Sponsor Affiliate which is or becomes a Lender and which enters into a Debt Purchase Transaction as a purchaser or a participant (or similar capacity) shall, by 5.00 pm on the Business Day following the day on which it entered into that Debt Purchase Transaction, notify the Facility Agent of the extent of the Commitment in respect of any Facility (or any commitment represented thereby), any Loan or any other amount outstanding to which that Debt Purchase Transaction relates. The Facility Agent shall promptly disclose such information to the Lenders.

27. CHANGES TO THE OBLIGORS

27.1 Assignment and transfers by Obligors

No Obligor shall, and each Obligor shall ensure that no Transaction Obligor or other Group Member shall, assign any of its rights or transfer any of its rights or obligations under any of the Finance Documents, except with the prior written consent of all of the Lenders.

27.2 Additional Guarantors

- (a) If (1) any person becomes a Group Member pursuant to a Permitted Acquisition (falling within paragraph (c) or (d) of the definition of "Permitted Acquisition") (such person being a "**New Group Member**") and (2) such New Group Member is incorporated or established outside the PRC, then:
 - (i) (if the Borrower directly holds or beneficially owns any Equity Interest in such New Group Member) the Borrower shall promptly upon such New Group Member's becoming a Group Member give the Facility Agent a notice to the effect that such New Group Member and each of such New Group Member's Subsidiaries incorporated or established outside the PRC shall become an Additional Guarantor (such notice being an "**Additional Guarantor Notice**"); or
 - (ii) (if the Borrower does not directly hold or beneficially own any Equity Interest in such New Group Member) the Borrower may (but shall not be obliged to, unless otherwise required pursuant to paragraph (a)(i) by virtue of a Holding Company of such New Group Member falling within paragraph (a)(i)) promptly upon such New Group Member's becoming a Group Member (that is incorporated or established outside the PRC) give the Facility Agent an Additional Guarantor Notice in respect of such New Group Member, **provided that** the Borrower may not give such Additional Guarantor Notice if the conditions under paragraph (d)(ix) of the definition of "Permitted Acquisition" are not (or would not as a result of the giving of such Additional Guarantor Notice be) satisfied with respect to such Permitted Acquisition.

- (b) Where the Borrower gives or is required to give an Additional Guarantor Notice in respect of any New Group Member pursuant to paragraph (a), the Borrower shall procure that:
- (i) such New Group Member and each of its Subsidiaries which are incorporated or established outside the PRC shall promptly (and in any event within 10 Business Days of such New Group Member's becoming a Group Member) become party to this Agreement as a "Guarantor" and become party to the Security Trust Agreement as a "Debtor" (as defined in the Security Trust Agreement)) in accordance with paragraph (c);
 - (ii) each Group Member that holds or beneficially owns any Equity Interest in such New Group Member shall promptly (and in any event within 10 Business Days of such New Group Member's becoming a Group Member) grant Transaction Security over all of the Equity Interests held and/or beneficially owned by it in such New Group Member pursuant to Transaction Security Document(s) in agreed form or otherwise in form and substance satisfactory to the Security Agent (acting reasonably), and for the purposes of this paragraph (b)(ii), if such Transaction Security Document(s) are substantially in the form of any existing Transaction Security Document(s) that confer fixed Security over Equity Interests in an entity of the same jurisdiction of incorporation or establishment as such New Group Member, such Transaction Security Document(s) shall (subject to specific considerations relating to the Equity Interests in question and specific requirements under applicable laws) be deemed to be in form and substance satisfactory to the Security Agent; and
 - (iii) each of such New Group Member and each of its Subsidiaries which are incorporated or established outside the PRC shall promptly (and in any event within 10 Business Days of such New Group Member's becoming a Group Member) grant Transaction Security over its assets (including Equity Interests in each of its Subsidiaries) pursuant to Transaction Security Document(s) in agreed form or otherwise in form and substance satisfactory to the Security Agent (acting reasonably), **provided that:**
 - (A) in the case of any such asset in the form of Equity Interests in any Onshore Group Member, the Borrower shall procure that such New Group Member or its applicable Subsidiary that holds or beneficially owns such Equity Interests shall execute the applicable Transaction Security Document (in respect of Transaction Security over such Equity Interests) within 10 Business Days of such New Group Member's becoming a Group Member and shall thereafter use reasonable endeavours to obtain and effect, within 90 days after the date of execution of such Transaction Security Document, the requisite Authorisations required under the laws of the PRC (including registration with SAMR) in respect of such Transaction Security Document and shall promptly upon obtaining or effecting any such Authorisation, deliver evidence of the same to the Facility Agent; and

- (B) if such Transaction Security Document(s) are substantially in the form of any existing Transaction Security Document(s) that confer (1) (in the case of assets other than Equity Interests) equivalent Transaction Security over similar assets of an Obligor of the same jurisdiction of incorporation or establishment of such New Group Member or, as the case may be, such Subsidiary or (2) (in the case of Equity Interests) fixed Security over Equity Interests in an entity of the same jurisdiction of incorporation or establishment as the entity the Equity Interests in which are to be made subject to Transaction Security, and for the purposes of this paragraph (b)(iii). such Transaction Security Document(s) shall (subject to specific considerations relating to the assets or Equity Interests in question and specific requirements under applicable laws) shall be deemed to be in form and substance satisfactory to the Security Agent.
- (c) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 21.7 (*“Know your customer” checks*) and paragraph (a) above, the Borrower may request that any New Group Member or any Subsidiary of any New Group Member become a “Guarantor” (which Group Member shall accede to the Security Trust Agreement as a “Debtor” (as defined in the Security Trust Agreement)) by giving the Facility Agent an Additional Guarantor Notice (in respect of such New Group Member or, as the case may be, such Subsidiary) no less than 5 Business Days prior to the date on which such New Group Member or, as the case may be, such Subsidiary is to become party to this Agreement. Such New Group Member or, as the case may be, such Subsidiary of such New Group Member ((in each case) a “**Proposed Additional Guarantor**”) shall become party hereto as a “Guarantor” if:
- (i) the Borrower and such Proposed Additional Guarantor deliver to the Facility Agent a duly completed and executed Accession Deed (in respect of the accession of such Proposed Additional Guarantor as a “Guarantor”);
 - (ii) each of the Borrower and such Proposed Additional Guarantor shall have confirmed in such Accession Deed that no Default is continuing or would occur as a result of such Proposed Additional Guarantor becoming a Guarantor;
 - (iii) each of the Facility Agent and the Security Agent shall have completed (and be satisfied with the results of) all necessary “know your customer”, anti-money laundering or similar other checks relating to any person that it is required under applicable laws and/or regulations to carry out in relation to such Proposed Additional Guarantor becoming a Guarantor; and
 - (iv) the Facility Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions Precedent*) in relation to that Proposed Additional Guarantor, each in form and substance satisfactory to the Facility Agent (acting reasonably).
- (d) The Facility Agent shall notify the Borrower, the Security Agent and the Lenders promptly upon being satisfied that it has received, or waived the requirement to receive (in form and substance satisfactory to it (acting reasonably)) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions Precedent*) in relation to a Proposed Additional Guarantor.

