

EXECUTION VERSION

DATED 23 DECEMBER 2014

**GANYMEDE PARENT LIMITED
AS PARENT**

**GANYMEDE INTERMEDIATE LIMITED
AS COMPANY**

**GANYMEDE INVESTMENT HOLDINGS, L.L.C.
AS MGOCO**

**CTBC BANK CO., LTD., CATHAY UNITED BANK CO., LTD., MEGA
INTERNATIONAL COMMERCIAL BANK CO., LTD. AND ING BANK N.V.,
SINGAPORE BRANCH
AS MANDATED LEAD ARRANGERS**

**THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1
AS LENDERS**

**CTBC BANK CO., LTD.
AS FACILITY AGENT**

AND

**CATHAY UNITED BANK CO., LTD.
AS SECURITY AGENT**

MGO FACILITY AGREEMENT

**C L I F F O R D
C H A N C E**

Legal counsel to the Obligors

Linklaters

Legal counsel to the Finance Parties

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THIS AGREEMENT is dated 23 December 2014 and made **BETWEEN**:

- (1) **GANYMEDE PARENT LIMITED**, an exempted company incorporated under the laws of the Cayman Islands with registration number 293130, whose registered office is at 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands (the "**Parent**");
- (2) **GANYMEDE INTERMEDIATE LIMITED**, an exempted company incorporated under the laws of the Cayman Islands with registration number 293154, whose registered office is at 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands (the "**Borrower**" or the "**Company**");
- (3) **GANYMEDE INVESTMENT HOLDINGS, L.L.C.**, a limited liability company formed under the laws of the State of Delaware, whose registered office is at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, 19801, Delaware, United States (the "**MGOCo**");
- (4) **CTBC BANK CO., LTD., CATHAY UNITED BANK CO., LTD., MEGA INTERNATIONAL COMMERCIAL BANK CO., LTD. and ING BANK N.V., SINGAPORE BRANCH** as mandated lead arrangers and bookrunners (the "**Mandated Lead Arrangers**");
- (5) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*The Original Lenders*) as original lenders (the "**Original Lenders**");
- (6) **CTBC BANK CO., LTD.** as facility agent of the other Finance Parties (the "**Facility Agent**"); and
- (7) **CATHAY UNITED BANK CO., LTD.** as security agent and as security trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"**1940 Act**" means the U.S. Investment Company Act of 1940, as amended.

"**Acceleration Date**" means the date (if any) on which the Facility Agent gives a notice under paragraph (b) or (c) of Clause 23.17 (*Acceleration*) in respect of all the Utilisations.

"**Acceptable Assets**" means Equity Interests in any MGO Group Member and/or any ListCo Group Member.

"**Acceptable Collateral**" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"**Acceptable Exchange**" means:

- (a) the London, Singapore or New York stock exchange;
- (b) the NASDAQ stock exchange,
- (c) the Main Board of the HKSE; and/or
- (d) any other stock exchange approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders).

"**Accession Deed**" means a document substantially in the form set out in Schedule 11 (*Form of Accession Deed*).

"**Account Pledge Agreement**" means the account pledge agreement in respect of the Interest Reserve Account, the Margin Account, the Disbursement Account and the Proceeds Account dated on or about the Signing Date between the Company and the Security Agent.

"**Accounting Principles**" means, in respect of:

- (a) any MGO Group Member incorporated in a jurisdiction which has generally accepted accounting principles, standards and practices, the generally accepted accounting principles, standards and practices in that jurisdiction, including (where applicable) IFRS;
- (b) the consolidated MGO Group or any MGO Group Member incorporated in a jurisdiction which does not have generally accepted accounting principles, standards and practices, IFRS; or
- (c) the consolidated ListCo Group, HKFRS.

"**Acquired MGO Shares**" means all the MGO Shares acquired by the MGOC Co pursuant to the MGO Transaction.

"**Acquired MGO Shares Charge**" means the share charge in respect of all of the Acquired MGO Shares dated on or before the Signing Date between the MGOC Co and the Security Agent.

"**Acquisition**" means the acquisition by the SPA BidCo of the Target Shares pursuant to the SPA.

"**Acquisition Related Suspension**" means the trading of the ListCo Shares on the Main Board of the HKSE being suspended in connection with the Acquisition, the MGO Transaction or any other mandatory general offer expressly permitted under Clause 22.30 (*No MGO*) or as expressly permitted under the SPA Facilities Agreement, in each case, including any related compulsory acquisition process or any failure to comply with the Public Float Requirement resulting from any of the foregoing.

"**Additional Guarantor**" means each company which becomes a Guarantor in accordance with Clause 26.2 (*Accession of Guarantors*).

"Adjusted Minimum Balance" means, at any time, an amount equal to the amount of interest falling due and payable under each Loan outstanding at that time under the Facility during the period (the **"Adjusted Period"**) commencing at that time and ending on the Top Up Date, calculated on the basis that the interest rate in respect of each such Loan for that Adjusted Period shall be the applicable interest rate for the Interest Period of such Loan commencing most recently prior to the first day of that Adjusted Period.

"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 (in each case including head offices and branches of that person).

"Agreed Form" means, in relation to a document, the form that is designated by the Company and the Facility Agent (including by email) as being in "agreed form".

"Agreed Lender" means a person on the Approved List.

"Alternative Acceptable Exchange" means the Acceptable Exchange (if any) on which the ListCo Shares are re-listed following a Privatisation (if any).

"Anti-Corruption Laws" means, as applicable, the US Foreign Corrupt Practices Act 1977 or any other similar laws, rules or regulations issued, administered or enforced by any governmental agency having jurisdiction over any Obligor, MGO Group Member or ListCo Group Member.

"Anti-Money Laundering Laws" means all applicable money laundering statutes and 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 agency having jurisdiction over any Obligor, MGO Group Member or ListCo Group Member, or to which any Obligor, MGO Group Member or ListCo Group Member is subject, and all applicable record keeping and reporting requirements pursuant to the foregoing.

"Approved Bank" means:

- (a) a Lender, the Facility Agent, the Security Agent or any Affiliate of any of the foregoing;
- (b) a bank or financial institution approved in writing by the Facility Agent (acting on the instructions of the Majority Lenders); or
- (c) a bank or financial institution which is rated at least BBB+ by Standard & Poor's Ratings Group, Baa1 by Moody's Investors Service, Inc. or BBB+ by Fitch Ratings Inc. or a comparable rating from an internationally recognised credit rating agency for its long-term debt obligations.

"Approved List" means the list of approved lenders attached as Schedule 10 (*Approved List*) as may be amended at any time by mutual agreement between the Company and the Facility Agent (acting on the instructions of all Lenders, unless the amendment is to add a person to the list, in which case the Company shall only be required to give notice to the Facility Agent of the name of such additional approved

lender (and no consent of any person shall be required) and such addition shall be effective on the delivery of such notice to the Facility Agent).

"Arrangement Fee Letter" means the Fee Letter setting out the arrangement fee referred to in Clause 13.3 (*Arrangement and extension fee*).

"Assignment Agreement" means:

- (a) an agreement substantially in the form set out in Schedule 8 (*Form of Assignment Agreement*); or
- (b) any other form agreed between the relevant assignor and assignee and approved by the Company (acting reasonably).

"Authorisation" means:

- (a) an authorisation, order, permit, consent, approval, notice, resolution, licence, exemption, filing, notarisation, lodgement, or registration recording or similar act or action; 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.

"Authorised Signatory" means, for any person, a duly authorised director or Chief Financial Officer that has the power to legally bind such person.

"Availability Period" means the period from and including the Signing Date to and including the date which is the earliest of:

- (a) the Final Date (or, in the case of a Settlement Utilisation, the day falling three Business Days after the Settlement Date);
- (b) the date falling 10 Business Days prior to the Final Maturity Date;
- (c) the first date on which the Available Facility is zero; and
- (d) the date falling eight Months after the Signing Date, if by that date the Initial Drawdown Date has not occurred.

"Available Commitment" means a Lender's Commitment minus:

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

"Available Facility" means the aggregate for the time being of each Lender's Available Commitment.

"Available Parent Funds" means the aggregate of New Equity or New Loans less the aggregate amount which has been spent in a manner permitted by the Finance Documents.

"Available Proceeds" means Disposal Proceeds Excess, Equity Funded Dividend Proceeds and Equity Funded Disposal Proceeds.

"Basel II" means 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 Signing Date (but excluding any amendment taking account of or incorporating any measure from Basel III).

"Basel III" means:

- (a) 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;
- (b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011 as amended, supplemented or restated; and
- (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

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

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

exceeds:

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

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong and Taipei, and (in relation to any date for payment or purchase of, or setting of any rate of interest in respect of an amount

denominated in, US\$) New York City and London, and (in relation to the Utilisation Date of any Loan) Singapore.

"Cash Equivalent Investments" means at any time:

- (a) certificates of deposit or time deposits (in each case) maturing within one year after the relevant date of calculation and issued by an Approved Bank;
- (b) any investment in marketable debt obligations maturing within one year after the relevant date of calculation which is not convertible or exchangeable to any other security, issued or guaranteed by a government, Governmental Authority or multilateral intergovernmental organisation which is rated at least A-1 by Standard & Poor's Rating Services, F1 by Fitch Ratings Ltd or P-1 by Moody's Investors Service Limited;
- (c) any investment in debt securities maturing within one year after the relevant date of calculation which is not convertible into any other security is rated either A-1 or higher by Standard & Poor's Rating Services, 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 the debt securities, the issue of which has, in respect of its long-term debt obligations, an equivalent rating);
- (d) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) which matures within one year after the relevant date of calculation; and
 - (iii) which has a credit rating of either A-1 or higher by Standard & Poor's Rating Services, 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 the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (e) investments accessible within three months in money market funds which:
 - (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services, F-1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited; and
 - (ii) invest substantially all of their assets in securities of the types described in paragraphs (a) to (d) above; or
- (f) any other debt security approved by the Facility Agent (acting in accordance with paragraph (f) of Clause 36.2 (*Exceptions*)),

in each case, to which any MGO Group Member is beneficially entitled at that time and which is not issued or guaranteed by any MGO Group Member or subject to any Security (other than Permitted Security).

"CCASS" means the Central Clearing and Settlement System operated by the Hong Kong Securities Clearing Company Limited.

"CCASS Shares" means any Acquired MGO Shares that are held in CCASS.

"Certain Funds Default" means:

- (a) the occurrence or existence of a Change of Control, Sale or (if any amount is outstanding under the SPA Facilities Agreement) SPA Change of Control; or
- (b) an Event of Default arising under or in connection with:
 - (i) in relation to the Parent or an Original Obligor only, Clause 23.1 (*Non-payment*);
 - (ii) in relation the Parent or an Original Obligor only (but excluding any procurement obligations regarding any ListCo Group Member), Clause 23.3 (*Other obligations*) as it relates to Clause 22.4 (*Amalgamation and change of business*), Clause 22.5 (*Acquisitions*), Clause 22.6 (*Joint Ventures*), Clause 22.7 (*Holding Company*), Clause 22.11 (*Negative pledge*), Clause 22.12 (*Disposals*), Clause 22.17 (*Loans or credit*), Clause 22.16 (*Guarantees*), Clause 22.14 (*Restricted Payments*) or Clause 22.15 (*Financial Indebtedness*);
 - (iii) Clause 23.4 (*Misrepresentation*) as it relates to a Certain Funds Representation; or
 - (iv) in relation to the Parent or an Original Obligor only, Clause 23.6 (*Insolvency*), Clause 23.7 (*Insolvency proceedings*), Clause 23.8 (*Creditors' process*), Clause 23.9 (*Unlawfulness and invalidity*) or Clause 23.14 (*Repudiation*).

"Certain Funds Illegality Event" means:

- (a) it is or would be illegal or unlawful in any applicable jurisdiction for a Lender to perform any of its obligations under this Agreement or to fund or maintain its participation in a Loan; and
- (b) any funding shortfall created as a result of the illegality or unlawfulness referred to in paragraph (a) above is not met by the aggregate of:
 - (i) funding provided by one or more new or existing Lenders as a result of (A) the Commitments corresponding to that Loan being increased in accordance with Clause 2.2 (*Increase*) and/or (B) all or part of the Commitments corresponding to that Loan being transferred or assigned to such new or existing Lenders in accordance with paragraph (b) of Clause 24.13 (*Right of Replacement*); and
 - (ii) additional Available Parent Funds on or before the Initial Drawdown Date.

"Certain Funds Representations" means:

- (a) in relation to the Parent or an Original Obligor only, the representations made in Clause 20.1 (*Status*) to Clause 20.6 (*Governing law and enforcement*), in each case, other than in respect of the ListCo Group;
- (b) in relation to the Parent only, the representations and warranties set out in Clause 20.15 (*Legal and beneficial ownership*) but only with respect to the Charged Assets which are expressed to be the subject of Transaction Security pursuant to the Company Share Charge; and
- (c) in relation to the Company only, the representations and warranties set out in Clause 20.15 (*Legal and beneficial ownership*) but only with respect to the Charged Assets which are expressed to be the subject of Transaction Security pursuant to the MGOC Co Share Pledge.

"Change in Law" means:

- (a) the introduction of any law or regulation after the Signing Date; or
- (b) any change in or re-enactment of (or in the interpretation, administration or application of) any law or regulation in existence as at the Signing Date that results in such law or regulation not being substantively comparable to or being materially more onerous to comply with than, in each case, such law or regulation as at the Signing Date.

"Change of Control" means:

- (a) the Sponsor ceases (directly or indirectly) to beneficially own at least 66.67% of the issued share capital of the Parent;
- (b) the Parent ceases (directly or indirectly) to beneficially own 100% of the issued share capital of the Company; or
- (c) the Company ceases (directly or indirectly) to beneficially own 100% of the issued share capital of the MGOC Co.

"Charged Assets" means all of the assets of the Obligors and the Parent which from time to time are, or are expressed to be, the subject of the Transaction Security.

"Claiming Lender" means a Lender:

- (a) in respect of which any Obligor becomes obliged to pay any amounts pursuant to Clause 14.2 (*Tax gross-up*), Clause 14.3 (*Tax indemnity*) or Clause 15.1 (*Increased Costs*);
- (b) which has given notice to the Facility Agent pursuant to paragraph (b)(ii) of Clause 12.2 (*Market disruption*); or
- (c) which on or after the date which is six Months before the earliest FATCA Application Date for any payment by a Party to a Lender (or to the Facility Agent for the account of that Lender), that Lender is not, or has ceased to be, a

FATCA Exempt Party and, as a consequence, a Party reasonably believes that it will be required to make a FATCA Deduction from a payment to that Lender (or to the Facility Agent for the account of that Lender) on or after that FATCA Application Date.

"Clean-up Period" shall mean the period from the Initial Drawdown Date to the date falling 60 days thereafter.

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

"Commitment" means:

- (a) in relation to an Original Lender, the amount in US Dollars set opposite its name under the heading "Commitment" in Schedule 1 (*The Original Lenders*) and the amount of any other Commitment transferred or assigned to it under this Agreement; and
- (b) in relation to any other Lender, the amount in US Dollars of any Commitment transferred or assigned to it under this Agreement,

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

"Company Debenture" means the debenture dated on or before the Signing Date between the Company and the Security Agent.

"Company Equity" means fully paid ordinary shares or non-redeemable preference shares or fully paid redeemable shares (with a redemption date at least six Months after the Extended Final Maturity Date), in each case, in the Company and, which are issued to its shareholder(s) for cash.

"Company Share Certificates" means all share certificates in respect of shares in the Company required to be delivered under the Company Share Charge on or prior to the Signing Date.

"Company Share Charge" means the first ranking equitable share mortgage over all of the shares of the Company dated on or before the Signing Date between the Parent and the Security Agent.

"Competitor" means any person (or an Affiliate thereof) which is principally engaged in a business that is in commercial competition with the core business of the ListCo Group.

"Compulsory Acquisition" means, in relation to the MGO, an acquisition made (or to be made) pursuant to the exercise of any right (and/or performance of any obligation) to compulsorily acquire ListCo Shares owned by minority ListCo shareholders (and/or the relevant process in respect thereof) which arises under applicable law and results from obtaining a prescribed level of acceptances pursuant to the MGO.

"Compulsory Acquisition Documents" means any document or notice required to be given to or by minority shareholders in relation to a Compulsory Acquisition under applicable law or regulation.

"Compulsory Acquisition Final Settlement Date" means, in respect of any Compulsory Acquisition, the final date for settlement of consideration payable in respect of such Compulsory Acquisition in accordance with the Takeovers Code and/or applicable law.

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

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

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

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

"Confidentiality Undertaking" means a confidentiality undertaking substantially in the form set out in Schedule 14 (*Form of Confidentiality Undertaking*) or any other form agreed between the Company and the Facility Agent, in each case, capable of being relied upon by the Company without requiring the same to be executed by or on behalf of the Company.

"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 a Participation):

- (a) a Competitor;
- (b) an investor or equity holder in a Competitor; or
- (c) an adviser to any such person referred to in paragraph (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 Company (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 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 further that** the relevant teams and employees involved in such transactions are separated from any teams or employees working in relation to the MGO Group and/or the ListCo 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 further that** the relevant teams and employees involved in such advisory activity are separated from any teams or employees working in relation to the MGO Group and/or the ListCo 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 further that** the relevant teams and employees involved in such private equity fund are separated from any teams or employees working in relation to the MGO Group and/or the ListCo Group and the Finance Documents (and related transactions) by way of an Information Barrier.

"Controlled Group" means an entity, whether or not incorporated, which is under common control with an Obligor within the meaning of Section 4001 of ERISA or is part of a group that includes an Obligor and that is treated as a single employer with the Obligor under Section 414 of the Code (each a **"Controlled Group Member"**). When any provision of this Agreement relates to a past event, the term "Controlled Group Member" includes any person that was a Controlled Group Member of the Obligor at the time of that past event.

"Coverage Amount" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"**Coverage Ratio**" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"**Coverage Ratio Test Date**" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"**Covington Memoranda**" means the email memoranda of advice from Covington & Burling dated December 2014 to the SPA BidCo.

"**CP Satisfaction Letter**" means the conditions precedent satisfaction letter from the Facility Agent to the Company dated on or about the Signing Date.

"**Creditor Accession Undertaking**" has the meaning ascribed to such term in the Intercreditor Agreement.

"**Custodian**" means CTBC Bank Co., Ltd., Hong Kong Branch.

"**Custodian Agreement**" means the custodian agreement between the MGOCo and the Custodian.

"**Debt/Equity Cost Ratio**" means the ratio of Debt Funded Total Cost to Equity Funded Total Cost.

"**Debt Funded Total Cost**" means, in respect of any date, the aggregate of all:

- (a) amounts which have been deducted from the proceeds of Utilisations by the Facility Agent (as authorised by the Company in the relevant Utilisation Request(s)); and
- (b) Disbursements, in each case, to the extent used to fund the payment of:
 - (i) the consideration for the Acquired MGO Shares in an amount equal to the SPA Price multiplied by the number of the Acquired MGO Shares purchased by the MGOCo up to that date;
 - (ii) the aggregate amount paid into the Interest Reserve Account up to that date in order to comply with the Minimum Balance on or prior to that date; and/or
 - (iii) any fees, costs, and expenses paid up to that date pursuant to Clauses 13 (*Fees*) or 18 (*Costs and Expenses*) and/or in relation to the MGO Transaction (including stamp duty),

in each case, up to and including that date, plus the aggregate of all amounts which have been transferred from the Disbursement Account to the Settlement Account pursuant to any Reimbursement Transfer up to and including that date.

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

- (a) purchases by way of assignment, novation or transfer (or equivalent);

- (b) enters into any sub-participation or sub-contract; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to the foregoing in paragraph (b) above,

in respect of (directly or indirectly) any commitment or amount outstanding under any Finance Document.

"Debt True-Up Amount" means the amount (if any) by which Debt Funded Total Cost would be required to be reduced (and Equity Funded Total Cost correspondingly increased by an amount equal to the amount of such reduction) to ensure that the Debt/Equity Cost Ratio on the Settlement Date would have been 1.5:1.

"Debtor" has the meaning ascribed to such term in the Intercreditor Agreement.

"Default" means an Event of Default or any event or circumstance specified in Clause 23 (*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, **provided that** any such event which requires the satisfaction of a condition as to materiality before it becomes an Event of Default shall not be a Default until that condition is satisfied.

"Defaulting Lender" means any Lender:

- (a) which has failed to make its participation in a Loan available as required by this Agreement or has repudiated its obligation to do so or has notified the Company or the Facility Agent that it will not make its participation in a Loan available by 2:00 pm on 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 administrative or technical error or a Disruption Event and payment is made within three Business Days of its due date; or
- (ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

"Deposited Equity Amount" means, in respect of any time, the aggregate of all amounts which have been transferred into the Settlement Account up to and including that time (whether or not such amounts have been subsequently withdrawn) minus the aggregate of all amounts which have been withdrawn from the Settlement Account and applied for:

- (a) funding any difference between the MGO Offer Price and the SPA HK\$ Price in making payment of any MGO Consideration; or

(b) any purpose other than a Permitted Purpose,

in each case up to and including that time.

"Disbursement" means a withdrawal (including by way of transfer) from the Disbursement Account in accordance with Clause 6 (*Disbursements*).

"Disbursement Account" means the cash account maintained in the name of the Company with the Facility Agent's offshore banking unit in Taiwan with account number 90121-100022-8, together with any replacement or substitute of that account (whether by way of transfer, renewal, re-designation, replacement, re-numbering or otherwise) and any sub-accounts thereof.

"Disbursement Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong, Taipei and New York City.

"Disbursement Date" means the date on which a Disbursement is made.

"Disbursement Evidence" means, in respect of any Disbursement, the documents and other evidence required to be delivered by the Company with respect to that Disbursement pursuant to paragraphs (a)(i)(B) and (a)(ii) of Clause 6.3 (*Disbursement conditions precedent*).

"Disbursement Request" means a notice substantially in the form set out in Schedule 16 (*Disbursement Request*).

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

"Disposal Proceeds Excess" means, in respect of any MGO Shares Disposal, the amount by which the Net Disposal Proceeds from such MGO Shares Disposal exceed the amount of the Relevant Disposal Proceeds from such MGO Shares Disposal.

"Disposal Proceeds Shortfall" means, in respect of any MGO Shares Disposal, the amount by which the Relevant Disposal Proceeds from such MGO Shares Disposal exceed the amount of the Net Disposal Proceeds from such MGO Shares Disposal.

"Disruption Event" means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; and

(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 from:

(i) performing its payment obligations under the Finance Documents; or

- (ii) communicating with the 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) paying, repaying or prepaying any principal, interest or other amount on or in respect of, or redeeming, purchasing or defeasing, any Financial Indebtedness, owed actually or contingently to any of its shareholders or to any Affiliate;
- (b) declaring, paying or making any dividend or other payment or distribution of any kind on or in respect of any class of its shares; or
- (c) reducing, returning, purchasing, repaying, cancelling or redeeming any of its share capital.

"Dividend Proceeds" means the proceeds received or recovered by (or paid to the order of) any MGO Group Member in respect of any cash dividends declared and paid in respect of the Acquired MGO Shares and after deducting:

- (a) any reasonable fees, costs and expenses which are incurred by that MGO Group Member with respect to the receipt of such dividends to persons who are not MGO Group Members or Affiliates of MGO Group Members; and
- (b) any Tax properly incurred and required to be paid by that MGO Group Member in connection with such dividends (as reasonably determined by that MGO Group Member, on the basis of existing rates and taking account of any available credit, deduction or allowance).

"Draft Announcement" means the draft press announcement to be issued in accordance with Rule 3.5 of the Takeovers Code with respect to the MGO.

"Employee Plan" means, at any time, an "employee pension benefit plan" as defined in Section 3(2) of ERISA subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA (other than a Multiemployer Plan), then or at any time during the previous five years maintained for, or contributed to (or to which there is or was an obligation to contribute) on behalf of, employees of any Obligor or ERISA Affiliate.

"Equity Documents" means any agreement, instrument or other document that records the provision of or the terms of any Company Equity.

"Equity Funded Disposal Proceeds" means the consideration and/or proceeds received or recovered by (or paid to the order of) any MGO Group Member in respect of any Disposal of any Equity Funded ListCo Shares.

"Equity Funded Dividend Proceeds" means the proceeds received or recovered by (or paid to the order of) any MGO Group Member in respect of any cash dividends declared and paid in respect of the Equity Funded ListCo Shares.

"Equity Funded ListCo Shares" means ListCo Shares that are beneficially owned by a MGO Group Member and which were purchased in accordance with paragraph (f) of the definition of Permitted Acquisition.

"Equity Funded Total Cost" means, in respect of any date, the aggregate amount of all amounts that have been withdrawn from the Settlement Account and used to fund the payment of:

- (a) the consideration for the Acquired MGO Shares in an amount equal to the SPA Price multiplied by the number of the Acquired MGO Shares purchased by the MGOCo up to that date;
- (b) the aggregate amount paid into the Interest Reserve Account up to that date in order to comply with the Minimum Balance on or prior to that date; and
- (c) all fees, costs, and expenses paid up to that date pursuant to Clauses 13 (*Fees*) or 18 (*Costs and Expenses*) and/or in relation to the MGO Transaction (including stamp duty),

minus the aggregate of all amounts which have been transferred from the Disbursement Account to the Settlement Account pursuant to any Reimbursement Transfer up to and including that date.

"Equity Interest" means, in relation to any person:

- (a) any shares of any class or capital stock of or equity interest in such person or any depositary receipt in respect of any such shares, capital stock or equity interest;
- (b) any securities 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 securities; or
- (c) any option, warrant or other right to acquire any such shares, capital stock, equity interest, securities or depositary receipts referred to in paragraphs (a) and/or (b) above.

"Equity True-Up Amount" means the amount (if any) by which Equity Funded Total Cost would be required to be reduced (and Debt Funded Total Cost correspondingly increased by an amount equal to the amount of such reduction) to ensure that the Debt/Equity Cost Ratio on the Settlement Date would have been 1.5:1.

"Equivalent Share Security" means Transaction Security on terms substantially equivalent to those contained in the Acquired MGO Shares Charge and the Securities Account Charge or such other form of security agreement agreed between the Company and the Security Agent (acting in accordance with paragraph (f) of Clause 36.2 (*Exceptions*)).

"ERISA" means the US Employee Retirement Income Security Act of 1974 (or any successor legislation thereto) and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA) that is a member of a Controlled Group of any Obligor.

"Event of Default" means any event or circumstance specified as such in Clause 23 (*Events of Default*) (other than Clauses 23.17 (*Acceleration*) and 23.18 (*Clean-up Period*)).

"Exchange Business Day" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Extended Final Maturity Date" means the date falling 12 Months from the Initial Drawdown Date.

"Extension Fee" means the extension fee payable by the Company pursuant to and in accordance with paragraph (d) of the section headed "Arrangement Fee" of the Arrangement Fee Letter.

"Extension Notice" means a notice substantially in the form set out in Schedule 15 (*Form of Extension Notice*).

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

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

"FATCA" means:

- (a) Sections 1471 to 1474 of the Code, any associated regulations and other official guidance;
- (b) any treaty, law, regulation or other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction, which (in either case) facilitates the implementation of paragraph (a) above; or
- (c) any agreement pursuant to the implementation of paragraph (a) or (b) above with the United States Internal Revenue Service, the government of the United States or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in Section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a "withholdable payment" described in Section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017;
or
- (c) in relation to a "passthru payment" described in Section 1471(d)(7) of the Code not falling within paragraph (a) or (b) above, 1 January 2017,

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

"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.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor thereto).

"Fee Letter" means any letter or letters between, as the case may be, the Facility Agent and/or the Security Agent and, in each case, an Obligor setting out any of the fees referred to in Clause 13 (*Fees*) and/or any letter between an Obligor or the Parent and any Mandated Lead Arranger setting out any fees payable by an Obligor or the Parent to any Mandated Lead Arranger.

"Final Announcement" means the final press announcement issued in accordance with Rule 3.5 of the Takeovers Code with respect to the MGO.

"Final Date" means the latest of:

- (a) the MGO Closing Date;
- (b) the MGO Final Settlement Date; and
- (c) if sufficient acceptances have been received by the MGO Co on or prior to the MGO Closing Date such that the requirements of a Compulsory Acquisition are met and any Compulsory Acquisition is commenced on or prior to the date falling three Months from the MGO Closing Date, the relevant Compulsory Acquisition Final Settlement Date.

"Final Maturity Date" means if the Original Final Maturity Date:

- (a) has not been extended to the Extended Final Maturity Date pursuant to and in accordance with paragraph (b) of Clause 8 (*Repayment*), the Original Final Maturity Date; or
- (b) has been extended to the Extended Final Maturity Date pursuant to and in accordance with paragraph (b) Clause 8 (*Repayment*), the Extended Final Maturity Date.

"Finance Document" means this Agreement, any Fee Letter, any Accession Deed, the Intercreditor Agreement, any Creditor Accession Undertaking, any Security Document, the CP Satisfaction Letter and any other document designated as such by the Facility Agent and the Company.

"Finance Lease" means any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease.

"Finance Party" means the Facility Agent, the Security Agent, a Mandated Lead Arranger or a Lender.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any Finance Lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold or discounted on a non-recourse basis or, if sold on a limited recourse basis, to the extent of such recourse only);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) required to be accounted for as a borrowing in accordance with the Accounting Principles;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) shares which are expressed to be redeemable on or prior to the date falling six Months after the Extended Final Maturity Date (**provided that** shares redeemable only at the option of the issuer will be treated as indebtedness only if not treated as equity by the Accounting Principles);
- (i) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a

bank or financial institution in respect of an underlying liability of an entity which is not a MGO Group Member or ListCo Group Member which liability would fall within one of the other paragraphs of this definition;

- (j) the amount of any liability in respect of any credit for goods and services raised in the ordinary course of day to day business outstanding for more than 120 days after its customary date of payment (unless being contested in good faith and in accordance with the relevant procedures); or
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

"Financial Year" means the period of 12 Months ending on 31 December in any year.

"First MGO Acquisition Date" means the first date on which any MGO Shares are acquired by the MGO Co pursuant to the MGO.

"Fraudulent Transfer Law" means any applicable US Bankruptcy Law or any applicable US state fraudulent transfer or conveyance law.

"Governmental Authority" means any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation, including national, federal, state and local governments, and any agency, commission or subdivision thereof that has the authority to issue rules or regulations with the force of law.

"Guarantor" means the Original Guarantor and an Additional Guarantor.

"Hedge Counterparty" has the meaning ascribed to such term in the Intercreditor Agreement.

"Hedging Agreements" means the documents entered into between an Obligor and the relevant hedge counterparty in respect of any interest payable under the Finance Documents.

"Higher Consenting Threshold" means (subject to Clause 25.2 (*Disenfranchisement*)):

- (a) if there are no Utilisations then outstanding, a Lender or Lenders whose Available Commitments aggregate 85% or more of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 85% or more of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose Available Commitments and participations in the Utilisations then outstanding aggregate 85% or more of the sum of the Available Facility and all the Utilisations then outstanding.

"HKFRS" means Hong Kong Financial Reporting Standards issued and/or adopted by the Hong Kong Institute of Certified Public Accountants.

"HKSE" means The Stock Exchange of Hong Kong Limited.

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

"IFRS" means International Financial Reporting Standards issued and/or adopted by the International Accounting Standards Board.

"Illegal Lender" means any Lender in relation to which the Company receives a notice pursuant to Clause 9.1 (*Illegality*).

"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 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) or paragraph (b) 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 administrative or technical error or a Disruption Event and payment is made within three Business Days of its due date;
- (ii) the Facility Agent is disputing in good faith whether it is contractually obliged to make the payment in question; or
- (iii) its failure to pay is due to another Party failing to fund the Facility Agent in accordance with this Agreement.

"Increase Confirmation" means a confirmation substantially in the form set out in Schedule 12 (*Form of Increase Confirmation*).

"Increase Lender" has the meaning ascribed to such term in Clause 2.2 (*Increase*).

