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

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**FORM 8-K**

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**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**Date of Report (Date of earliest event reported): July 1, 2014**

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**KVH Industries, Inc.**

(Exact Name of Registrant as Specified in Charter)

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**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**0-28082**  
(Commission  
File Number)

**05-0420589**  
(IRS Employer Identification No.)

**50 Enterprise Center**  
**Middletown, RI**  
(Address of Principal Executive Offices)

**02842**  
(Zip Code)

**Registrant's telephone number, including area code: (401) 847-3327**

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

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.14d-2(b))
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## **ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.**

### *Share Purchase Agreement*

On July 2, 2014, KVH Media Group Limited (“KMG UK”), an indirectly wholly owned subsidiary of KVH Industries, Inc. (the “Company”), entered into a Share Purchase Agreement with Nigel Cleave to acquire all of the issued share capital of Super Dragon Limited (“SDL”) and Videotel Marine Asia Limited (“VMA”, together with SDL referred to as “Videotel”), for an aggregate purchase price of approximately \$49 million. Videotel is a maritime training services company based in London that produces and distributes training films and eLearning computer-based training courses to commercial customers in the maritime market. The acquisition was consummated on the same day. The purchase price was determined through arm’s-length negotiation and is subject to a potential post-closing adjustment based on the value of the net assets delivered at the closing.

The Share Purchase Agreement contains certain representations, warranties, covenants and indemnification provisions. The Share Purchase Agreement provides that 10% of the purchase price shall be held in escrow for a period of approximately 21 months after the closing in order to satisfy valid indemnification claims that KMG UK may assert for specified breaches of representations, warranties and covenants.

In the Share Purchase Agreement, the Seller agreed to comply with certain confidentiality, non-competition and non-solicitation covenants with respect to the business of Videotel for a period of 18 months after the closing.

### *Credit Agreement and Notes*

On July 1, 2014, the Company entered into (i) a five-year senior credit facility agreement (the “Credit Agreement”) with Bank of America, N.A., as Administrative Agent, and the lenders named from time to time as parties thereto (the “Lenders”), for an aggregate amount of up to \$80,000,000, including a revolving credit facility (the “Revolver”) of up to \$15,000,000 and a term loan (“Term Loan”) of \$65,000,000 to be used for general corporate purposes, including both (A) the refinancing of the Company’s current \$30,000,000 outstanding indebtedness under its existing credit facility and (B) permitted acquisitions, and (ii) revolving credit notes (together, the “Revolving Credit Note”) to evidence the Revolver, (iii) term notes (together, the “Term Note,” and together with the Revolving Credit Note, the “Notes”) to evidence the Term Loan, (iv) a Security Agreement (the “Security Agreement”) required by the Lenders with respect to the grant by the Company of a security interest in substantially all of the assets of the Company in order to secure the obligations of the Company under the Credit Agreement and the Notes, and (v) Pledge Agreements (the “Pledge Agreements”) required by the Lenders with respect to the grant by the Company of a security interest in 65% of the capital stock of each of KVH Industries A/S and KVH Industries U.K. Limited held by the Company in order to secure the obligations of the Company under the Credit Agreement and the Notes. Merrill Lynch, Pierce, Fenner & Smith Incorporated, was the sole lead arranger and sole book runner.

The \$65 million Term Note was executed in connection with the acquisition of all of the outstanding shares of Videotel pursuant to the Share Purchase Agreement, on July 1, 2014. The proceeds of \$35 million were applied toward the payment of a portion of the purchase price for the acquired shares of Videotel, and approximately \$30 million was applied toward the refinancing of the outstanding balance of the Company’s existing credit facility. The Company must make principal repayments on the Term Loan in the amount of approximately \$1,219,000 at the end of each of the first eight three-month periods following the closing; thereafter, the Company must make principal repayments in the amount of \$1,625,000 for each succeeding three-month period until the maturity of the loan on July 1, 2019. On the maturity date, the entire remaining principal balance of the loan, including any future loans under the Revolver, is due and payable, together with all accrued and unpaid interest, penalties and other amounts due and payable under the Credit Agreement. The Credit Agreement contains provisions requiring the mandatory prepayment of amounts outstanding under the Term Loan and the Revolver under specified circumstances, including (i) 100% of the net cash proceeds from certain dispositions to the extent not reinvested in the Company’s business within a stated period, (ii) 50% of the net cash proceeds from stated equity issuances and (iii) 100% of the net cash proceeds from certain receipts of more than \$250,000 outside the ordinary course of business. The prepayments are first applied to the Term Loan, in inverse order of maturity, and then to the Revolver. In the discretion of the Administrative Agent, certain mandatory prepayments made on the Revolver can permanently reduce the amount of credit available under the Revolver.

Loans under the Credit Agreement bear interest at varying rates determined in accordance with the Credit Agreement. Each LIBOR Rate Loan, as defined in the Credit Agreement, bears interest on the outstanding principal amount thereof for each interest period from the applicable borrowing date at a rate per annum equal to the LIBOR Daily Floating Rate or LIBOR Monthly Floating Rate, each as defined in the Credit Agreement, as applicable, plus the Applicable Rate, as defined in the Credit Agreement, and each Base Rate Loan, as defined in the Credit Agreement, bears interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate, as defined in the Credit Agreement, plus the Applicable Rate. The Applicable Rate ranges from 1.50% to 2.25%, depending on the Company's Consolidated Leverage Ratio, as defined in the Credit Agreement. The highest Applicable Rate applies when the Consolidated Leverage Ratio exceeds 2.00:1.00. Based on rates in effect on the date hereof, the Company currently expects to make monthly interest payments of approximately \$100,000 with respect to the Term Loan, which interest payments will be subject to adjustment in accordance with the terms of the Credit Agreement. Upon certain defaults, including failure to make payments when due, interest becomes payable at a higher default rate.

Borrowings under the Revolver are subject to the satisfaction of numerous conditions precedent at the time of each borrowing, including the continued accuracy of the Company's representations and warranties and the absence of any default under the Credit Agreement.

The Credit Agreement contains two financial covenants, a Maximum Consolidated Leverage Ratio and a Minimum Consolidated Fixed Charge Coverage Ratio, each as defined in the Credit Agreement. The Maximum Consolidated Leverage Ratio is initially 2.25:1.00 and declines to 1.50:1.00 on December 31, 2014 and to 1.00:1.00 on September 30, 2015. The Minimum Consolidated Fixed Charge Coverage Ratio may not be less than 1.25:1.00 at any time after December 31, 2014. The Credit Agreement imposes certain other affirmative and negative covenants, including without limitation covenants with respect to the payment of taxes and other obligations, compliance with laws, entry into material contracts, creation of liens, incurrence of indebtedness, investments, dispositions, fundamental changes, restricted payments, changes in the nature of the Company's business, transactions with affiliates, corporate and accounting changes, and sale and leaseback arrangements.

The Company's obligation to repay loans under the Credit Agreement could be accelerated upon a default or event of default under the terms of the Credit Agreement, including certain failures to pay principal or interest when due, certain breaches of representations and warranties, the failure to comply with the Company's affirmative and negative covenants under the Credit Agreement, a change of control of the Company, certain defaults in payment relating to other indebtedness, the acceleration of payment of certain other indebtedness, certain events relating to the liquidation, dissolution, bankruptcy, insolvency or receivership of the Company, the entry of certain judgments against the Company, certain events relating to the impairment of collateral or the Lender's security interest therein, and any other material adverse change with respect to the Company.

#### *General*

The foregoing description of the terms and conditions of the Share Purchase Agreement, the Credit Agreement, the Notes, the Security Agreement and the Pledge Agreements is only a summary and is qualified in its entirety by reference to the full text of the Share Purchase Agreement, the Credit Agreement, the Notes, the Security Agreement and the Pledge Agreements filed as exhibits to this report, which are incorporated by reference herein.

The agreements filed as exhibits to this report contain representations and warranties that were made solely for the benefit of the parties to those agreements. These representations and warranties may have been qualified by disclosures that were made to the other party or parties in connection with the negotiation of the agreements, which disclosures are not necessarily reflected in the agreements, may apply standards of materiality that differ from those of investors, may have constituted an allocation of risk and responsibility among the parties rather than statements of fact, and were made only as of specified dates contained in the agreements and are subject to subsequent developments and changed circumstances. Accordingly, these representations and warranties may not describe the actual state of affairs as of the date or dates that these representations and warranties were made or at any other time. Investors should not rely on them as statements of fact.

## **ITEM 1.02. TERMINATION OF A MATERIAL DEFINITIVE AGREEMENT.**

On July 2, 2014, the Company received written confirmation from Bank of America, N.A. that all obligations of the Company owing to Bank of America, N.A. under the Amended and Restated Credit and Security Agreement dated as of July 17, 2003 and the Amended and Restated Revolving Credit Note dated as of May 9, 2013 in the principal amount of \$30.0 million, each as amended to date (together, the "Prior Credit Facility"), had been paid and satisfied in full. The written confirmation indicated that the Prior Credit Facility and all documents relating thereto were terminated and of no further force and effect.

The material terms of the Prior Credit Facility, filed as Exhibits 10.11, 10.12, 10.13, 10.14, 10.15, 10.16, 10.17, 10.18, 10.19, 10.20 and 10.21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2013 (the "Annual Report"), are described in the Annual Report under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Borrowing Arrangements" and are incorporated by reference herein.