- (e) Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in paragraph (d) above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

SECTION 10
THE FINANCE PARTIES

28. ROLE OF THE FACILITY AGENT, THE MANDATED LEAD ARRANGER AND OTHERS

28.1 Appointment of the Facility Agent

- (a) Each of the Mandated Lead Arranger and the Lenders appoints the Facility Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each of the Mandated Lead Arranger and the Lenders authorises the Facility Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

28.2 Instructions

- (a) The Facility Agent shall:
- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:
- (A) all Lenders if such right, power, authority or discretion relates to any matter that the requires the consent or instructions of all of the Lenders pursuant to the terms of the applicable Finance Document(s);
- (B) a specific group of Lenders if such right, power, authority or discretion relates to any matter that the requires the consent or instructions of such specific group of Lenders pursuant to the terms of the applicable Finance Document(s); and
- (C) in all other cases, the Majority Lenders; and
- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the applicable Finance Document(s) stipulates that instructions from or consent of any other Lender or any group of Lenders are required, from that other Lender or that group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent and the Facility Agent may refrain from acting unless and until it receives those instructions or that clarification.

- (c) Save in the case of any matter that requires the instructions or consent of any other Lender or group of Lenders under the applicable Finance Document(s) and unless a contrary indication appears in a Finance Document, any instructions given to the Facility Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Facility Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceeding relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceedings relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

28.3 Duties of the Facility Agent

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.
- (c) Without prejudice to Clause 25.7 (*Copy of Transfer Certificate, Assignment Agreement or Increase Confirmation to Borrower*), paragraph (b) above shall not apply to any Fee Letter, any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Facility Agent is aware of the non-payment of any principal, interest, or fee payable to a Finance Party (other than the Facility Agent, the Mandated Lead Arranger or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

28.4 **Role of the Mandated Lead Arranger**

Except as specifically provided in the Finance Documents, the Mandated Lead Arranger shall not have any obligations of any kind to any other Party under or in connection with any Finance Document.

28.5 **No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Facility Agent or the Mandated Lead Arranger as a trustee or fiduciary of any other person.
- (b) None of the Facility Agent or the Mandated Lead Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

28.6 **Business with the Group**

The Facility Agent and the Mandated Lead Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Group Member or any Transaction Obligor.

28.7 **Rights and discretions**

- (a) The Facility Agent may:
 - (i) rely on any representation, communication, notice or document (including, any notice given by a Lender pursuant to paragraph (b) or (c) of Clause 26.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*)) believed by it to be genuine, correct and appropriately authorised and shall have no duty to verify any signature on any document;
 - (ii) rely on any statement purportedly 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;
 - (iii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iv) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Finance Parties) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 24.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised;
 - (iii) any notice or request made by the Borrower (other than any Utilisation Request) is made on behalf of and with the consent and knowledge of all the Transaction Obligors; and
 - (iv) no Notifiable Debt Purchase Transaction:
 - (A) has been entered into;
 - (B) has been terminated; or
 - (C) has ceased to be with a Sponsor Affiliate.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Facility Agent may act in relation to the Finance Documents through its officers, employees and agents and the Facility Agent shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of, any such person,
- unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Facility Agent may disclose to any other Party any information it reasonably believes it has received as Facility Agent.
- (h) Without prejudice to the generality of paragraph (g) above, the Facility Agent:
- (i) may disclose; and
 - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a Defaulting Lender (to the extent that the Facility Agent is aware) to the Borrower and to the other Finance Parties.

- (i) Notwithstanding any other provision of any Finance Document to the contrary, none of the Facility Agent or the Mandated Lead Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) The Facility Agent may not disclose to any Finance Party any details of the rate notified to the Facility Agent by any Lender or the identity of any such Lender for the purpose of paragraph (a)(ii) of Clause 12.2 (*Market disruption*).
- (k) Notwithstanding any provision of any Finance Document to the contrary, the Facility Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

28.8 **Responsibility for documentation**

None of the Facility Agent or the Mandated Lead Arranger is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Facility Agent, the Mandated Lead Arranger, any Transaction Obligor or any other person in or in connection with any Finance Document, the Base Case Model or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

28.9 **No duty to monitor**

The Facility Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party or any Transaction Obligor of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

28.10 **Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Facility Agent, the Facility Agent will not be liable (including for negligence or any other category of liability whatsoever) for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;

- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action; or
 - (iv) having taken or having omitted to take any action under or in connection with any Finance Document, unless directly caused by the Facility Agent's gross negligence or wilful misconduct.
- (b) No Party (other than the Facility Agent) may take any proceedings against any officer, employee or agent of the Facility Agent, in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Facility Agent may rely on this Clause 28.10 subject to Clause 1.5 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose.
- (d) Nothing in this Agreement shall oblige the Facility Agent or the Mandated Lead Arranger to carry out:
- (i) any "know your customer" or other checks in relation to any person; or

(ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender, on behalf of any Lender and each Lender confirms to each of the Facility Agent and the Mandated Lead Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Mandated Lead Arranger.