"Increased Costs" means:

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

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

"Indirect Tax" means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

"Information Barrier" means, in relation to a Lender, a system of controls and monitoring (including physical segregation of employees and restrictions on access to and flow of information) sufficient to ensure that:

- (a) information relating to the MGO Group and/or the ListCo Group and the Finance Documents (and related transactions) 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 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 who is or who is acting on behalf of either a Competitor or an investor or equity holder in a 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 acting in relation to the MGO Group and/or the ListCo Group or the Finance Documents (and related transactions).

"Information Memorandum" means the document (if any) in the form approved by the Company concerning the MGO Group and the ListCo Group in relation to the Facility and distributed by the Mandated Lead Arrangers on a confidential basis in connection with the Syndication of the Facility.

"Information Package" means the Information Memorandum (if any) and the Reports.

"Initial Drawdown Date" means the first Utilisation Date under the Facility.

"Insolvency Event" in relation to a Finance Party, means the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that Finance Party or all or substantially all of that Finance Party's assets or any analogous procedure or step is taken in any jurisdiction with respect to that Finance Party.

"Intellectual Property" means all trademarks, service marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, topography rights, database rights, rights in confidential information and know-how, and any associated or similar rights anywhere in the world, which it now or in the future owns or (to the extent of its interest) in which it now or in the future has an interest (in each case whether registered or unregistered and including any related licences and sub-licences of the same granted by it or to it, applications and rights to apply for the same).

"Intercompany Debt" has the meaning ascribed to such term in the Intercreditor Agreement.

"Intercompany Funding Agreement" means the loan agreement to be entered into by the Company, the Obligors and the other MGO Group Members setting out the

terms on which all loans, from time to time, advanced by any MGO Group Member to any other MGO Group Member are made or are deemed to be made.

"Intercompany Lender" has the meaning ascribed to such term in the Intercreditor Agreement.

"Intercreditor Agreement" means the intercreditor agreement to be entered into before the Initial Drawdown Date between, amongst others, the Obligors and the Finance Parties.

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (*Default interest*).

"Interest Reserve Account" means the cash account maintained in the name of the Company with the Facility Agent's offshore banking unit in Taiwan with account number 90121-100019-2, together with any replacement or substitute of that account (whether by way of transfer, renewal, re-designation, replacement, re-numbering or otherwise) and any sub-accounts thereof.

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

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

each as of the Specified Time on the Quotation Day for the currency of that Loan.

"IRS" means the United States Internal Revenue Service (or any successor thereto).

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

"Legal Opinion" means any legal opinion delivered to the Facility Agent pursuant to Clause 4 (*Conditions of Utilisation*), Clause 26 (*Changes to the Obligors*) or any other Finance Document.

"Legal Reports" means:

- (a) the legal due diligence report prepared by Clifford Chance dated 28 November 2014; and
- (b) the Covington Memoranda.

"Lender" means:

- (a) any Original Lender; and

- (b) any bank, financial institution or other entity which has become a Lender in accordance with Clause 2.2 (*Increase*) or Clause 24 (*Changes to the Lenders*),

which, in each case, has not ceased to be a Lender in accordance with this Agreement, and for which purposes the:

- (c) termination in full of all the Commitments of any Lender; and
- (d) payment in full of all amounts which are payable to such Lender under the Finance Documents,

will result in that Lender ceasing to be regarded as a Lender for the purposes of determining whether any provision of any of the Finance Documents requiring consultation with or the consent or approval of or instruction from all the Lenders, the Higher Consenting Threshold, the Majority Lenders and/or any other class of Lenders has been complied with.

"LIBOR" means, in relation to any Loan:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- (c) (if no Screen Rate is available for US Dollars or for the Interest Period of that Utilisation and it is not possible to calculate an Interpolated Screen Rate for that Loan) the Reference Bank Rate,

as of the Specified Time on the Quotation Day for US Dollars and for a period equal in length to the Interest Period of that Loan **provided that** if any such applicable Screen Rate, Interpolated Screen Rate or Reference Bank Rate is below zero, LIBOR will be deemed to be zero.

"ListCo" means Asia Satellite Telecommunications Holdings Limited (HKSE stock code 1135).

"ListCo Group" means the ListCo and each of its Subsidiaries for the time being (and **"ListCo Group Member"** means any member of the ListCo Group).

"ListCo Share Disruption Event" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"ListCo Shares" means ordinary shares in the issued share capital of the ListCo.

"Listing Rules" means The Rules Governing the Listing of Securities on the HKSE.

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

"Loan/Equity Ratio" means, in respect of any time, the ratio of:

- (a) the aggregate of all the Loans (other than a Settlement Utilisation) which have been drawn up to and including that time (whether or not such Loan has been prepaid or repaid); to
- (b) the Deposited Equity Amount as at that time.

"London Business Day" means a day (other than a Saturday or Sunday) on which commercial banks are open for general business including dealings in interbank deposits in London.

"M&A Advisory Letter" means the letter dated on or about the Signing Date between, amongst others, the MGOC Co and/or the SPA BidCo and the financial adviser specified therein in relation to the cash confirmation requirement for the MGO Transaction and the Acquisition.

"Majority Lenders" means:

- (a) if there are no Utilisations then outstanding, a Lender or Lenders whose Available Commitments aggregate more than 66 $\frac{2}{3}$ % of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 $\frac{2}{3}$ % of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose Available Commitments and participations in the Utilisations then outstanding aggregate more than 66 $\frac{2}{3}$ % of the sum of the Available Facility and all the Utilisations then outstanding.

"Majority Senior Creditors" has the meaning ascribed to such term in the Intercreditor Agreement.

"Margin" means:

- (a) 3.50% per annum while a Prolonged Suspension is continuing; and
- (b) at all other times, 3.00% per annum.

"Margin Account" means the cash account maintained in the name of the Company with the Facility Agent's offshore banking unit in Taiwan with account number 90121-100021-5, together with any replacement or substitute of that account (whether by way of transfer, renewal, re-designation, replacement, re-numbering or otherwise) and any sub-accounts thereof.

"Margin Stock" means "margin stock" as defined in Regulation U.

"Market Price" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Master Assignment Agreement" means the Security assignment dated on or before the Signing Date between the Parent, the Company, the other Obligors and the Security Agent in relation to the Parent Loan Agreement and the Intercompany Funding Agreement.

"Material Adverse Effect" means any event or circumstance (or series of events or circumstances) which (after taking into account all relevant circumstances):

- (a) has a material adverse effect on:
 - (i) the business, assets or financial condition of the MGO Group or (from the First MGO Acquisition Date) the ListCo Group (taken as a whole); or
 - (ii) the ability of the Obligors (taken as a whole) to meet any of the payment obligations of the Obligors under the Finance Documents; or
- (b) (subject to applicable Reservations and Perfection Requirements which are not overdue) affects the validity or the enforceability of any Finance Document or the effectiveness or ranking of any Security granted pursuant to any Finance Document, in each case in a manner which would be materially adverse to the interests of the relevant Finance Parties under the Finance Documents taken as a whole and that, in each case for this paragraph (b), if capable of remedy, is not remedied within 20 Business Days of the earlier of the Parent or the Company first becoming aware of such event or circumstance or being given notice of such event or circumstance by the Facility Agent.

"Material Default" means an Event of Default which arises pursuant to Clause 23.6 (*Insolvency*), Clause 23.7 (*Insolvency proceedings*), Clause 23.11 (*Cessation of business*) or Clause 23.15 (*Cessation of listing or suspension of trading*).

"MGOC Co Debenture" means the debenture dated on or before the Signing Date entered into between the MGOC Co and the Security Agent.

"MGOC Co Share Pledge" means the pledge agreement in respect of all of the shares of the MGOC Co dated on or before the Signing Date between the Company and the Security Agent.

"MGO" means the mandatory general offer proposed to be made by MGOC Co following the Acquisition pursuant to and in accordance with Rule 26.1 of the Takeovers Code, to acquire the MGO Shares.

"MGO Closing Date" means the date on which the MGO is closed for acceptance in accordance with the Takeovers Code.

"MGO Consideration" means the MGO Offer Price multiplied by the aggregate of the number of the MGO Shares tendered for acceptance pursuant to the MGO and the number of the MGO Shares to be acquired by the MGOC Co pursuant to any Compulsory Acquisition (if any).

"MGO Documents" means the MGO Offer Document, the Final Announcement and any other documents despatched or to be despatched to shareholders of the ListCo in respect of the MGO by or on behalf of the MGOC Co.

"MGO Final Settlement Date" means the final date for settlement of consideration payable in respect of the MGO in accordance with the Takeovers Code.

"MGO Group" means the Company and each of its Subsidiaries for the time being other than any ListCo Group Member (and **"MGO Group Member"** means any member of the MGO Group).

"MGO Group Structure Chart" means the structure chart of the MGO Group delivered pursuant to Clause 4.1 (*Initial conditions precedent*).

"MGO Offer Document" means the offer document despatched (or to be despatched) to shareholders of the ListCo in respect of the MGO.

"MGO Offer Price" means the offer price per MGO Share pursuant to the MGO Offer Document.

"MGO Shares" means all of the ListCo Shares not beneficially owned (directly or indirectly) by the SPA BidCo (or by parties "acting in concert" (as defined in the Takeovers Code) with the SPA BidCo) following the Acquisition.

"MGO Shares Disposal" means any Disposal of any Acquired MGO Shares by any MGO Group Member completed at any time when a Privatisation is not continuing.

"MGO Transaction" means the MGO and any Compulsory Acquisition (if any).

"MGO Transaction Documents" means the MGO Documents and/or the Compulsory Acquisition Documents (if any).

"Minimum Balance" means, at any time, an amount equal to the amount of interest falling due and payable under each Loan outstanding at that time under the Facility during the Required Interest Reserve Period commencing at that time, calculated on the basis that in respect of each such Loan:

- (a) the interest rate applicable for the Required Interest Reserve Period starting on the Utilisation Date of that Loan will be the interest rate for the first Interest Period for such Loan (**provided that**, solely for the purposes of this paragraph (a), the reference to "two" in the definition of Quotation Day shall be deemed to be a reference to "five"); and
- (b) the interest rate for any other Required Interest Reserve Period will be that for the Interest Period of that Loan commencing most recently prior to the first day of that Required Interest Reserve Period.

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

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

- (c) if an Interest Period begins on the last Business Day of a calendar month and, consistent with the terms of this Agreement, that Interest Period is to be of a duration equal to a whole number of Months, 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.

"**MSOT**" means the ListCo management stock ownership trust constituted by a trust deed to be entered into between ListCo as settlor and AsiaSat MSOT (PTC) Limited as trustee.

"**MSOT Trustee**" means the trustee of MSOT (from time to time).

"**Multiemployer Plan**" means, at any time, a multiemployer plan (as defined in Section 4001(a)(3) of ERISA) then or at any time during the previous five years maintained for, or contributed to (or to which there is or was an obligation to contribute) on behalf of, employees of any Obligor or ERISA Affiliate.

"**Net Disposal Proceeds**" means the consideration and/or proceeds received or recovered by (or paid to the order of) any MGO Group Member in respect of any MGO Shares Disposal and after deducting:

- (a) any reasonable fees, costs and expenses (including commissions) which are incurred by any MGO Group Member with respect to that MGO Shares Disposal to persons who are not MGO Group Members or Affiliates of MGO Group Members; and
- (b) any Tax properly incurred and required to be paid by any MGO Group Member in connection with that MGO Shares Disposal (as reasonably determined by that MGO Group Member, on the basis of existing rates and taking account of any available credit, deduction or allowance) or the transfer of the proceeds thereof intra-MGO Group for the purpose of making any prepayment of the Facility from such proceeds.

"**Net Privatisation Disposal Proceeds**" means the consideration and/or proceeds received or recovered by (or paid to the order of) any MGO Group Member in respect of any Privatisation Disposal and after deducting:

- (a) any reasonable fees, costs and expenses (including commissions) which are incurred by any MGO Group Member with respect to that Privatisation Disposal to persons who are not MGO Group Members or Affiliates of MGO Group Members; and
- (b) any Tax properly incurred and required to be paid by any MGO Group Member in connection with that Privatisation Disposal (as reasonably determined by that MGO Group Member, on the basis of existing rates and taking account of any available credit, deduction or allowance) or the transfer of the proceeds thereof intra-MGO Group for the purpose of making any prepayment of the Facility from such proceeds.

"New Equity" means any Company Equity issued after the Initial Drawdown Date and the issue of which is not expressly contemplated in the Structure Report (for the purposes of the definition of "Certain Funds Illegality Event" only) any Company Equity issued on or prior to the Initial Drawdown Date and the issue of which is not expressly contemplated in the Structure Report and which does not, in each case, form part of any amount standing to the credit of the Settlement Account.

"New Loans" means all loans made by the Parent to the Company after the Initial Drawdown Date and which constitute Parent Debt and are subordinated under the Intercreditor Agreement as Parent Debt and (for the purposes of the definition of "Certain Funds Illegality Event" only) all loans made by the Parent to the Company on or prior to the Initial Drawdown Date and which constitute Parent Debt and are subordinated under the Intercreditor Agreement as Parent Debt and which do not, in each case, form part of any amount standing to the credit of the Settlement Account.

"Non-Consenting Lender" means any Lender which does not agree to a consent, waiver or amendment if:

- (a) the Company, through the Facility Agent, has requested a consent, waiver or amendment in relation to any Finance Document;
- (b) the consent, waiver or amendment in question requires the approval of all the Lenders or the Higher Consenting Threshold; and
- (c) the Majority Lenders have agreed to that consent, waiver or amendment.

"Notices (Account Pledge Agreement)" means the notices of pledge over accounts required to be delivered by the Company to the Facility Agent (in its capacity as account bank) under the Account Pledge Agreement on or prior to the Signing Date.

"Notice(s) (Company Debenture)" means the notice(s) of charge over and acknowledgment in relation to bank account(s) required to be delivered by the Company to the Facility Agent (in its capacity as account bank) under the Company Debenture on or prior to the Signing Date.

"Notifiable Debt Purchase Transaction" has the meaning given to that term in paragraph (b) of Clause 25.2 (*Disenfranchisement*).

"Notional A Amount" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Notional B Amount" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Obligor" means the Borrower or any Guarantor.

"Obligors' Agent" means the Company acting for itself and as agent for the other Obligors pursuant to Clause 2.4 (*Obligors' Agent*).

"Operating Account" means:

- (a) the cash account maintained in the name of the Company with the Facility Agent's offshore banking unit in Taiwan with account number 90114-101306-8;
- (b) the cash account maintained in the name of MGOC Co with the Facility Agent's offshore banking unit in Taiwan with account number 90114-101303-9; and
- (c) any cash account maintained in the name of an Obligor in accordance with this Agreement (other than the Interest Reserve Account, the Proceeds Account, the Margin Account, the Disbursement Account, the Securities Account, the Settlement Account and the Securities Cash Account) and designated in writing as such by the Company to the Facility Agent,

together, in each case, with any replacement or substitute of that account (whether by way of transfer, renewal, re-designation, replacement, re-numbering or otherwise) and any sub-account thereof.

"Original Final Maturity Date" means the date falling 6 Months from the Initial Drawdown Date.

"Original Finance Parties" means the Mandated Lead Arrangers, the Facility Agent, the Security Agent and the Original Lenders, in each case, as at the Signing Date.

"Original Guarantor" means the MGOC Co.

"Original Legal Opinion" means the legal opinions of:

- (a) Linklaters, legal advisers to the Mandated Lead Arrangers in Hong Kong, Delaware and New York;
- (b) Walkers, legal advisers to the Mandated Lead Arrangers in the Cayman Islands;
- (c) Baker & McKenzie, legal advisers to the Mandated Lead Arrangers in Taiwan; and
- (d) Appleby, legal advisers to the Mandated Lead Arrangers in Bermuda.

"Original Obligors" means the Borrower and the Original Guarantor.

"Original Security Deliverables" means:

- (a) the Company Share Certificates;
- (b) the Notice(s) (Company Debenture);
- (c) the Notices (Account Pledge Agreements); and
- (d) the Securities Account Notice.

"Original Security Documents" means the Company Share Charge, the Company Debenture, the MGOC Co Share Pledge, the MGOC Co Debenture, the Master

Assignment Agreement, the Account Pledge Agreement, the Securities Account Charge and the Acquired MGO Shares Charge.

"**Parent Debt**" has the meaning ascribed to such term in the Intercreditor Agreement.

"**Parent Loan Agreement**" means the parent loan agreement to be entered into on or before the Signing Date between the Parent and the Company.

"**Participation**" means a Debt Purchase Transaction other than a transaction specified in paragraph (a) of such definition and "**Participant**" means the relevant counterparty to such Participation excluding any Lender as grantor thereunder.

"**Party**" means a party to this Agreement.

"**Perfection Requirements**" means the making of the appropriate registrations, filings or notifications (and the corresponding acknowledgements) of, or the payment of any stamp duty (including mortgage duty), registration or similar Taxes or payments on, or in respect of, or the obtaining of any approval for, the Security Documents as specifically contemplated in this Agreement, any Security Document or in any related Legal Opinion.

"**Permitted Acquisition**" means:

- (a) the MGO Transaction and related steps;
- (b) the acquisition by a MGO Group Member of any share or asset sold, leased, transferred or otherwise disposed of by another MGO Group Member in circumstances constituting a Permitted Disposal or pursuant to a Permitted Transaction;
- (c) the acquisition by a MGO Group Member of Cash Equivalent Investments;
- (d) the incorporation of a company or the purchase of shares in an off-the-shelf limited liability company incorporated (or to be incorporated) in the Cayman Islands, the British Virgin Islands, Hong Kong, Singapore, Delaware or Bermuda (which has not previously traded or incurred liabilities (other than statutory liabilities));
- (e) an acquisition of shares or securities pursuant to a Permitted Share Issue;
- (f) an acquisition by a MGO Group Member of Equity Interests in the ListCo (otherwise than pursuant to the MGO Transaction) **provided that**:
 - (i) the purchase consideration for such acquisition is funded solely from the proceeds of Available Parent Funds; and
 - (ii) the relevant MGO Group Member grants Transaction Security over such Equity Interests in ListCo or such Equity Interests become subject to Transaction Security granted by such MGO Group Member; and
- (g) any acquisition to which the Majority Lenders have given their prior written consent.

"Permitted Disposal" means any Disposal:

- (a) of Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;
- (b) of cash to the extent not expressly prohibited under the terms of the Finance Documents;
- (c) arising as a result of any Permitted Security;
- (d) constituted by or required as part of a Permitted Transaction and, if pursuant to paragraph (c) of the definition of Permitted Transaction, to another MGO Group Member;
- (e) which is an MGO Shares Disposal **provided that** such MGO Shares Disposal is on arm's length or better terms from the perspective of that MGO Group Member and the Relevant Disposal Proceeds in respect of such MGO Shares Disposal are applied to prepay the Loans in accordance with Clause 9.3 (*Relevant Disposal Proceeds*), Clause 9.6 (*Proceeds Account*) and Clause 9.7 (*Application of Proceeds*);
- (f) which is a Privatisation Disposal;
- (g) of assets by a MGO Group Member to another Obligor **provided that** if the asset disposed of is subject to Transaction Security at the time of disposal it shall be disposed of on the basis that it shall remain subject to, or otherwise become subject to, equivalent Security under a Security Document following disposal;
- (h) constituted by a Permitted Transaction;
- (i) (without prejudice to the possibility that the same may constitute an Event of Default) of assets of a MGO Group Member (other than any shares of the MGO Co or any ListCo Shares) compulsorily acquired, seized or expropriated by or by order of any central or local Governmental Authority and not by reason of any default on the part of a MGO Group Member;
- (j) approved by the Majority Lenders;
- (k) of Equity Funded ListCo Shares; and
- (l) of a Permitted Hedging Transaction (including any unwinding or termination thereof) to the extent not restricted under the terms of the Intercreditor Agreement.

"Permitted Financial Indebtedness" means:

- (a) any Financial Indebtedness arising under any Finance Document;
- (b) any Parent Debt;

- (c) any Financial Indebtedness arising under a Permitted Loan, a Permitted Guarantee or a Permitted Transaction;
- (d) any Financial Indebtedness arising under a Permitted Hedging Transaction;
- (e) any Financial Indebtedness to which the Majority Lenders have given their prior written consent; and
- (f) any Financial Indebtedness (all or part of) the proceeds of which are immediately applied on drawdown (or will be so immediately applied on drawdown) to repay in full the Total Outstanding Amount.

"Permitted Guarantee" means:

- (a) any guarantee arising under any Finance Document;
- (b) any guarantee arising under any MGO Transaction Document;
- (c) any customary guarantee in relation to a Permitted Hedging Transaction;
- (d) any guarantee given by any MGO Group Member in favour of directors and officers of any MGO Group Member in respect of their respective functions as such which is, in each case, in a customary form and subject to customary limitations;
- (e) any guarantee given to professional (including financial) advisors and consultants in the ordinary course of day to day business (which is in a customary form and subject to customary limitations);
- (f) any guarantee given in the ordinary course of documentation of an acquisition or disposal transaction which is (or will be subject to the relevant Lender consent) a Permitted Acquisition or Permitted Disposal, which is in customary form and subject to customary limitations;
- (g) any guarantee in respect of Financial Indebtedness (including any guarantee in any mandate or commitment letter in respect of any such Financial Indebtedness) falling within paragraph (f) of the definition of Permitted Financial Indebtedness;
- (h) any guarantee required by a court, tribunal, arbitral body or agency in connection with arbitration and other legal proceedings not otherwise constituting an Event of Default; and
- (i) any guarantee arising under the M&A Advisory Letter or the Custodian Agreement.

"Permitted Hedging Transaction" means any derivative transaction entered into by the Company with a Lender (or an Affiliate of a Lender) in respect of any interest payable under the Finance Documents and documented by a Hedging Agreement and any replacement or extension thereof permitted under this Agreement and the Intercreditor Agreement **provided that** the aggregate notional amount of any and all

such derivative transactions does not at any time exceed 100% of the aggregate outstanding principal amount of the Facility at such time.

"Permitted Holding Company Activity" means, in respect of each Obligor and the Parent (unless otherwise specified below):

- (a) holding shares in its direct and indirect Subsidiaries and/or the ListCo;
- (b) any activity constituting a Permitted Transaction;
- (c) those activities expressly set out (and incurring any liability) in the Structure Report, the Privatisation Paper, the M&A Advisory Letter, the Custodian Agreement, the Voting Undertaking or the Transaction Documents;
- (d) holding cash or Cash Equivalent Investments;
- (e) in the case of the Parent, making a Distribution;
- (f) in the case of an Obligor, making a Permitted Loan and, in the case of the Parent, making any loan to its shareholders or to the Company;
- (g) in the case of an Obligor, receiving a Permitted Loan or (in the case of the Company) incurring any Parent Debt;
- (h) incurring any Financial Indebtedness or other liabilities under the Finance Documents or in respect of Permitted Hedging Transactions;
- (i) granting any Security under the Security Documents;
- (j) giving any Permitted Guarantee;
- (k) any Permitted Share Issue;
- (l) (in the case of the Parent only and without prejudice to Clause 9.2 (*Exit*)) issuing any shares to any person, granting to any person any conditional or unconditional option, warrant or other right to call for the issue or allotment of, subscribe for, purchase or otherwise acquire any of its shares (including any right of pre-emption, conversion or exchange), or altering any right attaching to any of its share capital;
- (m) incurring liability to pay Tax, where the liability is incurred in the ordinary course of activities which it is permitted to do under this Agreement, and paying that Tax;
- (n) entering into and giving effect to any arrangements regarding the issue or subscription of New Equity and/or the borrowing or making of New Loans;
- (o) in the case of a company incorporated in the Cayman Islands, Delaware, the British Virgin Islands, Singapore, Bermuda or Hong Kong:

- (i) employing the services of a registered office provider and/or registered agent to provide customary services, and paying (and incurring liability to pay) the customary and reasonable fees of such provider; or
- (ii) paying fees to maintain corporate existence and good standing and/or to conduct its administration in accordance with applicable laws and regulations;
- (p) (in the case of the Parent) being a debtor in respect of any Financial Indebtedness owing to any other Restricted Person; and
- (q) engaging in such other activities as are customary for a non trading holding company in a transaction of this nature.

"Permitted Loan" means:

- (a) a loan made by an Obligor to:
 - (i) another Obligor; or
 - (ii) (to the extent funded solely from the proceeds of Available Parent Funds) the ListCo **provided that** each Obligor that is a creditor in respect thereof grants Transaction Security over all its rights and interests in respect of such loan or such rights and interests become subject to Transaction Security granted by such Obligor;
- (b) any cash credit balance at a bank or other financial institution; and
- (c) any loan or credit granted with the prior consent of the Majority Lenders.

"Permitted Purpose" means any purpose referred to in paragraphs (a) to (c) (inclusive) of Clause 3.1 (*Purpose*).

"Permitted Security" means:

- (a) any Security or Quasi-Security created or granted by a MGO Group Member in the ordinary course of its bank and/or securities account and/or investment arrangements and as part of the relevant bank's, custodian's, securities intermediary's and/or broker's standard terms and conditions;
- (b) any Security or Quasi-Security created pursuant to any Finance Document;
- (c) any netting or set off arrangement entered into under a Permitted Hedging Transaction;
- (d) any Quasi-Security arising as a result of a Disposal which is a Permitted Disposal;
- (e) encumbrances over any assets of a MGO Group Member (other than in respect of any shares of the MGO Co or any ListCo Shares) arising pursuant to court proceedings or imposed by a Governmental Authority under applicable law where the underlying payment obligation can be lawfully withheld, is being

contested in good faith and adequate reserves with respect thereto (as determined by the relevant MGO Group Member in good faith) are maintained on the books of the relevant MGO Group Member;

- (f) any Security or Quasi-Security to which the Majority Lenders have given their consent;
- (g) any escrow arrangements relating to a disposal transaction which is (or will be subject to the relevant Lender consent) a Permitted Disposal, including those in favour of any Tax, customs or bonding authorities, which are in customary form and subject to customary limitations; and
- (h) any Security or Quasi-Security created or granted by a MGO Group Member under or pursuant to the Custodian Agreement.

"Permitted Share Issue" means:

- (a) the issue by the Company of New Equity if the New Equity is subject to the same Security under the Security Documents as the Company's shares already in issue;
- (b) the issue of shares by any MGO Group Member to another MGO Group Member which is its immediate Holding Company immediately prior to that share issue if the new shares are subject to the same Security under the Security Documents (if any) as the shares already in issue;
- (c) an issue of shares by a MGO Group Member (other than the Company) to its immediate Holding Company or another MGO Group Member (which is owned by the Company directly or indirectly in at least the same proportion and which is a Permitted Acquisition), where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly issued shares (to the extent held by an Obligor) are also subject to the Transaction Security on the same terms;
- (d) any issue of shares or equity interests which constitutes a Permitted Transaction; and
- (e) the issue by any Obligor of shares in exchange for Acceptable Assets to its immediate Holding Company immediately prior to that share issue (whether contributed to that Obligor or any other Obligor) **provided that** the shares issued or to be issued by that Obligor are subject to the same Security under the Security Documents as that Obligor's shares already in issue.

"Permitted Transaction" means:

- (a) any intra-MGO Group loan which is a Permitted Loan;
- (b) subject to the Intercreditor Agreement, any transaction expressly required pursuant to the Transaction Documents or any Disposal, Financial Indebtedness, guarantee, indemnity or Security or Quasi-Security incurred, given or arising under the Transaction Documents;

- (c) a reorganisation involving the business or assets of, or shares of (or other interests in), any MGO Group Member (other than the Company) where all of the business, assets and shares of (or other interests in) the relevant MGO Group Member (other than the Company) continue to be owned directly or indirectly by the Company in the same or a greater percentage as prior to such reorganisation save for:
- (i) the shares of (or other interests in) any MGO Group Member (other than the Company) which has been merged into another MGO Group Member (other than the Company) or which has otherwise ceased to exist (including by way of the collapse of a solvent partnership or solvent winding up of a corporate entity) as a result such reorganisation which is otherwise permitted in accordance with this definition;
 - (ii) the business, assets and shares of (or interests in) the relevant MGO Group Members which cease to be owned directly or indirectly by the Company:
 - (A) as a result of a disposal or merger permitted under, but subject always to the terms of, this Agreement; or
 - (B) as a result of a cessation of business or solvent winding up of a MGO Group Member (other than the Company) in conjunction with a distribution of all or substantially all of its assets remaining after settlement of its liabilities to its immediate shareholder(s) or other persons directly holding partnership or other interests in it in proportion to their shareholdings or other ownership interests; or
 - (C) as a result of a disposal of shares (or partnership or other ownership interests) in a MGO Group Member (other than the Company) required to comply with applicable laws **provided that** any such disposal is limited to the minimum amount required to comply with such applicable laws,

and where the Lenders (or the Security Agent on their behalf) will continue to have the same or substantially equivalent guarantees and security (ignoring for the purpose of assessing such equivalency any resetting of applicable hardening periods and any limitations which do not materially and adversely affect the value or enforceability of those guarantees and Security taken as a whole, and other than guarantees and Security previously provided from any entity which has ceased to exist as contemplated above) over the same or substantially equivalent assets and over the shares (or other interests) in the transferee other than over any shares (or other interests) which have ceased to exist as contemplated above, in each case to the extent such assets, shares or other interests are not disposed of as permitted under, but subject always to, the terms of this Agreement;

- (d) any reorganisation, step, action or event expressly set out in or contemplated by the Structure Report and/or the Privatisation Paper, or the actions or

intermediate steps necessary to implement any such reorganisation, step, action or event;

- (e) a reduction by a MGO Group Member (other than the Company) of its share or equity capital **provided that** as a result of such reduction no material adverse tax consequences would arise;
- (f) any conversion of:
 - (i) intra-MGO Group loans between a Holding Company and its direct Subsidiary; or
 - (ii) Parent Debt,
 - (iii) into distributable reserves or share or equity capital **provided that** if such relevant loan was subject to security in favour of the Lenders immediately before the conversion, the Security Agent will enjoy equivalent security over such share or equity capital after the conversion;
- (g) any payments or other transactions specifically described in the MGO Transaction Documents, the Custodian Agreement, the Voting Undertaking, the M&A Advisory Letter, the Structure Report and/or the Privatisation Paper (any intermediate steps or actions necessary to implement the transactions described in the Structure Report and/or the Privatisation Paper shall be regarded as a Permitted Transaction **provided that** they could not reasonably be expected to be materially adverse to the interests of the Lenders); and
- (h) any other merger, reorganisation or transaction permitted by the Majority Lenders.

"Permitted Transferee" means any bank, financial institution 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 relevant Existing Lender, a Conflicted Lender or a Distressed Investor and, in either case, which is not an Agreed Lender.

"Privatisation" means the ListCo Shares not being listed on the Main Board of the HKSE or an Alternative Acceptable Exchange other than any delisting which would constitute an Event of Default under paragraph (a) of Clause 23.15 (*Cessation of listing or suspension of trading*).

"Privatisation Disposal" means a Privatisation Disposal (MSOT) and a Privatisation Disposal (Target).

"Privatisation Disposal (MSOT)" means the Disposal of any Acquired MGO Shares by the MGO Co to the MSOT Trustee on behalf of the MSOT completed while a Privatisation is continuing and pursuant to the steps contemplated by the Privatisation Paper.

"Privatisation Disposal (Target)" means the Disposal of any Acquired MGO Shares by the MGO Co to the Target completed while a Privatisation is continuing and pursuant to the steps contemplated by the Privatisation Paper.

"Privatisation Paper" means the document entitled "Project Jupiter – Privatisation Steps" prepared by Clifford Chance and dated December 2014 (in the original form as delivered pursuant to paragraph 3(a) of Part I of Schedule 2 (*Initial Conditions Precedent*)).

"Privatisation Prepayment Cap" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Privatisation Start Date" means, in respect of a Privatisation, the first date on which such Privatisation occurs.

"Proceeds Account" means the cash account maintained in the name of the Company with the Facility Agent's offshore banking unit in Taiwan with account number 90121-100020-2, together with any replacement or substitute of that account (whether by way of transfer, renewal, re-designation, replacement, re-numbering or otherwise) and any sub-accounts thereof.