## **ITEM 2.01. COMPLETION OF ACQUISITION OR DISPOSITION OF ASSETS.**

The information set forth in Item 1.01 of this Form 8-K is incorporated into this Item 2.01 by reference.

## **ITEM 2.03. CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT.**

The information set forth in Item 1.01 of this Form 8-K is incorporated into this Item 2.03 by reference.

## **ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.**

### **(a) Financial Statements of Businesses Acquired**

The financial statements required by this item will be filed by amendment within 71 calendar days after the date on which this report must be filed.

### **(b) Pro Forma Financial Information**

The pro forma financial statements required by this item will be filed by amendment within 71 calendar days after the date on which this report must be filed.

### **(d) Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
2.1*	Share Purchase Agreement, dated as of July 2, 2014, by and between KVH Media Group Limited and Nigel Cleave
10.1	Credit Agreement, dated as of July 1, 2014, by and between Bank of America, N.A., The Washington Trust Company and KVH Industries, Inc.
10.2	Term Notes, dated as of July 1, 2014, by and between KVH Industries, Inc. and each of Bank of America, N.A. and The Washington Trust Company
10.3	Revolving Credit Notes, dated as of July 1, 2014, by and between KVH Industries, Inc. and each of Bank of America, N.A. and The Washington Trust Company
10.4	Security Agreement, dated as of July 1, 2014, by and between Bank of America, N.A. and KVH Industries, Inc.
10.5	Pledge Agreements, dated as of July 1, 2014, by and between Bank of America, N.A. and KVH Industries, Inc. with respect to KVH Industries A/S and KVH Industries U.K. Limited

\* Certain schedules are omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish copies thereof to the Securities and Exchange Commission upon request.

**SIGNATURES**

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

**Date:** July 3, 2014

**KVH INDUSTRIES, INC.**

BY: \_\_\_\_\_ /s/ PETER A. RENDALL

**Peter A. Rendall**  
**Chief Financial Officer**

## EXHIBIT INDEX

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*	Certain schedules are omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish copies thereof to the Securities and Exchange Commission upon request.

**DATED**

2014

**NIGEL CLEAVE**

(1)

**and**

**KVH MEDIA GROUP LIMITED**

(2)

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**SHARE PURCHASE AGREEMENT**

relating to the sale and purchase of the whole of the  
issued share capital of Super Dragon Limited and  
Videotel Marine Asia Limited

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**PARTIES**

- (1) **NIGEL CLEAVE** of A1, 16/F, Flora Garden, 50 Cloud View Road, North Point, Hong Kong (Holder of Hong Kong Identity Card No. M 280156(1)) (the “**Seller**”); and
- (2) **KVH MEDIA GROUP LIMITED**, a company incorporated in England with registered number 06462774 whose registered office is 2A Queen Street, Leeds, West Yorkshire, LS1 2TW, United Kingdom (the “**Buyer**”).

**INTRODUCTION**

- A Super Dragon Limited (“**SDL**”) and Videotel Marine Asia Limited (“**VMA**”, together with **SDL**, the “**Targets**” and each a “**Target**”) were incorporated in Hong Kong under the Companies Ordinance and each Target is a private company limited by shares.
- B The Seller is the legal and beneficial owner of the whole of the issued share capital of each of the Targets.
- C The Seller has agreed to sell the whole of the issued share capital of each of the Targets to the Buyer on the terms of this agreement.

**IT IS AGREED THAT:****1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this agreement the following words and expressions shall have the following meanings:

“**£**” means pound sterling, the official currency of the United Kingdom.

“**ASB**” means the Accounting Standards Board Limited, a company registered in England and Wales (registered number 2526824), or such other body prescribed by the Secretary of State from time to time pursuant to the Companies Acts.

“**Associate**” means, in relation to a person, (i) a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such specified person, or (ii) each spouse, sibling or child of such specified person or child of such specified person’s spouse, but excluding the Target Group.

“**Business Day**” means any day other than a Saturday, Sunday or a bank or public holiday in Hong Kong and the City of London.

“**Buyer’s Accountants**” means Grant Thornton UK LLP of No 1 Whitehall Riverside, Whitehall Road, Leeds LS14BN.

“**Buyer’s Group**” means the Buyer, any subsidiary of the Buyer, any holding company of the Buyer and any subsidiary of any holding company of the Buyer, from time to time (each, a “**Buyer Group Company**”).

“**Buyer’s Solicitors**” means Akin Gump Strauss Hauer & Feld LLP of Unit 01-04, 28th Floor, Alexandra House, 18 Chater Road Central, Hong Kong.

“**Claim**” means a claim for a breach of any of the provisions of this agreement, other than (i) a Tax-Related Claim or (ii) an Independent Indemnity Claim.

“**Cleave-Cheng SPA**” means the sale and purchase agreement dated as of the even date herewith between the Seller and Newton Cheng in relation to the Shares.

“**Companies Acts**” has the meaning set out in section 2 of the UK Companies Act 2006 and includes any enactment passed after the Companies Act 2006 which may, by reason of that or any other enactment, be cited together with the Companies Act 2006 as “the Companies Acts”.

“**Companies Ordinance**” means the Companies Ordinance, Chapter 622 of the Laws of Hong Kong.

“**Completion**” means completion of the sale and purchase of the Shares in accordance with clause 4.

“**Completion Accounts**” means the consolidated balance sheet of the Target Group as at the close of business on the date of Completion and a consolidated profit and loss account of the Target Group for the period from the Last Accounts Date up to and including the date of Completion, which shall be prepared in accordance with Schedule 5.

“**Confidential Business Information**” means all or any information of a secret or proprietary or confidential nature (however stored) and not publicly known which is owned by any member of the Target Group or which is used in or otherwise relates to the business, customers or financial or other affairs of the Target Group, including, without limitation, information relating to:

- (a) the business methods, technical processes, corporate plans, management systems, finances, new business opportunities or development projects of the Target Group; or
- (b) the marketing or sales of any past or present or future products, content or services of the Target Group including, without limitation, customer names and lists and other details of customers, sales targets, sales statistics, market share statistics, prices, market research reports and surveys and advertising and other promotional materials; or
- (c) future projects, business development or planning, commercial relationships and negotiations; or
- (d) any trade secrets or other information relating to the provision of any product or service of the Target Group.

“**Content**” means such written, spoken and/or visual and audio-visual communication delivered via any medium (including without limitation print, internet, television, satellite, on disc or digitally) to a third party.

“**Content Agreement**” means any agreement for the lease, rental, assignment, license or sub-license of Content by the Target or any member of the Target Group from a third party and, for the avoidance of doubt, excluding any agreements with a customer of the Target Group.

“**Data Room**” means the online data room relating to the Target Group operated by the Seller’s Solicitors, a copy of the contents of which are contained on the Data Room Disk.

“**Data Room Disk**” means the disk to be delivered at Completion, and initialed by both parties for identification purposes, on which is saved each of the documents contained in the Data Room.

“**Deed of Release**” means the deed of release in the agreed form releasing all Intra Group Guarantees and Intra Group Indebtedness.

“**Disclosure Letter**” means (i) the letter in the agreed form dated the same date as this agreement from the Seller to the Buyer disclosing information constituting exceptions to the Warranties and the Tax Warranties and (ii) each of the documents attached to such letter or otherwise contained in the Data Room Disk, in each case specifically referred to in such letter.

“**Domain Names**” means the domain names listed in Schedule 4.

“**Escrow Account**” means an account in the joint names of the Seller and the Buyer with the Escrow Bank, which shall be dealt with in accordance with Schedule 8 and the Escrow Agreement.

“**Escrow Agreement**” means the agreement to be entered into between the Seller, the Buyer and the Escrow Bank concerning the administration of the Escrow Account.

“**Escrow Bank**” means BNY Mellon Hong Kong branch.

“**Escrow Sum**” means £2,865,100.00.

“**EU**” means European Union.

“**Fundamental Warranties**” means the Warranties set out in paragraphs 1.1 to 1.4 (inclusive).

“**General Warranties**” means all of the Warranties save for the Fundamental Warranties.

“**Governmental Approvals**” means any permits, consents, licences, certificates, notices, filings, lodgements, agreements, directions, declarations, registrations, notifications, exemptions, variations, renewals, permissions and amendments and other authorisations and approvals of any Governmental Authority, including any conditions thereof.

“**Governmental Authority**” means any government, any agency, self-regulatory body, public, regulatory or taxing authority, instrumentality, department, commission, court, arbitrator, ministry, tribunal or board of any government or political subdivision thereof, in each case, whether foreign or domestic and whether national, supranational, federal, provincial, state, regional, local or municipal.

“**Holdback Account**” means an interest bearing account in the joint names of the Seller and the Buyer with the Escrow Bank, which shall be dealt with in accordance with Schedule 9 and the Holdback Agreement.

“**Holdback Amount**” means a sum equal to £1,000,000.00.

“**Holdback Agreement**” means the agreement to be entered into between the Seller, the Buyer and the Escrow Bank concerning the administration of the Holdback Account.

“**Holding Account**” means the account in the name of KVH Industries, Inc. with Bank of America.