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

28.11 Lenders' indemnity to the Facility Agent

- (a) Each Lender shall (in the proportion determined in accordance with paragraph (b) below) indemnify the Facility Agent, within five Business Days of demand, against any cost, loss or liability (including for negligence or any other category of liability whatsoever) incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.11 (*Disruption to payment systems etc.*) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents), unless the Facility Agent has been reimbursed by a Transaction Obligor pursuant to a Finance Document in respect of such cost, loss or liability.
- (b) Each Lender's proportion of such cost, loss or liability shall be:
- (i) if any Loan is then outstanding, the proportion borne by (A) such Lender's aggregate participations in the Loan(s) then outstanding to (B) the aggregate amount of the Loans then outstanding;
 - (ii) if no Loan is then outstanding and the Available Facility in respect of any Facility is then greater than zero, the proportion borne by (A) the aggregate of such Lender's Available Commitments (in respect of any or all of the Facilities) to (B) the sum of the Available Facility in respect of each Facility; or
 - (iii) if no Loan is then outstanding and the Available Facility in respect of each Facility is then zero:
 - (A) if no Loan has been made, the proportion borne by (A) the aggregate of such Lender's Available Commitments in respect of any or all of the Facilities (immediately before the time when the Available Facility in respect of each Facility became zero) to (B) the sum of the Available Facility in respect of each Facility (immediately before the time when the Available Facility in respect of each Facility became zero); or

- (B) if one or more Loan(s) have been made, the proportion borne by (A) the aggregate of such Lender's participations in the Loan(s) outstanding (immediately before the time when each Loan ceased to be outstanding) to (B) the aggregate amount of the Loans outstanding (immediately before the time when each Loan ceased to be outstanding).
- (c) Subject to paragraph (d) below, the Borrower shall as soon as reasonably practicable on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to paragraph (a) above.
- (d) Paragraph (c) above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement under paragraph (c) above relates to a liability of the Facility Agent to an Obligor.

28.12 Resignation of the Facility Agent

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders and the Borrower.
- (b) Alternatively the Facility Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Facility Agent (after consultation with the Borrower) may appoint a successor Facility Agent.
- (d) If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as Facility Agent and the Facility Agent is entitled to appoint a successor Facility Agent under paragraph (c) above, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a Party to this Agreement as Facility Agent) agree with the Borrower and the proposed successor Facility Agent amendments to this Clause 28 and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with the then current market practice for the appointment and protection of corporate trustees and those amendments will bind the Parties.
- (e) The retiring Facility Agent shall, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents. The Borrower shall, within five Business Days of written demand, reimburse the retiring Facility Agent for the amount of all reasonable and documented costs and expenses (including legal fees, subject to any agreed cap) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor Facility Agent.

- (g) Upon the appointment of a successor Facility Agent, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Facility Agent*) and this Clause 28 (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) the date of such appointment of such successor Facility Agent). Any successor Facility Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor Facility Agent had been an original Party.

28.13 Replacement of the Facility Agent

- (a) After consultation with the Borrower, the Majority Lenders may, by giving 30 days' notice to the Facility Agent (or, at any time the Facility Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Facility Agent by appointing a successor Facility Agent.
- (b) The retiring Facility Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders in the respective proportions referred to in Clause 28.11 (*Lenders' indemnity to the Facility Agent*)) make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents.
- (c) The appointment of the successor Facility Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Facility Agent pursuant to paragraph (a). As from this date, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Facility Agent*) and this Clause 28 (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Facility Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

28.14 Confidentiality

- (a) In acting as agent for the Finance Parties, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, none of the Facility Agent or the Mandated Lead Arranger is obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty.

28.15 Relationship with the Lenders

- (a) The Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
- (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,
- unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 33.1 (*Communications in writing*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 33.2 (*Addresses*) and of Clause 33.1 (*Communications in writing*) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

28.16 Credit appraisal by the Lenders

Without affecting the responsibility of any Transaction Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to each of the Facility Agent, the Security Agent and the Mandated Lead Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including:

- (a) the financial condition, status and nature of each Transaction Obligor and each Group Member;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) the adequacy, accuracy or completeness of the Base Case Model and any other information provided by the Facility Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and

- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

28.17 Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that first-mentioned amount from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount so deducted in or towards satisfaction of such first-mentioned amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

28.18 Reliance and engagement letters

Each of the Finance Parties and the Secured Parties confirms that each of the Mandated Lead Arranger, the Facility Agent and the Security Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by any of the Mandated Lead Arranger, the Facility Agent or the Security Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

29. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of any Finance Document will:

- (a) interfere with the right of any Finance Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

30. SHARING AMONG THE FINANCE PARTIES

30.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from or in respect of a Transaction Obligor (an “**Applicable Obligor**”) other than in accordance with Clause 31 (*Payment mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under the Finance Documents then:

- (a) that Recovering Finance Party shall, within three Business Days, notify details of that receipt or recovery, to the Facility Agent;

- (b) the Facility Agent shall determine whether that receipt or recovery is in excess of the amount which that Recovering Finance Party would have been paid had that Recovered Amount been received or recovered by the Facility Agent and distributed in accordance with Clause 31 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to such receipt, recovery or distribution; and
- (c) that Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to the amount of such Recovered Amount less any amount which the Facility Agent determines may be retained by that Recovering Finance Party as its share of any payment to be made (by reference to such Recovered Amount had it been received or recovered and distributed by the Facility Agent) in accordance with Clause 31.6 (*Partial payments*).

30.2 **Redistribution of payments**

The Facility Agent shall treat such Sharing Payment as if it had been paid by such Applicable Obligor and distribute it between the Finance Parties (other than that Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 31.6 (*Partial payments*) towards the obligations owing to such Sharing Finance Parties.

30.3 **Recovering Finance Party’s rights**

On a distribution by the Facility Agent under Clause 30.2 (*Redistribution of payments*), as between such Applicable Obligor and such Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by such Applicable Obligor (and such Applicable Obligor shall (or, if such Applicable Obligor is not party hereto, the Borrower shall) be liable to such Recovering Finance Party for a debt equal to such Sharing Payment, which debt is immediately due and payable).

30.4 **Reversal of redistribution**

To the extent that any part of such Recovered Amount received or recovered by such Recovering Finance Party (which Recovered Amount gives rise to any Sharing Payment) becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to (i) its share of such Sharing Payment (which is attributable to such Recovered Amount so repayable and repaid by that Recovering Finance Party) and (ii) an amount as is necessary to reimburse that Recovering Finance Party for its share of any interest on such Recovered Amount (to which such Sharing Payment is attributable) which that Recovering Finance Party is required to pay ((i) and (ii) being collectively the “**Redistributed Amount**”); and
- (b) as between such Applicable Obligor and each Sharing Finance Party, an amount equal to such Redistributed Amount will be treated as not having been paid by that Applicable Obligor (and such Applicable Obligor shall (or, if such Applicable Obligor is not party hereto, the Borrower shall) be liable to such Sharing Finance Party for a debt equal to such Redistributed Amount, which debt is immediately due and payable).

30.5 **Exceptions**

- (a) This Clause 30 shall not apply to the extent that such Recovering Finance Party would not, after making any payment pursuant to this Clause 30, have a valid and enforceable claim against such Applicable Obligor (if such Applicable Obligor is party hereto) or the Borrower as contemplated by Clause 30.3 (*Recovering Finance Party’s rights*) or paragraph (b) of Clause 30.4 (*Reversal of redistribution*) (if such Applicable Obligor is not party hereto).