"Prolonged Suspension" means an Acquisition Related Suspension which has continued for at least 120 consecutive Trading Days (the date falling after the last Trading Day of such 120 consecutive Trading Day period being the **"Prolonged Suspension Start Date"**).

"Public Float Requirement" means any requirement pursuant to Rule 8.08 of the Listing Rules.

"Quasi-Security" means:

- (a) any arrangement or transaction under which an Obligor or any other MGO Group Member will sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or reacquired by an Obligor or any other MGO Group Member;
- (b) any arrangement or transaction under which an Obligor will sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) any title retention arrangement;
- (d) 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
- (e) any other preferential arrangement having a similar effect,

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

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two London Business Days before the first day of that period unless

market practice differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the Relevant Interbank Market for that currency (and if quotations for that currency and period would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by the Reference Banks, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market in US Dollars and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

"Reference Banks" means, in relation to LIBOR, the principal London offices of Barclays Bank PLC, J.P. Morgan plc, HSBC Bank plc and Bank of America, N.A., London Branch, or such other banks as may be appointed by the Facility Agent with the consent of the Company.

"Regulation U" or **"Regulation X"** means Regulation U or X, as the case may be, of the Federal Reserve Board, as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulatory Restrictions" means:

- (a) export control restrictions and the U.S. State Department's Directorate of Defense Trade Controls and the International Traffic in Arms Regulations, the regulations promulgated and rulings issued thereunder, and any permits, licences, consents, approvals and authorisations required pursuant thereto, including as further detailed in the Covington Memorandum; or
- (b) the consents, approvals and/or waivers required pursuant to the Telecommunications Ordinance (Chapter 106 of the Laws of Hong Kong), the Takeovers Code and/or the Non-Domestic Television Programme Service Licence, including as further detailed in paragraphs 2.7 and 2.8 of the report referred to in paragraph (a) of the definition of "Legal Reports".

"Reimbursement" means any reimbursement effected by way of a Reimbursement Transfer in respect of any Equity Funded Total Cost which has already been incurred.

"Reimbursement Transfer" means any transfer of funds from the Disbursement Account to the Settlement Account pursuant to paragraph (b) of Clause 6.2 (*Permitted purposes*) and Clause 6.3 (*Disbursement conditions precedent*) for the purpose of a Reimbursement.

"Related Fund", in relation to a trust, fund or other entity (the **"first fund"**), means another trust, fund or other entity which is managed or advised by:

- (a) the same investment manager or investment advisor as the first fund; or
- (b) an Affiliate of the investment manager or investment advisor of the first fund.

"Relevant A Amount" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Relevant B Amount" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Relevant Disposal Proceeds" means in relation to any MGO Shares Disposal, an amount equal to 60% of the higher of:

- (a) the product of:
 - (i) the Total Cost as at the date on which such MGO Shares Disposal is completed (the "**Disposal Completion Date**"); and
 - (ii) the proportion borne by:
 - (A) the number of the Acquired MGO Shares disposed of or to be disposed of pursuant to such MGO Shares Disposal; to
 - (B) the number of all the Acquired MGO Shares acquired by the MGOCo (whether or not subsequently disposed of) up to the Disposal Completion Date; and
- (b) the Net Disposal Proceeds arising from such MGO Shares Disposal.

"Relevant Interbank Market" means the London interbank market.

"Relevant Jurisdictions" means, in relation to an Obligor or, as applicable, the Parent:

- (a) its jurisdiction of incorporation; and
- (b) any jurisdiction where any asset subject to or intended to be subject to Security created by a Security Document is situated; and
- (c) any jurisdiction where it conducts a material part of its business.

"Relevant Lender" has the meaning ascribed to such term in Clause 24.13 (*Right of Replacement*).

"Remaining Amount" has the meaning ascribed to such term in Clause 7.1 (*Settlement Release and repayment (Equity True-Up Amount)*).

"Repeating Representations" means each of the representations set out in Clauses 20.1 (*Status*) to 20.6 (*Governing law and enforcement*), paragraph (a) of Clause 20.9 (*No default*) and Clause 20.12 (*Pari passu ranking*).

"Reports" means the Legal Reports and the Structure Report.

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

"Required Interest Reserve Period" means, in relation to any date, the period starting on that date and ending on the date falling six months thereafter (or, if earlier, the Extended Final Maturity Date).

"Reservations" means:

- (a) the principle that certain (including equitable) remedies may be granted or refused at the discretion of a court, the principle of reasonableness and fairness where implied by law and the limitation of enforcement by laws relating to bankruptcy, insolvency, reorganisation, court schemes, administration, moratoria and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable statutes of limitation (or equivalent legislation), the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of acquiescence, set-off or counterclaim;
- (c) similar principles, rights and defences in respect of the enforceability of a contract, agreement or undertaking under the laws of any Relevant Jurisdiction;
- (d) 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;
- (e) 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;
- (f) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (g) the principle that the creation or purported creation of Security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which Security has purportedly been created;
- (h) the possibility that courts in Taiwan may not recognize a true joint and several creditor agreement existing among the Secured Parties, and therefore may only grant enforcement of the security interests under any Transaction Security governed by the laws of Taiwan up to the amount of the underlying claim of the Security Agent under the Secured Liabilities; and
- (i) any other matters which are set out as qualifications or reservations as to matters of law of general application and limiting the obligations of any of the Obligors or the Parent and which are set out in the Legal Opinions (as if references therein to the relevant opinion documents were references to any document the representations and warranties hereunder in respect of which are qualified by the Reservations).

"Restricted Payment" means to:

- (a) pay, repay or prepay any principal, interest or other amount on or in respect of, or redeem, purchase or defease, any Financial Indebtedness owing to any Restricted Person;
- (b) make any investment in, or pay any fee or commission or make any advance or other kind of payment to, any Restricted Person other than on terms at least as favourable to that MGO Group Member as would be the case on an arm's length basis; or
- (c) enter into any arrangement which imposes an obligation on any MGO Group Member in favour of a Restricted Person other than on terms at least as favourable to that MGO Group Member as would be the case on an arm's length basis.

"Restricted Person" means:

- (a) any Sponsor Group Member (other than a MGO Group Member or a ListCo Group Member);
- (b) any Holding Company of the Company;
- (c) any person with a voting interest (direct or indirect) in the shares in the Company;
- (d) any joint venture, consortium, partnership or similar arrangement of which any person described in paragraphs (a) to (c) above is a member; and
- (e) any Affiliate (other than a MGO Group Member) of any person described in paragraphs (a) to (d) above,

except to the extent that any such person is acting in its capacity as a Finance Party.

"Sale" means a disposal of all or substantially all of the assets or business of the MGO Group or (on and from the SPA Completion Date) the ListCo Group (whether in a single transaction or a series of related transactions).

"Sanctions" means any sanctions administered or enforced by the United States including the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"Scheduled Closing Time" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Screen Rate" means, in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for US Dollars for the relevant period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement 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 Reuters. If such page or service ceases to be available, the Facility Agent may specify another

page or service displaying the relevant rate after consultation with the Company and the Lenders.

"Secured Documents" means the Finance Documents and, if the relevant hedge counterparty has acceded to the Intercreditor Agreement as Hedge Counterparty (as defined therein), the Hedging Agreements.

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

"Secured Party" means a Finance Party or a Hedge Counterparty (as defined in the Intercreditor Agreement).

"Securities Account" means the securities account maintained in the name of the MGOC Co with the Custodian with account number C00092, together with any replacement or substitute of that account (whether by way of transfer, renewal, re-designation, replacement, re-numbering or otherwise) and any sub-accounts thereof.

"Securities Account Charge" means the securities account charge agreement dated on or before the Signing Date between the MGOC Co and the Security Agent.

"Securities Account Notice" means the notice of charge over the Securities Account and the Securities Cash Account required to be delivered by the MGOC Co to the Custodian under (and substantially in the form set out in) the Securities Account Charge on or prior to the Initial Drawdown Date.

"Securities Cash Account" the cash account maintained in the name of the MGOC Co with the Custodian with account number 904-20-117118-0, together with any replacement or substitute of that account (whether by way of transfer, renewal, re-designation, replacement, re-numbering or otherwise) and any sub-accounts thereof.

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

"Security Document" means any Original Security Document and any other security document that may at any time be given (whether by an Obligor, the Parent or any other person) as security for any of the Secured Liabilities pursuant to or in connection with any Secured Document.

"Security Principles" means the principles set out in Schedule 13 (*Security Principles*).

"Selection Notice" means a notice substantially in the form set out in Schedule 6 (*Selection Notice*) given in accordance with Clause 11 (*Interest Periods*) in relation to the Facility.

"Sellers" means:

- (a) GE Capital Equity Investments, Inc.;
- (b) GE Pacific-1 Holdings, Inc.;
- (c) GE Pacific-2 Holdings, Inc.; and
- (d) GE Pacific-3 Holdings, Inc.

"**Settlement Account**" means the cash account maintained in the name of MGOCO with CTBC Bank Co., Ltd., Hong Kong Branch with account number 901-10-117118-3, together with any replacement or substitute of that account (whether by way of transfer, renewal, re-designation, replacement, re-numbering or otherwise) and any sub-accounts thereof.

"**Settlement Date**" means the date falling one Disbursement Business Day after the Final Date.

"**Settlement Release**" means any transfer of any amount from the Disbursement Account to a bank account designated by the Company made in accordance with Clause 7.1 (*Settlement Release and prepayment (Equity True-Up Amount)*).

"**Settlement Utilisation**" means any Utilisation requested in accordance with Clause 7.2 (*Settlement Utilisation (Equity True-Up Amount)*).

"**SFC**" means the Securities and Futures Commission of Hong Kong.

"**SFC Executive**" means the Executive Director of the Corporate Finance Division of the SFC or any delegate of the Executive Director.

"**Signing Date**" means the date of this Agreement.

"**SPA**" means the share purchase agreement dated on or about the Signing Date between the SPA BidCo and the Sellers.

"**SPA BidCo**" means Jupiter Investment Holdings, L.L.C., a limited liability company formed under the laws of the State of Delaware, whose registered office is at The Corporation Trust Company, Corporation Trust Centre, 1209 Orange Street, City of Wilmington, County of New Castle, 19801, Delaware, United States.

"**SPA Borrower**" means Jupiter Intermediate Limited, an exempted company incorporated under the laws of the Cayman Islands with registration number 293155, whose registered office is at 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands.

"**SPA Change of Control**" means a Change of Control (as defined in the original form of the SPA Facilities Agreement as at the Signing Date).

"**SPA Completion Date**" has the meaning ascribed to the term "Completion Date" in the SPA Facilities Agreement.

"**SPA Facilities Agreement**" means the facilities agreement to be entered into on or about the Signing Date between, amongst others, Jupiter Parent Limited as parent, the

SPA Borrower as borrower, the BidCo, CTBC Bank Co., Ltd. as facility agent and Cathay United Bank Co., Ltd. as security agent.

"**SPA Financial Indebtedness**" means any Financial Indebtedness of the SPA Borrower incurred under or pursuant to the SPA Facilities Agreement.

"**SPA Group Member**" means a SPA Group Member (as defined in the SPA Facilities Agreement).

"**SPA Price**" means the price attributable to each ListCo Share under the SPA (based on the Purchase Price (as defined in the SPA)).

"**SPA HK\$ Price**" means the price (in HK\$) attributable to each ListCo Share under the SPA, being equal to (i) "A" as specified in clause 4.5; or (if applicable) (ii) the HK\$ price per ListCo Share specified in clause 4.6, in each case, of the copy of the SPA delivered pursuant to paragraph 3(a) of Part I of Schedule 2 (*Initial Conditions Precedent*).

"**Specified Time**" means a time determined in accordance with Schedule 9 (*Timetables*).

"**Sponsor**" means Carlyle Asia Partners IV, L.P. or any other fund advised, controlled or managed by its general partner, CAP IV, L.L.C, and/or its Affiliates.

"**Sponsor Group**" means (a) the Sponsor; (b) Affiliates of the Sponsor; (c) funds controlled, advised or managed by the Sponsor; (d) any partnership of which the Sponsor or any of its Affiliates is a partner, (e) any trust of which a Sponsor is a trustee; and (e) any trust, fund or other entity which is managed by, or is under the control of, a Sponsor; **provided that** any such trust, fund or other entity 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 a Sponsor which have been established for the primary or main purpose of investing in the share capital of companies shall not constitute a Sponsor Group Member (each a "**Sponsor Group Member**").

"**Structure Report**" means the tax structuring memorandum prepared by EY dated December 2014.

"**Subordinated Debt**" has the meaning ascribed to such term in the Intercreditor Agreement.

"**Subsidiary**" means, in relation to a company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) of which more than half the issued voting share capital is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or

(c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

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

"Syndication" means co-underwriting and general syndication of the Facility.

"Takeovers Code" means The Codes on Takeovers and Mergers and Share Buy-backs of the SFC.

"Target" means Bowenvale Limited.

"Target Shares" means 144,131,474 'Y' ordinary shares in the issued share capital of the Target (being approximately 49.5% of the total issued share capital of the Target).

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any Indirect Tax or any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Top Up Date" means the date falling six Months from the Initial Drawdown Date.

"Total Commitments" means the aggregate of the Commitments.

"Total Cost" means, in respect of any date, the aggregate amount of:

- (a) the SPA Price multiplied by the number of the Acquired MGO Shares purchased by the MGOCo up to that date;
- (b) the aggregate amount paid or payable into the Interest Reserve Account up to that date in order to comply with the Minimum Balance required on or prior to that date; and
- (c) all fees, costs, and expenses payable up to that date pursuant to Clauses 13 (*Fees*) or 18 (*Costs and Expenses*) and/or in relation to the MGO Transaction (including stamp duty).

"Total Outstanding Amount" means, at any time, the aggregate amount of the Loans, all accrued but unpaid interest thereon and all other amounts accrued but unpaid under the Finance Documents at that time.

"Trading Day" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Transaction Documents" mean the Secured Documents, the MGO Transaction Documents, the Equity Documents and the Parent Loan Agreement (if any).

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

"Transfer" means a Debt Purchase Transaction entered into by a Lender as assignor, transferor, grantor of any sub-participation or equivalent.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 7 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Company.

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

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

"Treasury Transaction" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"Trigger Date" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"Trigger Event" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

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

"US" and **"United States"** means the United States of America, its territories and possessions.

"US Bankruptcy Law" means the United States Bankruptcy Code of 1978 (Title 11 of the United States Code), any other United States federal or state bankruptcy, insolvency or similar law.

"US Guarantor" means a Guarantor that is organised, incorporated or formed under the laws of the United States or any state thereof (including the District of Columbia).

"US Tax Obligor" means:

- (a) the Company (if it is resident for tax purposes in the US); or
- (b) an Obligor some or all of whose payments under the Finance Documents are from the sources within the US for US federal income tax purposes.

"USA Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 of the United States, as amended.

"Utilisation" means a Loan.

"Utilisation Date" means the date on which a Utilisation is made.

"**Utilisation Request**" means a notice substantially in the form set out in Schedule 5 (*Utilisation Request*).

"**Valuation Time**" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

"**Voting Participation**" means a Participation which includes 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).

"**Voting Undertaking**" means the voting undertaking dated on or about the Signing Date and provided by the MGOCo in favour of CITIC and Able Star Associates Limited.

"**VWAP**" has the meaning ascribed to such term in Clause 22.24 (*Loan to Value*).

1.2 Construction

- (a) Unless a contrary indication appears, in this Agreement:
- (i) the "**control**" of one person (the "**first person**") by another person (the "**second person**") or the first person being "**controlled**" by the second person means that the second person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and/or remove all or a majority of the members of the board of directors or other governing body of the first person or otherwise controls or has the power of control over the affairs and policies of the first person;
 - (ii) the "**equivalent**" in any currency (the "**first currency**") of any amount in another currency (the "**second currency**") shall, unless otherwise specified, 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 for the purchase of the first currency with the second currency in the Hong Kong foreign exchange market at or about 11:00 a.m. (or such other time as may be specified) 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);
 - (iii) the "**Facility Agent**", any "**Finance Party**", any "**Hedge Counterparty**", any "**Lender**", any "**Mandated Lead Arranger**", any "**Obligor**", any "**Party**", any "**Secured Party**", the "**Security Agent**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (iv) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, 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 or other agreement or instrument (in any other manner whatsoever) and including any waiver or consent granted in respect of any term of any Finance Document from time to time;

- (v) "**guarantee**" means 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;
- (vi) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (vii) "**including**" means including without limitation and "**includes**" and "**included**" shall be interpreted accordingly;
- (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (ix) a "**regulation**" includes any regulation, rule, order, decree, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation or of any court;
- (x) "**shares**" or "**share capital**" includes equivalent ownership or equity interests and "**shareholder**" and similar expressions shall be construed accordingly;
- (xi) any reference to a certification or confirmation to be made by an Authorised Signatory of a MGO Group Member (or any Holding Company thereof) is to a certification to be made by such Authorised Signatory, following due and careful enquiry into the matters the subject of the certificate or confirmation, including as to the assets, operations and financial condition of the MGO Group taken as a whole, but without personal liability on the part of such Authorised Signatory (save in the case of fraud, gross negligence or wilful misconduct of such Authorised Signatory);
- (xii) "**HK\$**" means the lawful currency of the Hong Kong SAR;
- (xiii) "**US Dollars**" and "**US\$**" denote the lawful currency of the United States;

- (xiv) a provision of law is a reference to that provision as amended or re-enacted; and
- (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 is "**continuing**" if it has not been remedied or waived.
- (e) Any obligation of any MGO Group Member to make "**due and careful enquiry**" shall be satisfied by such due and careful enquiry being made by it through its directors as is practicable in the circumstances and it is assumed that such MGO Group Member has the knowledge of its directors.
- (f) When applying any monetary limits, thresholds and other exceptions to the undertakings and Events of Default under the Finance Documents, the equivalent to an amount in US Dollars shall be calculated as at the date of the MGO Group or ListCo Group incurring or making the relevant action.
- (g) No Event of Default or breach of any representation and warranty or undertaking under the Finance Documents shall arise merely as a result of a subsequent change in the US Dollar equivalent of any relevant amount due to fluctuations in exchange rates.

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Company a term loan facility in US\$ in an aggregate amount equal to the Total Commitments.

2.2 Increase

- (a) The Company may by giving prior notice to the Facility Agent after (or, at the Company's election, prior to (**provided that** such notice is expressed to be effective only on or after the occurrence of)) the effective date of a cancellation of:
 - (i) the Available Commitments of a Defaulting Lender in accordance with Clause 9.10 (*Right of cancellation in relation to a Defaulting Lender*);
 - (ii) the Commitments of an Illegal Lender; or
 - (iii) the Commitments of a Lender in accordance with paragraph (a) of Clause 24.13 (*Right of Replacement*),

request that the Commitments relating to the Facility be increased (and the Commitments relating to the Facility shall be so increased) in an aggregate amount of up to the amount of the Available Commitments or Commitments relating to the Facility so cancelled as follows:

- (iv) the increased Commitments will be assumed by one or more Lenders or other banks, financial institutions, trusts, funds or other entities (each an "**Increase Lender**") selected by the Company (each of which shall not be a MGO Group Member or a ListCo Group Member) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;
 - (v) each of the Obligor and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligor and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;
 - (vi) each Increase Lender shall become a Party as a "**Lender**" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;
 - (vii) the Commitments of the other Lenders shall continue in full force and effect; and
 - (viii) any increase in the Commitments relating to the Facility shall take effect on the date specified by the Company in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
- (b) An increase in the Commitments relating to the Facility will only be effective on:
- (i) the execution by the Facility Agent of an Increase Confirmation from the relevant Increase Lender; and
 - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:
 - (A) the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor 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 the increased Commitments by that Increase Lender. The

Facility Agent shall promptly notify the Company and the Increase Lender upon being so satisfied.

- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the 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 this Agreement on or prior to the date on which the increase becomes effective.
- (d) The Increase Lender shall, on the date upon which the 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 24.4 (*Assignment or transfer fee*) if the increase was a transfer pursuant to Clause 24.6 (*Procedure for Transfer*) and if the Increase Lender was a New Lender.
- (e) Clause 24.5 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
 - (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
 - (iii) a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".
- (f) The Parties acknowledge and agree that the effective date of any increase pursuant to this Clause 2.2 may be the same date as the effective date of any cancellation referred to in paragraph (a)(i) to (a)(iii) above.

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) Subject to paragraph (d) below, the rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (c) Subject to paragraph (d) below, a Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.
- (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 Secured

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 Obligors pursuant to Article 283 of the R.O.C. Civil Code and shall be entitled to pursue all such claims against the 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 Secured Parties and each Secured Party agrees that it shall appoint the Security Agent to exercise and enforce the Secured Parties' rights arising out of the Finance Documents (insofar as they relate to the Taiwanese Transaction Security) pursuant to clause 17.1 (*Appointment of the Security Agent*) of the Intercreditor Agreement.

2.4 **Obligors' Agent**

- (a) Each Obligor (other than the Company) irrevocably appoints the Company to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) the Company on its behalf to supply all information concerning itself contemplated by the Finance Documents to the Finance Parties and to give and receive all notices, consents and instructions (including Utilisation Requests and Selection Notices), to agree, accept and execute on its behalf all documents in connection with the Finance Documents (including amendments and variations of, and consents under, any Finance Document) and to execute any new Finance Document and to take such other action as may be necessary or desirable under, or in connection with, the Finance Documents; and
 - (ii) each Finance Party and each Hedge Counterparty to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Company.
- (b) Each Obligor (other than the Company) confirms that:
 - (i) it will be bound by any action taken by the Company under, or in connection with, any Finance Document; and
 - (ii) each Finance Party and each Hedge Counterparty may rely on any action purported to be taken by the Company on behalf of that Obligor.

2.5 **Acts of the Company**

- (a) The respective liabilities of each of the Obligors under the Finance Documents shall not be in any way affected by:
 - (i) any actual or purported irregularity in any act done, or failure to act, by the Company;
 - (ii) the Company acting (or purporting to act) in any respect outside any authority conferred upon it by any Obligor; or

- (iii) any actual or purported failure by, or inability of, the Company to inform any Obligor of receipt by it of any notification under the Finance Documents.
- (b) In the event of any conflict between any notices or other communications of the Company and any other Obligor, those of the Company shall prevail.

3. **PURPOSE**

3.1 **Purpose**

The Company shall apply all amounts borrowed by it under the Facility towards directly or indirectly (including by Reimbursement):

- (a) financing part of the MGO Consideration payable by the MGO Co pursuant to the MGO Transaction (and the settlement processes in respect thereof);
- (b) the payment of an amount into the Interest Reserve Account on each Utilisation Date up to the Minimum Balance on that date;
- (c) financing the payment of fees, costs and expenses under Clause 13 (*Fees*), Clause 18 (*Costs and Expenses*) and/or in relation to the MGO Transaction; and/or
- (d) financing a Settlement Release and/or a Settlement Utilisation in accordance with Clause 7 (*Settlement*).

3.2 **Monitoring**

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

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

- (a) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any Utilisation if, on or before 11:00 a.m. on the Utilisation Date, the Facility Agent has received (or, if not received, has waived the requirement for receipt thereof) all of the documents and other evidence listed in Part I and Part II of Schedule 2 (*Initial Conditions Precedent*), in each case (including all attachments thereto), in form and substance satisfactory to the Facility Agent (acting reasonably). The Facility Agent shall notify the Company and the Lenders promptly upon being so satisfied.
- (b) The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in relation to any proposed Utilisation (other than a proposed Settlement Utilisation) if such Utilisation would not cause the Loan/Equity Ratio to exceed 1.5:1 immediately after such Utilisation is made.

4.2 **Further conditions precedent**

Subject to Clause 4.4 (*Certain Funds*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) in respect of any proposed Utilisation if on the date of the Utilisation Request and on the proposed Utilisation Date, no Default is continuing or would result from the proposed Loan and the Repeating Representations to be made by each Obligor and the Parent are true in all material respects.

4.3 **Maximum number of Utilisations**

The Company may not deliver a Utilisation Request if, as a result of the proposed Utilisation, more than ten Loans (other than any Loan constituted by a Settlement Utilisation) would be outstanding.

4.4 **Certain Funds**

Notwithstanding anything to the contrary in any Finance Document, during the Availability Period, subject to Clauses 4.1 (*Initial conditions precedent*) and 6.3 (*Disbursement conditions precedent*), unless a Certain Funds Default or a Certain Funds Illegality Event is continuing or would result from the proposed Loan, no Finance Party shall:

- (a) invoke any condition set out in Clause 4.2 (*Further conditions precedent*) as a ground for refusing to make any Loan to the extent of its Available Commitment;
- (b) exercise any right, power or discretion to terminate or cancel the obligation to make any Loan;
- (c) have or exercise any right of rescission or similar right or remedy which it or they may have in respect of this Agreement in respect of any Loan;
- (d) take any step under Clause 23.17 (*Acceleration*) in respect of any Loan or that part of the Commitments which may be used by way of any Loan;
- (e) exercise any right of set-off or counterclaim in respect of any Loan; or
- (f) exercise any right, power or discretion to prevent the making of a Disbursement.

However, as soon as the Availability Period ends, and in relation to a Default to the extent that Default is continuing, all those rights, remedies and entitlements shall be available even though they have not been exercised or available during the Availability Period.

5. **UTILISATION**

5.1 **Delivery of a Utilisation Request**

The Company may utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
 - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
 - (iii) the proposed Interest Period complies with Clause 11 (*Interest Periods*);
 - (iv) in relation to any Utilisation (other than a Settlement Utilisation), it specifies the Disbursement Account as the account into which the proceeds of the Utilisation are expressed to be credited (except to the extent it irrevocably instructs and authorises the Facility Agent to deduct any amount from the proceeds of the Utilisation and apply such amount for any purpose referred to in paragraph (b) or (c) of Clause 3.1 (*Purpose*)); and
 - (v) in relation to a Settlement Utilisation, it specifies the account(s) and bank(s) to which the proceeds of the Settlement Utilisation are expressed to be credited.
- (b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be US\$.
- (b) In relation to any Utilisation Request, the amount of the proposed Loan must be an amount less than or equal to the Available Facility.

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 through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Facility Agent shall by the Specified Time notify each Lender of the amount of each Loan and the amount of its participation in that Loan.

5.5 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

6. DISBURSEMENTS

6.1 Delivery of a Disbursement Request

The Company may request a Disbursement by delivery to the Facility Agent of a duly completed Disbursement Request not later than the Specified Time (or such later time as the Facility Agent may agree in its absolute discretion).

6.2 Permitted purposes

The Company shall ensure that the proceeds of all Disbursements are:

- (a) applied towards a Permitted Purpose; and/or
- (b) transferred to the Settlement Account.

6.3 Disbursement conditions precedent

The Facility Agent will only be obliged to comply with Clause 6.6 (*Disbursement by the Facility Agent*) in relation to any Disbursement if:

- (a) not later than the Specified Time (or such later time as the Facility Agent may agree in its absolute discretion), the Facility Agent has received (or, if not received, has waived the requirement for receipt thereof):
 - (i) a certificate (which can be incorporated into the Disbursement Request in respect of such Disbursement) confirming:
 - (A) the Debt/Equity Cost Ratio at the time of giving effect to such Disbursement (taking into account any withdrawal from the Settlement Account in accordance with paragraph (e)(i) of Clause 22.27 (*Disbursement Account and Settlement Account*) which are proposed to be made prior to or simultaneously with such Disbursement; and/or any Reimbursement Transfer proposed to be made in the Disbursement Request in respect of such Disbursement) would not exceed 1.5:1; and
 - (B) setting out the amount of the Debt Funded Total Cost and Equity Funded Total Cost (and attaching payment receipts, account records in respect of the Disbursement Account or Settlement Account or other evidence of payment of, in each case, each Total Cost item) to be taken into account in calculating the Debt/Equity Cost Ratio referred to in paragraph (A) above; and
 - (ii) all of the documents and other evidence listed in Schedule 3 (*Conditions Precedent to Disbursements*) in relation to the payments to be funded by the Disbursement and, if any proposed withdrawal from the Settlement Account will be taken into account in calculating the Debt/Equity Cost Ratio in accordance with paragraph (a)(i) above, to be funded by such proposed withdrawal; and

- (b) (if any proposed withdrawal from the Settlement Account will be taken into account in calculating the Debt/Equity Cost Ratio in accordance with paragraph (a)(i) above) on or before 10:00 a.m. (or such later time as the Facility Agent may agree in its absolute discretion) on the proposed Disbursement Date, the Facility Agent has received (or, if not received, has waived the requirement for receipt thereof) a copy of the MGOCO's irrevocable instruction to the account bank in respect of the Settlement Account) to effect such proposed withdrawal (**provided that** the amount actually withdrawn will be permitted to be less than the amount proposed to be withdrawn if such difference arises solely as a result of the fluctuation of the exchange rate between US Dollars and Hong Kong Dollars from the date of the Disbursement Request to the date of the Disbursement **provided that** the Parties acknowledge that such difference may give rise to a Debt True-Up Amount),

in each case (including all attachments thereto), in form and substance satisfactory to the Facility Agent (acting reasonably). The Facility Agent shall notify the Company and the Lenders promptly upon being so satisfied.

6.4 **Maximum number of Disbursements**

There shall be no limit on the number of Disbursement Requests that the Company may deliver.

6.5 **Completion of a Disbursement Request**

- (a) Each Disbursement Request will not be regarded as having been duly completed unless:
- (i) the proposed Disbursement Date is a Disbursement Business Day;
 - (ii) the currency specified in a Disbursement Request is US Dollars;
 - (iii) the amount of the proposed Disbursement is an amount that is equal to or less than the amount standing to the credit of the Disbursement Account;
 - (iv) it specifies the account(s) to which the proceeds of the Disbursement are to be credited; and
 - (v) it specifies the purposes of the proceeds of the Disbursement which shall comply with Clause 6.2 (*Permitted purposes*) (including a breakdown showing the amount allocated to each of such purposes (including a Reimbursement Transfer, if any)).
- (b) Multiple Disbursements may be requested in a Disbursement Request.

6.6 **Disbursement by the Facility Agent**

If the conditions set out in this Agreement have been met, the Facility Agent shall make (and/or cause to be made) (and shall instruct the Security Agent to (and the

Security Agent shall) take all such action as is necessary to permit) the Disbursement to the bank(s) and account(s) listed in the relevant Disbursement Request.

7. SETTLEMENT

7.1 Settlement Release and prepayment (Equity True-Up Amount)

If at 9 a.m. on the Settlement Date there is any amount (the "**Remaining Amount**") standing to the credit of the Disbursement Account and:

- (a) if the Remaining Amount is greater than the Equity True-Up Amount, the Facility Agent shall (and shall instruct the Security Agent to (and the Security Agent shall) take all such action as is necessary to permit the Facility Agent to transfer (or cause to be transferred) an amount of the Remaining Amount equal to the Equity True-Up Amount to a bank account designated by the Company and the Company shall the apply (and hereby irrevocably authorises the Facility Agent and the Security Agent to (and the Facility Agent and the Security Agent shall each take all such action as is required to) apply (or cause to be applied) the remaining portion of the Remaining Amount (being equal to the difference between the Remaining Amount and the Equity True-Up Amount) to prepay the Loans, in each case on the Settlement Date; or
- (b) if the Remaining Amount is equal to or less than the Equity True-Up Amount, the Facility Agent shall instruct the Security Agent (and the Security Agent shall) transfer (or cause to be transferred) the Remaining Amount to a bank account designated by the Company, in each case, on the Settlement Date.

7.2 Settlement Utilisation (Equity True-Up Amount)

If at 9 a.m. on the Settlement Date the Remaining Amount is less than the Equity True-Up Amount, the Company may submit one (but only one) Utilisation Request in accordance with Clause 5 (*Utilisation*) to request a Loan in an amount equal to the difference between the Equity True-Up Amount and the Remaining Amount save that if no amount stands to the credit of the Disbursement Account but the Equity True-Up Amount is a positive number, the Company may submit one (but only one) Utilisation Request in accordance with Clause 5 (*Utilisation*) to request a Loan in an amount equal to the Equity True-Up Amount.