“**HK\$**” means Hong Kong dollars, the official currency of Hong Kong.

“**Initial Payment**” means the sum of £28,651,000.00.

“**Independent Indemnity Item**” means each of the indemnities given by the Seller in clauses 6.9 and 6.10.

“**Intellectual Property**” means any patents, trade marks, service marks, registered designs, utility models, design rights, copyright (including copyright in computer software), database rights, semi-conductor topography rights, inventions, trade secrets and other confidential information, know-how, business or trade names (including internet domain names and e-mail address names) and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights and the right to sue for infringements of any of the foregoing rights.

“**Intra Group Guarantees**” means all securities, guarantees, indemnities, counter-indemnities, sureties and letters of comfort of any nature whatsoever given by or binding upon any member of the Target Group in respect of a debt, liability or obligation of the Seller and/or any of his Associates.

“**Intra Group Indebtedness**” means all debts, liabilities (whether actual, contingent or prospective) or obligations subsisting or outstanding as at Completion owed by any member of the Target Group on the one hand to the Seller and/or any of his Associates on the other hand.

“**IP Licences**” means any licences, sub-licences, agreements, authorisations and permissions in writing, relating to the use, enjoyment and/or exploitation by:

- (a) any member of the Target Group of any Third Party Intellectual Property Rights; and
- (b) any third party of any Target Intellectual Property Rights.

“**Last Accounts**” means the consolidated balance sheet of the Target Group as at the Last Accounts Date and the consolidated profit and loss account of the Target Group for the two-year period ending on such date, together with the directors’ reports and notes thereon.

**“Last Accounts Date”** means 31 December 2013.

**“Law”** means any applicable treaty, law, regulation or ordinance or any applicable principal of common law, civil law or equity or any direction, instruction, codes, pronouncement or decision of an applicable Governmental Authority having the force of law.

**“Leased Properties”** all the Properties occupied and used by the Target Group under any lease, tenancy, license or other agreement or arrangement.

**“Management Accounts”** means the unaudited profit and loss account of VMI for the three-month period ended on the Management Accounts Date.

**“Management Accounts Date”** means 31 March 2014.

**“Material Contract”** means the top 4 supplier contracts and the top 40 customer contracts (by annual income to or annual expenditure by the Target Group) to which a member of the Target Group is a party (each of which is listed in the Disclosure Letter).

**“Parent Company Acknowledgement”** means an acknowledgement in the agreed form by KVH Industries, Inc. to the Seller and the Buyer that it is holding the amount standing to the balance of the Holding Account (following completion of the matters set out at clauses 4.7(b) and 4.7(c)) on trust, for the joint benefit of the Seller and the Buyer and in accordance with the terms of this agreement.

**“Payment Date”** means 31 March 2016.

**“Properties”** means all the freehold and leasehold properties owned or occupied or used by any member of the Target Group, brief details of which are set out in Schedule 3 and **“Property”** means any one of them.

**“Registered Intellectual Property Rights”** means the Intellectual Property listed in Part 1 of Schedule 4.

**“RSRB”** means Reed Smith Richards Butler of 20<sup>th</sup> Floor, Alexandra House, 18 Chater Road, Central, Hong Kong.

**“RS Solicitors’ Undertakings”** means the undertakings of RSRB in a form to be mutually agreed by RSRB and the Buyer before the signing of this agreement, to be given in favour of the Buyer and relating to inter alia, the payment of the Consideration under clause 3.

**“Sanctions and Export Laws”** means, where applicable to any Target Group Company, any U.S. or other applicable Laws involving the export of any commodity, service, technology, or software, or otherwise imposing sanctions, embargoes or trade controls on transactions or activities between different countries or nationals of different countries, including, but not limited to any international sanctions programs promulgated under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706), the National Emergencies Act (50 U.S.C. §§ 1601-1651), the Trading With the Enemy Act (50 U.S.C. App. §§ 5, 16); any embargoes, sanctions or restrictions administered by the U.S. Department of Treasury, Office of Foreign Assets Control (“OFAC”) and the U.S. Department of State, including any regulations contained in 31 C.F.R. Subtitle B, Part V; any orders of the United States President regarding embargoes and restrictions on transactions with designated countries and entities, including persons and entities designated on OFAC’s lists of Specially Designated Nationals and Blocked Persons and Foreign Sanctions Evaders; or additional international sanctions programs administered by OFAC and any other regulations promulgated under each such act, including any regulations contained in 31 C.F.R. Subtitle B, Part V. the Export Administration Act of 1979 (50 U.S.C. App. §§ 2401 et seq.) as amended; the Export Administration Regulations (15 C.F.R. Parts 730-774), including related restrictions with regards to transactions involving persons and entities on any restricted party list maintained by the U.S. Department of Commerce, such as the Denied Persons List, Entity List, or Unverified List; the Arms Export Control Act Act (22 U.S.C. § 2778 et seq.), as amended; the International Traffic in Arms Regulations (“ITAR”), including related restrictions with regard to transactions involving persons and entities on any restricted party list maintained by the U.S. Department of State, such as the Debarred List; the International Emergency Economic Powers Act, as amended; and the Trading With the Enemy Act, as amended,

as well as similar laws implemented by the European Union or its member states, including, without limitation, EU Council Regulation (EU) No. 267/2012, as amended, the United Kingdom's Iran (European Union Financial Sanctions) Regulations 2012 (2012 No. 295), as amended, the United Kingdom's Iran (United Nations Sanctions) Order 2009 (2009 No. 886), as amended, and the United Kingdom's Export Control Order 2008 (2008 No. 3231).

**"SDL Shares"** means the 100 ordinary shares of HK\$1.00 each in the issued share capital of SDL representing the entire issued share capital of SDL.

**"Security Interest"** means any mortgage, charge, assignment or assignation by way of security, guarantee, indemnity, debenture, hypothecation, pledge, declaration of trust, lien, right of set off or combination of accounts or any encumbrance or security interest whatsoever, howsoever created or arising and whether monetary or not.

**"Seller Employment Agreement"** means the employment agreement, dated as of even date herewith, between VMA and the Seller in the agreed form.

**"Seller's Solicitors"** means Reed Smith LLP of The Broadgate Tower, 20 Primrose Street, London EC2A 2RS

**"SETT Cooperation Agreement"** means the SETT co-operation agreement among VMA, COSCONET (Beijing) Co. Limited, Guangyuan Communication & Navigation Co. Ltd. and Trinti Marine Solutions dated 22 July 2013.

**"Shares"** means the SDL Shares and the VMA Shares to be sold by the Seller to the Buyer pursuant to the terms and conditions of this agreement.

**"Stamp Office"** means the Stamp Office of the Inland Revenue Department of Hong Kong.

**"Subsidiaries"** means the subsidiaries of the Targets, brief details of which are set out in Part 2 of Schedule 1.

**"Systems"** means the computer, telecommunications and networking hardware and software and other information technology owned or used by any member of the Target Group.

**"Target Group"** means collectively the Targets and the Subsidiaries (each, a **"Target Group Company"**).

**"Target Intellectual Property Rights"** means all the Intellectual Property owned by any member of the Target Group including, without limitation, the Intellectual Property listed in Parts 1, 2 and 3 of Schedule 4.

**"Taxation"** means all forms of taxation, duties, rates, social security costs (including National Insurance contributions), levies, charges, withholdings or other impositions whatsoever, created or imposed or by operation of Law, in each case of a fiscal nature, and whether in Hong Kong or any other part of the world, and any interest, penalty, addition to tax, surcharge, fine or other liability, arising in connection with the imposition or non-payment or delay in payment of any taxation and "Tax" shall be construed accordingly.

**"Taxation Statute"** any directive, statute, enactment, law or regulation wheresoever enacted or issued, coming into force or entered into providing for or imposing any Tax and including orders, regulations, instruments, by-laws or other subordinate legislation made under the relevant statute or statutory provision and any directive, statute, enactment, law, order, regulation or provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same;

**"Tax Authority"** means the Inland Revenue Department of Hong Kong and any other statutory or governmental authority or body in any jurisdiction in any part of the world with responsibility in that capacity for Taxation.

**"Tax Indemnity"** means the deed of indemnity in respect of Taxation to be executed by the Buyer and the Seller at Completion in the agreed terms as set out in Appendix 1.

**"Tax-Related Claim"** means a claim under the Tax Indemnity or for breach of any of the Tax Warranties.

“**Tax Warranties**” means the warranties contained in Schedule 6.

“**Third Party Intellectual Property Rights**” means all Intellectual Property used or exploited by or in connection with any member of the Target Group but not owned by any member of the Target Group including, without limitation, the Intellectual Property listed in Schedule 4.

“**Undertakings Instruction**” means the instruction to be given by the Buyer’s Solicitors to RSRB pursuant to paragraph 1(b) of the RSRB Solicitors’ Undertaking.

“**UK GAAP**” means generally accepted accounting practices, principles and standards in compliance with all applicable laws in the United Kingdom including without limitation the legal principles set out in the Companies Acts, rulings and abstracts of the ASB and guidelines, conventions, rules and procedures of accounting practice in the United Kingdom which are regarded as permissible by the ASB.

“**UK Subsidiaries**” means Videotel Limited, Videotel Consultants and Rentals Limited, Videotel Marine International Limited and Videotel Training Services Limited, companies incorporated and existing under the laws of England and Wales.