-
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which that Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
- (i) it notified that other Finance Party of such legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

**SECTION 11
ADMINISTRATION**

31. PAYMENT MECHANICS

31.1 Payments to the Facility Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Facility 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 Facility Agent as being customary at the time for settlement of transactions in the currency (of such payment) in the place of payment.
- (b) Such payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Facility Agent, in each case, specifies.
- (c) Each payment of any amount made by any Transaction Obligor to the Facility Agent in accordance with any Finance Document (including paragraph (a) above) is made to the Facility Agent for and on behalf of each Finance Party to whom such amount is owing. The payment of any such amount to the Facility Agent shall not in any way affect or prejudice the separate and independent nature of the debt owing to each such Finance Party, which may be enforced individually by each such Finance Party in the event that all or part of such debt remains unpaid when due.

31.2 Distributions by the Facility Agent

- (a) Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 28.17 (*Deduction from amounts payable by the Facility Agent*), Clause 31.3 (*Distributions to an Obligor*), Clause 31.4 (*Clawback and pre-funding*), Clause 31.6 (*Partial payments*) and the Security Trust Agreement, be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive such 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 Facility Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of the currency of such payment.
- (b) The Facility Agent shall distribute payments received by it in relation to all or any part of any Loan to the Lenders indicated in the records of the Facility Agent as being so entitled on that date **provided that** the Facility Agent is authorised to distribute payments to be made on the date on which any assignment or transfer by any Lender and any increase or assumption in Commitment(s) in respect of any Facility becomes effective pursuant to Clause 25 (*Changes to the Lenders*), Clause 2.2 (*Increase*) or Clause 2.5 (*Incremental Facilities*) to the Lenders so entitled immediately before such assignment, transfer, increase or assumption took place regardless of the period to which such payments relate.

31.3 Distributions to an Obligor

The Facility Agent may (with the prior written consent of the Obligor referred to below or in accordance with Clause 32 (*Set-off*)) apply any amount received by it for an Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

31.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility 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) Unless paragraph (c) below applies, the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.
- (c) If the Facility Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower (in respect of any Loan to be made to the Borrower) ("**Pre-funding Amount**") before receiving funds from the Lenders in respect of such Loan, then if and to the extent that the Facility Agent does so but it proves to be the case that it does not then receive such funds from a Lender in respect of any such Pre-funding Amount which it paid to the Borrower:
 - (i) the Facility Agent shall notify the Borrower of that Lender's identity and the Borrower shall on demand refund such Pre-funding Amount to the Facility Agent; and
 - (ii) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower shall on demand pay to the Facility Agent the amount (as certified by the Facility Agent) which will indemnify the Facility Agent against any funding cost incurred by it as a result of paying out that Pre-funding Amount before receiving those funds from that Lender.

31.5 Impaired Agent

- (a) If, at any time, the Facility Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Facility Agent for the account of any person in accordance with Clause 31.1 (*Payments to the Facility Agent*) may instead either:
 - (i) pay that amount direct to that person; or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to that person, pay that amount (or the relevant part of that amount payable to that person) to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making that payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**"),

in each case such payment must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on any amount standing to the credit of that trust account shall be for the benefit of such Recipient Party or such Recipient Parties *pro rata* to their respective entitlements of such amount.
- (c) A Party which has made a payment in accordance with this Clause 31.5 in respect of any amount payable to any Recipient Party or Recipient Parties under any Finance Document shall be discharged of the obligation to make such payment to such Recipient Party or such Recipient Parties under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Facility Agent in accordance with Clause 28.13 (*Replacement of the Facility Agent*), each Paying Party that has made any payment to a trust account in accordance with this Clause 31.5 in respect of any amount payable to any Recipient Party or Recipient Parties under any Finance Document shall (other than to the extent that that Party has given an instruction pursuant to paragraph (e) below with respect to such trust account) give all requisite instructions to the bank with whom such trust account is held to transfer the amount of such payment (together with any accrued interest) to the successor Facility Agent for distribution to such Recipient Party or Recipient Parties in accordance with Clause 31.2 (*Distributions by the Facility Agent*).
- (e) A Paying Party that has made a payment into a trust account (on account of any amount payable by such Paying Party to a Recipient Party) in accordance with this Clause 31.5 shall, promptly upon request by that Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above (with respect to such trust account); and
 - (ii) that it has been provided with the necessary information by that Recipient Party,give all requisite instructions to the bank with which that trust account is held to transfer the amount of such payment so paid into and held in such trust account (together with any accrued interest thereon) to that Recipient Party.

31.6 Partial payments

- (a) Subject to the provisions of the Security Trust Agreement, if the Facility Agent receives or recovers a payment for application against amounts due in respect of any Finance Documents from a Transaction Obligor that is insufficient to discharge all the amounts then due and payable by that Transaction Obligor and/or (if different) the Borrower under those Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Transaction Obligor and/or (if different) the Borrower under those Finance Documents in the following order:
 - (i) **first**, in or towards payment *pro rata* of any unpaid amount owing to the Facility Agent and/or the Security Agent and/or the Mandated Lead Arranger under the Finance Documents;
 - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under the Finance Documents;
 - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under the Finance Documents; and

(iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents,

provided that (in the case where such payment so received by the Facility Agent is a payment under any Guarantee or Transaction Security Document governed by the laws of the PRC or granted by a Transaction Obligor that is incorporated or established in the PRC) to the extent that the extension of the benefit of such Guarantee or security under such Transaction Security Document to amounts owing in respect of any Incremental Facility is subject to the obtaining or effecting of any Authorisation in the PRC, then for so long as such Authorisation has not been obtained or effected, such payment shall not be applied towards any amount owing or due in respect of such Incremental Facility (and, for the purposes of the application of such payment by the Facility Agent pursuant to this paragraph (a), any amount owing or due in respect of such Incremental Facility shall be deemed not to be owing or due).

- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (a)(iv) above.
- (c) Paragraph (a) above will override any appropriation made by any Transaction Obligor.

31.7 **Set-off by Obligors**

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

31.8 **Business Days**

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

31.9 **Currency of account**

- (a) Subject to paragraphs (b) to (e) below, USD is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of any Loan or any Unpaid Sum or a part of any Loan or any Unpaid Sum shall be made in the currency in which that Loan or that Unpaid Sum is denominated, pursuant to this Agreement or the applicable Finance Document, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which that interest is payable was denominated, pursuant to this Agreement or the applicable Finance Document, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which such costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than USD shall be paid in that other currency.