7.3 Settlement prepayment (Debt True-Up Amount)

If at 9 a.m. on the Settlement Date the Debt True-Up Amount is a positive number and there is:

- (a) any Remaining Amount, the Company shall:
 - (i) apply (and hereby irrevocably authorises the Facility Agent and the Security Agent to (and the Facility Agent and the Security Agent shall each take all such action as is required to) apply (or cause to be applied)) the Remaining Amount to prepay the Loans; and

- (ii) in addition to the prepayment referred to paragraph (i) above, prepay the Loans in an amount equal to the Debt True-Up Amount,

in each case on the Settlement Date; or

- (b) no Remaining Amount, the Company shall prepay the Loans in an amount equal to the Debt True-Up Amount on the Settlement Date.

7.4 Settlement prepayment (neutral)

If at 9 a.m. on the Settlement Date neither the Debt True-Up Amount nor the Equity True-Up Amount is a positive number and there is any Remaining Amount, the Company shall apply (and hereby irrevocably authorises the Facility Agent and the Security Agent to (and the Facility Agent and the Security Agent shall each take all such action as is required to) apply (or cause to be applied)) the Remaining Amount to prepay the Loans on the Settlement Date.

8. REPAYMENT

- (a) The Company shall repay the Loan(s) in full on the Final Maturity Date.
- (b) At any time on or prior to the date falling 10 Business Days prior to the Original Final Maturity Date, the Company may deliver an Extension Notice signed by an Authorised Signatory of the Company to the Facility Agent **provided that** no more than one Extension Notice may be delivered pursuant to this paragraph (b). On receipt by the Facility Agent of an Extension Notice delivered in accordance with this paragraph, the Original Final Maturity Date shall be automatically extended to the Extended Final Maturity Date **provided that** the Extension Fee is paid in accordance with the Arrangement Fee Letter.

9. PREPAYMENT AND CANCELLATION

9.1 Illegality

- (a) 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 or maintain its participation in any Utilisation:
 - (i) that Lender shall promptly notify the Facility Agent upon becoming aware of that event and the Facility Agent shall notify the Company as soon as reasonably practicable;
 - (ii) upon the Facility Agent notifying the Company, the obligations of that Lender to participate in any Utilisation under this Agreement will immediately be suspended;
 - (iii) upon the Facility Agent notifying the Company:
 - (A) the Commitment of that Lender will be immediately cancelled or, as the case may be, such Lender's Commitment shall be transferred to another person pursuant to Clause 24.13 (*Right of Replacement*); and/or

- (B) to the extent that such Lender's participation (or any part of such Lender's participation) has not been transferred pursuant to Clause 24.13 (*Right of Replacement*), the Company shall repay that Lender's participation (or part thereof) in the Utilisations on the last day of the Interest Period for each Utilisation occurring after the Facility Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law or regulation),

provided that such Lender's Commitments shall be either cancelled and/or transferred in full no later than the latest date permitted by law or regulation.

- (b) If the Facility Office of the relevant Lender becomes aware (i) that it will become unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation and (ii) of the impact on such unlawfulness on this Agreement, that Lender shall promptly notify the Facility Agent upon becoming aware of that event or of the relevant circumstances and its impact on this Agreement and the Facility Agent shall notify the Company.

9.2 **Exit**

If a Change of Control, Sale or (whilst any amount is outstanding under the SPA Facilities Agreement) SPA Change of Control occurs:

- (a) the Company shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) a Lender shall not be obliged to fund a Utilisation; and
- (c) the Facility shall immediately be cancelled and the Total Outstanding Amount shall become immediately due and payable.

9.3 **Relevant Disposal Proceeds**

The Company shall ensure that any Net Disposal Proceeds are paid into the Securities Cash Account in accordance with Clause 22.25 (*Securities Accounts*).

9.4 **Dividend Proceeds**

The Company shall ensure that:

- (a) 100% of any Dividend Proceeds are directly credited to the Securities Cash Account promptly upon being received by the MGOC; and
- (b) promptly upon being credited to the Securities Cash Account in accordance with paragraph (a) above, an amount equal to such Dividend Proceeds is transferred from the Securities Cash Account and credited to the Proceeds

Account (and each of the Company and the MGOC Co irrevocably authorises the Facility Agent and the Security Agent to (and the Facility Agent and the Security Agent shall) take all such action as is necessary to give effect thereto).

9.5 Net Privatisation Disposal Proceeds

The Company shall ensure that:

- (a) if the Privatisation Disposal (Target) is completed at the same time as or before the Privatisation Disposal (MSOT) is completed, all the Loans are prepaid in full on the earlier of: (i) the date falling 10 Business Days after the completion of the Privatisation Disposal (Target); and (ii) the date on which the MGOC Co receives the Net Privatisation Disposal Proceeds of the Privatisation Disposal (Target); or
- (b) if the Privatisation Disposal (MSOT) is completed before the Privatisation Disposal (Target) is completed:
 - (i) an amount equal to the Net Privatisation Disposal Proceeds of the Privatisation Disposal (MSOT) is applied in prepayment of the Loans on the earlier of: (i) the date falling 10 Business Days after the completion of the Privatisation Disposal (MSOT); and (ii) the date on which the MGOC Co receives the Net Privatisation Disposal Proceeds of the Privatisation Disposal (MSOT); and
 - (ii) all the Loans are prepaid in full on the earlier of: (i) the date falling 10 Business Days after the completion of the Privatisation Disposal (Target); and (ii) the date on which the MGOC Co receives the Net Privatisation Disposal Proceeds of the Privatisation Disposal (Target).

9.6 Proceeds Account

- (a) No amount may be withdrawn or transferred from the Proceeds Account except:
 - (i) to make prepayments under paragraphs (b) and (d) below;
 - (ii) for the withdrawal of interest under paragraph (e) below; or
 - (iii) with the prior consent of all the Lenders.
- (b) The Company may elect at any time and at its option to apply any amount standing to the credit of the Proceeds Account in prepayment and cancellation in accordance with Clause 9.7 (*Application of Proceeds*), and, in such case, shall irrevocably notify the Facility Agent of the proposed date for prepayment (which must be at least three Business Days after the date of the notice).
- (c) Notwithstanding paragraph (b) above, where any amount is credited to the Proceeds Account, the Company shall, within five Business Days of such amount being so credited, elect to apply all of such amount credited in accordance with Clause 9.7 (*Application of Proceeds*), and shall irrevocably

notify the Facility Agent of the proposed date of prepayment (which shall be at least three Business Days after the date of that notice but shall not be later than the last day of the then current Interest Period in relation to the Loan to be prepaid).

- (d) For so long as an Acceleration Date has occurred and is continuing the Company irrevocably authorises the Facility Agent to withdraw from the Proceeds Account, at any time, any amount standing to the credit of that account and apply that amount in prepayment and cancellation in accordance with paragraph (d) of Clause 9.7 (*Application of Proceeds*).
- (e) Interest which has accrued on the Proceeds Account may be withdrawn by the Company in accordance with the mandate relating to the Proceeds Account **provided that** no such withdrawal may be made while an Event of Default is continuing.

9.7 **Application of Proceeds**

- (a) Subject to paragraphs (b) and (c) below, any Relevant Disposal Proceeds or Dividend Proceeds in respect of which the Company has made an election under paragraph (b) or (c) of Clause 9.6 (*Proceeds Account*) shall be applied in prepayment of the Loans until the Loans have been satisfied in full.
- (b) Subject to paragraph (c) below, any amount to be applied in prepayment of any Loan under paragraph (a) above shall be applied on the earlier of the date of prepayment (if any) notified by the Company under paragraph (b) or (c) of Clause 9.6 (*Proceeds Account*) and the last day of the Interest Period relating to that Loan.
- (c) If, before the date on which any Relevant Disposal Proceeds or Dividend Proceeds are applied in accordance with paragraphs (a) and (b) above, the Acceleration Date occurs or any amount becomes due and payable under Clause 9.2 (*Exit*), those Relevant Disposal Proceeds or Dividend Proceeds shall be applied in repayment of the Total Outstanding Amount on the Acceleration Date or, as the case may be, the date on which that amount becomes so due and payable.
- (d) Any Relevant Disposal Proceeds or Dividend Proceeds which the Facility Agent withdraws from the Proceeds Account under paragraph (d) of Clause 9.6 (*Proceeds Account*) shall be applied on the Acceleration Date in repayment of the Total Outstanding Amount.

9.8 **Voluntary cancellation**

The Company 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 (but, if in part being a minimum of US\$1,000,000 and integral multiples of US\$500,000) of the Available Facility. Any cancellation under this Clause 9.8 shall reduce the Commitments of the Lenders rateably.

9.9 Voluntary prepayment

- (a) The Company may, if it gives the Facility Agent not less than three Business Days' (or, in the case of any prepayment pursuant to paragraph (b)(iv) of Clause 22.24 (*Loan to Value*), one Business Day's) prior notice or (such shorter period as the Facility Agent may agree), prepay the whole or any part of any Loan (but, if in part, being an amount that reduces such Loan by a minimum amount of US\$1,000,000 and integral multiples of US\$500,000) (or, in the case of paragraph (b)(iv) of Clause 22.24 (*Loan to Value*), any such lower amount as the Company may elect to voluntarily prepay pursuant thereto).
- (b) Each Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the applicable Available Facility is zero).

9.10 Right of cancellation in relation to a Defaulting Lender

- (a) If any Lender becomes a Defaulting Lender, the Company may, at any time whilst the Lender continues to be a Defaulting Lender, give the Facility Agent three Business Days' notice of cancellation of the Available Commitment of that Lender.
- (b) On the notice referred to in paragraph (a) above becoming effective, the Available Commitment of the Defaulting Lender 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.

9.11 Prepayment conditions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 9 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs (if any), if applicable, without premium or penalty **provided that** any mandatory prepayment made in accordance with Clause 9.3 (*Relevant Disposal Proceeds*) shall be deemed to include any applicable accrued interest, any associated hedge termination costs and Break Costs (if any) and amounts of principal required to be prepaid shall be reduced accordingly to fund any applicable accrued interest, any hedge termination costs (relating to any termination of hedge arrangements in whole or in part) and Break Costs (if any).
- (c) The Company may not reborrow any part of the Facility which is repaid or prepaid.

- (d) The Company may not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 9, it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.

9.12 Operating Account

Each Obligor may open, maintain and withdraw any amount standing to the credit of an Operating Account.

10. INTEREST

10.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

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

10.2 Payment of interest

The Company shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).

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 the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is the sum of 2% and the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by the Obligor within three Business Days of demand by the Facility Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

- (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be the sum of 2% and the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

10.4 **Notification of rates of interest**

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

11. **INTEREST PERIODS**

11.1 **Selection of Interest Periods**

- (a) The Company may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Facility Agent by the Company not later than the Specified Time.
- (c) If the Company fails to deliver a Selection Notice to the Facility Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to this Clause 11, be three Months.
- (d) Subject to this Clause 11, the Company may select an Interest Period of one, two, three or six Months or any other period agreed between the Company and the Facility Agent (acting on the instructions of all the Lenders).
- (e) An Interest Period for a Loan shall not extend beyond the Final Maturity Date.
- (f) Each Interest Period for each Loan shall start on the Utilisation Date of that Loan or (if already made) on the last day of its preceding Interest Period.

11.2 **Non-Business Days**

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

11.3 **Consolidation of Loans**

The Company shall use reasonable efforts to ensure that the Interest Periods of two or more Loans will, as soon as reasonably practicable after the last of those Loans is drawn, end on the same date. Once the Interest Periods of two or more Loans end on the same date, those Loans shall be automatically consolidated into, and treated as, a single Loan on the last day of the Interest Period in respect thereof.

12. CHANGES TO THE CALCULATION OF INTEREST

12.1 Absence of quotations

Subject to Clause 12.2 (*Market disruption*), if LIBOR 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, the applicable rate 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 and is continuing (which term, for the purposes of this Clause 12.2 in respect of a Market Disruption Event under paragraph (b)(ii)(B) below of Market Disruption Event only, shall mean for such time as the threshold for notification by Affected Lenders set out in paragraph (b)(ii)(B) below is satisfied) in relation to a Loan for any Interest Period, then the rate of interest on each Affected Lender's share (but, in respect of a Market Disruption Event under paragraph (b)(ii)(B) below only, provided such Affected Lender has delivered a notification pursuant to paragraph (b)(ii)(B) below) of that Loan for the 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 five 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 Loan from whatever source it may reasonably select.

(b) In this Agreement:

(i) "**Affected Lender**" means a Lender which is a commercial bank or other financial institution that customarily obtains funds for lending in the Relevant Interbank Market or in Hong Kong or Taiwan interbank market; and

(ii) "**Market Disruption Event**" means:

(A) at or about noon London time on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Facility Agent to determine LIBOR for the relevant Interest Period;

(B) (where there is more than one Lender) before close of business in Hong Kong on the Business Day after the Quotation Day for the relevant Interest Period, the Facility Agent receives notifications from an Affected Lender or Lenders (whose participation(s) in a Loan exceed 40% of that Loan) that the

cost to it or them of obtaining matching deposits in the Relevant Interbank Market (or the Hong Kong or Taiwan interbank market, as applicable) would be in excess of LIBOR save that any such Affected Lender or Lenders may elect at any time (and, in circumstances where the cost to an Affected Lender of obtaining matching deposits in the Relevant Interbank Market (or the Hong Kong or Taiwan interbank market, as applicable) would no longer be in excess of LIBOR, such Affected Lender shall elect) to cancel such notification at any time thereafter and such threshold shall immediately be recalculated following such cancellation; or

- (C) (where there is only one Lender) after the Lender notifies the Company that (1) such a Market Disruption Event arises similarly with respect to its cost of funding of other similar facilities and that it is recovering or intending to recover such costs from similar borrowers under such similar facilities, and (2) that its funding cost is in excess of the cost of funds primarily due to general market conditions affecting banks generally rather than solely as a result of credit related concerns specifically relating to the Lender or any of its Affiliates.

12.3 **Alternative basis of interest or funding**

- (a) If the Facility Agent receives notice from any Affected Lender pursuant to paragraph (b)(ii)(B) or (C) of Clause 12.2 (*Market disruption*), it shall promptly provide a copy of such notice to the Company. The Facility Agent shall promptly notify the Company if a Market Disruption Event arises under paragraph (b)(i) of Clause 12.2 (*Market disruption*).
- (b) If a Market Disruption Event occurs and is continuing (which, for the purposes of this Clause 12.3, shall be for such time as the threshold for notification by Affected Lenders set out in paragraph (b)(ii)(B) of Clause 12.2 (*Market disruption*) is satisfied) and the Facility Agent or the Company so requires, the Facility Agent and the Company shall enter into negotiations (for a period of not more than 20 Business Days) with a view to agreeing a substitute basis for determining the rate of interest for such Interest Period.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Affected Lenders and the Company, be binding on all such Parties for such Interest Period.
- (d) Where a Market Disruption Event is no longer continuing, the rate of interest shall revert to the rate calculated in accordance with Clauses 10.1 (*Calculation of interest*) and 12.1 (*Absence of quotations*).
- (e) The Facility Agent and the Company agree to keep all information relating to an Affected Lender received in connection with a Market Disruption Event confidential and not to disclose it to anyone, except as may be required by applicable law or regulation, to their respective officers, directors, employees, advisors and shareholders or (in the case of the Facility Agent) to the

Company (and its officers, directors and employees) or (in the case of the Company) to another Obligor (and its respective officers, directors and employees).

12.4 **Break Costs**

- (a) The Company shall, within five Business Days of demand by a Finance Party, other than a Defaulting Lender, pay to the Facility Agent (for the account of the relevant Finance Party) such Finance Party's Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by it on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent or the Company, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue and providing (in reasonable detail) computation for deriving such Break Costs.
- (c) The Company shall have the right to request that any Finance Party that makes a demand under paragraph (a) above waives the requirement that the Company pays Break Costs otherwise payable to that Finance Party and such Finance Party may unilaterally agree (in its absolute discretion) to such request.

13. **FEES**

13.1 **Commitment fee**

- (a) The Company shall pay to the Facility Agent (for the account of each Lender) a fee in US Dollars computed at the rate of 40% of the Margin on that Lender's Available Commitment for the period commencing on and including the date falling 90 days after the Signing Date and ending on the last day of the Availability Period.
- (b) Any accrued commitment fee under paragraph (a) above is payable on:
 - (i) the Initial Drawdown Date;
 - (ii) the last day of each successive period of three Months which ends during the Availability Period applicable to the relevant Facility (the first such payment being made on the date that is three Months after the Initial Drawdown Date);
 - (iii) on the last day of the Availability Period; and
 - (iv) if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.
- (c) No fee paid pursuant to this Clause 13.1 shall be refunded or capable of being refunded.
- (d) Without prejudice to paragraph (c) above, no fee shall be payable pursuant to paragraph (a) above to a Defaulting Lender.

- (e) No commitment fee shall be payable pursuant to this Clause 13.1 if the Initial Drawdown Date does not occur.

13.2 Agency and Security Agency fee

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

13.3 Arrangement and extension fee

The Company shall pay to each Mandated Lead Arranger (for its own account) an arrangement fee and (if applicable) an extension fee in the amount and at the times agreed in a Fee Letter.

14. TAX GROSS-UP AND INDEMNITIES

14.1 Definitions

- (a) In this Clause 14:

"**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 an increased payment made by an 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) All payments to be made by an Obligor to any Finance Party under the Finance Documents shall be made free and clear of and without any Tax Deduction unless such Obligor is required to make a Tax Deduction, in which case the sum payable by such Obligor (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that such Finance Party receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.
- (b) The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the 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 Company and that Obligor.

- (c) If an Obligor is required to make a Tax Deduction, it 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.
- (d) Within 20 Business 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 evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

14.3 Tax indemnity

- (a) Without prejudice to Clause 14.2 (*Tax gross-up*), if any Finance Party is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for purposes of Tax to be received or receivable by such Finance Party whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against any Finance Party, the Company shall, within five Business Days of demand of the Facility Agent, promptly indemnify the Finance Party which suffers a loss or liability as a result against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith **provided that** this Clause 14.3 shall not apply:

- (i) with respect to any Tax assessed on a Finance Party:

- (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
- (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

- (ii) to the extent a loss, liability or cost:

- (A) is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*);
- (B) relates to a FATCA Deduction required to be made by a Party; or
- (C) is not notified to the Facility Agent by the relevant Finance Party within six Months of such Finance Party becoming aware

of such loss, liability or cost in accordance with paragraph (a) above.

- (b) A Finance Party intending to make a claim under paragraph (a) above shall notify the Facility Agent of the event giving rise to the claim, whereupon the Facility Agent shall notify the Company thereof.
- (c) A Finance 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 and the relevant Finance Party determines that:

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

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor **provided that** in case of any change in the residence for Tax purposes of an Obligor (whether or not materially adverse to the Lenders), this Clause 14.4 shall not apply in respect of that Obligor.

14.5 **Stamp taxes**

The Company shall:

- (a) promptly on demand (or otherwise as required) pay all stamp duty, registration and other similar Taxes payable in respect of any Transaction Document; and
- (b) within five Business Days of demand, pay to and indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes in respect of any Finance Document.

14.6 **Indirect Tax**

- (a) All consideration 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 in connection with a Finance Document, that Party shall pay (unless that Party is the Facility Agent, the Security Agent or a Mandated Lead Arranger, in which case the Company shall pay) to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the Indirect Tax.
- (b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all Indirect Tax incurred by the Finance

Party in respect of the costs or expenses except to the extent that Finance Party determines that it is entitled to credit or repayment in respect of the Indirect Tax.

14.7 **FATCA Deduction**

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

14.8 **FATCA Information**

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

- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Company is a US Tax Obligor or the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
 - (i) where the Company is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
 - (ii) where the Company is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
 - (iii) where the Company is not a US Tax Obligor, the date of a request from the Facility Agent,

supply to the Facility Agent:

- (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (B) any withholding statement or other document, authorisation or waiver as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Company.
 - (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Company.
 - (h) The Facility Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with paragraph (e), (f) or (g) above.

15. INCREASED COSTS

15.1 Increased Costs

Subject to Clause 15.3 (*Exceptions*), the Company shall, within five Business Days of a demand by the Facility Agent (which demand shall include reasonable details, provided by the relevant Finance Party, of the circumstances giving rise to the Increased Cost and the calculation of the Increased Cost **provided that** the relevant Finance Party need not declare any information which it would not be permitted to disclose by reason of a legally binding obligation to which it is subject), pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

- (a) a Change in Law; or
- (b) compliance with any law or regulation made after the Signing Date.

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 event giving rise to the claim, following which the Facility Agent shall promptly notify the Company.
- (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.

15.3 Exceptions

- (a) Clause 15.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 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 (a) of Clause 14.3 (*Tax indemnity*) applied);
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation or the terms of any Finance Document;
 - (v) attributable to the implementation or application of or compliance with Basel II or the Dodd-Frank Wall Street Reform and Consumer Protection Act or any other law or regulation which implements Basel II or the Dodd-Frank Wall Street Reform and Consumer Protection Act (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates); or

- (vi) not notified to the Facility Agent by the relevant Finance Party within six Months of such Finance Party becoming aware of the Increased Cost in accordance with paragraph (a) of Clause 15.2 (*Increased Cost claims*).
- (b) In this Clause 15.3, a 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 demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion, including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

16.2 Other indemnities

The Company shall (or shall procure that an Obligor will), within five Business Days of demand (which demand shall be accompanied by reasonable calculations or details of the amount demanded **provided that** the relevant Finance Party need not disclose any information which it would not be permitted to disclose by reason of a legally binding obligation to which it is subject), indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including any cost, loss or liability arising as a result of Clause 29 (*Sharing Among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Utilisation requested by the Company in a Utilisation Request but not made by reason of

the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or

- (d) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by the Company.

16.3 Indemnity to the Facility Agent

The Company shall promptly upon written demand 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 has reasonable grounds to believe 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) exercising any of the rights, powers, discretions or remedies vested in it under any Finance Document or by law.

17. MITIGATION BY THE LENDERS

17.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 9.1 (*Illegality*), Clause 14 (*Tax gross-up and indemnities*) or paragraph (a) of Clause 15.1 (*Increased Costs*), including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

17.2 Limitation of liability

- (a) The Company shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 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 might be prejudicial to it.

18. COSTS AND EXPENSES

18.1 Transaction expenses

- (a) Subject to the terms of any Fee Letter, the Company shall, within 10 Business Days of written demand, pay to the Facility Agent and the Mandated Lead Arrangers the amount of all costs and expenses (including legal fees up to the

amount of any agreed cap, to the extent that the assumption (if any) forming the basis for that cap was not breached in any material respect) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and Syndication of:

- (i) this Agreement and any other documents referred to in this Agreement; and
 - (ii) any other Finance Documents executed after the Signing Date.
- (b) Subject to the terms of any Fee Letter, in the event that the Initial Drawdown Date does not occur, the Obligors shall only be liable for the Finance Parties' legal advisor's fees up to an agreed cap, any fee which the Company has expressly agreed to pay to the Finance Parties in such circumstances and the Finance Parties' out-of-pocket expenses up to caps agreed separately between the Mandated Lead Arrangers and the Company prior to the date of this Agreement. No legal fees or out of pocket expenses will be paid pursuant to this paragraph (b) until the Company and the Mandated Lead Arrangers determine (acting reasonably) that the Initial Drawdown Date is reasonably unlikely to occur.

18.2 **Amendment costs**

If an Obligor requests an amendment to, or a waiver or consent under, a Finance Document, the Company shall, within ten Business Days of written demand, reimburse the Facility Agent and the Security Agent for the amount of all reasonable third party costs and expenses (including legal fees) reasonably incurred by the Facility Agent and the Security Agent in responding to, evaluating, negotiating or complying with that request or requirement.

18.3 **Enforcement costs**

The Company shall, within ten Business Days of written demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party (acting reasonably other than when an Event of Default is continuing) in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

18.4 **Transaction indemnity**

- (a) Subject to paragraph (b) below, the Company shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each director, officer, employee and (where appointed by the relevant Finance Party for the purposes of the transactions contemplated by the Finance Documents) agents of a Finance Party or its Affiliate (each an "**Indemnified Person**") against any cost, expense, loss or liability incurred by that Indemnified Person in connection with or arising out of the MGO Transaction or the funding of the MGO Transaction (whether or not completed) or the use of the Facility (including those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the MGO Transaction), except to the extent that such loss or liability is caused by the gross negligence, wilful

breach of the terms of the Finance Documents or any confidentiality undertaking given by that Indemnified Person for the benefit of the Company or the wilful misconduct of that Indemnified Person or to the extent arising from any dispute solely among Indemnified Persons other than claims against any Finance Party in its capacity or in fulfilling its role as Facility Agent or Security Agent or Mandated Lead Arranger or any similar role under the Facility and other than any claims arising out of any act or omission on the part of the Company or its Affiliates **provided that** the Indemnified Persons together shall instruct only one legal counsel in any one jurisdiction at any one time (unless it is reasonably determined they have a conflict as between themselves).

- (b) If any event occurs in respect of which indemnification may be sought from the Company pursuant to paragraph (a) above, the relevant Indemnified Person shall only be so indemnified if it:
 - (i) notifies the Company in writing within a reasonable time after the relevant Indemnified Person becomes expressly aware (acting reasonably) of such event;
 - (ii) (to the extent legally permitted and only if it would not prejudice the defence or making of such claim) consults with the Company fully and promptly with respect to the conduct of the relevant claim, action or proceeding;
 - (iii) conducts such claim, action or proceeding properly and diligently (based on advice from its legal counsel, to the extent permitted by law and without being under any obligation to disclose any information which it is not lawfully permitted to disclose); and
 - (iv) does not settle any such claim, action or proceeding without the Company's prior written consent (such consent not to be unreasonably withheld).

19. **GUARANTEE AND INDEMNITY**

19.1 **Guarantee and indemnity**

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Secured Party punctual performance by each other Obligor of all that Obligor's obligations under the Secured Documents;
- (b) undertakes with each Secured Party that whenever another Obligor does not pay any amount when due under or in connection with any Secured Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Secured 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 Secured Party immediately on demand

against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Secured 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 claimed 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 Obligor under the Secured Documents, regardless of any intermediate payment or discharge in whole or in part or any increase of the Commitments.

19.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a 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 the 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 Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any MGO Group Member or any other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Secured Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the

addition of any new facility under any Secured Document or other document or security or in any other manner whatsoever;

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Secured Document or any other document or security; or
- (g) any insolvency or similar proceedings; or
- (h) this Agreement or any other Secured Document not being executed by or binding against any other Guarantor or any other party.

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 and of whatsoever nature and whether or not more onerous) variation, increase, extension or addition of or to any of the Secured Documents and/or any facility or amount made available under any of the Secured 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 Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 19. This waiver applies irrespective of any law or any provision of a Secured Document to the contrary.

19.7 Appropriations

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

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it 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 the Guarantor or on account of any Guarantor's liability under this Clause 19.

19.8 Deferral of the Guarantors' rights

Until all amounts which may be or become payable by the Obligor under or in connection with the Secured Documents have been irrevocably paid in full and unless the Facility Agent (or, as the case may be, the Security Agent) otherwise directs, no Guarantor shall exercise any rights which it may have by reason of performance by it of its obligations under the Secured Documents or by reason of any amount being payable, or liability arising, under this Clause 19:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Secured Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Secured Documents or of any other guarantee or security taken pursuant to, or in connection with, the Secured Documents by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under Clause 19.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Secured Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Parties by the Obligor under or in connection with the Secured Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with Clause 30 (*Payment Mechanics*).

19.9 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 Secured Party.

19.10 Guarantee Limitations

- (a) This guarantee and indemnity does not apply to any liability to the extent that it would result in the relevant Guarantor breaching any applicable law and/or regulation (including any financial assistance laws). In addition, the obligations of any MGO Group Member that grants a guarantee and indemnity under this Clause 19 by entering into an Accession Deed shall be subject to any limitations set out in that Accession Deed (if any).

- (b) Each US Guarantor acknowledges that it will receive valuable direct or indirect benefits as a result of the transactions financed by the Secured Documents.
- (c) Notwithstanding anything to the contrary contained herein or in any other Secured Document, each Finance Party and each Hedge Counterparty agrees that the maximum liability of each US Guarantor under this Clause 19 shall in no event exceed an amount equal to the greatest amount that would not render such US Guarantor's obligations hereunder and under the other Secured Documents subject to avoidance under US Bankruptcy Law or to being set aside, avoided or annulled under any Fraudulent Transfer Law, in each case after giving effect (i) to all other liabilities of such US Guarantor, contingent or otherwise, that are relevant under such Fraudulent Transfer Law (specifically, excluding, however, any liabilities of such US Guarantor in respect of intercompany indebtedness to any Obligor to the extent that such Financial Indebtedness would be discharged in an amount equal to the amount paid by such US Guarantor hereunder without duplication of any amounts paid by any other person) and (ii) to the value as assets of such US Guarantor (as determined under the applicable provisions of such Fraudulent Transfer Law) of any rights to subrogation, contribution, reimbursement, indemnity or similar rights held by such US Guarantor pursuant to (A) applicable law or (B) any other agreement providing for an equitable allocation among such US Guarantor and the other Obligors of obligations arising under this Agreement or other guarantees of such obligations by such parties.

20. REPRESENTATIONS

Each Obligor (unless otherwise stated below) makes the representations and warranties set out in this Clause 20 on the dates set out in Clause 20.28 (*Times when representations made*) to each Finance Party. Where the representations and warranties set out in this Clause 20 refer to the Parent or are stated to be made by the Parent, such representation and warranty is made by the Parent in respect of itself only.

20.1 Status

It and the Parent:

- (a) is a limited liability company or corporation, duly incorporated or organised, validly existing and (if applicable) in good standing under the law of its jurisdiction of incorporation or organisation; and
- (b) has the power to own its assets and carry on its business as it is being conducted.

20.2 Binding obligations

Subject to the Reservations and (in the case of any Security Document) any applicable Perfection Requirements, the obligations expressed to be assumed by it and the Parent in each Finance Document to which it or the Parent (and, in the case of the MGOCo,

the Custodian Agreement) is or will be (upon its execution thereof) a party are legal, valid, binding and enforceable.

20.3 **Non-conflict with other obligations**

The entry into and performance by it and the Parent, and the transactions contemplated by, the Finance Documents (and the granting of the Transaction Security) (and, in the case of the MGO Co, the Custodian Agreement) do not conflict with:

- (a) any law or regulation applicable to it or the Parent in a material respect;
- (b) its or the Parent's constitutional documents; or
- (c) any agreement or instrument binding upon it or the Parent or any of its or the Parent's assets, in each case, to the extent that it has, or would reasonably be expected to have, a Material Adverse Effect,

in each case, **provided that** the enforcement of any Transaction Security over any ListCo Shares or the shares of any MGO Group Member which directly or indirectly holds any Equity Interest in the ListCo (including the ability to dispose of shares of the ListCo or any MGO Group Member) is, in each case, subject to compliance with the Regulatory Restrictions.

20.4 **Power and authority**

- (a) It and the Parent has (or will have by the time of execution of the relevant Finance Document) the power to enter into, perform and deliver, and has taken (or will have taken prior to the relevant time) all necessary corporate action to authorise its or the Parent's entry into, performance and delivery of the Finance Documents to which it or the Parent is or will be a party (and, in the case of the MGO Co, the Custodian Agreement) and the transactions contemplated by those Finance Documents (and, in the case of the MGO Co, the Custodian Agreement).
- (b) No limit on its or the Parent's powers will be exceeded as a result of borrowing, granting the Transaction Security or giving of guarantees or indemnities to be granted by it or the Parent pursuant to any Finance Document.