“**VMA Shares**” means the 100 ordinary shares of HK\$1.00 each in the issued share capital of VMA representing the entire issued share capital of VMA.

“**VMI**” means Videotel Marine International Limited, being one of the UK Subsidiaries.

“**Warranties**” means the warranties set out in Schedule 2.

- 1.2 Any reference to a statute, statutory provision or subordinate legislation shall be construed as referring to that statute, statutory provision or subordinate legislation as amended, modified, consolidated, re-enacted or replaced and in force from time to time, whether before or after the date of this agreement and shall also be construed as referring to any previous statute, statutory provision or subordinate legislation amended, modified, consolidated, re-enacted or replaced by such statute, statutory provision or subordinate legislation.
- 1.3 Any reference to a statutory provision shall be construed as including references to all statutory instruments, orders, regulations or other subordinate legislation made pursuant to that statutory provision.
- 1.4 Unless the context otherwise requires, all words and expressions which are defined in the Companies Ordinance shall have the same meanings in this agreement.
- 1.5 Unless the context otherwise requires:
- (a) words denoting the singular include the plural and vice versa;
  - (b) words denoting any gender include all other genders;
  - (c) any reference to a “person” includes individual, partnership, limited liability company, corporation, association, joint stock company, trust, entity, joint venture, labour organisation, unincorporated organisation or Governmental Authority;
  - (d) any references to time are to Hong Kong time;
  - (e) any reference to a party is to a party to this agreement.
- 1.6 Clause headings are for convenience only and shall not affect the interpretation of this agreement. Any reference to a clause, sub-clause, paragraph or schedule is to the relevant clause, sub-clause, paragraph or schedule of this agreement.
- 1.7 The schedules to this agreement shall for all purposes form part of this agreement.
- 1.8 Any reference to a document being in the “agreed form” means a document in a form agreed and initialed by the parties for the purpose of identification on or prior to Completion.

1.9 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. SALE AND PURCHASE

2.1 Subject to the terms and conditions of this agreement, the Seller shall sell the Shares with full title guarantee and the Buyer shall purchase the Shares.

2.2 The Seller covenants with the Buyer that:

- (a) the Shares are fully paid (or credited as fully paid) and constitute the whole of his interest in the allotted and issued share capital of the Targets;
- (b) he is entitled to sell and transfer the full legal and beneficial ownership of the Shares on the terms of this agreement without the consent of any third party; and
- (c) he will sell and transfer the Shares to the Buyer free and clear from all Security Interests and together with all accrued benefits and rights attaching or accruing to the Shares, including all dividends declared on or after the date of this agreement.

2.3 The Seller waives all rights of pre-emption (if any) over the Shares to which he may be entitled under the Articles of Association of each Target or otherwise in relation to the sale and purchase of the Shares pursuant to this agreement.

## 3. CONSIDERATION

3.1 The total consideration for the sale of the Shares shall, subject to clause 6.8, be an amount equal to the sum of (i) the Initial Payment; (ii) plus or minus, as the case may be, any adjustments made pursuant to the provisions of Schedule 5.

3.2 Any consideration payable to the Seller under the terms of this agreement shall be allocated 80% to the SDL Shares and 20% to the VMA Shares.

3.3 On Completion, the Buyer shall pay, on account of the consideration:

- (a) an amount equal to the Initial Payment (less amounts equal to the Escrow Sum and the Holdback Amount) to the Seller;
- (b) an amount equal to the Escrow Sum into the Holding Account, in accordance with clause 4.7(b); and
- (c) an amount equal to the Holdback Amount into the Holding Account, in accordance with clause 4.7(c).

3.4 Any adjustment to be made to the Initial Payment pursuant to the provisions of Schedule 5 shall be paid as provided in Schedule 5.

3.5 The provisions of Schedule 8 shall apply in relation to the Escrow Account.

3.6 The provisions of Schedule 9 shall apply in relation to the Holdback Account.

3.7 The Seller agrees that the sum due to the Seller under clause 3.3(a) shall be paid by the Buyer to RSRB’s trust account prior to Completion pursuant to the RSRB Solicitors’ Undertakings, and RSRB’s receipt of such funds and RSRB’s receipt of the Undertakings Instruction from the Buyer’s Solicitors shall constitute a full discharge of the Buyer’s obligations to make such a payment. All other sums payable to the Seller hereunder shall be paid to the bank account of the Seller as notified by it in writing from time to time.

## 4. COMPLETION

4.1 Completion shall take place at the offices of the Seller’s Solicitors immediately after the signing of this agreement on the date of this agreement when each of the events set out in clauses 4.2 to 4.5 shall occur.

4.2 At Completion, the Seller shall deliver to the Buyer:

- (a) duly executed instruments of transfer in favour of the Buyer in respect of all of the Shares;
- (b) duly executed sold notes in favour of the Buyer in respect of all of the Shares;
- (c) the share certificates representing the Shares in the name of the Buyer;
- (d) the resignations of the directors of each member of the Target Group and the secretary of each member of the Target Group (other than any director or secretary whom the Buyer may wish to remain in office) as a deed in the agreed form from their respective offices and employment with each member of the Target Group containing a written acknowledgement from each of them that he or she has no claim (whether for loss of office or otherwise) against any member of the Target Group on any grounds whatsoever, along with a Form ND2A for each Target completed with the information of the outgoing directors and secretary;
- (e) the Deed of Release duly executed by the Seller;
- (f) the Tax Indemnity duly executed by the Seller; and
- (g) the Seller Employment Agreement duly executed by the parties thereto.

4.3 At Completion, there shall be delivered or made available to the Buyer:

- (a) the certificate of incorporation (and, where relevant, any certificate of incorporation on change of name), by-laws or comparable organisational documents of each member of the Target Group;
- (b) the minute books of each member of the Target Group duly made up to Completion;
- (c) the register of members, register of directors and other statutory registers of each member of the Target Group duly made up to Completion, including in respect of each Target reflecting the Seller as the sole shareholder thereof;
- (d) any common seal of any member of the Target Group;
- (e) all unissued share certificates of each member of the Target Group;
- (f) the title deeds relating to each of the Properties;
- (g) all books of accounts and documents of record and all other documents in the possession, custody or control of the Seller in connection with each member of the Target Group all complete and up to date;
- (h) all bank statements of all bank accounts of each member of the Target Group as at a date not more than two Business Days prior to Completion together with bank reconciliation statements in respect of each such account made up to Completion;
- (i) all the current cheque books, paying in books and unused cheques of each member of the Target Group;
- (j) evidence satisfactory to the Buyer that all outstanding indebtedness owed by a Target Group Company on the one hand to Newton Cheng or his Associates (other than accounts payable arising in the ordinary course of business under the administration and service agreement dated 1 April 2013 between VMA and Winwell Services Limited) on the other hand has been extinguished;
- (k) a copy of the duly executed Cleave-Cheng SPA;
- (l) evidence satisfactory to the Buyer that the entire issued share capital of Videotel Pte. Ltd. is fully paid up according to the Singapore corporate registry; and

- (m) evidence satisfactory to the Buyer that all employment agreements between the Seller on the one hand and any member of the Target Group on the other hand have been terminated, together with a written acknowledgement from the Seller that he has no claim under any such employment agreement.
- 4.4 At Completion, the Seller shall and shall procure that his Associates shall pay all monies (if any) then owing by them to any member of the Target Group, whether due for payment or not.
- 4.5 At Completion, a board meeting of each member of the Target Group shall be duly convened and held at which, with effect from Completion:
- (a) the transfers referred to in clause 4.2(a) shall (subject to stamping) be approved and registered;
  - (b) such persons as the Buyer may nominate shall be appointed as directors and as the secretary of each member of the Target Group and the resignations referred to in clause 4.2(d) shall be submitted and accepted.
- 4.6 At Completion, the Buyer shall deliver to the Seller the Tax Indemnity duly executed by the Buyer.
- 4.7 Upon Completion and simultaneously with the matters specified in clauses 4.2 to 4.5 the Buyer shall:
- (a) pay the Initial Payment (less amounts equal to the Escrow Sum and the Holdback Amount) by procuring the provision of the Undertakings Instruction to RSRB;
  - (b) pay the Escrow Sum by telegraphic transfer into the Holding Account;
  - (c) pay the Holdback Amount by telegraphic transfer into the Holding Account;
  - (d) deliver to the Seller the duly executed bought notes in favour of the Seller in respect of all of the Shares; and
  - (e) deliver to the Seller the duly executed Parent Company Acknowledgement.
- 4.8 The Buyer may in its absolute discretion waive any requirement contained in clauses 4.2 to 4.5 (inclusive).
- 4.9 Neither party shall be obliged to complete the purchase or sale (as the case may be) of any of the Shares unless the purchase and sale of all the Shares is completed simultaneously in accordance with such clauses and this agreement.
- 5. POST-COMPLETION OBLIGATIONS**
- 5.1 The Seller undertakes that, immediately following Completion until such time as the transfers of the Shares have been registered in the register of members of the Targets, the Seller will hold the Shares registered in his name on trust for and as nominee for the Buyer or its nominees and undertakes to hold all dividends and distributions and exercise all voting rights available in respect of the Shares in accordance with the directions of the Buyer or its nominees and if the Seller is in breach of the undertakings contained in this clause the Seller irrevocably authorises the Buyer to appoint some person or persons to execute all instruments or proxies (including consents to short notice) or other documents which the Buyer or its nominees may reasonably require and which may be necessary to enable the Buyer or its nominees to attend and vote at general meetings of the Targets and to do any thing or things necessary to give effect to the rights contained in this clause 5.1.
- 5.2 The Seller shall cause the audit of the Last Accounts by the Buyer's Accountants to be completed and the relevant audit letter to be delivered to the Target Group as soon as practicable following Completion, but in any event no later than 21 July 2014. For purposes of this agreement, notwithstanding anything to the contrary herein, on or after the date of such audit letter:
- (a) "Last Accounts" shall mean "the audited consolidated balance sheet of the Target Group as at the Last Accounts Date and the audited consolidated profit and loss account of the Target Group for the two-year period ending on such date, together with the auditor's and the directors' reports and notes thereon";