31.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the Borrower); 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 Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect that change in currency.

31.11 Disruption to payment systems etc.

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

- (a) the Facility Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of any Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Facility Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 37 (*Amendments and waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 31.11; and

(f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

32. **SET-OFF**

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

33. **NOTICES**

33.1 **Communications in writing**

Any communication to be made by a Party to another Party under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter or electronic mail ("**email**") (including scanned signed document where such document is required by the Finance Documents or the Facility Agent to bear a signature or other attachments), fax or letter.

33.2 **Addresses**

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

- (a) in the case of the Borrower, that identified with its name below;
 - (b) in the case of any Lender or any other Obligor, that notified in writing to the Facility Agent on or prior to the date on which it becomes a Party; and
 - (c) in the case of the Facility Agent or the Security Agent, that identified with its name below,
- or any substitute email address, address, fax number or department or officer as that Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five Business Days' notice.

33.3 **Delivery**

- (a) Any communication or document made or delivered by one Party to another Party under or in connection with the Finance Documents will be effective:
 - (i) if by way of email, only when received in legible form by at least one of the relevant email addresses of such Party to whom such communication or document is to be made or delivered;
 - (ii) if by way of posting by any Party on a Designated Website pursuant to Clause 33.5 (*Use of websites*), one Business Day after such posting;
 - (iii) if by way of fax, only when received in legible form; or
 - (iv) if by way of letter, only 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 (in the case of any of paragraphs (i), (iii) and (iv) above) if a particular department or officer is specified as part of its address details provided under Clause 33.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Facility Agent or the Security Agent will be effective only when actually received by the Facility Agent or Security Agent and then only if it is sent to the correct fax number or email address(es) or, in the case of a letter, expressly marked for the attention of the department or officer identified with the Facility Agent's or, as the case may be, the Security Agent's signature below (or any substitute department or officer as the Facility Agent or, as the case may be, the Security Agent shall specify for this purpose).
- (c) Subject to Clause 33.4 (*Communication when Facility Agent is Impaired Agent*), all notices from or to an Obligor to or by another Party under or in connection with the Finance Documents shall be sent through the Facility Agent.
- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause 33.3 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

33.4 **Communication when Facility Agent is Impaired Agent**

If the Facility Agent is an Impaired Agent, (a) the Parties may, instead of communicating with each other through the Facility Agent, communicate with each other directly and (b) (while the Facility Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Facility Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Facility Agent has been appointed to replace such Impaired Agent.

33.5 **Use of websites**

- (a) The Borrower 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 such information onto an electronic website designated by the Borrower and the Facility Agent (the "**Designated Website**") if:
 - (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of such information by this method;
 - (ii) both the Borrower and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) such information is in a format previously agreed between the Borrower and the Facility Agent.

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

- (b) The Facility 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 Borrower and the Facility Agent.
- (c) The Borrower shall promptly upon becoming aware of its occurrence notify the Facility 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 Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Borrower notifies the Facility Agent under paragraph (c)(i) or (c)(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to that notification are no longer continuing.

- (d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall at its own cost comply with any such request within 10 Business Days.

33.6 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Facility 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.

34. CALCULATIONS AND CERTIFICATES

34.1 Accounts

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

34.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates, **provided that** such certification or determination shall set out the basis of the applicable calculation in reasonable detail.

34.3 Day count convention

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

35. PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document 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.

36. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No waiver or election to affirm any Finance Document on the part of any Finance Party or Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

37. AMENDMENTS AND WAIVERS

37.1 Security Trust Agreement

This Clause 37 is subject to the terms of the Security Trust Agreement.

37.2 Required consents

- (a) Subject to Clause 37.3 (*All Lender matters*), Clause 37.4 (*Other exceptions*) and paragraph (j) of Clause 2.5 (*Incremental Facilities*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.

- (c) Each Obligor agrees to any such amendment or waiver permitted by this Clause 37 which is agreed to by the Borrower. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of any or all of the Guarantors.

37.3 All Lender matters

- (a) Subject to Clause 37.8 (*Replacement of Screen Rate*), an amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Finance Document that has the effect of changing or which relates to:
- (i) the definition of “Majority Lenders” in Clause 1.1 (*Definitions*);
 - (ii) any change to any requirement that a cancellation of Commitments (in respect of any Facility) reduces the Commitments of the Lenders (in respect of such Facility) rateably;
 - (iii) a change to an Obligor (other than in accordance with Clause 27 (*Changes to the Obligors*)) or a change to any other Transaction Obligor;
 - (iv) any provision which expressly requires the consent of all the Lenders;
 - (v) Clause 2.3 (*Finance Parties’ rights and obligations*), Clause 2.5 (*Incremental Facilities*), Clause 8 (*Mandatory prepayment and cancellation*) (insofar as it relates to any VIE Termination Event or Change of Control), Clause 9.10 (*Application of prepayments*), Clause 25 (*Changes to the Lenders*), Clause 26 (*Debt Purchase Transactions*), Clause 30 (*Sharing among the Finance Parties*), this Clause 37, Clause 40 (*Governing law*) or Clause 41.1 (*Jurisdiction*);
 - (vi) any amendment to the order of priority or subordination under the Security Trust Agreement;
 - (vii) (other than as expressly permitted by the provisions of any Finance Document) the nature or scope of:
 - (A) any guarantee and/or indemnity granted under Clause 19 (*Guarantee and indemnity*) or any other Guarantee;
 - (B) any Transaction Security or Charged Property; or
 - (C) the manner in which the proceeds of enforcement of any Transaction Security are distributed,
(except in the case of paragraph (vii)(B) or (C) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Finance Document);
 - (viii) the release of any guarantee and/or indemnity granted under Clause 19 (*Guarantee and indemnity*) or any other Guarantee or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Finance Document;