20.5 **Validity and admissibility in evidence**

- (a) All Authorisations required by it or the Parent to:
 - (i) enable it or the Parent to lawfully enter into, exercise its or the Parent's rights and comply with and perform its or the Parent's obligations in the Finance Documents to which it is a party and the transactions contemplated by the Finance Documents have been obtained or effected and, subject to the Reservations, are in full force and effect **provided that** the enforcement of any Transaction Security over any ListCo Shares or the shares of any MGO Group Member which directly or indirectly holds any Equity Interest in the ListCo (including

the ability to dispose of shares of the ListCo or any MGO Group Member) is, in each case, subject to compliance with the Regulatory Restrictions; and

(ii) subject to any applicable Reservations, make the Finance Documents to which it or the Parent is a party enforceable and admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and, subject to the Reservations, are in full force and effect, save for complying with any applicable Perfection Requirements, or (in the case of any Authorisation in connection with the MGO Transaction) will have been obtained or effected and will be in full force and effect before the Initial Drawdown Date.

(b) All Authorisations which are necessary for the conduct of the business, trade or ordinary activities of any MGO Group Member have been obtained or effected and are in full force and effect where failure to obtain or maintain any of those Authorisations has, or would reasonably be expected to have, a Material Adverse Effect.

20.6 **Governing law and enforcement**

Subject to any applicable Reservations:

- (a) the choice of law specified in each Finance Document as the governing law of that Finance Document will be recognised and enforced in its and the Parent's jurisdiction of incorporation; and
- (b) any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its and the Parent's Relevant Jurisdiction.

20.7 **No filing or stamp Taxes**

Under the law of its and the Parent's Relevant Jurisdictions it is not necessary that 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 the Finance Documents or the transactions contemplated by the Finance Documents (excluding any Transfers made pursuant to this Agreement), save, in each case, for complying with any applicable Perfection Requirements or the payment of any stamp duty, Tax or fee referred to in a Legal Opinion.

20.8 **Deduction of Tax**

The Company is not required to make any deduction for or on account of Tax (excluding Taxes imposed under FATCA) from any payment it may make under any Finance Document to a Finance Party.

20.9 **No default**

- (a) No Event of Default is continuing (which has not been notified to the Facility Agent) or would reasonably be expected to result from the making of any

Utilisation or the entry into, performance of, or any transaction contemplated by, any Finance Document.

- (b) No other event or circumstance is outstanding which constitutes (or which would, with the lapse of time, the giving of notice, the making of any determination under the relevant document or any combination of the foregoing, constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject which has or would reasonably be expected to have a Material Adverse Effect.

20.10 No breach of law

It has not (and no MGO Group Member has) breached any law or regulation which breach has, or would reasonably be expected to have, a Material Adverse Effect.

20.11 No misleading information

To the best of its knowledge after due and careful enquiry, except as specifically disclosed to the Facility Agent or the Mandated Lead Arrangers in writing prior to the Signing Date:

- (a) all the factual information (other than information of a general economic nature) contained in the Information Package (the "**Information**") was true and accurate in all material respects (as at the date of the relevant Report or document containing the Information or (as the case may be) as at the date the Information is expressed to be given or prepared);
- (b) all expressions of opinion or intention specifically attributed to the Company or any other MGO Group Member in the Information Package were made after careful consideration and (as at the date of the relevant document or report containing the expression of opinion or intention) were, in the reasonable opinion of the Company, based on reasonable grounds (**provided that** nothing in this paragraph (b) shall require any MGO Group Member to review or make any enquiry in relation to matters within the technical or professional expertise of the adviser preparing the relevant Report);
- (c) the financial projections and forecasts contained in the Information Memorandum are (if any is prepared) (together the "**Projections**") have been prepared in good faith on the basis of recent historical information (to the extent available) and on the basis of assumptions believed to be reasonable by the Company (after careful consideration) at the time of preparation and have been prepared, where applicable, in accordance with the Accounting Principles (it being understood that the Projections are subject to significant uncertainties and contingencies many of which are beyond the control of the MGO Group and that no assurances can be given that the Projections will be realised); and
- (d) no event or circumstance has occurred and the Information Package does not omit to disclose any matter where failure to disclose or take into account such event or circumstance would result in the information, opinions, intentions,

forecasts or projections contained in the Information being untrue or misleading in any material respect.

20.12 Pari passu ranking

Without limiting Clause 20.14 (*Security*) and subject to any applicable Reservations, its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

20.13 No proceedings pending or threatened

To the best of its knowledge after due and careful enquiry, no litigation, arbitration or administrative proceedings of or before any court, tribunal, arbitral body, agency or other forum (including any arising from or relating to environmental law), labour dispute or any investigations or actions by any Governmental Authority which (to the best of its knowledge after due and careful enquiry) are or would be reasonably likely to be adversely determined and, if so adversely determined, would reasonably be expected to have a Material Adverse Effect have been started or threatened against it or any of its Subsidiaries.

20.14 Security

Subject to the Reservations and any applicable Perfection Requirements, each Security Document to which it or the Parent is a party creates (or, once entered into, will create), in favour of the Security Agent for the benefit of the Secured Parties, the Security which that Security Document purports to make and with the ranking and priority it is expressed to have, except for obligations mandatorily preferred by law applying to companies generally.

20.15 Legal and beneficial ownership

It is and the Parent is the absolute legal (other than in the case of any Acquired MGO Shares standing to the credit of the Securities Account or any ListCo Shares (other than Acquired MGO Shares) standing to the credit of any other securities account) and beneficial owner of all the material assets over which it or the Parent (as applicable) purports to create Security pursuant to any Security Document, free from any Security other than Permitted Security (or, in the case of legal ownership, will be upon payment of any applicable stamp duty, receipt of applicable certificates and/or the making of applicable registrations).

20.16 Assets

It has good and marketable title to, or valid leases or licences of, or is otherwise entitled to use, all material assets necessary for the conduct of its business as it is substantially being, and is proposed to be, conducted, where failure to have such title, leases, licenses or entitlement would reasonably be expected to have a Material Adverse Effect.

20.17 MGO Documents and Equity Documents

- (a) The MGO Documents contain all the material terms of the MGO.
- (b) The Equity Documents and the Parent Loan Agreement (if applicable) contain all the material terms and conditions of the arrangements between the Parent and the Company in relation to the investment (whether by way of equity, debt or otherwise) in connection with the MGO Transaction.

20.18 MGO Group Structure Chart

The MGO Group Structure Chart is accurate in all material respects.

20.19 No prior business

As at any date on or prior to the Initial Drawdown Date, neither the Parent nor any Obligor has traded, or carried on any businesses, incurred any material liability or obligation (actual or contingent, present or future) or entered into any contract, other than (in each case) in relation to the transactions contemplated by the Transaction Documents or any Permitted Holding Company Activity.

20.20 No Financial Indebtedness, guarantees or Security

No MGO Group Member has:

- (a) any Financial Indebtedness other than Permitted Financial Indebtedness;
- (b) issued any guarantee other than a Permitted Guarantee; and
- (c) any Security or Quasi-Security other than Permitted Security.

20.21 Shares

- (a) The shares of any MGO Group Member or the Acquired MGO Shares which are expressed to be (or are required by this Agreement to be or become) subject to any Security under any Security Document are issued, fully paid, non-assessable and (upon enforcement of such Security) freely transferable and constitute shares in the capital of limited companies, and there are no moneys or liabilities outstanding or payable in respect of any such share (other than to the extent such restriction or inhibitions are required by applicable law or regulation) **provided that** the enforcement of any Transaction Security over any ListCo Shares or the shares of any MGO Group Member which directly or indirectly holds any Equity Interest in the ListCo (including the ability to dispose of shares of the ListCo or any MGO Group Member) is subject to compliance with the Regulatory Restrictions.
- (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 share or loan capital of any MGO Group Member (including any option or right of pre-emption or conversion) save to the extent such issue or allotment would constitute a Permitted Share Issue.

20.22 Intellectual Property

- (a) The Intellectual Property which is required in order to conduct the business of the MGO Group:
 - (i) is beneficially owned by or licensed to MGO Group Members on arm's length or better terms free from any licences to third parties; and
 - (ii) has not lapsed or been cancelled in any respect which has or could reasonably be expected to have a Material Adverse Effect and all steps have been taken to protect and maintain in full force and effect and preserve its ability to enforce such Intellectual Property, including paying renewal fees.
- (b) Neither it nor any MGO Group Member has infringed any material Intellectual Property of any third party in any respect which would reasonably be expected to have a Material Adverse Effect.

20.23 Solvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in Clause 23.7 (*Insolvency proceedings*); or
- (b) creditors' process described in Clause 23.8 (*Creditors' process*),

has been taken or, to the knowledge of such Obligor, threatened in writing in relation to it; and none of the circumstances described in Clause 23.6 (*Insolvency*) applies to it.

20.24 Taxes

Each MGO Group Member has paid all Taxes required to be paid by it within the time period allowed for payment without incurring any penalties for non payment other than any Taxes:

- (a) being contested by it in good faith and in accordance with the relevant procedures; or
- (b) for which adequate reserves are being maintained in accordance with the Accounting Principles; or
- (c) where failure to pay those Taxes will not result in the imposition of any material penalty nor in any Security ranking in priority to the claims of any Finance Party under any Finance Document or to any Security created under any Security Document; or
- (d) which are the subject of any reassessment **provided that** such Taxes are promptly paid following such re assessment.

20.25 Sanctions

It is not (and no MGO Group Member and, to the best of its knowledge, none of its or their respective officers, directors, employees or Affiliates is):

- (a) the subject of any Sanctions; and
- (b) located, organised or resident in a country or territory that is the subject of Sanctions.

20.26 Anti-corruption and anti-money laundering

- (a) No Obligor or MGO Group Member has, nor has any director or officer associated with or acting on behalf of any MGO Group Member:
 - (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;
 - (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; or
 - (iii) violated or is in violation of any provision of the Anti-Corruption Laws.
- (b) The operations of each MGO Group Member are and have been conducted at all times in compliance with Anti-Money Laundering Laws and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving a MGO Group Member with respect to Anti-Money Laundering Laws is pending and no such actions, suits or proceedings are threatened or contemplated.

20.27 US Regulations

- (a) No Obligor or ERISA Affiliate has, during the past five years, maintained, contributed to or had an obligation to contribute to any Employee Plan or Multiemployer Plan or has any present intention to do so **provided that** for the purposes of this Clause 20.27, ERISA Affiliate shall not include any ERISA Affiliate of the ListCo prior to the First MGO Acquisition Date that will not be a Controlled Group Member on or after the First MGO Acquisition Date.
- (b) No part of the proceeds of any Utilisation will be used for "buying" or "carrying" (within the meaning of Regulation U or Regulation X) any Margin Stock.
- (c) None of the Obligors is an "investment company" under the 1940 Act.

20.28 Times when representations made

- (a) Subject to paragraphs (b) to (c) below, the representations and warranties set out in this Clause 20 are made by each Obligor and (with respect only to those representations and warranties that refer to the Parent or are stated to be made by the Parent) the Parent on the Signing Date and the MGO Closing Date.

- (b) The representations and warranties set out in Clauses 20.11 (*No misleading information*) and 20.18 (*MGO Group Structure Chart*) are deemed to be made by the Company:
 - (i) with respect to the Information Memorandum, on the date on which the Information Memorandum is approved in writing by the Company; and
 - (ii) with respect to the Information Package (other than the Information Memorandum) and the MGO Group Structure Chart, on the Signing Date and the MGO Closing Date,

in each case (x) by reference to the facts and circumstances then existing at such time; and (y) not repeated thereafter.

- (c) The Repeating Representations are deemed to be made by:
 - (i) each Obligor and, with respect only to those Repeating Representations that refer to the Parent or are stated to be made by the Parent, the Parent on each Utilisation Date and the first day of each Interest Period; and
 - (ii) each Additional Guarantor in respect of itself on the day on which the company becomes an Additional Guarantor,

in each case, by reference to the facts and circumstances then existing at such time.

- (d) The representations and warranties set out in Clause 20.14 (*Security*) and Clause 20.15 (*Legal and beneficial ownership*) are deemed to be made by the Parent or relevant Obligor (as the case may be) who enters into such Security Document, on the date of such Security Document, in relation to that Security Document by reference to the facts and circumstances then existing at such time.

21. INFORMATION UNDERTAKINGS

The undertakings in this Clause 21 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1 Information: miscellaneous

The Company shall supply to the Facility Agent:

- (a) promptly after they are despatched, copies of all material documents despatched by the Company to its creditors generally as a class by reason of financial difficulty;
- (b) promptly upon becoming aware of them, the details of any event which would trigger a mandatory prepayment obligation pursuant to Clause 9.2 (*Exit*);

- (c) the details of the generation of proceeds that require prepayment pursuant to Clause 9.3 (*Relevant Disposal Proceeds*);
- (d) promptly upon becoming aware of them the details of any material litigation, arbitration or administrative proceedings which are current, threatened or pending against any MGO Group Member, and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and
- (e) promptly upon request by the Facility Agent such further information regarding the MGO Transaction or the financial condition, business and operations of any MGO Group Member or any ListCo Group Member (subject, in the case of business and operations, to any pre-existing confidentiality arrangements and, in the case of information relating to any ListCo Group Member, to the extent (i) available to the MGO Group and (ii) permitted by all applicable laws and regulations) as the Facility Agent may reasonably request.

21.2 Notification of Default

- (a) Each Obligor shall notify the Facility Agent of any Default that is continuing (and the steps, if any, being taken to remedy it), promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Facility Agent, the Company shall supply to the Facility Agent a certificate signed by an Authorised Signatory of the Company on its behalf certifying that no Default is continuing (or, if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

21.3 Inspection of books and records and investigations

- (a) Each Obligor shall keep books and records which accurately reflect in all material respects all of its business, affairs and transactions.
- (b) Each Obligor shall (and the Company shall ensure that each MGO Group Member will) permit any Finance Party (or any of its representatives) while an Event of Default is continuing and upon reasonable notice and at convenient times to visit any of its offices and, subject to any applicable confidentiality requirements and after consultation between the Facility Agent and the Company as to the scope of the investigation, inspect any of its premises, assets, books and records, and discuss its financial matters with its officers and auditors.

21.4 "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 Signing Date;

- (ii) any change in the status of an Obligor or the Parent or the composition of the shareholders of an Obligor or the Parent (including any change resulting in a shareholder holding more than 25% of the issued share capital of that Obligor or the Parent) after the Signing Date; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

- (b) Each Lender shall promptly upon the request of the 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 or the Security Agent (in each case, 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 pursuant to the transactions contemplated in the Finance Documents.
- (c) The Company shall, by not less than 10 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 one of its Subsidiaries becomes an Additional Guarantor pursuant to Clause 26 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Guarantor obliges the Facility Agent, the Security Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Company 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 or any Lender (for itself or on behalf of any prospective new Lender) in order for the Facility Agent, the Security Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know

your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.

22. GENERAL UNDERTAKINGS

The undertakings in this Clause 22 shall continue for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

22.1 Authorisations

Each of the Obligor and (for the purposes of paragraphs (a) and (b) below only) the Parent shall (and the Company shall ensure that each other MGO Group Member, and from the First MGO Acquisition Date and for the purposes of paragraph (c) below only, each ListCo Group Member will) promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any applicable law or regulation of a Relevant Jurisdiction to:

- (a) enable it to perform its obligations under the Transaction Documents to which it is a party;
- (b) ensure the legality, validity, enforceability or admissibility in evidence in the Relevant Jurisdictions of any Transaction Document, subject to any applicable Reservations and Perfection Requirements; and
- (c) enable it to carry on its business save to the extent failure to do so would not reasonably be expected to have a Material Adverse Effect.

22.2 Compliance with laws

Each Obligor shall (and the Company shall ensure that, from the First MGO Acquisition Date, each ListCo Group Member will) comply in all respects with all laws and regulations to which it may be subject, if failure so to comply would reasonably be expected to have a Material Adverse Effect.

22.3 Taxes

Each Obligor shall (and the Company shall ensure that, from the First MGO Acquisition Date, each ListCo Group Member will) pay all Taxes required by a Governmental Authority to be paid by it within the time period allowed for payment without incurring any penalties for non-payment except for any Taxes:

- (a) being contested by the relevant MGO Group Member or ListCo Group Member in good faith and in accordance with the relevant procedures;
- (b) which have been disclosed in its financial statements and for which adequate reserves are being maintained in accordance with the Accounting Principles;
or
- (c) where failure to pay those Taxes does not have or would not reasonably be expected to have a Material Adverse Effect.

22.4 **Amalgamation and change of business**

No Obligor shall (and the Company shall ensure that no other MGO Group Member will):

- (a) enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction except for a Permitted Transaction; or
- (b) substantially change the general nature of the business of the MGO Group (taken as a whole).

22.5 **Acquisitions**

Except for a Permitted Acquisition or a Permitted Transaction, no Obligor shall (and the Company shall ensure that no other MGO Group Member will):

- (a) invest in or acquire any share in, or any security issued by, any person, or any interest therein or in the capital of any person, or make any capital contribution to any person, or from any person; or
- (b) invest in or acquire any business or going concern, or the whole or substantially the whole of the assets or business of any person, or any assets that constitute a division or operating unit of the business of any person.

22.6 **Joint Ventures**

No Obligor shall (and the Company shall ensure that no other MGO Group Member will):

- (a) invest in or acquire any share in, or any security issued by, any Joint Venture or any interest therein; or
- (b) transfer any assets, or lend, to or give a guarantee, Security or Quasi-Security for, or otherwise underwrite, the obligations of, or incur any other liability (whether actual or contingent and whether present or future) in respect of, a Joint Venture,

except, in the case of paragraph (a) above, in the case of the MGO Group in respect of the ListCo.

22.7 **Holding Company**

Neither the Parent nor any Obligor shall trade, carry on any business, own any asset or incur any liability except to the extent that any activity constitutes a Permitted Holding Company Activity.

22.8 **Assets**

Each Obligor shall (and the Company shall ensure that, from the First MGO Acquisition Date, each ListCo Group Member will to the extent customary and practicable) maintain in good working order and condition (ordinary wear and tear excepted) all its material assets necessary for the conduct of its business where failure

to do so would have or would reasonably be expected to have a Material Adverse Effect.

22.9 **Pari passu**

Subject to the Reservations, each Obligor shall ensure that its payment obligations under the Finance Documents rank at all times at least *pari passu* in right of priority and payment with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

22.10 **MGO Documents, Equity Documents, constitutional documents and Custodian Agreement**

- (a) No Obligor shall, and the Company shall ensure that no MGO Group Member will, amend, vary, novate, supplement, supersede, waive or terminate any terms of any MGO Documents or any Equity Document in any respect which is materially adverse to the interests of the Finance Parties under the Finance Documents (otherwise than with the consent of the Majority Lenders), save for:
 - (i) any amendment, novation, supplement, addition, extension, renewal or revision required to be made pursuant to and in accordance with the requirements of the Takeovers Code or by the SFC Executive; and/or
 - (ii) any amendment of the MGO Offer Price to the extent an increase in the MGO Offer Price resulting from such amendment is funded solely from the proceeds of Available Parent Funds.
- (b) No Obligor shall amend its constitutional documents in a manner that would be materially adverse to the interests of the Finance Parties.
- (c) The MGOCo shall not amend, vary, novate, supplement, supersede, waive or terminate any terms of the Custodian Agreement (otherwise than with the consent of the Majority Lenders), save for any amendment, novation, supplement, addition, extension, renewal or revision that is not materially adverse to the interests of the Finance Parties under the Finance Documents.

22.11 **Negative pledge**

Except for a Permitted Security or a Permitted Transaction:

- (a) no Obligor shall (and the Company shall ensure that no other MGO Group Member will) create or permit to subsist any Security or Quasi-Security over any of its assets; and
- (b) the Parent shall not create or permit to subsist any Security or Quasi-Security over the Company Equity or Parent Debt.

22.12 **Disposals**

Except for a Permitted Disposal or a Permitted Transaction:

- (a) no Obligor shall (and the Company shall ensure that no other MGO Group Member will) whether by a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) sell, lease, transfer or otherwise dispose of any asset; and
- (b) the Parent shall not, whether by a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) sell, lease, transfer or otherwise dispose of any Parent Debt.

22.13 **Arm's length terms**

No Obligor shall (and the Company shall ensure that no other MGO Group Member will, and, from the First MGO Acquisition Date, that no ListCo Group Member will) enter into any material transaction with any Restricted Person or any of their Affiliates other than on terms that are at least as favourable to that MGO Group Member or ListCo Group Member (as the case may be), as arm's length terms except for:

- (a) a Permitted Transaction or a Permitted Share Issue;
- (b) transactions between Obligors or between MGO Group Members who are not Obligors or between ListCo Group Members;
- (c) loans between MGO Group Members which are Permitted Loans or loans between ListCo Group Members; or
- (d) in the case of any ListCo Group Member, any transaction in respect of which the relevant ListCo Group Member complies with the Listing Rules in all material respects.

22.14 **Restricted Payments**

Except for any transaction under a Finance Document or any Restricted Payment funded from Available Proceeds, a Settlement Release, a Settlement Utilisation or any amount withdrawn from the Settlement Account in accordance with paragraph (e)(ii) or (e)(iii) of Clause 22.27 (*Disbursement Account and Settlement Account*) (**provided that** such Restricted Payment is made at a time when no Event of Default is continuing), no Obligor shall (and the Company shall ensure that no other MGO Group Member will) make a Restricted Payment.

22.15 **Financial Indebtedness**

Except for Permitted Financial Indebtedness, no Obligor shall (and the Company shall ensure that no other MGO Group Member will) incur or agree to incur or allow to remain outstanding any Financial Indebtedness.

22.16 **Guarantees**

Except for a Permitted Guarantee or a Permitted Transaction, no Obligor shall (and the Company shall ensure that no other MGO Group Member will) issue or allow to

remain outstanding any guarantee in respect of any liability or obligation of any person.

22.17 Loans or credit

Except for a Permitted Loan or a Permitted Transaction, no Obligor shall (and the Company shall ensure that no other MGO Group Member will) be a creditor in respect of any Financial Indebtedness.

22.18 Issue of shares

Except for a Permitted Share Issue, a Permitted Disposal, a Permitted Holding Company Activity or a Permitted Transaction, no Obligor shall issue any shares or grant any conditional or unconditional option, warrant or other right to call for the issue or allotment of, subscribe for, purchase or otherwise acquire any share of any MGO Group Member.

22.19 Intercompany Debt

The Company shall ensure that each MGO Group Member which is or becomes in respect of Financial Indebtedness:

- (a) (in the case of an Obligor) a debtor of another MGO Group Member, is a party to or accedes to the Intercreditor Agreement as a Debtor;
- (b) a creditor of an Obligor, is a party to or accedes to the Intercreditor Agreement as an Intercompany Lender;
- (c) a debtor or creditor of another MGO Group Member, is a party to or accedes to the Intercompany Funding Agreement in respect of such Financial Indebtedness; and
- (d) (in the case of an Obligor) a creditor of another MGO Group Member, is a party to or accedes to the Master Assignment Agreement to assign by way of security its rights and interests in respect of such Financial Indebtedness to the Security Agent.

22.20 Insurance

Each Obligor shall (and the Company shall ensure that each other MGO Group Member, and, from the First MGO Acquisition Date, each ListCo Group Member, will) maintain insurances on and in relation to its business and material assets with reputable underwriters or insurance companies against those risks, and to the extent, usually insured against by prudent companies located in the same or a similar location and carrying on a similar business and required by applicable law, if failure so to do would reasonably be expected to have a Material Adverse Effect.

22.21 Pensions

The Company shall ensure that all pension schemes maintained or operated by, or for the benefit of, any MGO Group Member and/or any of its employees are funded to the extent required by law and maintained in accordance with all applicable laws, except

where non-compliance does not have, or would not reasonably be expected to have a Material Adverse Effect.

22.22 Intellectual Property

Each Obligor shall (and the Company shall ensure that each other MGO Group Member, and, from the First MGO Acquisition Date, each ListCo Group Member, will) observe and comply with all obligations and laws to which it in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of the material Intellectual Property which is required to conduct the material business of the MGO Group or the ListCo Group (as applicable) is subject and take all commercially reasonable endeavours to prevent third parties infringing any necessary Intellectual Property, if in either case, failure to do so would reasonably be expected to have a Material Adverse Effect.

22.23 Reserve Account

(a) The Company shall:

- (i) on the Signing Date, ensure that there is opened and thereafter maintained an Interest Reserve Account;
- (ii) ensure that the amount standing to the credit of the Interest Reserve Account on each Utilisation Date (and, if an Extension Notice has been delivered, on the Top Up Date) is not less than the Minimum Balance on each such date; and
- (iii) not make any withdrawals from the Interest Reserve Account, except as expressly permitted by this Clause 22.23.

(b) The Company may:

- (i) withdraw amounts from the Interest Reserve Account **provided that**:
 - (A) if the amount so withdrawn is immediately applied to pay accrued interest under the Finance Documents and such withdrawal is made prior to the Top Up Date, following such withdrawal the amount standing to the credit of the Interest Reserve Account will not be less than the Adjusted Minimum Balance at that time;
 - (B) if the amount so withdrawn is applied towards any purpose other than that referred to in paragraph (A) above or such withdrawal is made on or after the Top Up Date, following such withdrawal the amount standing to the credit of the Interest Reserve Account will not be less than the Minimum Balance at that time; and
 - (C) no Default is continuing or will occur as a result of such withdrawal; and

- (ii) apply any amount standing to the credit of the Interest Reserve Account on the Final Maturity Date in repayment of any Loans.
- (c) Notwithstanding paragraphs (a) and (b) above, the Company irrevocably authorises the Facility Agent to, at any time, apply the moneys standing to the credit of the Interest Reserve Account towards payment of any amount under this Agreement then due and payable but unpaid regardless of whether or not an Event of Default has occurred. The Facility Agent shall notify the Company and the Security Agent of any such withdrawal promptly upon such withdrawal and, in any event, within two Business Days of any such withdrawal.
- (d) Where the Company is permitted to make a withdrawal from the Interest Reserve Account under this Clause 22.23 the Facility Agent shall, promptly following an application from the Company to do so and prior to any such withdrawal by the Company, notify the Security Agent that such withdrawal is so permitted and the Security Agent shall take such actions under the Finance Documents as are required to permit such withdrawal.

22.24 Loan to Value

- (a) The Company shall, subject to paragraph (d) below, on the Signing Date ensure that there is opened and thereafter maintained a Margin Account.
- (b) The Company shall, subject to paragraph (d) below, on or prior to the fifteenth Business Day after the relevant Trigger Date (the "**Deadline Date**"):
 - (i) deposit cash in US Dollars to the Margin Account;
 - (ii) deliver to the Security Agent additional Acceptable Collateral;
 - (iii) without prejudice to Clause 22.30 (*No MGO*), acquire beneficially (directly or indirectly):
 - (A) MGO Shares which upon such acquisition will become Acquired MGO Shares; or
 - (B) any other ListCo Shares in accordance with paragraph (f) of the definition of "Permitted Acquisition" **provided that** Equivalent Share Security is granted over such ListCo Shares; and/or
 - (iv) make a voluntary prepayment of all or part of one or more Loans,

(or any combination of the foregoing) to the extent necessary to ensure that the Coverage Ratio is not less than 160% on the Coverage Ratio Test Date in respect of which the relevant Trigger Event occurred, using the original VWAP as at that Coverage Ratio Test Date but taking into account:

 - (A) the amount of cash deposited in the Margin Account pursuant to paragraph (i) above;

- (B) the US Dollar equivalent of the market value (determined by the Facility Agent (acting in good faith and in a commercially reasonable manner)) of Acceptable Collateral (other than any ListCo Shares) delivered pursuant to paragraph (ii) above;
- (C) the number of the additional ListCo Shares acquired pursuant to paragraph (iii) above when re-calculating the Market Price;
- (D) any voluntary prepayments of Loans made pursuant to paragraph (iv) above;
- (E) any mandatory prepayment or scheduled repayment of any Loans made; and
- (F) any Loans borrowed after the Coverage Ratio Test Date,

in each case, on or prior to the relevant Deadline Date.

- (c) The Company shall not, subject to paragraph (d) and (e) below, withdraw any amount standing to the credit of the Margin Account without the consent of all the Lenders **provided that** the Company may elect at any time and at its option to apply any amount standing to the credit of the Margin Account in prepayment and cancellation of the Loans and, in such case, shall irrevocably notify the Facility Agent of the proposed date for prepayment (which must be at least three Business Days after the date of the notice).
- (d) While a Privatisation is continuing, the Company shall have no further obligations under this Clause 22.24 **provided that**, except as permitted by paragraph (e) below, no Security which has already been granted pursuant to this Clause 22.24 may be released or terminated solely on the grounds that a Privatisation is continuing.
- (e) On any Privatisation Start Date, the Company shall:
 - (i) (to the extent that any amount is standing to the credit of the Margin Account on that Privatisation Start Date) apply all amounts standing to the credit of the Margin Account up to the Privatisation Prepayment Cap in relation to that Privatisation Start Date in mandatory prepayment of the Loans; and
 - (ii) if after the application pursuant to paragraph (i) above there is any remaining amount standing to the credit of the Margin Account, be entitled to withdraw such remaining amount without the consent of any Finance Party and the Security Agent is irrevocably authorised to (and shall) release the Transaction Security over such remaining amount and thereafter the Margin Account.
- (f) The Company may by giving written notice to the Facility Agent prior to the Valuation Time on any Coverage Ratio Test elect to apply a voluntary prepayment against either the Relevant A Amount or the Relevant B Amount. If the Company does not make any such election, voluntary prepayments shall

reduce the Relevant A Amount on each Coverage Ratio Test Date. For the avoidance of doubt, no prepayment made under Clause 7 (*Settlement*) shall be treated as a voluntary prepayment.