- (b) all references to “Last Accounts” in this agreement shall be construed accordingly; and
  - (c) the copy of the audited Last Accounts shall be added to the disclosed unaudited Last Accounts attached to the Disclosure Letter.
- 5.3 At any time after Completion, the Seller at his own expense shall (and shall use his reasonable endeavours to procure that any necessary third party shall) sign and execute all such documents and do all such acts and things as are necessary for effectively vesting the Shares in the Buyer and otherwise giving the Buyer the full benefit of all the provisions of this agreement.
- 5.4 Each of the Seller and the Buyer shall bear fifty per cent of the stamp duty payable on the instruments of transfer and the bought and sold notes in respect of the Shares as contemplated by this agreement.
- 5.5 The Seller and the Buyer agree that the Buyer’s Solicitors shall submit to the Stamp Office the instruments of transfer and bought and sold notes referred to in clause 5.4, together with other documents required by the Stamp Office in relation to the transactions contemplated by this agreement as soon as practicable after Completion (but in any event within 30 days of Completion). The Buyer shall indemnify the Seller and hold him harmless in respect of any liability (including any fines, penalties or interest) arising from the Buyer’s failure to submit the relevant documents to the Stamp Office within 30 days of Completion. For the purpose of this clause 5.5, the Seller shall provide to the Buyer:
- (a) a copy of the memorandum and articles of association of SDL and VMA;
  - (b) statements from SDL and VMA confirming that company has acquired landed property, rights to acquire landed property or investments;
  - (c) the latest audited accounts for SDL and VMA;
  - (d) certified management accounts of each Target made up to a date close to the date of Completion; and
  - (e) certified copies of the resolutions of meetings of directors relating to dividends paid or payable during the period since the date of the latest audited accounts.
- 5.6 As soon as practicable (but in any event within 10 days) following receipt by the Buyer’s Solicitors of the definitive assessment from the Stamp Office with respect to the submission contemplated by clause 5.5, the Buyer and the Seller shall cause an amount equal to fifty per cent of the stamp duty adjudged payable with respect to the transactions under this agreement, to be released to the Buyer from the Escrow Account, which sum (the “**Seller Stamp Duty Amount**”) shall be paid by the Buyer’s Solicitors to the Stamp Office on behalf of the Seller, in discharge of the Seller’s obligation under clause 5.4. The Buyer shall procure the payment of the remaining fifty per cent to the Stamp Office at the same time, in discharge of its obligation under clause 5.4.
- 5.7 As soon as practicable following Completion, the Seller and the Buyer shall jointly instruct the Escrow Bank to open:
- (a) the Escrow Account on the terms and conditions of the Escrow Agreement; and
  - (b) the Holdback Account on the terms and conditions of the Holdback Agreement.
- 5.8 The Buyer irrevocably undertakes, in favour of the Seller, upon being notified by the Escrow Bank of the opening of the Escrow Account, to procure the transfer of £2,865,100 from the Holding Account to the Escrow Account.
- 5.9 The Buyer irrevocably undertakes, in favour of the Seller, upon being notified by the Escrow Bank of the opening of the Holdback Account by the Escrow Bank, to procure the transfer of £1,000,000 from the Holding Account to the Holdback Account.
- 5.10 Until such time as the Escrow Account and Holdback Account are opened, the Buyer shall procure that:

- (a) the monies standing to the balance of the Holding Account are held on trust for the joint benefit of the Seller and the Buyer; and
- (b) the Holding Account is operated in accordance with the provisions of Schedule 8 and Schedule 9 as if such Holding Account were the Escrow Account or the Holdback Account as the context determines.

## **6. WARRANTIES**

- 6.1 The Seller warrants to the Buyer that each Warranty and Tax Warranty is true and accurate and not misleading as at the date of this agreement, subject to:
- (a) any matter fairly disclosed in the Disclosure Letter;
  - (b) the limitations and qualifications set out in this clause and Schedule 7; and
  - (c) in relation to the Tax Warranties only, the limitations and qualifications set out in the Tax Indemnity.
- 6.2 Each Warranty and Tax Warranty made or given in respect of any Target shall be deemed to be a warranty of the Seller made or given in respect of each member of the Target Group and (unless the context or subject matter otherwise requires) the expression the “Target” in the Warranties and the Tax Warranties shall be construed accordingly.
- 6.3 Each Warranty and Tax Warranty shall be construed as a separate and independent warranty and, except where expressly stated, shall not be limited or restricted by reference to or inference from the terms of any other warranty or any other provision of this agreement.
- 6.4 The rights and remedies of the Buyer in respect of any breach of the Warranties or the Tax Warranties shall not be affected by completion of the purchase of the Shares, by any failure to exercise or delay in exercising any right or remedy or by any other event or matter whatsoever, except a specific and duly authorised written waiver or release expressly referring to such breach.
- 6.5 The Seller agrees with the Buyer to waive any claim or remedy or right which he may have in respect of any misrepresentation, inaccuracy or omission in or from any information or advice supplied or given by any member of the Target Group or a director, officer or employee of any member of the Target Group for the purpose of assisting the Seller in giving any warranty, representation, undertaking or covenant, in preparing the Disclosure Letter and in entering into this agreement or any agreement or document entered into pursuant to this agreement.
- 6.6 If any Warranty or Tax Warranty is qualified by the expression “so far as the Seller is aware” or “to the best of the knowledge, information and belief of the Seller” or words to such effect, such expression shall be deemed to refer to the actual knowledge, information or belief of the Seller, the Seller having made reasonable enquiries of the directors of the Target Group (including Newton Cheng), Somerton Consultancy Ltd (in its capacity as accountant to the UK Subsidiaries), Hoosang, Lyn, Li & Co. Ltd (in its capacity as auditors of the Targets) and BSL Public Housing Corporation (in its capacity as auditors of Videotel Pte. Ltd.).
- 6.7 Notwithstanding any other provisions of this agreement or any other agreement or document entered into pursuant to this agreement, none of the limitations contained in this clause 6, Schedule 7, the Tax Indemnity, the Disclosure Letter nor any statutory limitation shall apply to any claim for breach of the Warranties or the Tax Warranties where the fact, matter or circumstance giving rise to the claim arises as a result of fraud, wilful concealment or deliberate non-disclosure on the part the Seller, any member of the Target Group or any of their respective officers, employees or advisers.
- 6.8 If any amount is paid by the Seller in respect of a breach of any Warranty or Tax Warranty or otherwise pursuant to this agreement, the amount of such payment shall be deemed to constitute a reduction in the consideration payable under this agreement for the Shares to which the breach or other matter most relates.

- 6.9 The Seller will indemnify the Buyer for any damages, losses, liabilities, proceedings and reasonably incurred costs and expenses in connection with any claims brought by employees of any Target Group Company or third parties with respect to Intellectual Property used in the Target Group's business.
- 6.10 The Seller will indemnify the Buyer for any damages, losses, liabilities or proceedings relating or attributable to the period prior to the Completion, together with reasonably incurred costs and expenses, in connection with any claims, other than any Tax-Related Claims or any claims related to the termination, howsoever arising on or after Completion, of any engagement or employment (or any alleged engagement or employment), that may be brought by an individual who is not listed in the Disclosure Letter as an employee of a Target Group Company, but who is or was engaged in providing services to any Target Group Company whether under a formal consultancy agreement or otherwise (or who alleges to have been so engaged), and who alleges or is found to have been an employee of that Target Group Company during the period prior to the Completion.

## 7. RESTRICTIVE COVENANTS

- 7.1 For the purposes of this clause 7:

**"Competing Services"** means any services which are the same or materially similar to and competitive with any Restricted Services.

**"Key Staff Member"** means Stephen Bond, George Cheng, Raj Bharkada and Loulla Mouzouris.

**"Protected Period"** means the period of 18 months following the Relevant Date.

**"Relevant Period"** means the 12 month period ending on the Relevant Date.

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

**"Restricted Company"** means any member of the Target Group.

**"Restricted Client"** means any person who, at the Relevant Date or at any time during the Relevant Period is or, as the case may be, has been:

- (a) a customer of any Restricted Company; and/or
- (b) in negotiations or discussions with any Restricted Company in relation to the provision of any Restricted Services,

in either case in the course of his employment, consultancy or directorship of any Restricted Company.