- (ix) any change to any term of any Finance Document relating to the release of any guarantee or indemnity granted under Clause 19 (*Guarantee and indemnity*) or any other Guarantee or of any Transaction Security; or
 - (x) any increase in the principal amount of Secured Obligations that have the benefit of any Transaction Security, shall not be made, or given, without the prior consent of all the Lenders.
- (b) Without prejudice to paragraph (a), an amendment or waiver that has the effect of changing or which relates to:
- (i) any increase in the principal amount of any Incremental Facility (other than any increase which would have been permitted under Clause 2.5 (*Incremental Facilities*) had it constituted the establishment of a new Incremental Facility, **provided that** (A) for the purposes of determining the compliance of such increase with paragraph (d)(i) of Clause 2.5 (*Incremental Facilities*), the Most Recent Relevant Period referred to therein shall be deemed to be the Most Recent Relevant Period as at the date of such increase and (B) for the purposes of any and all calculations under paragraphs (d)(i) of Clause 2.5 (*Incremental Facilities*) (including any such calculation with respect to the establishment of any further Incremental Facility upon or after such increase), such increase in the principal amount of any Incremental Facility shall be treated as the establishment of an additional Incremental Facility and the amount of such increase shall be taken into account in all such calculations); or
 - (ii) any Incremental Facility where following such amendment or waiver:
 - (A) such Incremental Facility would not or would cease to comply with any of the requirements under Clause 2.5 (*Incremental Facilities*) (including any of paragraphs (d)(ii) to (vii) of Clause 2.5 (*Incremental Facilities*)); or
 - (B) such Incremental Facility would mature earlier than the Termination Date or have a Weighted Average Life to Maturity that is shorter than the then remaining Weighted Average Life to Maturity of Facility A,may not be made without the prior consent of each Lender that has any Commitment in respect of the relevant Initial Facility or any participation in a relevant Initial Facility Loan.

37.4 Other exceptions

- (a) In addition to Clause 37.2 (*Required consents*), an amendment or waiver which relates to the rights or obligations of the Facility Agent, the Mandated Lead Arranger, the Security Agent or a Hedge Counterparty (each in its capacity as such) may not be effected without the consent of the Facility Agent, the Mandated Lead Arranger, the Security Agent or, as the case may be, that Hedge Counterparty.
- (b) If any amendment, waiver or consent of, or in relation to, any Finance Document is or relates to:
 - (i) any increase in or addition of any Commitment or the Total Commitments, or any extension of the Availability Period (in respect of any Facility), the redenomination of any Commitment in respect of any Facility into another currency;

- (ii) any extension of the date for, or maturity of, or redenomination or change in currency of, or a reduction of, any amount (including any principal, interest, fee or commission) owing, accruing or payable under any of the Finance Documents (including any reduction in the Margin);
- (iii) the introduction of any additional tranche or facility under the Finance Documents (whether ranking junior or *pari passu* to any of the Facilities);
- (iv) a waiver or reduction of any mandatory prepayment that is due; or
- (v) any changes to the Finance Documents that are consequential on, incidental to or required to implement or reflect any of the foregoing,

that amendment, waiver or consent may be made with the consent of the Borrower and

- (a) each Lender (i) that assumes any commitment or an increased commitment in the relevant additional tranche or facility, (ii) any of whose commitment is being increased, extended or redenominated or the Availability Period applicable to any Facility in which such Lender participates is extended, (iii) to whom any amount is owing, accruing or payable which is being reduced, deferred, redenominated (or the currency of which is being changed) or waived, pursuant to any of paragraphs (b)(i) to (b)(v) above (as the case may be) (each an “**Affected Lender**”); and
- (b) the Majority Lenders (for which purpose the existing Commitments of each Affected Lender in respect of each Facility will be taken into account, together with the Commitments of the other Lenders in respect of each Facility).

37.5 Excluded Commitments

If any Lender (including a Defaulting Lender) fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the terms of this Agreement within 20 Business Days of that request being made (unless, in either case, the Borrower and the Facility Agent agree to a longer time period in relation to any request) or abstains from accepting or rejecting such a request within such period:

- (a) its Commitment in respect of any Facility and/or participation in any Loan under any Facility shall not be included for the purpose of calculating the Total Commitments and/or the Commitments or Available Commitments of the Lenders under any or all of the Facilities and/or the Loan(s) or any participation therein when ascertaining whether the consent of Lender(s) holding any relevant percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments, the Commitments or Available Commitments (in respect of any or all of the Facilities) and/or participations in any or all of the Loan(s) has been obtained to approve that request; and
- (b) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of the Lenders or any group of Lenders has been obtained to approve that request.

37.6 Replacement of Lender

- (a) If at any time:
- (i) any Lender becomes a Non-Consenting Lender (as defined in paragraph (e) below);
 - (ii) any Lender has become and continues to be a Defaulting Lender; or
 - (iii) the Borrower becomes obliged to repay any amount in accordance with Clause 7.1 (*Illegality*) or to pay any amount pursuant to Clause 15.1 (*Increased costs*), paragraph (c) of Clause 14.2 (*Tax gross-up*) or Clause 14.3 (*Tax indemnity*) to any Lender, (such Lender being a “**Replaced Lender**”) then the Borrower may, on five Business Days’ prior written notice to the Facility Agent and such Replaced Lender:
 - (A) replace such Replaced Lender by requiring such Replaced Lender to (and, to the extent permitted by law, such Replaced Lender shall) transfer pursuant to Clause 25 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (that is not any Transaction Obligor, any Group Member, any Affiliate of any of the foregoing or any Sponsor Affiliate) (a “**Replacement Lender**”) selected by the Borrower and which confirms (x) its willingness to assume and does assume all the obligations of such Replaced Lender in accordance with Clause 25 (*Changes to the Lenders*) and (y) (in the case where such Replaced Lender is a Non-Consenting Lender) its consent or agreement to the applicable consent, waiver or amendment (that is the subject of the applicable Non-Consenting Event which constitutes such Replaced Lender as a Non-Consenting Lender) for a purchase price in cash (without deduction or withholding) payable at the time of such transfer in an amount equal to the aggregate of the outstanding principal amount of such Replaced Lender’s participation in each of the Loans and all accrued interest (whether or not due) and other costs, expenses and other amounts payable in relation thereto or outstanding in favour of such Replaced Lender under the Finance Documents and the amount of Break Costs that would have been payable under Clause 12.4 (*Break Costs*) had all of such Replaced Lender’s participation in each of the Loans, such accrued interest and such other costs, expenses and other amounts been paid by the Obligors to such Replaced Lender at the time of such transfer and had a demand been made under Clause 12.4 (*Break Costs*) in connection therewith; or
 - (B) (in the case of (i) or (ii)) prepay all (but not part) of that Lender’s participation in each of the outstanding Loans in full, together with accrued interest thereon, all applicable Break Costs and all other costs, expenses and other amounts payable in relation to such prepayment or outstanding in favour of such Replaced Lender under the Finance Documents, provided that such prepayment is entirely funded from the proceeds of Acceptable Funding Sources that have not been applied towards any other purpose.

For the avoidance of doubt, no Lender shall have any obligation to agree to be a Replacement Lender.