(g) In this Clause:

"Acceptable Collateral" means any other collateral acceptable to the Facility Agent (acting on the instructions of the Majority Lenders);

"Coverage Amount" means the sum of:

- (a) the Market Price;
- (b) the amount standing to the credit of the Margin Account; and
- (c) the US Dollar equivalent of the market value (determined by the Facility Agent (acting in good faith and in a commercially reasonable manner)) of additional Acceptable Collateral delivered in accordance with paragraph (b)(ii) of this Clause 22.24;

"Coverage Ratio" means, in respect of any Coverage Ratio Test Date, the percentage level determined by the Facility Agent (acting in good faith and in a commercially reasonable manner) which is the quotient of:

$$\frac{(A - B)}{C} \times 100$$

Where:

"A" means the Coverage Amount;

"B" means the Notional B Amount; and

"C" means the Notional A Amount,

in each case, on such Coverage Ratio Test Date;

"Coverage Ratio Test Date" means the date falling on the last (if any) Trading Day of each full week ending after the Initial Drawdown Date (and if there is no Trading Day in any such week, there shall be no Coverage Ratio Test Date in respect of such week);

"Exchange Business Day" means any Trading Day on which the HKSE is open for trading during its regular trading sessions, notwithstanding the HKSE closing prior to its Scheduled Closing Time;

"ListCo Share Disruption Event" means in respect of the ListCo Shares:

- (a) the occurrence or existence at any time during the one hour period that ends at the relevant Valuation Time of:

- (i) any suspension of or limitation imposed on trading by the HKSE or otherwise and whether by reason of movements in price exceeding limits permitted by the HKSE or otherwise relating to the ListCo Shares;
- (ii) any event (other than an event described in paragraph (b) below) that disrupts or impairs (as determined by the Facility Agent) the ability of market participants in general to effect transactions in, or obtain market values for, the Shares on the HKSE,

which in either case the Facility Agent determines acting in good faith and in a commercially reasonable manner is material; or

- (b) the closure on any Exchange Business Day of the HKSE prior to its Scheduled Closing Time unless such earlier closing time is announced by the HKSE, as the case may be, at least one hour prior to the earlier of: (i) the actual closing time for the regular trading session on the HKSE on such Exchange Business Day; and (ii) the submission deadline for orders to be entered into the HKSE system for execution at the Valuation Time on such Exchange Business Day;

"Market Price" means the product of:

- (a) the VWAP; and
- (b) the aggregate of the number of ListCo Shares which are beneficially owned (directly or indirectly) by the Company and (to the extent such ListCo Shares are not Acquired MGO Shares) subject to Equivalent Share Security;

"Notional A Amount" means, at any time, the positive difference (if any) between:

- (a) the Relevant A Amount at that time; and
- (b) if the Notional B Amount has been reduced to zero, the aggregate amount of all mandatory prepayments made under Clauses 9.3 (*Relevant Disposal Proceeds*) or 9.4 (*Dividend Proceeds*) to the extent not taken into account in calculating the Notional B Amount;

"Notional B Amount" means, at any time, the positive difference (if any) between:

- (a) the Relevant B Amount at that time; and
- (b) the aggregate amount of all mandatory prepayments made under Clauses 9.3 (*Relevant Disposal Proceeds*) or 9.4 (*Dividend Proceeds*) up to an aggregate amount that is equal to the Relevant B Amount at that time;

"Privatisation Prepayment Cap" means, in relation to a Privatisation Start Date, the amount (if any) which would be required to be standing to the credit of the Margin Account had the Coverage Ratio on the Coverage Ratio Test Date immediately preceding that Privatisation Start Date been equal to 160% (on the basis that when conducting this calculation, all the components in the formula for Coverage Ratio other than the amount standing to the credit of the Margin Account will remain the same as they were on that Coverage Ratio Test Date);

"Relevant A Amount" means, at any time, the positive difference (if any) between:

- (a) an amount equal to 25% of the difference between the aggregate drawn amount under the Facility as at that time (whether or not such drawn amount has been prepaid) and the amount standing to the credit of the Disbursement Account as at that time; and
- (b) the aggregate amount of all voluntary prepayments which the Company has elected in accordance with paragraph (f) of this Clause 22.24 to reduce the Relevant A Amount;

"Relevant B Amount" means, at any time, the positive difference (if any) between:

- (a) an amount equal to 75% of the difference between the aggregate drawn amount under the Facility as at that time (whether or not such drawn amount has been prepaid) and the amount standing to the credit of the Disbursement Account as at that time; and
- (b) the aggregate amount of all voluntary prepayments which the Company has elected in accordance with paragraph (f) of this Clause 22.24 to reduce the Relevant B Amount;

"Scheduled Closing Time" means, in respect of the HKSE and a Coverage Ratio Test Date, the scheduled weekday closing time of the HKSE on such Coverage Ratio Test Date, without regard to after hours or any other trading outside of the regular trading session hours;

"Trading Day" means any day on which the HKSE is scheduled to be open for trading on each of its regular trading sessions and on which no ListCo Share Disruption Event has occurred;

"Trigger Date" means the date on which the Facility Agent notifies the Company in writing that a Trigger Event has occurred;

"Trigger Event" means, on any Coverage Ratio Test Date, the Facility Agent determines (acting in good faith and in a commercially reasonable manner) that the Coverage Ratio on that Coverage Ratio Test Date is less than 135%;

"Valuation Time" means, in relation to the ListCo Shares, the Scheduled Closing Time on the HKSE on the relevant Trading Day. If the HKSE closes

prior to its Scheduled Closing Time and the Valuation Time would otherwise fall after the actual closing time for its regular trading session, then the Valuation Time shall be such actual closing time; and

"**VWAP**" means, in respect of any Trading Day, the US Dollar equivalent (which shall be construed in accordance with paragraph (a)(ii) of Clause 1.2 (*Construction*) except that "11:00 a.m." in that paragraph shall be deemed to be "close of business" for the purposes of this definition) of the 10-day volume weighted average closing price per publicly listed ListCo Share determined by the Facility Agent (acting in good faith and in a commercially reasonable manner) at the Valuation Time on that Trading Day.

22.25 Securities Accounts

- (a) The MGOC Co shall ensure that:
 - (i) on the Signing Date, there is opened and thereafter maintained the Securities Account and the Securities Cash Account; and
 - (ii) no securities are transferred into the Securities Account other than the Acquired MGO Shares.
- (b) The MGOC Co shall not make, or instruct the Custodian to give effect to, any withdrawal of any Acquired MGO Shares from the Securities Account other than any withdrawal, or instruction to the Custodian to give effect to any withdrawal:
 - (i) required to facilitate a disposal of any Acquired MGO Shares standing to the credit of the Securities Account **provided that**:
 - (A) the relevant Acquired MGO Shares are withdrawn from the Securities Account at the same time as or after the Net Disposal Proceeds of such MGO Shares Disposal are credited to the Securities Cash Account or the Custodian's CCASS clearing account; and
 - (B) no Acceleration Date has occurred and is continuing on the date on which such withdrawal is to be made;
 - (ii) approved by the Facility Agent (acting on the instructions of the Higher Consenting Threshold); or
 - (iii) on a Privatisation Start Date or otherwise when a Privatisation is continuing.
- (c) No amount may be withdrawn or transferred from the Securities Cash Account unless such withdrawal or transfer is made by the Security Agent on behalf of the MGOC Co in accordance with paragraph (b) of Clause 9.4 (*Dividend Proceeds*) or paragraph (d) or (e) below.

- (d) Within 10 Business Days of the Net Disposal Proceeds of a MGO Shares Disposal being credited to the Securities Cash Account in accordance with paragraph (b)(i) above:
- (i) the Security Agent shall (and the MGOCo irrevocably authorises the Security Agent to) transfer to the Proceeds Account, if such Net Disposal Proceeds:
 - (A) are less than or equal to the Relevant Disposal Proceeds in respect of such MGO Shares Disposal, all of such Net Disposal Proceeds; or
 - (B) are greater than the Relevant Disposal Proceeds in respect of such MGO Shares Disposal, an amount of such Net Disposal Proceeds equal to such Relevant Disposal Proceeds; and
 - (ii) the Company shall transfer to the Proceeds Account an amount equal to the Disposal Proceeds Shortfall in relation to such MGO Shares Disposal.
- (e) At any time after a transfer has been made in accordance with paragraph (d)(i)(B) above in relation to a MGO Shares Disposal and for so long as no Acceleration Date has occurred and is continuing, the MGOCo may, by giving the Security Agent not less than three Business Days' prior notice, request the Security Agent to (and the Security Agent shall) transfer (or cause to be transferred) an amount equal to the Disposal Proceeds Excess from the Securities Cash Account to a bank account designated by the MGOCo.
- (f) While a Privatisation is continuing, the MGOCo shall have no further obligations under this Clause 22.25 **provided that** all the Acquired MGO Shares owned by the MGOCo at as the Privatisation Start Date shall remain subject to the Acquired MGO Shares Charge save to the extent permitted to be released pursuant to the terms of the Finance Documents.

22.26 Conditions subsequent

The Company shall:

- (a) within 20 Business Days of each of the dates referred to in paragraphs (a) to (c) (each such date, a "**Notice Date**") of the definition of Final Date, provide to the Facility Agent written confirmation of the number of ListCo Shares beneficially owned by the MGOCo as at the relevant Notice Date; and
- (b) ensure that the MGOCo shall, within 10 Business Days after any MGO Shares are acquired by the MGOCo:
 - (i) deposit such MGO Shares into the Securities Account; and
 - (ii) convert such MGO Shares into CCASS Shares (to the extent not already in such form).

22.27 Disbursement Account and Settlement Account

- (a) The Company shall ensure that, on the Signing Date, there is opened in its name and thereafter maintained the Disbursement Account until the end of the Settlement Date.
- (b) The Company shall ensure that no amount other than the proceeds of Loans and/or accrued interest (if any) will be credited to the Disbursement Account.
- (c) The Company shall not withdraw, or otherwise transfer from the Disbursement Account, any amount standing to the credit of the Disbursement Account other than pursuant to a Disbursement, a Settlement Release or a prepayment made in accordance with paragraph (a) of Clause 7.1 (*Settlement Release and prepayment (Equity True-Up Amount)*), Clause 7.3 (*Settlement prepayment (Debt True-Up Amount)*) or Clause 7.4 (*Settlement prepayment (neutral)*).
- (d) The MGOC Co shall ensure that, on the Signing Date, there is opened in its name and thereafter maintained the Settlement Account until the end of the Settlement Date.
- (e) The MGOC Co shall not withdraw, or otherwise transfer from the Settlement Account, any amount standing to the credit of the Settlement Account unless:
 - (i) the amount so withdrawn or transferred is immediately applied towards a Permitted Purpose;
 - (ii) such withdrawal or transfer would not cause the Loan/Equity Ratio to exceed 1.5; or
 - (iii) such withdrawal or transfer is made on or after the Settlement Date.

22.28 Bank Accounts

Each Obligor shall ensure that, on and from the Initial Drawdown Date, each of its bank accounts which has any amount standing to the credit thereof is maintained with an Approved Bank.

22.29 Further assurance

- (a) Subject to the Security Principles, each Obligor shall:
 - (i) at its own expense promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices, instructions and powers of attorney) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
 - (A) to perfect the Security created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment, powers of attorney or other Security over all or any of the assets which are,

or are intended to be, the subject of the Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Secured Parties provided by or pursuant to the Secured Documents or by applicable law;

- (B) to confer on the Security Agent or confer on the 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 Security Documents; and/or
 - (C) (following the occurrence of an Acceleration Date) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security; and
- (ii) 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.
- (b) In relation to any provision of any Finance Document which requires the Parent or an Obligor to deliver any document for the purposes of granting any guarantee or Security for the benefit of all or any of the Finance Parties, the Security Agent agrees to execute as soon as reasonably practicable any such Agreed Form document which is presented to it for execution.

22.30 No MGO

No Obligor shall and the Parent shall not, take any action or step that results in any mandatory general offer being required to be made by an Obligor or the Parent pursuant to the Listing Rules (in the form in effect as at the Signing Date) (other than the MGO) unless the aggregate purchase consideration and other amounts payable in respect thereof are funded solely from the proceeds of Available Parent Funds.

22.31 Sanctions

Each Obligor shall not (and the Company shall procure that no MGO Group Member and, from the First MGO Acquisition Date, no ListCo Group Member, and, to the extent within its power, none of its or their respective directors, officers, employees or Affiliates (each a "**Person**") will):

- (a) engage in any transaction that violates any of the applicable prohibitions set forth in any Sanctions where to do so would reasonably be expected to have a Material Adverse Effect;
- (b) be located, organised or resident in a country or territory that is the subject of Sanctions; or

- (c) directly or indirectly use the proceeds of any Loan or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person:
 - (i) to fund any activities or business with any person that, at the time of such funding or facilitation, is the subject of Sanctions;
 - (ii) to fund any activities or business in any country or territory that, at the time of such funding, is the subject of Sanctions; or
 - (iii) in any other manner that would result in a violation by any Person or Finance Party of Sanctions.

22.32 **Anti-corruption and anti-money laundering**

Each Obligor shall, and shall procure that each MGO Group Member and, from the First MGO Acquisition Date, each ListCo Group Member will, conduct its operations at all times in compliance with Anti-Money Laundering Laws and Anti-Corruption Laws, where failing to do so would reasonably be expected to have a Material Adverse Effect or to materially adversely affect the interests or reputation of any Finance Party.

22.33 **US Regulations**

- (a) No Obligor or any ERISA Affiliate shall establish, or agree to contribute to, any Employee Plan or Multiemployer Plan.
- (b) No part of the proceeds of any Utilisation will be used, whether directly or indirectly, for "buying" or "carrying" any Margin Stock or to extend credit to others for the purpose of "buying" or "carrying" any Margin Stock (in each case within the meaning of Regulation U or X).

23. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 23 is an Event of Default (save for Clauses 23.17 (*Acceleration*) and 23.18 (*Clean-up Period*)).

23.1 **Non-payment**

An Obligor does not pay on 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:

- (a) (in the case of principal and interest) its failure to pay is caused by administrative or technical error or a Disruption Event and payment is made within three Business Days of its due date; and
- (b) (in the case of any other amount) payment is made within five Business Days of its due date.

23.2 **Loan to Value and other obligations**

An Obligor does not comply with any requirement of Clause 22.24 (*Loan to Value*) or Clause 22.26 (*Conditions subsequent*).

23.3 **Other obligations**

An Obligor or the Parent does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.1 (*Non-payment*) and Clause 23.2 (*Loan to Value and other obligations*)) unless failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of the Facility Agent giving notice to the Company and an Obligor or the Parent becoming aware of the failure to comply.

23.4 **Misrepresentation**

Any representation, warranty or statement made or deemed to be made by an Obligor or the Parent in any Finance Document or any other document delivered by or on behalf of any Obligor or the Parent under or pursuant to any Finance Document is or proves to be incorrect or misleading in any material respect (or where that representation, warranty or statement is itself qualified by materiality, in any respect) when made or deemed to be made unless the facts or circumstances underlying the misrepresentation are capable of remedy and is remedied within 20 Business Days of the earlier of the Facility Agent giving notice to the Company and any Obligor or the Parent becoming aware of the misrepresentation.

23.5 **Cross-default**

- (a) Any Financial Indebtedness of any Obligor, MGO Group Member or (on and from the First MGO Acquisition Date) any ListCo Group Member is not paid when due nor within any originally applicable grace period or is validly declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (b) Any creditor of any Obligor or MGO Group Member (or, from the First MGO Acquisition Date, any ListCo Group Member) becomes entitled to declare any Financial Indebtedness of any Obligor or MGO Group Member (or, from the First MGO Acquisition Date, any ListCo Group Member) (as the case may be) due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any SPA Financial Indebtedness is not paid when due nor within any originally applicable grace period or is validly declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (d) No Event of Default will occur under paragraph (a) or (b) above:
 - (i) if the relevant Financial Indebtedness is intra-MGO Group Financial Indebtedness, intra-ListCo Group Financial Indebtedness or Parent Debt;

- (ii) if the aggregate amount of Financial Indebtedness is at the relevant time less than (in the case of an Obligor or any MGO Group Member) US\$1,000,000 (or its equivalent) or (in the case of a ListCo Group Member) US\$10,000,000 (or its equivalent); or
- (iii) if the Financial Indebtedness is in respect of any derivative transaction which is terminated as a result of an event of default (however described) with respect to the counterparty or a credit support provider for or specified entity of the counterparty rather than with respect to an Obligor, the relevant MGO Group Member or the relevant ListCo Group Member.

23.6 **Insolvency**

Any Obligor, the Parent or any MGO Group Member (or, from the First MGO Acquisition Date, the ListCo) is unable or admits inability to pay its debts as they fall due, suspends or threatens to suspend making payments on any of its debts, or commences negotiations with one or more of its creditors (other than the Finance Parties) with a view to rescheduling any of its indebtedness, in each case, by reason of actual or anticipated financial difficulties.

23.7 **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, bankruptcy, liquidation, winding-up, dissolution, administration, rehabilitation or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor, the Parent or any MGO Group Member (or, from the First MGO Acquisition Date, the ListCo);
- (b) a composition, compromise, assignment or arrangement with any creditor of any Obligor, the Parent or any MGO Group Member (or, from the First MGO Acquisition Date, the ListCo) for reasons of financial difficulty of such company;
- (c) the appointment of a liquidator, receiver, judicial manager, receiver and manager, administrative receiver, trustee, compulsory administrator, provisional liquidator or interim manager or other similar officer in respect of any Obligor, the Parent or any MGO Group Member (or, from the First MGO Acquisition Date, the ListCo) or, in each case, any of its assets having an aggregate value of US\$1,000,000 or more (or in the case of the ListCo, US\$10,000,000 (or more)) (or, in each case, its equivalent);
- (d) enforcement of any Security over any asset or assets of any Obligor or the Parent or any MGO Group Member (or, from the First MGO Acquisition Date, the ListCo), having an aggregate value of US\$1,000,000 or more (or in the case of the ListCo, US\$10,000,000 (or more)) (or, in each case, its equivalent); or

(e) any analogous procedure or step is taken in any Relevant Jurisdiction,

excluding any reorganisation which constitutes a Permitted Transaction or any corporate action, legal proceedings or other procedure which is frivolous or vexatious and is discharged, stayed or dismissed within 20 Business Days of commencement.

23.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Obligor, the Parent or any MGO Group Member (or, from the First MGO Acquisition Date, the ListCo) having an aggregate value of US\$1,000,000 or more (or in the case of the ListCo, US\$10,000,000 (or more)) (or, in each case, its equivalent) and in respect of indebtedness aggregating US\$1,000,000 or more (or in the case of the ListCo, US\$10,000,000 (or more)) (or its equivalent) is not discharged within 20 Business Days.

23.9 Unlawfulness and invalidity

Subject to the Reservations and Perfection Requirements (other than in respect of paragraph (a) below):

- (a) it is or becomes unlawful for an Obligor or the Parent to perform any of its material obligations under the Finance Documents;
- (b) any obligation or obligations of any Obligor or the Parent under any Finance Documents are not or cease to be legal, valid, binding or enforceable; or
- (c) any Finance Document ceases to be in full force and effect or any Transaction Security or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective,

in each case, in a way which is materially adverse to the interests of the Finance Parties.

23.10 Intercreditor Agreement

Any party to the Intercreditor Agreement (other than an Obligor, a Finance Party or a Hedge Counterparty) fails to comply with its obligations under that agreement and the interests of the Lenders are, or are reasonably likely to be, materially prejudiced by such failure unless the facts or circumstances underlying such failure is capable of remedy and are remedied within 20 Business Days of the earlier of the Facility Agent giving notice to the Company and any Obligor becoming aware of such failure.

23.11 Cessation of business

Any MGO Group Member (or, following the First MGO Acquisition Date, the ListCo Group (taken as a whole)) materially changes, suspends or ceases to carry on (or threatens to materially change, suspend or cease to carry on) the whole of its business or a part of its business which is material in the context of that MGO Group Member

or the ListCo Group (taken as a whole) (as the case may be) except as part of a Permitted Transaction or Permitted Disposal.

23.12 **Litigation**

Any litigation, arbitration, proceeding or dispute is started or threatened or there are any circumstances likely to give rise to any litigation, arbitration, proceeding or dispute, in each case against any MGO Group Member by any third party which is reasonably likely to be adversely determined and would, if so adversely determined, reasonably be expected to have a Material Adverse Effect.

23.13 **Nationalisation**

All or part of the assets of any MGO Group Member (or, from the First MGO Acquisition Date, the ListCo) are seized, nationalised, expropriated or compulsorily acquired by, or by the order of, any agency of any state (or any analogous process by relevant authorities in any jurisdiction) and such event has or would reasonably be expected to have a Material Adverse Effect.

23.14 **Repudiation**

Any party (other than a Secured Party) to a Finance Document repudiates or rescinds a Finance Document or evidences an intention in writing to repudiate or rescind a Finance Document where to do so has or would reasonably be expected to have a material adverse effect on the interests of the Finance Parties under the Finance Documents.

23.15 **Cessation of listing or suspension of trading**

- (a) Pursuant to the exercise by the HKSE of its powers pursuant to Rule 6.10 of the Listing Rules only, the ListCo Shares cease to be listed on the Main Board of the HKSE and all Loans are not voluntarily prepaid in accordance with Clause 9.9 (*Voluntary prepayment*) within 60 Business Days following such cessation.
- (b) Other than in connection with any Acquisition Related ListCo Suspension, the trading of the ListCo Shares on the Main Board of the HKSE is suspended for 30 consecutive Trading Days and all Loans are not voluntarily prepaid in accordance with 9.9 (*Voluntary prepayment*) within 60 Business Days following the last Trading Day of such period.

23.16 **Material adverse change**

The occurrence of any other event or circumstance which has a Material Adverse Effect.

23.17 **Acceleration**

- (a) Subject to Clause 4.4 (*Certain Funds*), 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 Company:

- (b) cancel the Total Commitments, whereupon they shall immediately be cancelled;
- (c) declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall immediately become due and payable;
- (d) declare that all or part of the Utilisations be payable on demand, whereupon they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or
- (e) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

23.18 Clean-up Period

- (a) If, during a Clean-up Period, any event or circumstance has occurred or exists which would constitute a Default (other than a Material Default) with respect to any ListCo Group Member (the "**Relevant Default**"):
 - (b) promptly upon becoming aware of its occurrence or existence, the Company shall notify the Facility Agent of that Relevant Default and the related event or circumstance (and the steps, if any, being taken to remedy it); and
 - (c) during the Clean-up Period that Relevant Default shall not constitute a Default or an Event of Default, the Facility Agent shall not be entitled to give any notice under Clause 23.17 (*Acceleration*) with respect to that Relevant Default and no other Finance Party shall be entitled to take any action with respect to that Relevant Default until (if that Relevant Default is then continuing) the date immediately after the end of the Clean-up Period **provided that** the Relevant Default:
 - (i) was not procured or approved by the Parent or an Obligor (with knowledge of the Relevant Default only not being interpreted in any way as procurement or approval in circumstances where the Parent or the relevant Obligor did not reasonably have the ability to control or prevent the Relevant Default);
 - (ii) is capable of remedy within the Clean-up Period and reasonable steps are being taken by the relevant MGO Group Member to remedy it or the event or circumstance which gave rise to it; or
 - (iii) does not or would not reasonably be expected to have a Material Adverse Effect.

24. CHANGES TO THE LENDERS

24.1 Transfers by the Lenders

- (a) Prior to the Final Date, no Lender shall enter into a Transfer with any person.

- (b) Subject to this Clause 24, following the Final Date, a Lender (the "**Existing Lender**") shall not enter into any Transfer other than a Transfer with another bank or financial institution or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in syndicated loans (the "**New Lender**").

24.2 **Conditions of Transfer**

- (a) The consent of the Company is required for a Transfer in accordance with paragraph (b) of Clause 24.1 (*Transfers by the Lenders*), unless the Transfer is:
 - (i) to another Lender or a Related Fund or an Affiliate of a Lender (each a "**Related Lender**") or is undertaken as part of an amalgamation, demerger, merger, consolidation, corporate reconstruction or corporate reorganisation of that Existing Lender, in each case when the Related Lender or the surviving or resulting entity is a Permitted Transferee;
 - (ii) made at a time when an Event of Default is continuing; or
 - (iii) to a Permitted Transferee.
- (b) The consent of the Company to a Transfer must not be unreasonably withheld or delayed (the Company will be deemed to have given its consent five Business Days after the Existing Lender has requested it unless consent is expressly refused by the Company within that time). It shall not be unreasonable for the Company to withhold its consent to a proposed Transfer to a person who is not a Permitted Transferee.
- (c) In respect of a Transfer of part but not all of a Lender's participation in the Facility to a person other than a Related Lender, the amount of such Transfer must be:
 - (i) in a minimum of US\$3,000,000; and
 - (ii) such that the amount of that transferring Lender's remaining participation (when aggregated with its Related Lenders' participations (if any)) in respect of Commitments or Utilisations made under the Facility is in a minimum amount of US\$3,000,000 (in aggregate).
- (d) An assignment will only be effective on:
 - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender;
 - (ii) the New Lender acceding to the Intercreditor Agreement in accordance with the terms thereof; and

- (iii) performance by the Facility Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (e) A transfer will only be effective if the New Lender accedes to the Intercreditor Agreement in accordance with the terms of those agreements and the procedure set out in Clause 24.6 (*Procedure for Transfer*) is complied with.
- (f) If a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office (any such Lender, an "**Outgoing Lender**") and as a result of circumstances existing at the date the assignment, transfer or change occurs, the Company or a Guarantor (which is (respectively) the Company or a Guarantor at the date the assignment, transfer or change occurs) would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 14 (*Tax Gross-up and Indemnities*) or Clause 15.1 (*Increased Costs*), then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses from the Company or such Guarantor to the same extent as the Outgoing Lender would have been if the assignment, transfer or change had not occurred.
- (g) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms 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 this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.
- (h) If any Lender completes any Transfer other than in accordance with this Clause 24, its Commitment and/or participation in the Utilisations then outstanding shall not be included for the purpose of calculating the Total Commitments or participations under the Facility (or any part thereof) when ascertaining whether any relevant percentage of Total Commitments and/or participations has been obtained until such time as there have been compliance with the provisions of this Agreement.

24.3 The Register

The Facility Agent shall maintain a register (the "**Register**") for the recordation of the names and addresses of each Lender and the Commitments of and obligations owing to each Lender. The entries in the Register shall be conclusive absent manifest error and each Obligor, the Facility Agent and each Lender shall treat each person whose name is recorded in the Register as a Lender notwithstanding any notice to the contrary.

24.4 **Assignment or transfer fee**

- (a) Unless the Facility Agent otherwise agrees and excluding an assignment or transfer made pursuant to the Syndication, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of US\$3,000 (or its equivalent).
- (b) All costs and expenses relating to a Transfer (including any costs and expenses relating to any Security Document) shall be for the account of the Existing Lender and the New Lender and not any MGO Group Member.

24.5 **Limitation of responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor or other person;
 - (iii) the performance and observance by any Obligor or other person of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,and any representations or warranties implied by law are excluded.
- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Secured Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities and any other person whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 24; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor or other person of its obligations under the Finance Documents or otherwise.

24.6 Procedure for Transfer

- (a) Subject to the conditions set out in Clause 24.1 (*Transfers by the Lenders*), a transfer is effected 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. 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 other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to Clause 24.12 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents, each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (ii) each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (iii) the Facility Agent, the Mandated Lead Arrangers, the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Facility Agent, the Mandated Lead Arrangers, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
 - (iv) the New Lender shall become a Party as a "**Lender**".

24.7 Procedure for Assignment

- (a) Subject to the conditions set out in Clause 24.2 (*Conditions of Transfer*), an assignment may be effected in accordance with paragraph (d) below when the Facility Agent executes an otherwise duly completed Assignment Agreement 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 other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
- (c) Subject to Clause 24.12 (*Pro rata interest settlement*), on the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and
 - (iii) the New Lender shall become a Party as a "**Lender**" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 24.7 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 24.6 (*Procedure for Transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders or the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 24.2 (*Conditions of Transfer*).

24.8 **Copy of Transfer Certificate or Assignment Agreement to the Company**

- (a) The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement send to the Company a copy of that Transfer Certificate or Assignment Agreement.
- (b) A Lender shall, as soon as reasonably practicable after the execution of the agreement(s) in respect thereof, inform the Facility Agent (who shall inform the Company) of any Voting Participation.

24.9 **Transfer Status**

Any New Lender shall confirm in its respective Transfer Certificate or Assignment Agreement (and any Lender entering into a Participation shall ensure that the Participant shall confirm in the agreement relating to such Participation (and the relevant Lender shall (via the Facility Agent) notify the Company of each such confirmation)) whether or not it is a Distressed Investor or a Conflicted Lender.

24.10 Hedge Counterparties

- (a) A Lender (or an Affiliate of a Lender) which becomes a Hedge Counterparty shall accede to this Agreement and to the Intercreditor Agreement by delivery to the Security Agent of a duly completed and signed Creditor Accession Undertaking in the form required under the Intercreditor Agreement and by the Security Agent executing that Creditor Accession Undertaking.
- (b) Where this Agreement or any other Finance Document imposes an obligation on a Hedge Counterparty and the relevant Hedge Counterparty is an Affiliate of a Lender and is not a party to that document, the relevant Lender shall ensure that the obligation is performed by its Affiliate.

24.11 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 24, each Lender may, without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender, including:

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

except that no such charge, assignment or Security shall:

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

24.12 Pro rata interest settlement

If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a *pro rata* basis to Existing Lenders and New Lenders, then (in respect of any transfer pursuant to Clause 24.6 (*Procedure for Transfer*) or any assignment pursuant to Clause 24.7 (*Procedure for Assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (the "**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that:
 - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 24.12, have been payable to it on that date, but after deduction of the Accrued Amounts.

24.13 **Right of Replacement**

- (a) If at any time any Lender (as applicable) becomes an Illegal Lender, a Non-Consenting Lender, a Defaulting Lender, a Claiming Lender or a Conflicted Lender (each, a "**Relevant Lender**"), then the Company may, **provided that** it gives at least five Business Days prior written notice to the Facility Agent and such Relevant Lender:
 - (i) replace such Relevant Lender by requiring such Relevant Lender to (and, to the extent permitted by law or regulation, such Relevant Lender shall) transfer pursuant to Clause 24 (*Changes to the Lenders*) all or part (but always, in the case of a Non-Consenting Lender, the non-consenting portion) of its rights and obligations under this Agreement to a Sponsor Group Member, a Lender or other bank, financial institution, trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in or securitising loans, securities or other financial assets (excluding to any MGO Group Member or any ListCo Group Member) (a "**Replacement Lender**") selected by the Company, which confirms its willingness to assume and does assume all the obligations of the transferring Relevant Lender (including the assumption of the transferring Relevant Lender's participations on the same basis as the transferring Relevant Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Relevant Lender's participation in the outstanding Utilisations and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (ii) give the Facility Agent notice of cancellation of that Relevant Lender's commitment whereupon that Relevant Lender's commitment shall immediately be reduced to zero, and prepay such Relevant Lender (together with all accrued interest, Break Costs and other amounts

payable to that Relevant Lender under the Finance Documents) on the last day of the Interest Period which ends after the Company has given such notice or, if earlier, on the date specified in such notice, **provided that** such prepayment and reduction may only be financed from the proceeds of any New Equity or New Loans.

- (b) The replacement of a Relevant Lender pursuant to this Clause 24.13 shall be subject to the following conditions:
- (i) no Finance Party shall have any obligation to find a replacement Lender;
 - (ii) any replacement of an Illegal Lender shall take effect on the last day of the then current Interest Period or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent under paragraph (a) of Clause 9.1 (*Illegality*) (being no earlier than the last day of any applicable grace period permitted by law or regulation);
 - (iii) in the case of an Illegal Lender, it is not illegal or contrary to any regulation for that Illegal Lender to enter into any transfer or assignment documentation;
 - (iv) no Conflicted Lender shall be replaced if its entry into a Participation with a Competitor was consented to in writing by the Company;
 - (v) in the event of a replacement or prepayment of a Non-Consenting Lender, such replacement or prepayment may occur at any time during a period of 50 Business Days commencing on the date on which the relevant consent is requested (or, in the case of a prepayment, at the end of the current Interest Period);
 - (vi) performance by the Facility Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such transfer or assignment to a new Lender, the completion of which the Facility Agent shall promptly notify to the Company;
 - (vii) the Company shall notify the Facility Agent promptly after any such transfer or assignment;
 - (viii) any replaced Relevant Lender shall not be required to refund, or to pay or surrender to any other Lender, any of the fees or other amounts received by that replaced Relevant Lender under any Finance Document; and
 - (ix) any replacement of a Relevant Lender which is the Facility Agent shall not affect its role as the Facility Agent.

25. DEBT PURCHASE TRANSACTIONS

25.1 Prohibition on Debt Purchase Transactions by the MGO Group or ListCo Group

The Company shall not, and shall procure that each other MGO Group Member and each ListCo Group Member shall not, enter into any Debt Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraph (b) or paragraph (c) of the definition of Debt Purchase Transaction.