**"Restricted Services"** means all and any services provided by any Restricted Company at any time during the Relevant Period.

- 7.2 As the Seller, in the course of his employment, consultancy and/or directorship is likely to obtain knowledge of trade secrets and other confidential information of Restricted Companies from time to time and will have dealings with the customers and suppliers of Restricted Companies, and in order to protect such trade secrets and other confidential information and the goodwill of the Restricted Companies, the Seller hereby covenants with and undertakes to the Buyer and, on the same basis separately covenants with and undertakes with the Target as agent and trustee for each of the Restricted Companies, that, without prejudice to any other duty implied by Law, he will not directly or indirectly, either alone or jointly, at any time during the Protected Period (other than in the case of clauses 7.2(h), 7.2(i), 7.2(j) and 7.2(k) below which shall apply indefinitely following the Relevant Date):

- (a) be concerned (whether as a director, shareholder, partner, lender, proprietor, agent, consultant or otherwise) in any business which competes with any of the Restricted Companies in or in relation to any territory in which business was carried on by any of the Restricted Companies at the Relevant Date other than the Seller's pre-existing role as Non-Executive Director of Paragon Shipping, Inc. and Chairman of the Cayman Islands Shipowners' Advisory Council;

- (b) be employed or engaged by any Restricted Client;
- (c) canvass or solicit or attempt to canvass or solicit business, orders or custom for Competing Services from any Restricted Client or interfere with or entice away or attempt to interfere with or entice away the custom or prospective custom of any Restricted Client with a view to providing any Competing Services to any Restricted Client in competition with any Restricted Company;
- (d) have any commercial dealings in respect of any Competing Services to or in relation to any Restricted Client otherwise than in relation to the Seller's pre-existing role as Non-Executive Director of Paragon Shipping, Inc. and Chairman of the Cayman Islands Shipowners' Advisory Council;
- (e) on his own account or for any other person, solicit or attempt to solicit the services of, or endeavour to entice away from any Restricted Company any Key Staff Member (whether or not such person would commit any breach of his contract of employment or engagement by reason of leaving the service of such company) provided that nothing shall give rise to any liability of the Seller in the event that any Key Staff Member undertakes such employment on their own initiative without inducement or encouragement by the Seller.
- (f) employ in any capacity or offer employment in any capacity to or enter into or offer to enter into business or partnership with any Key Staff Member provided that nothing shall give rise to any liability of the Seller in the event that any Key Staff Member undertakes such employment on their own initiative without inducement or encouragement by the Seller;
- (g) induce or attempt to induce any supplier of a Restricted Company to cease to supply, or to restrict or vary the terms of supply, to a Restricted Company;
- (h) represent himself or permit himself to be held out as being in any way connected with or interested (except as shareholder if that is the case) in the business of any Restricted Company;
- (i) use or allow to be used (except by a member of the Target Group) any trade name used by any member of the Target Group at the Relevant Date, or any other name calculated or likely to be confused with such a trade name;
- (j) except so far as may be required by Law, use or disclose to any person any confidential information of a technical, trade or other character which he has acquired in the course of or as a result of his directorship of or employment by a Restricted Company or his ownership of shares in the capital of a Restricted Company; or
- (k) act in any manner or make any public statement which is or is calculated to be prejudicial to the interests of a Restricted Company or its business.

7.3 The Seller shall not induce, procure or authorise any other person to do or procure to be done anything which if done by the Seller would be a breach of any of the provisions of clause 7.2.

7.4 The Seller, having obtained professional advice, acknowledges and agrees that the covenants contained in this clause 7 in favour of the Buyer and the Target Group are no more extensive than is reasonable to protect the legitimate interests of the Buyer and the Target Group.

7.5 Each of the restrictions contained in clause 7.2 shall be construed as a separate restriction and is considered reasonable by the parties but in the event that any such restriction shall be found to be void or for any reason unenforceable but would be valid and enforceable if some part thereof were deleted or the period or area of application reduced such restriction shall apply with such modification as may be necessary to make it valid and enforceable.

7.6 The Seller shall procure that each of his Associates shall comply with the provisions of this clause as if each such person were a party covenanting with the Buyer in place of the Seller.

7.7 The Seller acknowledges that the Buyer is accepting the benefit of the covenants contained in this clause 7 both on its own behalf and on behalf of each member of the Buyer's Group and the Target Group with the intention that the Buyer may claim against the Seller on behalf of any such person for loss sustained by that person as a result of any breach of any of the covenants contained in this clause.

## **8 CONFIDENTIALITY AND USE OF NAMES**

8.1 The Seller shall not at any time after the date of Completion use or disclose or permit there to be disclosed any Confidential Business Information which he has or acquires, provided that this clause shall not apply if and to the extent that:

- (a) such Confidential Business Information has come into the public domain (other than as a result of breach of any obligation of confidence by the Seller or any of his Associates); or
- (b) any disclosure of such Confidential Business Information has been authorised in writing by the Buyer; or
- (c) disclosure of the Confidential Business Information concerned is required by Law or by any regulatory body.

8.2 The Seller shall not at any time after the date of Completion either as principal or partner, alone or jointly with, through or as manager, adviser, consultant or agent for any person or in any other capacity use any of the Target Intellectual Property Rights (in particular, but without limitation, any name including the words "Videotel", "Videotel on Demand", "Videotel Online Assessment" and webFTA", or any similar words) or use anything which is intended, or is likely to be confused with any of the Target Intellectual Property Rights.

8.3 The Seller shall procure that each of his Associates shall comply with the provisions of this clause as if each such person were a party covenanting with the Buyer.

8.4 Notwithstanding anything to the contrary in this clause 8, nothing in this clause 8 shall prevent the Seller from carrying out his bona fide duties for and on behalf of the Target Group in accordance with the terms of an employment or consultancy agreement entered into between the Seller and the relevant member of the Target Group.

## **9 ANNOUNCEMENTS**

9.1 Subject to clause 9.2 and clause 9.3, the parties shall not make or authorise another person to make any public announcement concerning the terms of or any matters contemplated by or ancillary to this agreement without the prior written consent of all the other parties (such consent not to be unreasonably withheld or delayed).

9.2 A party may make or authorise an announcement if:

- (a) that party concludes in its reasonable discretion that the announcement is required by Law or regulation or any securities exchange or regulatory or governmental body or the rules and regulations thereof (whether or not such requirement has the force of Law); and
- (b) that party has consulted with and considered the reasonable comments of the other parties.

9.3 The parties agree to the release of the press announcement in the agreed form.

## **10 GENERAL**

10.1 Except where this agreement provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this agreement and of each agreement or document entered into pursuant to this agreement and the transactions contemplated by this agreement (including the due diligence exercise conducted prior to Completion). No such costs incurred by or on behalf of the Seller shall be charged to any member of the Target Group.

- 10.2 No variation of this agreement or any agreement or document entered into pursuant to this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 10.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this agreement or by Law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.
- 10.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this agreement or by Law shall preclude any other or further exercise of such right, power or remedy or of any other right, power or remedy.
- 10.5 The rights, powers and remedies of the parties provided by this agreement are cumulative and are not exclusive of any rights, powers and remedies provided by Law.
- 10.6 The provisions of this agreement insofar as they have not been performed at Completion shall remain in full force and effect notwithstanding Completion.
- 10.7 This agreement and each of the agreements and documents executed pursuant to this agreement shall be binding upon and enure for the benefit of the successors in title of the parties.
- 10.8 If any provision of this agreement is or becomes illegal, invalid or unenforceable under the Law of any jurisdiction, that shall not affect or impair:
- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or
  - (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this agreement.
- 10.9 Subject to the provisions of this clause 10, no person who is not a party to this agreement may enforce any term of this agreement.
- 10.10 Where a term of this agreement is expressed to be for the benefit of or confers a right on a member of the Buyer's Group, other than the Buyer, (the "**Third Party Rights**"), such rights are enforceable by each such member of the Buyer's Group.
- 10.11 The Buyer may, at its discretion, exercise the Third Party Rights on behalf of any relevant Buyer's Group member as if the Buyer were such person.
- 10.12 All sums payable under this Agreement shall be paid without deduction, counterclaim, set off or withholding, except as may be required by law or as otherwise expressly stated in this Agreement.
- 10.13 The parties shall bear all costs relating to the Escrow Account and the Holdback Account in equal amounts.

## 11 ASSIGNMENT

- 11.1 Subject to clauses 11.2 and 11.3, no party may assign, transfer, charge, make the subject of a trust or deal in any other manner with any of its rights under it or purport to do any of the same nor sub-contract any or all of its obligations under this agreement without the prior written consent of all of the other parties.
- 11.2 Notwithstanding clause 11.1, the Buyer shall be entitled to assign its rights under this agreement and/or any agreement or document entered into pursuant to this agreement to:
- (a) any member of the Buyer's Group provided that the Buyer shall procure that any such company to whom it assigns any of its rights under this clause shall re-assign all such rights to the Buyer immediately prior to its ceasing to be a member of the Buyer's Group; or
  - (b) any parent undertaking of the Target on or following a change of control of the Target,

provided that the Seller's obligations or liability under this Agreement and/or any such agreement or document shall not be increased beyond what his obligations or liability would have been if the assignment had not occurred.