- (b) In the event that the Borrower elects to replace such Replaced Lender in accordance with paragraph (a)(A), if the conditions under paragraph (c) are satisfied with respect to such replacement and the applicable purchase price in respect of such replacement (as contemplated under paragraph (a)(A)) has been paid in full in favour of such Replaced Lender but such Replaced Lender fails to execute the applicable Transfer Certificate to give effect to the transfer of its rights and obligations under this Agreement to the applicable Replacement Lender pursuant to paragraph (a)(A) for the purposes of such replacement, the Borrower shall have the right to execute such Transfer Certificate on behalf of such Replaced Lender, and such Transfer Certificate so executed by the Borrower on behalf of such Replaced Lender shall be binding on such Replaced Lender.
- (c) The replacement of a Replaced Lender pursuant to this Clause 37.6 shall be subject to the following conditions:
 - (i) the Borrower shall have no right to replace the Facility Agent or Security Agent;
 - (ii) neither the Facility Agent nor such Replaced Lender shall have any obligation to the Borrower to find a Replacement Lender;
 - (iii) in the event of a replacement of a Non-Consenting Lender, such replacement must take place no later than 30 Business Days after the date on the Non-Consenting Event constituting such Replaced Lender a Non-Consenting Lender first arose;
 - (iv) in the event of a replacement of a Defaulting Lender, such replacement must take place no later than 30 Business Days after the date on which that Lender is deemed a Defaulting Lender;
 - (v) in no event shall such Replaced Lender be required to pay or surrender to such Replacement Lender any of the fees received by such Replaced Lender pursuant to the Finance Documents; and
 - (vi) such Replaced Lender shall only be obliged to transfer its rights and obligations under this Agreement pursuant to paragraph (a) above once each of it, the Facility Agent and the Security Agent are satisfied that they have complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer and if the documentation in relation to that transfer is based on standard form LMA transfer documentation (and as otherwise prescribed by Clause 25 (*Changes to the Lenders*));
- (d) A Replaced Lender shall perform the checks described in paragraph (c)(vi) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Facility Agent and the Borrower when it is satisfied that it has complied with those checks.

- (e) In the event that:
- (i) the Borrower or the Facility Agent (at the request of the Borrower) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;
 - (ii) such consent, waiver or amendment in question requires the approval of all the Lenders; and
 - (iii) the Majority Lenders have given such consent or agreed to such waiver or amendment,
- then any Lender who does not and continues not to give such consent or agree to such waiver or amendment shall be deemed a “**Non-Consenting Lender**” (and such event or circumstance shall be referred to as a “**Non-Consenting Event**”).

37.7 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment in respect of any Facility, in ascertaining:
- (i) the Majority Lenders; or
 - (ii) whether:
 - (A) the agreement of the Lenders holding any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments or the Commitments or Available Commitments of the Lenders in respect of any or all of the Facilities; or
 - (B) the agreement of the Lenders or any group of Lenders,
- has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents,
- that Defaulting Lender’s Commitment in respect of such Facility will (for such purpose) be deemed to have been reduced by the amount of its Available Commitment for such Facility and, to the extent that that reduction results in that Defaulting Lender’s Commitment of each Facility being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (a) (i) and (a)(ii) above.
- (b) For the purposes of this Clause 37.7, the Facility Agent may assume that the following Lenders are Defaulting Lenders:
- (i) any Lender which has notified the Facility Agent that it has become a Defaulting Lender; and
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraph (a), (b) or (c) of the definition of “Defaulting Lender” has occurred,

unless the Facility Agent has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Facility Agent), or the Facility Agent is otherwise aware, that the Lender concerned has ceased to be a Defaulting Lender.

37.8 Replacement of Screen Rate

Subject to Clause 37.4 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to any Screen Rate in respect of any Facility, any amendment or waiver which relates to:

- (i) providing for the use of a Replacement Benchmark in relation to that Screen Rate; and
- (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Benchmark;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Facility Agent (acting on the instructions of the Majority Facility Lenders in respect of such Facility) and the Obligors.

- (b) For the purposes of this Clause 37.8:

“**Relevant Nominating Body**” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“**Replacement Benchmark**” means a benchmark rate which is:

- (i) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (A) the administrator of that Screen Rate (**provided that** the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (B) any Relevant Nominating Body,

and if replacement benchmark rates have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement benchmark rate under paragraph (B) above;

- (ii) in the opinion of the Majority Facility Lenders (in respect of a Facility) and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the Screen Rate in respect of such Facility; or
- (iii) in the opinion of the Majority Facility Lenders (in respect of a Facility) and the Borrower, an appropriate successor to any Screen Rate in respect of such Facility.

“**Screen Rate Replacement Event**” means, in relation to any Screen Rate relating to a Facility:

- (i) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Facility Lenders (in respect of such Facility) and the Borrower, materially changed;
- (ii)
 - (1)
 - (x) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
 - (y) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,
provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (2) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (3) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
 - (4) the administrator of that Screen Rate or its supervisor announces that such Screen Rate may no longer be used; or
- (iii) the administrator of that Screen Rate determines that such Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (1) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Facility Lenders (in respect of such Facility) and the Borrower) temporary; or

- (2) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than 30 days; or
 - (iv) in the opinion of the Majority Facility Lenders (in respect of such Facility) and the Borrower, such Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.
- (c) If, as at 30 June 2021, this Agreement provides that the rate of interest for a Loan is to be determined by reference to the Screen Rate for LIBOR:
- (i) a Screen Rate Replacement Event in relation to that Screen Rate shall be deemed to have occurred on that date; and
 - (ii) the Facility Agent (acting on the instructions of the Majority Lenders) and the Borrower shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in place of that Screen Rate from and including a date no later than 30 September 2021.