25.2 Disenfranchisement

- (a) For so long as a Sponsor Group Member beneficially owns a Commitment or has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
 - (i) in ascertaining the Lenders, the Majority Lenders, the Higher Consenting Threshold, the Majority Senior Creditors or whether any given percentage of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, such Commitment shall be deemed to be zero **provided that** such consent, waiver, amendment or other vote is not detrimental substantially (in comparison to the other Lenders) to the rights and/or interests of the Sponsor Group Member solely in its capacity as a Lender (and excluding its interests as a holder of equity in any MGO Group Member or ListCo Group Member (whether directly or indirectly)), and each Sponsor Group Member upon becoming a Party expressly agrees and acknowledges that the operation of this Clause 25.2 shall not of itself be so detrimental to it in comparison to the other Lenders or otherwise;
 - (ii) for the purposes of Clause 36.2 (*Exceptions*), such Sponsor Group Member or the person with whom it has entered into such Participation, shall be deemed not to be a Lender (unless in the case of a person not being a Sponsor Group Member it is a Lender by virtue otherwise than by beneficially owning the relevant Commitment); and
 - (iii) under no circumstances may such Sponsor Group Member have any right to vote in relation to any Enforcement Action (as defined in the Intercreditor Agreement).
- (b) Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Facility Agent in writing if it knowingly enters into a Debt Purchase Transaction with a Sponsor Group Member (a "**Notifiable Debt Purchase Transaction**"), such notification to include the amount of Commitment to which the Debt Purchase Transaction relates.
- (c) A Lender shall promptly notify the Facility Agent if a Debt Purchase Transaction to which it is a party:

- (i) is terminated; or
 - (ii) ceases to be with a Sponsor Group Member.
- (d) Each Sponsor Group Member that is a Lender agrees that:
- (i) in relation to any meeting or conference call which all the Lenders are invited to attend or participate in, it shall not receive notice of such meeting or conference call or attend or participate in the same unless 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. CHANGES TO THE OBLIGORS

26.1 Assignments and transfer by Obligors

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

26.2 Accession of Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 21.4 ("*Know your customer*" checks), the Company may request that any MGO Group Member become a Guarantor. That Subsidiary shall become a Guarantor if:
 - (i) the Company delivers to the Facility Agent a duly completed and executed Accession Deed; and
 - (ii) the Facility Agent has received all of the documents and other evidence listed in Schedule 4 (*Conditions Precedent by an Additional Guarantor*) in relation to that Guarantor, each in form and substance satisfactory to the Facility Agent (acting reasonably).
- (b) The Facility Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Schedule 4 (*Conditions Precedent by an Additional Guarantor*).

26.3 Repetition of representations

Delivery of an Accession Deed constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing in all material respects.

27. ROLES

27.1 Appointment of the Facility Agent

- (a) Each other Finance Party:
 - (i) appoints the Facility Agent to act as its agent under and in connection with the Finance Documents; and
 - (ii) 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.

27.2 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 the relevant Finance Document stipulates the matter is an all Lender decision;
 - (B) the Higher Consenting Threshold if the relevant Finance Document stipulates the matter is a Higher Consenting Threshold decision; 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 relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives any such instructions or clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the 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 security that it may require 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 proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the Transaction Security or Security Documents.

27.3 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. The Facility Agent is not obliged to forward or disclose any Fee Letter or any of the commitment documents to any person who is not a party to such letter or such document.
- (c) Without prejudice to Clause 24.8 (*Copy of Transfer Certificate or Assignment Agreement to the Company*), paragraph (b) above shall not apply to any Transfer Certificate, any Assignment Agreement or any Increase Confirmation.
- (d) 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, commitment fee or other fee payable to a Finance Party (other than the Facility Agent 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).
- (h) The Facility Agent shall provide to the Company, within five Business Days of a request by the Company (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders and the Participants of any Voting Participation as at that Business Day (and, if different, the date of the request), their respective Commitments,

the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Facility Agent to that Lender under the Finance Documents.

27.4 Role of the Mandated Lead Arranger

Except as specifically provided in the Finance Documents, the Mandated Lead Arrangers has no obligations of any kind to any other Party under or in connection with any Finance Document.

27.5 No fiduciary duties

- (a) Nothing in this Agreement constitutes the Facility Agent or the Mandated Lead Arrangers as a trustee or fiduciary of any other person.
- (b) None of the Facility Agent or the Mandated Lead Arrangers 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.

27.6 Business with the MGO Group

The Facility Agent and the Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any MGO Group Member or any other person.

27.7 Rights and discretions

- (a) The Facility Agent may:
 - (i) rely on any representation, communication, notice or document (including, without limitation, any notice given by a Lender pursuant to paragraphs (b) or (c) of Clause 25.2 (*Disenfranchisement*)) believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:

- (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
- (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 23.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised;
 - (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors; 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 Group Member.
- (c) The Facility Agent may engage and pay for the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) 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 agent under this Agreement.
- (e) Without prejudice to the generality of paragraph (d) above, the Facility Agent:
 - (i) may disclose; and
 - (ii) on the request of the Company or the Majority Lenders shall, as soon as reasonably practicable, disclose, the identity of a Defaulting Lender to the Company and to the other Finance Parties.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, none of the Facility Agent or the Mandated Lead Arrangers 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.

- (g) The Facility Agent is not obliged to 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*).
- (h) 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.

27.8 Responsibility for documentation

None of the Facility Agent or the Mandated Lead Arrangers 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, an Obligor or any other person in or in connection with any Finance Document or the Information Memorandum or the Reports;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security; or
- (c) for 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.

27.9 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 of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

27.10 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 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 fraud, gross negligence or wilful misconduct;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security;
or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control;
or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action, unless directly caused by its fraud, 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 or any Transaction Document and any officer, employee or agent of the Facility Agent may rely on this Clause 27.10.
- (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 Arrangers to carry out:

- (i) any "know your customer" or other checks in relation to any person; or
- (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Facility Agent and the Mandated Lead Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the 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 the 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.

27.11 Lenders' indemnity to the Facility Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) in acting as Facility Agent under the Finance Documents (unless the Facility Agent has been reimbursed by an Obligor pursuant to a Finance Document).

27.12 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 Company.
- (b) Alternatively the Facility Agent may resign by giving 30 days' notice to the Lenders and the Company, in which case the Majority Lenders (with the agreement of Company) 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 (with the agreement of Company) may appoint a successor Facility Agent.
- (d) Notwithstanding paragraphs (b) and (c) above, if, despite good faith negotiations, the Majority Lenders (or, as the case may be, the Facility Agent) and the Company cannot agree on the identity of the successor Facility Agent

within the timeframe referred to in paragraph (c) above, the Majority Lenders (or, as the case may be, the Facility Agent) may, without further consultation with (or the need for the consent of) the Company, appoint the successor Facility Agent.

- (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.
- (f) The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, 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 27 (and any agency fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Facility Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:
 - (i) the Facility Agent fails to respond to a request under Clause 14.8 (*FATCA Information*) and the Company or a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
 - (ii) the information supplied by the Facility Agent pursuant to Clause 14.8 (*FATCA Information*) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
 - (iii) the Facility Agent notifies the Company and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) the Company or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and the Company or that Lender, by notice to the Facility Agent, requires it to resign.

27.13 Replacement of the Facility Agent

- (a) After consultation with the Company, 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) 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. 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 27 (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.

27.14 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) The Facility Agent and the Mandated Lead Arrangers (save as expressly permitted in the Finance Documents) must not use Confidential Information obtained from the Sponsor or the Parent or any of their Affiliates by virtue of the transactions contemplated by the Finance Documents or through their other relationships with the Sponsor and its Affiliates in connection with their performance of services for other companies nor furnish any such information to any such other companies.

27.15 Relationship with the Lenders

- (a) Subject to Clause 24.12 (*Pro rata interest settlement*), 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 32.6 (*Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 32.2 (*Addresses*) and paragraph (a)(ii) of Clause 32.6 (*Electronic communication*) and the 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.

27.16 Credit appraisal by the Lenders

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

- (a) the financial condition, status and nature of each MGO Group Member and each ListCo Group Member;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- (c) whether that 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 or the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

- (d) the adequacy, accuracy or completeness of the Information Memorandum, the Reports 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 Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Assets, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Assets.

27.17 **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 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 deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

27.18 **Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each of the Mandated Lead Arrangers and the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Mandated Lead Arrangers or Facility Agent) the terms of any reliance letter or engagement letters relating to the Reports or 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, 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.

28. **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

29. **SHARING AMONG THE FINANCE PARTIES**

29.1 **Payments to Finance Parties**

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 30 (*Payment Mechanics*) (a

"**Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 30 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the 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 such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 30.6 (*Partial payments*).

29.2 **Redistribution of payments**

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 30.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

29.3 **Recovering Finance Party's rights**

On a distribution by the Facility Agent under Clause 29.2 (*Redistribution of payments*), of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

29.4 **Reversal of redistribution**

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

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

29.5 Exceptions

- (a) This Clause 29 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 29, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified the other Finance Party of the legal or arbitration proceedings; and
 - (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

30. PAYMENT MECHANICS

30.1 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 relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Facility Agent, in each case, specifies.

30.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 30.3 (*Distributions to an Obligor*) and Clause 30.4 (*Clawback and pre-funding*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the 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 that currency.

30.3 Distributions to an Obligor

The Facility Agent and the Security Agent may (with the consent of the Obligor or in accordance with Clause 31 (*Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

30.4 Clawback and pre-funding

- (a) Where a sum is to be paid to the Facility Agent or the Security 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) If the Facility Agent or the Security Agent pays an amount to another Party and it proves to be the case that it had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent or, as the case may be, the Security Agent shall on demand refund the same to the Facility Agent or, as the case may be, the Security Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent or, as the case may be, the Security Agent, calculated by it to reflect its cost of funds.

30.5 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 in accordance with Clause 30.1 (*Payments to the Facility Agent*) may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Approved Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "**Recipient Party**" or "**Recipient Parties**").

In each case such payments must be made on the due date for payment under the Finance Documents.

- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Party or the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 30.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Facility Agent in accordance with Clause 27.13 (*Replacement of the Facility Agent*), each Paying Party shall (other than to the extent that that Party has given an instruction pursuant

to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Facility Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 30.2 (*Distributions by the Facility Agent*).

- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
 - (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

30.6 Partial payments

- (a) If the Facility Agent receives a payment for application against amounts due under the Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:
 - (i) *firstly*, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Facility Agent, the Security Agent or the Mandated Lead Arrangers under those Finance Documents;
 - (ii) *secondly*, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;
 - (iii) *thirdly*, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents; and
 - (iv) *fourthly*, in or towards payment *pro rata* of any other sum due but unpaid under those Finance Documents.
- (b) Subject to the terms of the Intercreditor Agreement, the Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

30.7 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.

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

30.9 **Currency of account**

- (a) Subject to paragraphs (b) to (e) below, US Dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than US Dollars shall be paid in that other currency.

30.10 **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 Company); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the 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 Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

30.11 **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 Company that a Disruption Event has occurred:

- (a) the Facility Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Parent such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;
- (b) the Facility Agent shall not be obliged to consult with the Company 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 Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 36 (*Amendments and Waivers*);
- (e) the Facility Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 30.11; and
- (f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

31. **SET-OFF**

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

32. NOTICES

32.1 Communications in writing

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

32.2 Addresses

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

- (a) in the case of the Parent, the Company or the MGOC_o that identified with its name below;
- (b) in the case of each 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 address, email address, fax number or department or officer as the 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.

32.3 Delivery

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

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

- (b) Any communication or document to be made or delivered to the 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 expressly marked for the attention of the department or officer identified with the Facility Agent's or Security Agent's signature below (or any substitute department or officer as the Facility Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Facility Agent.

- (d) Any communication or document made or delivered to the Company in accordance with this Clause 32.3 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.

32.4 Notification of address and fax number

Promptly upon changing its address or fax number, the Facility Agent shall notify the other Parties.

32.5 Communication when Facility Agent is Impaired Agent

If the Facility Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Facility Agent, communicate with each other directly and (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.

32.6 Electronic communication

Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means:

- (a) to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Facility Agent or the Security Agent only if it is addressed in such a manner as the Facility Agent or Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

32.7 Use of websites

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Company and the 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 the information by this method;
 - (ii) both the Company and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Company and the Facility Agent.
- (b) If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Facility Agent shall notify the Company accordingly and the Company shall, at its own cost, supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company 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.
- (c) 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 Company and the Facility Agent.
- (d) The Company 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 Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Company notifies the Facility Agent under paragraph (d)(i) or paragraph (d)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless

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

- (e) 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 Company shall at its own cost comply with any such request within 15 Business Days.

32.8 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the 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.

33. CALCULATIONS AND CERTIFICATES

33.1 Accounts

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

33.2 Certificates and determinations

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

33.3 Day count convention

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

33.4 No personal liability

No director, officer, employee or other individual acting (or purporting to act) on behalf of the Parent, the Company or any other MGO Group Member (including any Affiliate of a MGO Group Member) shall be personally liable for:

- (a) any representation, certification or statement made by it, the Parent, the Company or any other MGO Group Member in any Finance Document; or

- (b) any certificate, notice or other document required to be delivered under, or in connection with, any Finance Document (whether or not signed by that person),

where such representation, certification, statement, certificate, notice or other document proves to be incorrect or misleading, unless that individual acted fraudulently, recklessly or with an intention to mislead, in which case any liability will be determined in accordance with applicable law.

34. **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.

35. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party or Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

36. **AMENDMENTS AND WAIVERS**

This Clause 36 is subject to the terms of the Intercreditor Agreement.

36.1 **Required consents**

- (a) Subject to Clause 36.2 (*Exceptions*), any term of the Finance Documents (including Clause 9.4 (*Dividend Proceeds*), solely to the extent expressly provided for in such Clause) other than the Fee Letters (which may be amended or waived in accordance with their terms) may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party or Hedge Counterparty, any amendment or waiver permitted by this Clause 36 or any amendment, waiver or consent falling within paragraph (b) of clause 4.6 (*Amendments and Waivers: Hedging Agreements*) of the Intercreditor Agreement.
- (c) Each Obligor acknowledges that its consent is not required for any amendment or waiver permitted by this Clause 36 which is agreed to by the Company.

36.2 Exceptions

- (a) An amendment or waiver that has the effect of changing or which relates to:
- (i) the definition of "**Majority Lenders**" or "**Higher Consenting Threshold**" in Clause 1.1 (*Definitions*);
 - (ii) an extension to the availability or the date of payment of any amount under the Finance Documents;
 - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission owing or payable;
 - (iv) the currency of payment of any amount under the Finance Documents;
 - (v) an increase in or an addition or extension of availability of any Commitment or the Total Commitments;
 - (vi) the introduction of an additional loan, commitment, tranche or facility into the Finance Documents;
 - (vii) any provision which expressly requires the consent of all the Lenders;
 - (viii) the order of priority or subordination under the Intercreditor Agreement;
 - (ix) the manner in which the proceeds of enforcement of any Security created pursuant to any Security Document are distributed;
 - (x) Clause 2.3 (*Finance Parties' rights and obligations*), Clauses 9.2 (*Exit*), 9.3 (*Relevant Disposal Proceeds*), Clause 9.4 (*Dividend Proceeds*), Clause 24 (*Changes to the Lenders*) or this Clause 36;
 - (xi) without prejudice to paragraph (b) below, a change to the Obligors other than in accordance with the terms of the Finance Documents; or
 - (xii) Clause 29 (*Sharing among the Finance Parties*) and clause 30.6 (*Partial payments*),

other than in respect of paragraphs (vi) and (viii) above where agreed to by the Majority Lenders to accommodate a junior facility, shall not be made without the prior consent of all the Lenders.

- (b) An amendment or waiver that has the effect of changing or which relates to:
- (i) the guarantee and indemnity granted under Clause 19 (*Guarantee and Indemnity*);
 - (ii) the nature or scope of the Charged Assets or the release of the guarantee and indemnity granted under Clause 19 (*Guarantee and Indemnity*) or any Security created pursuant to any Security Document except to the extent that it is:

- (A) conditional upon prepayment in full of the Facility and the payment of all other amounts due and payable under the Finance Documents; or
- (B) required to effect a Permitted Disposal (including any disposal of Equity Funded ListCo Shares pursuant to paragraph (j) of the definition of Permitted Disposal and/or in connection with or required to facilitate a withdrawal permitted by Clause 22.25 (*Securities Account*)) or a Permitted Transaction or the grant of Permitted Security (in connection with the grant of security over specified cash deposits or bank accounts for the purpose of cash collateralising local banking facilities),

in which circumstances, the Security Agent shall be authorised to release such guarantees or Transaction Security without requiring any further approval from any Finance Party; or

- (iii) any provision which expressly requires the consent of the Higher Consenting Threshold,

shall not be made without the prior consent of the Higher Consenting Threshold.

- (c) Any amendment or waiver which relates to a FATCA Deduction may be made with the consent of the Majority Lenders and (to the extent that any such amendment or waiver has the effect of reducing or extending the date for payment of an amount payable or to become payable to any Lender in relation to a FATCA Deduction) the consent of each such affected Lender.
- (d) An amendment or waiver which relates in any material aspect to the rights or obligations of the Facility Agent, the Security Agent, a Mandated Lead Arranger or a Hedge Counterparty (or to any of its material rights or obligations) may not be effected without its consent.
- (e) If any Lender fails to accept or to reject a request by or on behalf of the Obligors for a consent, waiver or amendment of or in relation to any of the terms of any Finance Document under the terms of this Agreement within 15 Business Days (unless the Company agrees to a longer time period in relation to any request or the Company specifies a longer period in the relevant request during which a Lender may respond) of that request being made, its Commitment and/or participation in the Utilisations then outstanding shall not be included for the purpose of calculating the Total Commitments or participations under the Facility (or any part thereof) when ascertaining whether any relevant percentage of Total Commitments and/or participations has been obtained to approve that request. The Company shall use reasonable endeavours to ensure that any amendment, waiver or consent request delivered by it under this Agreement cross-refers to or sets out (or paraphrases substantially all of) the text of this paragraph (e) under a heading entitled "snooze and lose".
- (f) Any determination or approval by the Facility Agent or the Security Agent:

- (i) in relation to whether the documents and other evidence listed in Schedule 2 (*Initial Conditions Precedent*) or Schedule 4 (*Conditions Precedent by an Additional Guarantor*) has been delivered to it in a satisfactory form and substance;
- (ii) in connection with:
 - (A) the granting of additional Transaction Security (including whether any Transaction Security constitutes Equivalent Share Security);
 - (B) any Transaction Security pursuant to Schedule 4 (*Conditions Precedent by an Additional Guarantor*); or
 - (C) any other deliverable under or pursuant to any Finance Document;
- (iii) of any debt security pursuant to paragraph (f) of the definition of Cash Equivalent Investments; or
- (iv) in relation to whether the documents and other evidence listed in Clause 6 (*Disbursements*) or Schedule 3 (*Conditions Precedent to Disbursements*),

shall be made (or, as the case may be, provided), in the case of paragraphs (i) to (iii) (inclusive) above, on the instructions of the Majority Lenders (in each case, each Lender acting reasonably) and the Facility Agent's or the Security Agent's confirmation as to the satisfactory nature of such conditions or the provision of such approval, and the Majority Lenders' instruction of such satisfaction or approval, will not be unreasonably withheld or delayed by any Lender, and shall at all times be made subject to the terms of the CP Satisfaction Letter, which shall bind each Finance Party and, in the case of paragraph (iv), by the Facility Agent or the Security Agent (as applicable) acting reasonably without the need for any other authority or consent from any other Finance Party.

36.3 Disenfranchisement of Defaulting Lenders

- (a) In ascertaining the Majority Lenders, the Higher Consenting Threshold or the Majority Senior Creditors or whether any given percentage (including unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, a Defaulting Lender's Commitments and participations will be deemed to be zero and its status as a Lender shall be ignored (**provided that** such consent, waiver, amendment or other vote is not detrimental substantially (in comparison to the other Lenders) to the rights and/or interests of that Defaulting Lender solely in its capacity as a Lender, and each Lender upon becoming a Party expressly agrees and acknowledges that the operation of this Clause 36.3 shall not of itself be so detrimental to it in comparison to the other Lenders or otherwise).

(b) For the purposes of this Clause 36.3, 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; or
- (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 it 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 has ceased to be a Defaulting Lender.

36.4 Disenfranchisement of Relevant Lenders

In ascertaining the Majority Lenders, the Higher Consenting Threshold or the Majority Senior Creditors or whether any given percentage (including unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, the Commitments and participations of a Relevant Lender who has failed to sign a Transfer Certificate within three Business Days of request pursuant to paragraph (a)(i) of Clause 24.13 (*Right of Replacement*) will be deemed to be zero and such Relevant Lender's status as a Lender shall be ignored.

37. CONFIDENTIALITY

37.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 37.2 (*Disclosure of Confidential Information*) and Clause 37.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

37.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates (including its head office and branches) and Related Funds and any of its or their officers, directors, employees, professional advisers, insurers and reinsurers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient of such information is subject to professional obligations to maintain the confidentiality of the 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 or and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or paragraph (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 27.15 (*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 (b)(i) or paragraph (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, 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 for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 24.11 (*Security over Lenders' rights*);
 - (viii) who is a Party; or
 - (ix) with the consent of the Parent;

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

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom such Confidential Information is to be given has entered into a Confidentiality Undertaking and such Confidentiality Undertaking has been duly executed by all parties to it and delivered to the Parent prior to the provision of any Confidential Information except that there shall be no

requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking and such Confidentiality Undertaking has been duly executed by all parties to it and delivered to the Parent prior to the provision of any Confidential Information or is otherwise bound by requirements of confidentiality in favour of the Parent 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)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

provided that unless a Confidentiality Undertaking has been entered into between such Finance Party and the relevant potential New Lender to which such Finance Party is proposing to assign or transfer its rights or obligations under this Agreement, such assignment or transfer to such potential New Lender shall not be effective (unless such New Lender becomes bound by the confidentiality provisions in this Clause 37.2);

- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or paragraph (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if 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 or such other form of confidentiality undertaking agreed between the Parent and the relevant 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 Obligors if such rating agency 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.

37.3 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
- (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) the Signing Date;
 - (v) the names of the Facility Agent and the Mandated Lead Arranger;
 - (vi) date of each amendment and restatement of this Agreement;
 - (vii) amount of Total Commitments;
 - (viii) currency of the Facility;
 - (ix) type of Facility;
 - (x) ranking of the Facility;
 - (xi) Final Maturity Date for the Facility;
 - (xii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xi) above; and
 - (xiii) such other information agreed between such Finance Party and the Company,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Company represents that none of the information set out in paragraphs (i) to (xiii) of paragraph (a) above is, nor will at any time be, unpublished price sensitive information.
- (d) The Facility Agent shall notify the Company and the other Finance Parties of:

- (i) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and/or one or more Obligors; and
- (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligors by such numbering service provider.

37.4 **Entire agreement**

This Clause 37 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

37.5 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

37.6 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Parent:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 37.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 37.

37.7 **Continuing obligations**

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

- (a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

38. COUNTERPARTS

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

39. GOVERNING LAW

This Agreement is governed by Hong Kong law.

40. ENFORCEMENT

40.1 Jurisdiction

- (a) The courts of Hong Kong 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) (a "**Dispute**").
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and, accordingly, no Party will argue to the contrary.
- (c) This Clause 40.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction.
- (d) To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

40.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, the Parent and each Obligor (other than an Obligor incorporated in Hong Kong):
 - (i) irrevocably appoints The Law Debenture Corporate (H.K.) Limited as its agent for service of process in relation to any proceedings before the courts of Hong Kong in connection with any Finance Document in respect of which the courts of Hong Kong are expressed to have exclusive or non-exclusive jurisdiction to settle disputes arising out of or in connection with the same; and
 - (ii) agrees that failure by a process agent to notify the Parent or the relevant Obligor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of the Parent and all the Obligors) must promptly (and in any event within 15 Business Days of such event taking place) appoint another agent on terms

acceptable to the Facility Agent. Failing this, the Facility Agent may appoint another agent for this purpose.

40.3 **Consent to enforcement etc.**

The Parent and the Obligors irrevocably and generally consent in respect of any proceedings anywhere in connection with any Finance Document to the giving of any relief or the issue of any process in connection with those proceedings, including the making, enforcement or execution against any assets whatsoever (irrespective of their use or intended use) of any order or judgment which may be made or given in those proceedings.

40.4 **Waiver of immunity**

The Parent and the Obligors irrevocably agree that, should any Party take any proceedings anywhere (whether for an injunction, specific performance, damages or otherwise in connection with any Finance Document), no immunity (to the extent that it may at any time exist, whether on the grounds of sovereignty or otherwise) from those proceedings, from attachment (whether in aid of execution, before judgment or otherwise) of its assets or from execution of judgment shall be claimed by it or with respect to its assets, any such immunity being irrevocably waived. The Parent and each Obligor irrevocably agrees that it and its assets are, and shall be, subject to such proceedings, attachment or execution in respect of its obligations under the Finance Documents.

40.5 **Waiver of Jury Trial**

EACH PARTY HERETO HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL IN RESPECT OF ANY LITIGATION IN ANY UNITED STATES FEDERAL OR STATE COURT DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER/GUARANTOR RELATIONSHIP. Each Party hereto hereby acknowledges that this waiver is a material inducement to enter into a business relationship, it has relied on this waiver in entering into this Agreement, and it will continue to rely on this waiver in related future dealings. Each Party hereto hereby further warrants and represents that it has reviewed this waiver with its legal counsel and it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE AND MAY NOT BE MODIFIED OTHER THAN BY A WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS CLAUSE 40.5 AND EXECUTED BY EACH OF THE PARTIES HERETO.** In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

40.6 **USA Patriot Act**

Each Lender hereby notifies each Obligor that, pursuant to the requirements of the USA Patriot Act, such Lender is required to obtain, verify and record information that identifies such Obligor, which information includes the name and address of such

Obligor and other information that will allow such Lender to identify such Obligor in accordance with the USA Patriot Act.

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

**SCHEDULE 1
THE ORIGINAL LENDERS**

Name of Original Lender	Commitment (US\$)
Cathay United Bank Co., Ltd.	60,000,000
CTBC Bank Co., Ltd	60,000,000
Mega International Commercial Bank Co., Ltd.	60,000,000
ING Bank N.V., Singapore Branch.....	20,000,000
Total	200,000,000

SCHEDULE 2
INITIAL CONDITIONS PRECEDENT

PART I
CONDITIONS PRECEDENT TO SIGNING OF THIS AGREEMENT

1. Original Obligors and the Parent

A certificate of each Original Obligor and the Parent (signed by a director or, in the case of MGOC Co, an authorised signatory of its sole member):

- (a) confirming that borrowing, securing or guaranteeing, as applicable, the Total Commitments as at the Signing Date would not cause any borrowing, securing, guaranteeing or similar limit binding on it to be exceeded;
- (b) certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the Signing Date;
- (c) in the case of the Company and Parent, attaching a copy of its certificate of incorporation (and any change of name certificates), memorandum and articles of association, register of members, register of directors, register of mortgages and charges, a certificate of incumbency issued by its registered office service provider in the Cayman Islands and a certificate of good standing issued by the Registrar of Companies in the Cayman Islands;
- (d) in the case of the MGOC Co, certifying as to the solvency of the MGOC Co and attaching a copy of its constitutional documents, a certificate as to the existence and good standing of the MGOC Co from the appropriate governmental authorities in the State of Delaware, United States;
- (e) attaching a copy of a resolution of its board of directors (or, in the case of MGOC Co, its sole member) approving the terms of, and the transactions contemplated by the Finance Documents (to which it is a party) and resolving that it execute such Finance Documents and authorising specified person(s) to execute such Finance Documents on its behalf and to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with such Finance Documents; and
- (f) attaching or containing a specimen of the signature of each person authorised by the resolution referred to in paragraph (e) above (where such person actually executes any such document).

2. Finance Documents and Security

This Agreement, the Intercreditor Agreement, each Fee Letter, the Custodian Agreement, the Original Security Documents and the Original Security Deliverables, each duly executed (as applicable) by the Parent and each Original Obligor.

3. **Other documents and evidence**

- (a) A certificate of the Company (signed by a director) (which certificate of the Company may be combined with the certificate to be delivered pursuant to paragraph 1 above) attaching copies of the Equity Documents, the Parent Loan Agreement (if applicable), the Draft Announcement, the Privatisation Paper, the M&A Advisory Letter (**provided that** commercially sensitive information may be redacted), the Voting Undertaking and the MGO Group Structure Chart.
- (b) Evidence that the Proceeds Account, the Interest Reserve Account, the Operating Account and the Margin Account, the Disbursement Account and the Settlement Account have been opened.
- (c) Evidence that each of the Securities Account and the Securities Cash Account has been opened with the Custodian.
- (d) Evidence that each Original Finance Party has carried out and is satisfied with the results of all agreed "know your customer" checks with respect to each Original Obligor and the Parent.
- (e) Each Original Legal Opinion.
- (f) Evidence that the process agent specified in Clause 40.2 (*Service of process*) has accepted its appointment.

PART II CONDITIONS PRECEDENT TO INITIAL UTILISATION

- (a) A certificate of the Company (signed by a director):
 - (i) confirming that no terms of the MGO Documents have been amended, varied, novated, supplemented, superseded, waived or terminated save as permitted pursuant to the Finance Documents; and
 - (ii) attaching a copy of the MGO Offer Document, the Final Announcement in substantially the same form as the Draft Announcement and each other MGO Document (if any).
- (b) Evidence that the MGO has been launched on an unconditional basis.
- (c) Evidence that all fees, costs and expenses falling due on or prior to the Initial Drawdown Date (other than legal fees) pursuant to Clauses 13 (*Fees*) or 18 (*Costs and Expenses*) have been or will be paid on or prior to the Initial Drawdown Date.

SCHEDULE 3
CONDITIONS PRECEDENT TO DISBURSEMENTS

In relation to any Disbursement or proposed withdrawal from the Settlement Account (to the extent to be taken into account pursuant to paragraph (a)(i) of Clause 6.3 (*Disbursement conditions precedent*)) made for the purposes of paying all or part of:

- (a) the MGO Consideration in respect of MGO Shares tendered for acceptance or required to be purchased pursuant to the MGO Transaction, evidence that such MGO Shares have been tendered for acceptance or required to be purchased pursuant to the MGO Transaction;
- (b) the stamp duty payable in connection with the MGO Consideration or in relation to the MGO Transaction, a copy of an invoice for or other notice of the amount of such stamp duty to be paid issued or given (including by email) by Computershare; and
- (c) the fees, costs and expenses incurred (otherwise than under this Agreement) in connection with the MGO Consideration or in relation to the MGO Transaction, evidence that such fees, costs and expenses have been incurred.

SCHEDULE 4
CONDITIONS PRECEDENT BY AN ADDITIONAL GUARANTOR

1. An Accession Deed, duly executed by the Additional Guarantor and the Company.
2. A certificate of the Additional Guarantor (signed by a director):
 - (a) confirming that borrowing, securing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, securing, guaranteeing or similar limit binding on it to be exceeded;
 - (b) certifying that each copy document relating to it specified in this Schedule 4 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Deed;
 - (c) attaching a copy of its constitutional documents and, (if incorporated in the Cayman Islands or the British Virgin Islands), a copy of its register of members, register of directors and register of mortgages and charges, a certificate of incumbency issued by its registered office service provider and a certificate of good standing issued by the Registrar of Companies, in each case, in the Cayman Islands or the British Virgin Islands (as the case may be) and (if incorporated in the United States) a copy of its constitutional documents, a certificate as to its existence and good standing from the appropriate governmental authorities in that Additional Guarantor's jurisdiction of organization and certifying as to the solvency of that Additional Guarantor;
 - (d) attaching a copy of a resolution of its board of directors approving the terms of, and the transactions contemplated by, the Finance Documents to which it is to become a party and resolving that it execute the Finance Documents to which it is to become a party and authorising a specified person or persons to execute the Finance Documents to which it is to become a party on its behalf and to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party;
 - (e) where necessary or customary in accordance with market practice in the jurisdiction of incorporation of the Additional Guarantor, or if so required by the Facility Agent, attaching a copy of a resolution signed by all the holders of its issued shares approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party; and
 - (f) attaching or containing a specimen of the signature of each person authorised by the resolution referred to in paragraph (c) above (where such person actually executes any such document).
3. A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent (acting in accordance with paragraph (f) of Clause 36.2 (*Exceptions*)) considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Finance Document.