- 11.3 Notwithstanding clause 11.1, the Buyer may assign by way of security all or any of its rights under this agreement and/or any agreement or document entered into pursuant to this agreement to any bank and/or any financial institution lending money or making banking facilities available to the Buyer.

## 12 ENTIRE AGREEMENT

This agreement and any agreement or document entered into pursuant to this agreement (including without limitation the Tax Indemnity) constitute the entire agreement between the parties and supersede any previous agreement or arrangement between the parties or any of them relating to the acquisition of the Shares.

## 13 NOTICES

- 13.1 Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and may be served by delivering it by hand or sending it by internationally recognized courier (for which a signed acknowledgement of receipt is give) or by fax to the party due to receive it, at the address or fax number set out below or to such other address or fax number as are last notified in writing to the parties:

- (a) in case of the Buyer:

Address: 50 Enterprise Center

Middletown, RI 02842-5279

U.S.A.

Fax Number: +1 401 849 0045

Attention: Felise Feingold

- (b) in case of the Seller:

Address: A1, 16/F, Flora Garden

50 Cloud View Road, North Point

Hong Kong

Fax Number: +852 2544 6662

Attention: Nigel Cleave

- 13.2 Subject to clause 13.3, in the absence of evidence of earlier receipt, any notice given pursuant to this clause shall be deemed to have been received:

- (a) if delivered by hand, at the time of actual delivery to the address referred to in clause 13.1;
- (b) if delivered by courier, the date stated on the signed acknowledgement of receipt; and
- (c) if sent by fax, at the time of completion of transmission.

- 13.3 If deemed receipt under clause 13.2 occurs before 9.00 am on a Business Day, the notice shall be deemed to have been received at 9.00 am on that day. If deemed receipt occurs on any day which is not a Business Day or after 5.00 pm on a Business Day the notice shall be deemed to have been received at 9.00 am on the next Business Day.

#### **14 COUNTERPARTS**

This agreement may be executed in any number of counterparts and by the different parties on separate counterparts (which may be facsimile copies), but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

#### **15 GOVERNING LAW AND JURISDICTION**

15.1 This agreement shall be governed by and construed in accordance with laws of England and Wales.

15.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts, in relation to any claim or matter arising under or in connection with this agreement (or any agreement or document entered into pursuant to this agreement), including any non-contractual claims or matters.

**IN WITNESS** of which the parties have executed this agreement on the date set out above.

## Schedule 1

### Target Group

#### Part 1 - Target Companies

<b>Name:</b>	<b>Super Dragon Limited</b>
<b>Registered Number:</b>	1327525
<b>Type of Company:</b>	Private company limited by shares
<b>Date of incorporation:</b>	27 March 2009
<b>Country of incorporation:</b>	Hong Kong
<b>Issued Share Capital:</b>	100 ordinary shares of HK\$1.00 each
<b>Registered Office:</b>	Room 401, 4/F, Yu Sung Boon Building, 107-111 Des Voeux Road Central, Hong Kong
<b>Directors:</b>	Newton Cheng
<b>Secretary</b>	Panfair Services Limited
<b>Accounting Reference Date:</b>	31 March
<b>Auditors:</b>	Hoosang, Lyn, Li & Co. Ltd.
<b>Charges:</b>	None
<b>Name:</b>	<b>Videotel Marine Asia Limited ( Videotel Marine Asia Limited )</b>
<b>Registered Number:</b>	1110854
<b>Type of Company:</b>	Private company limited by shares
<b>Date of incorporation:</b>	16 February 2007
<b>Country of incorporation:</b>	Hong Kong
<b>Issued Share Capital:</b>	100 ordinary shares of HK\$1.00 each
<b>Registered Office:</b>	Room 401, 4/F, Yu Sung Boon Building, 107-111 Des Voeux Road Central, Hong Kong
<b>Directors:</b>	Newton Cheng
<b>Secretary</b>	Panfair Services Limited
<b>Accounting Reference Date:</b>	31 March
<b>Auditors:</b>	Hoosang, Lyn, Li & Co. Ltd.
<b>Charges:</b>	None

## Part 2 - Subsidiaries of the Target

**Name of Subsidiary:** Videotel Limited  
**Registered Number:** 06979429  
**Type of Company:** Private company limited by shares  
**Date of incorporation:** 4 August 2009  
**Country of incorporation:** England  
**Issued Share Capital:** 2 ordinary shares of £1.00 each  
**Registered Office:** 84, Newman Street, London, W1T 3EU  
**Directors:** Newton Cheng  
**Secretary:** Somerton Consultancy Ltd  
**Accounting Reference Date:** 31 August  
**Charges:** None  
**Shareholder:** Super Dragon Limited

**Name of Subsidiary:** Videotel Consultants and Rentals Limited  
**Registered Number:** 01116781  
**Type of Company:** Private company limited by shares  
**Date of incorporation:** 5 June 1978  
**Country of incorporation:** England  
**Issued Share Capital:** 100 ordinary shares of £1.00 each  
**Registered Office:** 84, Newman Street, London, W1T 3EU  
**Directors:** Newton Cheng and William Andrew O'Neil  
**Secretary:** Somerton Consultancy Ltd  
**Accounting Reference Date:** 30 June  
**Charges:** None  
**Shareholder:** Super Dragon Limited

**Name of Subsidiary:** Videotel Marine International Limited  
**Registered Number:** 01347854  
**Type of Company:** Private company limited by shares  
**Date of incorporation:** 12 January 1978  
**Country of incorporation:** England  
**Issued Share Capital:** 1,000 ordinary shares of £1.00 each  
**Registered Office:** 84, Newman Street, London, W1T 3EU  
**Directors:** Newton Cheng and William Andrew O'Neil  
**Secretary:** Somerton Consultancy Ltd  
**Accounting Reference Date:** 31 December  
**Charges:** None  
**Shareholder:** Super Dragon Limited

**Name of Subsidiary:** Videotel Training Services Limited  
**Registered Number:** 04963322  
**Type of Company:** Private company limited by shares  
**Date of incorporation:** 13 November 2003  
**Country of incorporation:** England  
**Issued Share Capital:** 2 ordinary shares of £1.00 each  
**Registered Office:** 84, Newman Street, London, W1T 3EU  
**Directors:** Newton Cheng  
**Secretary:** Somerton Consultancy Ltd  
**Accounting Reference Date:** 30 November  
**Charges:** None  
**Shareholders:** Super Dragon Limited

**Name of Subsidiary:** Videotel Pte. Ltd.  
**Registered Number:** 201117004D  
**Type of Company:** Private company limited by shares  
**Date of incorporation:** 18 July 2011  
**Country of incorporation:** Singapore  
**Issued Share Capital:** 100 ordinary share of SG\$10.00 each  
**Registered Office:** 220 Orchard Road, #05-01, Midpoint Orchard, Singapore (2388852)  
**Directors:** Newton Cheng and Sundeep Ranjit Sequeira  
**Secretary:** Lo Swee Oi and Lim Guek Hong  
**Accounting Reference Date:** 31 March  
**Auditors:** BSL Public Accounting Corporation  
**Shareholders:** Video Marine Asia Limited

## Schedule 2

### Warranties

#### 1. CORPORATE MATTERS

##### 1.1 Authority and Capacity

(a) The Seller has full power and authority to enter into and perform this agreement and any agreement or document to be entered into by the Seller pursuant to this agreement which constitute, or when executed will constitute, valid and binding obligations on the Seller which are enforceable in accordance with their respective terms.

(b) The Seller has taken all action necessary to enable him to enter into and perform this agreement and any agreement or document to be entered into pursuant to this agreement and has obtained all approvals and consents required by him for the performance by him of the transactions contemplated by this agreement and any agreement or document to be entered into pursuant to this agreement.

(c) The execution and delivery of, and the performance by the Seller of his obligations under, this agreement and any agreement or document entered into pursuant to this agreement will not result in a breach of any applicable Laws or any order, judgment or decree of any court or governmental agency or Security Interest to which the Seller is a party or by which the Seller or any of his assets is bound.

##### 1.2 Title to the Shares

(a) The Seller is the only legal and beneficial owner of the Shares and has the full power, right and authority to transfer the Shares to the Buyer.

(b) The Shares have been validly allotted and issued, are fully paid or are properly credited as fully paid in accordance with the constitutional documents of the Target and all applicable Laws.

(c) The SDL Shares and the VMA Shares represent the entire issued share capital of SDL and VMA respectively.

(d) There is no Security Interest on, over or affecting any of the Shares and there is no agreement or arrangement to give or create any such Security Interest. No claim has been or will be made by any person to be entitled to any such Security Interest.

(e) The Target has not created or granted or agreed to create or grant any Security Interest in respect of any of its uncalled share capital.

(f) Except as required by this agreement, there are no oral or written agreements or arrangements which provide for the present or future allotment, issue, transfer, redemption or repayment of, or grant to any person of the right (whether conditional or otherwise) to require the allotment, issue, transfer, redemption or repayment of, any share or loan capital of the Target (including any option, warrant or right of pre-emption or conversion).

(g) None of the Shares are subject to any rights of pre-emption or restrictions on transfer under the constitutional documents of the Target, agreements entered into by the Seller, any of his Associates or the Target or otherwise other than any which apply as a matter of generally applicable Law.