38. CONFIDENTIALITY

38.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 38.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

38.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates (and for the avoidance of doubt, its head offices, branches, representative offices) and Related Funds and any of its or their respective officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom such Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if such recipient is subject to professional obligations to maintain the confidentiality of such Confidential Information or is otherwise bound by requirements of confidentiality in relation to such Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, or any Representatives or professional advisers of any of the foregoing;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, (A) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Transaction Obligors or (B) any Participation Agreement, or to any of that person's Affiliates, Related Funds, or any Representatives or professional advisers of any of the foregoing;

- (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including any person appointed under paragraph (b) of Clause 28.15 (*Relationship with the Lenders*));
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (i) or (ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and/or for the purposes of, any litigation, arbitration, administrative, regulatory or other investigations, proceedings or disputes;
- (vii) for the purposes of or in connection with the preservation (through obtaining or effecting any Authorisation) or enforcement of any Transaction Security;
- (viii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.9 (*Security over Lenders' rights*);
- (ix) who is a Party; or
- (x) with the consent of any Transaction Obligor;

in each case, such Confidential Information (including, for the avoidance of doubt, a copy of any Finance Document and any information which that Finance Party has acquired under or in connection with any Finance Document) as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom such Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if such person is a professional adviser and is subject to professional obligations to maintain the confidentiality of such Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom such Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(vi), (b)(vii) and (b)(viii) above, the person to whom such Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if such service provider to whom such Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers (which confidentiality agreement shall be also be addressed in favour of the Borrower) or such other form of confidentiality undertaking agreed between the Borrower and that Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Transaction Obligors.

38.3 Entire agreement

This Clause 38 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

38.4 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

38.5 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 38.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 38.

38.6 Continuing obligations

The obligations in this Clause 38 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Transaction Obligors under or in connection with the Finance Documents have been paid in full and none of the Finance Parties is under any actual or contingent obligation to make available any advance or financial accommodation under any Finance Document; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

39. **COUNTERPARTS**

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

SECTION 12
GOVERNING LAW AND ENFORCEMENT

40. GOVERNING LAW

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

41. ENFORCEMENT

41.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 41.1 is for the benefit of the Finance Parties and the Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and the Secured Parties may take concurrent proceedings in any number of jurisdictions.

41.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, the Parent, each of the Obligors:
 - (i) irrevocably appoints Maples Fiduciary Services (UK) Limited at 200 Aldersgate Street, 11th Floor, London, EC1A 4HD, United Kingdom as its agent for service of process in relation to any proceedings before the courts of England in connection with any Finance Document; and
 - (ii) agrees that failure by an agent for service of process to notify such Obligor of any such process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process in respect of any Obligor is unable for any reason to act as agent for service of process in respect of such Obligor, the Borrower (on behalf of such Obligor) must immediately (and in any event within seven days of such event taking place) appoint another agent for accepting service of process in England on behalf of such Obligor on terms acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for accepting service of process in England on behalf of such Obligor, which appointment shall be binding on the Obligors.
- (c) Each of the Obligors expressly agrees and consents to the provisions of this Clause 41 and Clause 40 (*Governing law*).
- (d) An Obligor may irrevocably appoint another person as its agent for service of process in relation to any proceedings before the courts of England in connection with any Finance Document, subject to notifying the Facility Agent accordingly. In the case of any replacement of an existing agent for such service of process, following the new process agent’s appointment and notification to the Facility Agent of such new appointment, the existing process agent may resign.

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

SCHEDULES

[Omitted]

SIGNATURES

THE BORROWER

RISE EDUCATION CAYMAN I LTD

By: /s/ Lihong Wang _____

Name: Lihong Wang

Title: Director

Address: 2/F, Jiahe Guoxin Mansion, No. 15 Baoqiao Street, Dongcheng District, Beijing

Email: warren.wang@rdchina.net

Attention: Warren Wang

THE HK GUARANTOR

RISE EDUCATION INTERNATIONAL LIMITED

By: /s/ Lihong Wang

Name: Lihong Wang

Title: Director

Address: 2/F, Jiahe Guoxin Mansion, No. 15 Baoqiao Street, Dongcheng District, Beijing

Email: warren.wang@rdchina.net

Attention: Warren Wang

THE HK GUARANTOR

EDGE FRANCHISING CO. LIMITED

By: /s/ Lihong Wang

Name: Lihong Wang

Title: Director

Address: 2/F, Jiahe Guoxin Mansion, No. 15 Baoqiao Street, Dongcheng District, Beijing

Email: warren.wang@rdchina.net

Attention: Warren Wang

THE HK GUARANTOR

EDGE ONLINE CO. LIMITED

By: /s/ Lihong Wang

Name: Lihong Wang

Title: Director

Address: 2/F, Jiahe Guoxin Mansion, No. 15 Baoqiao Street, Dongcheng District, Beijing

Email: warren.wang@rdchina.net

Attention: Warren Wang

THE CAYMAN GUARANTOR

RISE IP (CAYMAN) LIMITED

By: /s/ Lihong Wang

Name: Lihong Wang

Title: Director

Address: 2/F, Jiahe Guoxin Mansion, No. 15 Baoqiao Street, Dongcheng District, Beijing

Email: warren.wang@rdchina.net

Attention: Warren Wang

MANDATED LEAD ARRANGER

CTBC BANK CO., LTD.

[Company stamp affixed]

By: _____

Name:

Title:

Address: 8F, No. 168, Jingmao 2nd Road, Nangang Dist., Taipei 11568, Taiwan, R.O.C.

Fax No: +886-2-2653-9856

Email: haley.chang@ctbcbank.com / hy.wu@ctbcbank.com / yina.huang@ctbcbank.com / emily.liang@ctbcbank.com /
ba.rc901jum@ctbcbank.com

Attention: Haley Chang / Doris Wu / Yina Huang / Emily Liang

ORIGINAL LENDER

CTBC BANK CO., LTD.

[Company stamp affixed]

By: _____

Name:

Title:

Address: 8F, No. 168, Jingmao 2nd Road, Nangang Dist., Taipei 11568, Taiwan, R.O.C.

Fax No: +886-2-2653-9856

Email: haley.chang@ctbcbank.com / hy.wu@ctbcbank.com / yina.huang@ctbcbank.com / emily.liang@ctbcbank.com /
ba.rc901jum@ctbcbank.com

Attention: Haley Chang / Doris Wu / Yina Huang / Emily Liang

THE FACILITY AGENT

CTBC BANK CO., LTD.

[Company stamp affixed]

By: _____

Name:

Title:

Address: 5F, No. 168, Jingmao 2nd Road, Nangang Dist., Taipei 11568, Taiwan, R.O.C.

Fax No: +886-2-2653-9016

Email: mendy.tsui@ctbcbank.com / maggie.chou@ctbcbank.com

Attention: Mendy Tsui / Maggie Chou

THE SECURITY AGENT

CTBC BANK CO., LTD.

[Company stamp affixed]

By: _____

Name:

Title:

Address: 5F, No. 168, Jingmao 2nd Road, Nangang Dist., Taipei 11568, Taiwan, R.O.C.

Fax No: +886-2-2653-9016

Email: mendy.tsui@ctbcbank.com / maggie.chou@ctbcbank.com

Attention: Mendy Tsui / Maggie Chou