4. If available, the latest audited financial statements of the Additional Guarantor.
5. A legal opinion of the legal advisors to the Finance Parties in Hong Kong.
6. If the Additional Guarantor is incorporated in a jurisdiction other than Hong Kong, a legal opinion in the jurisdiction in which the Additional Guarantor is incorporated issued by the legal advisors to the Finance Parties in that jurisdiction or, to the extent customary to do so in that jurisdiction, by the legal advisers to the Additional Guarantor in that jurisdiction.
7. Confirmation from the Security Agent that it has received in form and substance satisfactory to it (acting in accordance with paragraph (f) of Clause 36.2 (*Exceptions*)), such Security as the Security Agent (acting reasonably) may require in accordance with the Security Principles (including first ranking assignment by way of security over all of its present and future rights, title, interest and benefit in and to the Intercompany Funding Agreement), together with, in each case and subject to the Security Principles, all other documentation, and/or evidence of all other steps, required to perfect such Security as advised to the Security Agent by its legal advisers (acting reasonably) in each Relevant Jurisdiction. Evidence of compliance with any procedure (if any) for permitting financial assistance.
8. Evidence satisfactory to the Facility Agent and the Security Agent that each Lender has carried out and is satisfied with the results of all necessary "know your customer" or other similar checks in relation to the Additional Guarantor under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
9. If the Additional Guarantor is incorporated in a jurisdiction other than Hong Kong, evidence that the process agent specified in Clause 40.2 (*Service of process*) or in any other Finance Document has accepted its appointment in relation to the proposed Additional Guarantor.
10. Evidence that the Additional Guarantor has acceded to the terms of the Intercompany Funding Agreement and the Intercreditor Agreement as a "Debtor" and an "Intercompany Lender" (in each case, as defined therein).

**SCHEDULE 5
UTILISATION REQUEST**

From: Ganymede Intermediate Limited (the "Company")
To: [Facility Agent]

Dated:

Dear Sirs

**Ganymede Intermediate Limited – MGO Facility Agreement
dated [•] December 2014 (the "Agreement")**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request. This Utilisation Request is irrevocable.

2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [•] or, if that is not a Business Day, the next Business Day
Amount: [•] or, if less, the Available Facility
Interest Period: [•]

3. We confirm that each condition specified in Clause 4.1 (*Initial conditions precedent*) is satisfied on the date of this Utilisation Request or will be satisfied on the proposed Utilisation Date and the proceeds of this Loan should be credited to the Disbursement Account, the relevant details of which are included below:

[*Details*]

Name of Account:
Name of Account Bank:
Account No. (with Swift Code):

4. We authorise you to deduct from the proceeds of this Utilisation:

- (a) any agency and security agency fees payable pursuant to Clause 13.2 (*Agency and Security Agency fee*) and any Arrangement Fee (as defined in a Fee Letter referred to in Clause 13.3 (*Arrangement and extension fee*)) in each case on or before the Initial Drawdown Date; and
- (b) an amount equal to the Minimum Balance as at the Proposed Utilisation Date as notified by you to us via email prior to the proposed Initial Drawdown Date and to pay that amount directly into the Interest Reserve Account.

Yours faithfully

.....
authorised signatory for
and on behalf of
Ganymede Intermediate Limited

**SCHEDULE 6
SELECTION NOTICE**

From: Ganymede Intermediate Limited (the "**Company**")
To: [Facility Agent]

Dated:

Dear Sirs

**Ganymede Intermediate Limited – MGO Facility Agreement
dated [•] December 2014 (the "Agreement")**

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice. This Selection Notice is irrevocable.
2. We refer to the Loan[s] with an Interest Period ending on [•].
3. [We request that the next Interest Period for the above Loan[s] is [•].]

Yours faithfully

.....
authorised signatory for
and on behalf of
Ganymede Intermediate Limited

**SCHEDULE 7
FORM OF TRANSFER CERTIFICATE**

To: [•] as Facility Agent
From: [•] (the "**Existing Lender**") and [•] (the "**New Lender**")

Dated:

**Ganymede Intermediate Limited – MGO Facility Agreement
dated [•] December 2014 (the "Agreement")**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 24.6 (*Procedure for Transfer*):
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 24.6 (*Procedure for Transfer*).
 - (b) The proposed Transfer Date is [•].
 - (c) The Facility Office and address, fax number, email address and attention details for notices of the New Lender (administrative and relevant credit departments) for the purposes of Clause 32.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraphs (a) and (c) of Clause 24.5 (*Limitation of responsibility of Existing Lenders*).
4. The New Lender confirms that it [is]/[is not] a Sponsor Group Member/Competitor/Agreed Lender/FATCA Exempt Party/Distressed Investor/Conflicted Lender.
5. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
6. This Transfer Certificate is governed by Hong Kong law and has been entered into on the date stated at the beginning of this Transfer Certificate.

**THE SCHEDULE
COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED**

[insert relevant details]

[Facility Office address, fax number, email address and attention details for notices and account details for payments (administrative and relevant credit departments).]

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Facility Agent and the Transfer Date is confirmed as [_____].

[Facility Agent]

By:

**SCHEDULE 8
FORM OF ASSIGNMENT AGREEMENT**

To: [•] as Facility Agent and Ganymede Intermediate Limited as the Company (for and on behalf of each Obligor)

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

Dated:

**Ganymede Intermediate Limited – MGO Facility Agreement
dated [•] December 2014 (the "Agreement")**

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 24.7 (*Procedure for Assignment*):
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitments and participations in Loans under the Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitments and participations in Loans under the Agreement as specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [•].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, fax number, email address and attention details for notices of the New Lender (administrative and relevant credit departments) for the purposes of Clause 32.2 (*Addresses*) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraphs (a) and (c) of Clause 24.5 (*Limitation of responsibility of Existing Lenders*).
7. This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 24.8 (*Copy of Transfer Certificate or Assignment Agreement to the Company*), to the Company (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.
8. The New Lender confirms that it [is]/[is not] a Sponsor Group Member/Competitor/Agreed Lender/FATCA Exempt Party/Distressed Investor/Conflicted Lender.

- 9. This Assignment Agreement is governed by Hong Kong law.
- 10. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

**THE SCHEDULE
RIGHTS TO BE ASSIGNED AND OBLIGATIONS TO BE RELEASED AND
UNDERTAKEN**

[insert relevant details]

[Facility Office address, fax number, email address and attention details for notices and account details for payments (administrative and relevant credit departments).]

[Existing Lender]

[New Lender]

By: By:

This Assignment Agreement is accepted by the Facility Agent and the Transfer Date is confirmed as [•].

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

[Facility Agent]

By:

SCHEDULE 9 TIMETABLES

"U - X" refers to the number of Business Days before the relevant Utilisation Date/the first day of the relevant Interest Period.

"D - X" refers to the number of Disbursement Business Days before the relevant Disbursement Date.

Delivery of a duly completed Utilisation Request in respect of the initial Utilisation (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)).	U-3 5:00 p.m.
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Delivery of a duly completed Utilisation Request in respect of any Utilisation (other than the initial Utilisation) (Clause 5.1 (<i>Delivery of a Utilisation Request</i>)) or a Selection Notice (Clause 11.1 (<i>Selection of Interest Periods</i>)).	U-2 9:00 a.m.
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Facility Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>).	U-2 5:00 p.m.
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Delivery of a duly completed Disbursement Request (Clause 6.1 (<i>Delivery of a Disbursement Request</i>)) or receipt of certain condition precedent documents in relation to a Disbursement (paragraphs (a)(i)(B) and (a)(ii) of Clause 6.3 (<i>Disbursement conditions precedent</i>)).	D-1 5:00 p.m.
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LIBOR is fixed.	Quotation Day as of 11:00 a.m. London time
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SCHEDULE 10
APPROVED LIST

(in alphabetical order)

- | | |
|---|--|
| 1. Aozora | 33. ING Bank N.V. |
| 2. Australia and New Zealand Banking Group Limited | 34. Intesa Sanpaolo |
| 3. Bank of China | 35. Jih Sun |
| 4. Bank of Communications Co., Ltd. | 36. King's Town Bank |
| 5. Bank of East Asia | 37. Korea Development Bank |
| 6. Bank of Taiwan | 38. Korea Exchange Bank |
| 7. Babson Capital | 39. Land Bank of Taiwan |
| 8. Bank of Kaohsiung | 40. Maybank |
| 9. Bank of Tokyo-Mitsubishi UFJ, Ltd. | 41. Mega ICBC |
| 10. Bank SinoPac | 42. Mizuho Corporate Bank, Ltd. |
| 11. BNP Paribas | 43. National Australia Bank, Limited |
| 12. Cathay United Bank Co., Ltd. | 44. Natixis |
| 13. Chailease Finance Co Ltd | 45. Oversea-Chinese Banking Corporation Ltd. |
| 14. Chang Hwa Commercial Bank | 46. Ping An |
| 15. China Construction Bank Corporation | 47. Raiffeisen Bank International |
| 16. China Development Bank Corporation | 48. Shanghai Commercial & Saving Bank |
| 17. China Development Industrial Bank | 49. Shinhan |
| 18. China Minsheng Banking Corp., Ltd. | 50. Siemens Financial Services |
| 19. Crédit Agricole Corporate and Investment Bank | 51. Société Générale |
| 20. Crédit Industriel et Commercial | 52. SPDB |
| 21. CTBC Bank Co., Ltd. | 53. Standard Chartered Bank |
| 22. DBS Bank Ltd. | 54. Ta Chong Bank |
| 23. E Sun | 55. Taichung Commercial |
| 24. Emirates | 56. Taishin |
| 25. EnTie Commercial Bank | 57. Taiwan Business Bank |
| 26. Far Eastern International | 58. Taiwan Cooperative |
| 27. First Commercial Bank | 59. United Overseas Bank |
| 28. First Gulf Bank | 60. Wing Hang |
| 29. Hua Nan | 61. Wing Lung Bank Limited |
| 30. Hwatai Commercial Bank | 62. Woori |
| 31. Industrial and Commercial Bank of China Limited | 63. Yuanta Commercial Bank |
| 32. Industrial Bank of Taiwan | |

**SCHEDULE 11
FORM OF ACCESSION DEED**

To: [•] as Facility Agent
From: [] and Ganymede Intermediate Limited

Dated:

Dear Sirs

**Ganymede Intermediate Limited – MGO Facility Agreement
dated [•] December 2014 (the "Agreement")**

1. We refer to the Agreement and to the Intercreditor Agreement. This deed (the "**Accession Deed**") shall take effect as an Accession Deed for the purposes of the Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Agreement have the same meaning in paragraphs 1-3 of this Accession Deed unless given a different meaning in this Accession Deed.
2. [MGO Group Member] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional Guarantor pursuant to Clause 26.2 (*Accession of Guarantors*) of the Agreement. [MGO Group Member] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [].
3. [MGO Group Member's] administrative details for the purposes of the Agreement and the Intercreditor Agreement are as follows:

Address:

Fax no:

Attention:
4. [MGO Group Member] (for the purposes of this paragraph 4, the "**Acceding Debtor**") intends to give a guarantee, indemnity or other assurance against loss in respect of Secured Liabilities under the following documents:

[Insert details (date, parties and description) of relevant documents]

the "**Relevant Documents**".

IT IS AGREED as follows:

- (a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in this paragraph 4.
- (b) The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:

- (i) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
- (ii) all proceeds of that Security; and]
- (iii) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

- (c) The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

5. This Accession Letter is governed by Hong Kong law.

This Accession Letter has been delivered as a deed on the date stated at the beginning of this Accession Letter.

THIS ACCESSION DEED has been signed on behalf of the Security Agent (for the purposes of paragraph 4 above only), signed on behalf of the Company and executed as a deed by *[MGO Group Member]* and is delivered on the date stated above.

[MGO Group Member]

[EXECUTED AS A DEED)
By: *[MGO Group Member]*)

_____ Director

_____ Director/Secretary

OR

[EXECUTED AS A DEED

By: *[MGO Group Member]*

_____ Signature of Director

_____ Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness]

The Company

GANYMEDE INTERMEDIATE LIMITED

By:

The Security Agent

[Full Name of Current Security Agent]

By:

Date:

SCHEDULE 12
FORM OF INCREASE CONFIRMATION

To: [•] as Facility Agent, [•] as Security Agent, and Ganymede Intermediate Limited as Company, for and on behalf of each Obligor

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

Dated:

Ganymede Intermediate Limited – MGO Facility Agreement
dated [•] December 2014 (the "Agreement")

1. We refer to the Agreement and to the Intercreditor Agreement (as defined in the Agreement). This Increase Confirmation shall take effect as an Increase Confirmation for the purpose of the Agreement and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Agreement have the same meaning in this Increase Confirmation unless given a different meaning in this Increase Confirmation.
2. We refer to Clause 2.2 (*Increase*) of the Agreement.
3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Agreement.
4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [•].
5. On the Increase Date, the Increase Lender becomes:
 - (a) party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Lender; and
 - (b) party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).
6. The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 32.2 (*Addresses*) are set out in the Schedule.
7. The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (e) of Clause 2.2 (*Increase*).
8. The Increase Lender confirms that it is not a Sponsor Group Member, MGO Group Member or ListCo Group Member.
9. We refer to clause [•] (*Creditor Accession Undertaking*) of the Intercreditor Agreement.

In consideration of the Increase Lender being accepted as a Senior Lender for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor

Agreement), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

10. This Increase Confirmation is governed by Hong Kong law.
11. This Increase Confirmation has been entered into on the date stated at the beginning of this Increase Confirmation.

Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Relevant Commitment/rights and obligations to be assumed by the Increase Lender

[insert relevant details]

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

[Increase Lender]

By:

This Increase Confirmation is accepted as an Increase Confirmation for the purposes of the Agreement by the Facility Agent, and as a Creditor Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent and the Increase Date is confirmed as [•].

For and on behalf of

Facility Agent

By:

For and on behalf of

Security Agent

By:

SCHEDULE 13 SECURITY PRINCIPLES

1. Considerations

- 1.1 In determining what Security will be provided in support of the Facility the following matters will be taken into account. Security shall not be created or perfected to the extent that it would:
- (a) result in any breach of corporate benefit, financial assistance, fraudulent preference or thin capitalisation laws or regulations (or analogous restrictions) of any applicable jurisdiction **provided** that the Company will use reasonable endeavours to assist in demonstrating that adequate corporate benefit accrues to each Obligor and to remedy or mitigate any of the other specified limitations including undertaking any "whitewash" or equivalent procedure;
 - (b) result in a significant risk to the officers of the relevant grantor of Security of contravention of their fiduciary duties and/or of civil or criminal liability **provided** that the relevant Obligor shall use reasonable endeavours to overcome such obstacle; or
 - (c) result in costs that, in the opinion of the Facility Agent (acting reasonably), are disproportionate to the benefit obtained by the Secured Parties in respect of that Security **provided** that in such case the Company will consider alternative arrangements (whose costs are proportionate to the benefit accruing to the Secured Parties) to structure the Security.
- 1.2 For the avoidance of doubt, in these Security Principles, "cost" includes, but is not limited to, income tax cost, registration taxes payable on the creation or enforcement or for the continuance of any Security, stamp duties, out-of-pocket expenses, and other fees and expenses directly incurred by the relevant grantor of Security or any of its direct or indirect owners, subsidiaries or Affiliates.

2. Obligations to be Secured

- 2.1 Subject to Clause 1 (*Considerations*) above and to paragraph 2.3 below, the obligations to be secured are the Secured Liabilities (as defined below). The Security is to be granted in favour of the Security Agent on behalf of each Lender from time to time, and the Facility Agent, the Mandated Lead Arrangers and any Hedge Counterparty.
- 2.2 For ease of reference, the following definitions should, to the extent legally possible, be incorporated into each Security Document (with the capitalised terms used in them having the meaning given to them in this Agreement):

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

"**Secured Party**" means a Finance Party or a Hedge Counterparty (as defined in the Intercreditor Agreement).

2.3 The secured obligations will be limited:

- (a) to avoid any breach of corporate benefit, financial assistance, fraudulent preference, thin capitalisation rules or the laws or regulations (or analogous restrictions) of any applicable jurisdiction **provided** that the Company will use reasonable endeavours to assist in demonstrating that adequate corporate benefit accrues to each Obligor and to remedy or mitigate any of the other specified limitations including undertaking any "whitewash" or equivalent procedure; and
- (b) to avoid any risk to officers of the relevant member of the MGO Group that is granting Transaction Security of contravention of their fiduciary duties and/or civil or criminal or personal liability **provided** that the relevant Obligor shall use reasonable endeavours to overcome such obstacle.

3. **General**

Where appropriate, defined terms in the Security Document should mirror those in this Agreement.

The parties to this Agreement agree to negotiate the form of each Security Document in good faith and will ensure that all documentation required to be entered into as a condition precedent to first drawdown under this Agreement (or immediately thereafter) is in a finally agreed form as soon as reasonably practicable after the date of this Agreement. The form of guarantee is set out in Clause 19 (*Guarantee and Indemnity*) of this Agreement and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

The Security shall, to the extent possible under local law, be enforceable on the occurrence of an Acceleration Date.

4. **Undertakings/Representations and Warranties**

Any representations, warranties or undertakings which are required to be included in any Security Document shall reflect (to the extent to which the subject matter of such representation, warranty and undertaking is the same as the corresponding representation, warranty and undertaking in this Agreement) the commercial deal set out in this Agreement (save to the extent that Secured Parties' local counsel deem it necessary to include any further provisions (or deviate from those contained in this Agreement) in order to protect or preserve the Security granted to the Secured Parties).

5. **Bank accounts**

- (a) Subject to these Security Principles, an Obligor shall grant Security over its bank accounts but shall be free to deal with those bank accounts (other than any mandatory prepayment or any other accounts which are specifically blocked) in the course of its business until an Acceleration Date has occurred.

- (b) If required by local law in order to perfect the Security, notice of the Security will be served on the account bank within five Business Days of the Security being granted and the Obligor shall use its reasonable endeavours to obtain an acknowledgement of that notice within three months of service. If the Obligor has used its reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement shall cease on the expiry of that three month period. Irrespective of whether notice of the Security is required for perfection, if the service of notice would prevent the Obligor from using a bank account (other than any mandatory prepayment or any other account which is specifically blocked) in the course of its business no notice of Security shall be served unless requested by the Security Agent (acting on the instructions of the Majority Lenders) where an Event of Default is continuing.
- (c) Any Security over bank accounts (other than any mandatory prepayment or any other accounts which are specifically blocked) shall be subject to any prior Security interests in favour of the account bank which are created either by law or in the standard terms and conditions of the account bank. The notice of Security may request these are waived by the account bank but the Obligor shall not be required, to change its banking arrangements if these Security interests are not waived or only partially waived or waived subject to conditions.
- (d) If required under local law, Security over bank accounts will be registered subject to the general principles set out in these Security Principles.

6. Shares

- (a) Subject to these Security Principles, the shares and/or equity interests of each Obligor shall be secured.
- (b) Subject to this paragraph 6, until an Acceleration Date has occurred, the Parent and each Obligor will be permitted to retain and to exercise voting rights appertaining to any shares over which it has created Security save as permitted by this Agreement in a manner and save as permitted by this Agreement for a purpose which:
 - (i) is not inconsistent with, or would breach the terms of, any Secured Document;
 - (ii) does not affect the validity or enforceability of the Security;
 - (iii) does not cause an Event of Default to occur; or
 - (iv) would not have a material adverse effect on the value of the relevant shares and would not otherwise prejudice the interests of any Secured Party under any Secured Document,

and the company whose shares have been secured will be permitted to declare and pay dividends upstream on secured shares to the extent permitted under the Finance Documents with the proceeds to be available to the Obligors or

the Parent but only to the extent permitted under this Agreement and the Intercreditor Agreement.

- (c) Where customary, on, or as soon as reasonably practicable and in any event no later than twenty Business Days after the Security over the shares has been granted, the share certificate(s) (if such shares are certificated) and a (stamped, to the extent relevant under applicable law) stock transfer form executed in blank (or local law equivalent) will be provided to the Security Agent and where required by law or when customary the share certificate or shareholders' register will be endorsed or written up and the endorsed share certificate or a copy of the written up register provided to the Security Agent.
- (d) Unless the restriction is required by law or regulation, the constitutional documents of the company whose shares have been secured will be amended to disapply any restriction on the transfer or the registration of the transfer of the shares on the taking or enforcement of the Security granted over them. Shares in Joint Ventures will not be subject to Security where such Security is prohibited by the terms of the underlying joint venture agreement.

7. Intercompany receivables

Subject to these Security Principles, an Obligor shall grant Security over its intercompany receivables but shall be free to deal with those receivables in the course of its business until an Acceleration Date has occurred but subject always to the terms of the Finance Documents. Subject to the rest of this paragraph, if required by local law to perfect the Security, notice of the Security will be served on the relevant debtor within five Business Days of the Security being granted (which notice shall specify an account subject to Security in favour of the Security Agent as Security for the Secured Liabilities as being the account to which those receivables are to be paid) and the Obligor shall use its reasonable endeavours obtain an acknowledgement of that notice within 20 Business Days of service. Irrespective of whether notice of the security is required for perfection, if the service of notice would prevent the Obligor from dealing with an intercompany receivable in the course of its business, no notice of security shall be served unless requested by the Security Agent (acting on the instructions of the Majority Lenders) where an Event of Default is continuing. If required under local law, Security over intercompany receivables will be registered subject to the general principles set out in these Security Principles.

8. Release of Security

Unless required by local law the circumstances in which the Security shall be released should not be dealt with in individual Security Documents but, if so required, shall, except to the extent required by local law, be the same as those set out in the Intercreditor Agreement.

**SCHEDULE 14
FORM OF CONFIDENTIALITY UNDERTAKING**

Date: []

To:

[]

Re: **The Agreement**

<p><i>Company:</i> <i>Ganymede Intermediate Limited</i> (the "Company")</p> <p><i>Date:</i></p> <p><i>Amount:</i></p> <p><i>Agent:</i></p>

Dear Sirs

We understand that you are considering acquiring an interest in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other transaction under which payments are to be made or may be made by reference to one or more Finance Documents and/or one or more Obligors or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (the "**Acquisition**"). In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. Confidentiality Undertaking

You undertake (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information, and (b) until the Acquisition is completed to use the Confidential Information only for the Allowed Purpose.

2. Permitted Disclosure

We agree that you may disclose:

- 2.1 to any of your Affiliates and any of your or their officers, directors, employees, professional advisers and auditors such Confidential Information as you shall consider appropriate if any person to whom the Confidential Information is to be given

pursuant to this paragraph 2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

2.2 subject to the requirements of the Agreement, to any person:

- (a) to (or through) whom you assign or transfer (or may potentially assign or transfer) all or any of your rights and/or obligations which you may acquire under the Agreement such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (a) of paragraph 2.2 has delivered a letter to you in equivalent form to this letter;
- (b) with (or through) whom you enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or any Obligor such Confidential Information as you shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (b) of paragraph 2.2 has delivered a letter to you in equivalent form to this letter;
- (c) to whom information is required or requested to be disclosed by 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 such Confidential Information as you shall consider appropriate; and
- (d) notwithstanding paragraphs 2.1 and 2.2 above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Agreement, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to you.

3. **Notification of Disclosure**

You agree (to the extent permitted by law and regulation) to inform us:

- 3.1 of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (c) of paragraph 2.2 above 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
- 3.2 upon becoming aware that Confidential Information has been disclosed in breach of this letter.

4. **Return of Copies**

If you do not enter into the Acquisition and we so request in writing, you shall return or destroy all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use your reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (c) of paragraph 2.2 above.

5. **Continuing Obligations**

The obligations in this letter are continuing and, in particular, shall survive and remain binding on you until (a) if you become a party to the Agreement as a lender of record, the date on which you become such a party to the Agreement; (b) if you enter into the Acquisition but it does not result in you becoming a party to the Agreement as a lender of record, the date falling twelve months after the date on which all of your rights and obligations contained in the documentation entered into to implement that Acquisition have terminated; or (c) in any other case the date falling twelve months after the date of your final receipt (in whatever manner) of any Confidential Information.

6. **No Representation; Consequences of Breach, etc**

You acknowledge and agree that:

- 6.1 neither we, nor any member of the MGO Group, the ListCo Group nor any of our or their respective officers, employees or advisers (each a "**Relevant Person**") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other person in respect of the Confidential Information or any such information; and
- 6.2 we or members of the MGO Group and/or the ListCo Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. **Entire Agreement: No Waiver; Amendments, etc**

- 7.1 This letter constitutes the entire agreement between us in relation to your obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

- 7.2 No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy under this letter.
- 7.3 The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. **Inside Information**

You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and you undertake not to use any Confidential Information for any unlawful purpose.

9. **Nature of undertakings**

The undertakings given by you under this letter are given to us and are also given for the benefit of the Company and each other member of the MGO Group and/or the ListCo Group.

10. **Third Party Rights**

- 10.1 Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (*Rights of Third Parties*) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this letter.
- 10.2 The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- 10.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

11. **Governing Law and Jurisdiction**

- 11.1 This letter (including the agreement constituted by your acknowledgement of its terms) (the "**Letter**") and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.
- 11.2 The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

12. **Definitions**

In this letter (including the acknowledgement set out below) terms defined in the Agreement shall, unless the context otherwise requires, have the same meaning and:

"Confidential Information" means all information relating to the Company, any Obligor, the MGO Group and/or the ListCo Group, the Finance Documents, the Facility and/or the Acquisition which is provided to you in relation to the Finance Documents or the Facility by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by you of this letter; or
- (b) is identified in writing at the time of delivery as non-confidential by us or our advisers; or
- (c) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, from a source which is, as far as you are aware, unconnected with the MGO Group and/or the ListCo Group and which, in either case, as far as you are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Allowed Purpose" means considering and evaluating whether to enter into the Acquisition.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of

[•]

To: [•]

The Company and each other member of the MGO Group and the ListCo Group

We acknowledge and agree to the above:

.....

For and on behalf of

[•]

**SCHEDULE 15
FORM OF EXTENSION NOTICE**

To: [•] as Facility Agent
From: Ganymede Intermediate Limited (the "**Company**")
Dated:

Dear Sirs

**Ganymede Intermediate Limited – MGO Facility Agreement
dated [•] December 2014 (the "Agreement")**

1. We refer to the Agreement. This is an Extension Notice. Terms defined in the Agreement have the same meaning in this Extension Notice unless given a different meaning in this Extension Notice.
2. We refer to paragraph (b) of Clause 8 (*Repayment*) of the Agreement and hereby request that the Original Final Maturity Date is extended to the Extended Final Maturity Date.

Yours faithfully

.....
authorised signatory for
and on behalf of
Ganymede Intermediate Limited

**SCHEDULE 16
DISBURSEMENT REQUEST**

From: Ganymede Intermediate Limited (the "Company")
To: [Facility Agent]

Dated:

Dear Sirs

**Ganymede Intermediate Limited – MGO Facility Agreement
dated [•] December 2014 (the "Agreement")**

1. We refer to the Agreement. This is a Disbursement Request. Terms defined in the Agreement have the same meaning in this Disbursement Request unless given a different meaning in this Disbursement Request.
2. We wish to request a Disbursement on the following terms:

Proposed Disbursement Date:	[•] or, if that is not a Disbursement Business Day, the next Disbursement Business Day
Amount:	[•] or, if less, the amount standing to the credit of the Disbursement Account
3. We confirm that as at the time of making such Disbursement, the Debt/Equity Costs Ratio [would not] exceed 1.5:1 (taking into account: (A) any withdrawal from the Settlement Account in accordance with paragraph (e)(i) of Clause 22.27 (*Disbursement Account and Settlement Account*)).
4. The amount of the Debt Funded Total Cost taken into account for the purposes of paragraph 3 above is US\$[]¹, consisting of the following cost items:
 - 4.1 [*insert details of Debt Funded Total Cost items*]; and
 - 4.2 [*insert details of Debt Funded Total Cost items*]².
5. The amount of the Equity Funded Total Cost taken into account for the purposes of paragraph 3 above is US\$[]³, consisting of the following cost items:
 - 5.1 [*insert details of Equity Funded Total Cost items*]; and
 - 5.2 [*insert details of Equity Funded Total Cost items*]⁴.
6. Attached in Schedule 1 is a copy of the Disbursement Evidence deliverable in connection with this Disbursement.

¹ To be completed.

² Add/delete as appropriate.

³ To be completed.

⁴ Add/delete as appropriate.

7. The proceeds of this Loan should be credited to the following account:

[Details of Settlement Account/Computershare account/other account]

Name of Account:

Name of Account Bank:

Account No. (with Swift Code):

Yours faithfully

.....

authorised signatory for

and on behalf of

Ganymede Intermediate Limited

SCHEDULE 1
Disbursement Evidence

[To be attached]

SIGNATURE PAGES

THE PARENT

GANYMEDE PARENT LIMITED

By: 

Address: c/o Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue,
George Town, Grand Cayman KY1-9005, Cayman Islands

cc: The Carlyle Group, Suite 2801, 28/F, Two Pacific Place, 88
Queensway, Hong Kong

Fax Number: +852 2878 7227

Email: alex.ying@carlyle.com; james.yang@carlyle.com; frank.lin@carlyle.com

Attention: Alex Ying, James Yang and Frank Lin

THE COMPANY

GANYMEDE INTERMEDIATE LIMITED

By: Wayne Bauer

Address: c/o Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue,
George Town, Grand Cayman KY1-9005, Cayman Islands

cc: The Carlyle Group, Suite 2801, 28/F, Two Pacific Place, 88
Queensway, Hong Kong


Fax Number: +852 2878 7227

Email: alex.ying@carlyle.com; james.yang@carlyle.com; frank.lin@carlyle.com

Attention: Alex Ying, James Yang and Frank Lin

THE MGOCO

GANYMEDE INVESTMENT HOLDINGS, L.L.C.

By: 

Address: c/o The Corporation Trust Company, Corporation Trust Center, 1209
Orange
Street, City of Wilmington, County of New Castle, 19801, Delaware,
United States

cc: The Carlyle Group, Suite 2801, 28/F, Two Pacific Place, 88
Queensway, Hong Kong

Fax Number: +852 2878 7227

Email: alex.ying@carlyle.com; james.yang@carlyle.com; frank.lin@carlyle.com

Attention: Alex Ying, James Yang and Frank Lin

THE MANDATED LEAD ARRANGERS AND BOOKRUNNERS

CTBC BANK CO., LTD.



By:

THE MANDATED LEAD ARRANGERS AND BOOKRUNNERS

CATHAY UNITED BANK CO., LTD.

By: *Jaylee*

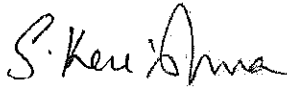
THE MANDATED LEAD ARRANGERS AND BOOKRUNNERS

MEGA INTERNATIONAL COMMERCIAL BANK CO., LTD.

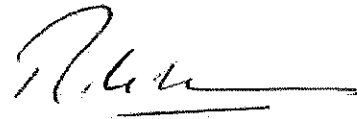
By: Swati Singh

THE MANDATED LEAD ARRANGERS AND BOOKRUNNERS

ING BANK N.V., SINGAPORE BRANCH

By: 
.....

Krishna Saryanasayanan
Managing Director
Telecoms, Media & Technology, Asia



Ranesh Verma
Managing Director
Head of Telecoms, Media & Technology, Asia

THE ORIGINAL LENDERS

CTBC BANK CO., LTD.



By:

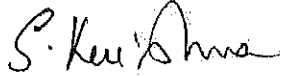
THE ORIGINAL LENDERS

CATHAY UNITED BANK CO., LTD.

By: *Daylee*

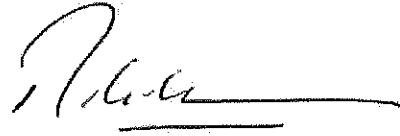
THE ORIGINAL LENDERS

ING BANK N.V., SINGAPORE BRANCH



By:

Krishna Suryanarayanan
Managing Director
Telecoms, Media & Technology, Asia



Ranesh Verma
Managing Director
Head of Telecoms, Media & Technology, Asia

THE FACILITY AGENT

CTBC BANK CO., LTD.



By:

Address: 5F, No 168, JingMao 2nd Road, Nangang Dist., Taipei 11568, Taiwan, R.O.C.

Fax Number: +886-2-2653-9016/ +886-2-2653-9019

Tel. No: +886-2-3327-7777 ext 1127

Email: mendy.tsui@ctbcbank.com

Attention: Mendy Tsui

THE SECURITY AGENT

CATHAY UNITED BANK CO., LTD.

By: *Daphe*

Address: 4F., No.65, Guanqian Rd., Zhongzheng Dist., Taipei City 100, Taiwan
(R.O.C.)

Fax Number: +886 2 2388-8727

Email: nt45141@cathaybk.com.tw

Attention: Lizy Chung, Syndication Department