(h) There are no voting trusts, shareholder agreements or other contracts in effect with respect to the voting or transfer of any Shares.

(i) The Shares have never been the subject of a transaction at an undervalue and do not represent assets which have been the subject of a transaction at an undervalue.

### 1.3 **Changes in share capital**

(a) Since the Last Accounts Date: (i) no share or loan capital has been issued or allotted, or agreed to be issued or allotted, by the Target; and (ii) the Target has not redeemed or purchased or agreed to redeem or purchase any of its share capital.

(b) The Cleave-Cheng SPA is the only agreement between the Seller and Newton Cheng and there is not outstanding any other agreement between those parties.

### 1.4 **Subsidiaries and other interests**

(a) SDL is the sole legal and beneficial owner of the whole of the issued share capital of each of the UK Subsidiaries.

(b) VMA is the sole legal and beneficial owner of the whole of the issued share capital of Videotel Pte. Ltd.

(c) The whole of the issued share capital of each of the Subsidiaries has been validly allotted and issued and is fully paid or properly credited as fully paid.

(d) There is no Security Interest on, over or affecting any of the share capital of any of the Subsidiaries and there is no agreement or arrangement to give or create any such Security Interest. No claim has been or will be made by any person to be entitled to any such Security Interest.

(e) Apart from the Subsidiaries, neither SDL nor VMA owns or has any interest of any nature whatsoever in any shares, debentures or other securities of any body corporate.

(f) No person is entitled or has claimed to be entitled to require the Subsidiaries to issue any securities either now or at any future date and whether contingently or not.

### 1.5 **Directors**

(a) The only directors of the Target are the persons whose names are so listed in relation to the Target in Schedule 1.

(b) No director has entered into any transactions with the Target in contravention of applicable Law.

(c) No director is now or has at any time within the last 5 years been subject to any disqualification order under applicable Law.

### 1.6 **Corporate compliance**

(a) The Target has been duly incorporated in accordance with applicable Laws.

(b) During the last 5 years, the Target has at all times carried on business and conducted its affairs in accordance with its memorandum and articles of association for the time being in force and so far as the Seller is aware, any other documents to which it is or has been a party.

(c) The Target is empowered and duly qualified to carry on business in all jurisdictions in which it now carries on business.

(d) Due compliance has been made with all the provisions of applicable Law in connection with the formation of the Target, the allotment or issue of any of its shares, debentures and other securities and the payment of dividends.

(e) During the last 5 years, the Target has complied with and enforced any code of ethics, code of business conduct or other business policies, procedures and guidelines, written and unwritten, implemented by the

Target and intended to ensure and promote compliance with Law and the directives of the shareholders, directors and management of the Target.

#### 1.7 **Memorandum and Articles of Association**

The copy of the memorandum and articles of association of the Target which is contained in the Data Room is true, accurate and complete in all respects.

#### 1.8 **Common seal**

The Target has a common seal.

#### 1.9 **Documents filed**

(a) All returns, particulars, resolutions and documents required by applicable Law to be filed with the relevant corporate registry in the last 5 years, in respect of the Target have been duly filed and were true and accurate in all material respects.

(b) So far as the Seller is aware, all mortgages and charges in favour of the Target have (where necessary in order to secure their enforceability) been duly registered in accordance with applicable Law.

#### 1.10 **Possession of documents**

All documents of title relating to the material assets of the Target (including, without limitation, all title deeds relating to the Properties), and a copy of every document or instrument creating or evidencing a charge over any of its assets, property or undertaking are in its possession.

#### 1.11 **Accuracy of Information**

The information contained in Schedule 1, Schedule 3 and Schedule 4 is true and accurate.

#### 1.12 **Commissions**

No one is entitled to receive from the Target any finder's fee, brokerage or other commission in connection with the sale and purchase of the Shares under this agreement.

### 2. **ACCOUNTS**

#### 2.1 **The Last Accounts**

(a) The Last Accounts were prepared in accordance with the historical cost convention. The bases and policies of accounting adopted for the purposes of preparing the Last Accounts are the same as those adopted in preparing the audited accounts of the Target in respect of the last 3 preceding accounting periods.

(b) The Last Accounts:

(i) give a true and fair view of the assets and liabilities and state of affairs of the Target Group, as the case may be, as at the Last Accounts Date and of its profits or losses for the financial period ended on that date;

(ii) comply with all requirements under applicable Law;

(iii) have been prepared in accordance with UK GAAP;

(iv) in accordance with relevant generally accepted accounting principles, make proper provision or reserve for all Tax liable to be assessed on the Target or for which it may be accountable in respect of the period ended on the Last Accounts Date; and

(v) are not affected by any extraordinary, exceptional or non-recurring item.

## 2.2 Depreciation of fixed assets

Fixed assets of the Target are written down at the rates of depreciation and amortisation as shown in the relevant statutory accounts of each Target Group Company and are sufficient to ensure that each fixed asset of the Target will be written down to nil by the end of its useful life.

## 2.3 Management Accounts

(a) The Management Accounts are attached to the Disclosure Letter and are true and not misleading.

(b) The Management Accounts have been prepared from the books and records of VMI on a consistent basis with the statutory accounts of VMI.

## 2.4 Books and Records

(a) All the accounts, books, ledgers, financial and other records of the Target are in its possession or under its control and have, for the last 5 years, been maintained on a proper and consistent basis. Without limiting the generality of the foregoing, the Target has kept books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Target and has devised and maintained a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorisation; (ii) transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with UK GAAP or any other criteria applicable to such statements, and (B) to maintain accountability for assets.

(b) All the accounting records and systems (including, without limitation, computerised accounting systems) of the Target are recorded, stored, maintained or operated or otherwise held by the Target or another member of the Target Group and are not wholly or partly dependent on any facilities or systems which are not under the exclusive ownership or control of the Target or another member of the Target Group.

(c) The register of members and other statutory books of the Target are in its possession or under its control, are up-to-date and have been maintained in all material respects in accordance with all applicable Laws. The Target has not received any notice that any information contained in any of the statutory books is incorrect or should be rectified.

(d) Neither the Target nor, to the Target's knowledge, its auditor has identified (i) any significant deficiency or material weakness in the Target's internal control over financial reporting, (ii) any fraud, whether or not material, that involves the Target's management or other employees who have a role in the preparation of financial statements or the Target's internal control over financial reporting or (iii) any claim or allegation regarding any of the foregoing. The Target has not received any complaint, allegation, assertion or claim in writing regarding the accounting practices, procedures, methodologies or methods of the Target or its internal accounting controls.

(e) The Target is not a party to, and does not have any legally binding commitment to become a party to, any joint venture, off-balance sheet partnership or any similar contract, including any contract relating to any transaction or relationship between or among the Target, on the one hand, and any unconsolidated affiliate (other than a Target Group Company), including any structured finance, special purpose or limited purpose entity or person, on the other hand or any other "off-balance sheet arrangement".

## 2.5 **Accounting Reference Date**

The accounting reference date of each Target Group Company for the purposes of the applicable Law of the jurisdiction in which that Target Group Company was incorporated has not been changed in the last three years.

## 3. **FINANCE**

### 3.1 **Capital Commitments**

(a) As at the Last Accounts Date, the Target had no outstanding capital commitments except as disclosed in the Last Accounts.

(b) Since the Last Accounts Date, the Target has not made or agreed to make any capital expenditure or incurred or agreed to incur any capital commitments, in any case in excess of £20,000 per item or £100,000 in aggregate, nor has it disposed of or realised any capital assets or any interest therein.

### 3.2 **Dividends and distributions**

(a) Since the Last Accounts Date, no dividend or other distribution has been or is treated as having been declared, made or paid by the Target.

(b) All dividends or distributions declared, made or paid by the Target have been declared, made or paid in accordance with its memorandum and articles of association and applicable Laws and in accordance with any agreements or arrangements between the Target and any third party regulating the payment of dividends and distributions.

### 3.3 **Loans by the Target**

The Target has not lent any money which has not been repaid to it nor has it made any loan or quasi-loan contrary to applicable Laws.

### 3.4 **Debtors**

A list of all debts owing to the Target which are outstanding as at the date being 5 Business Days prior to the date of this agreement is attached to the Disclosure Letter.

### 3.5 **Liabilities**

(a) No member of the Target Group has any liabilities (contingent liabilities or otherwise) other than (i) liabilities disclosed in the Last Accounts and (ii) liabilities which have arisen after the Last Accounts Date in the ordinary and proper course of business which, individually or in the aggregate, are not material and are of the same character and nature as the liabilities disclosed in the Last Accounts.

(b) The Target has not at any time in the last three years been the tenant of, or a guarantor in respect of, any leasehold property other than the Properties.

### 3.6 **Trade Creditors**

A list of all creditors of the Target who are owed amounts which are outstanding as at the date being 5 Business Days prior to the date of this agreement is attached to the Disclosure Letter.

### 3.7 **Bank Accounts**

Statement(s) of all the bank accounts of the Target as at a date not more than two Business Days prior to Completion together with a reconciliation statement up to and including the Business Day immediately prior to the date of this agreement is attached to the Disclosure Letter.

### 3.8 **Bank and other borrowings**

- (a) The Target has no borrowings or other indebtedness otherwise than in the ordinary course of business which, individually or in the aggregate are not material.
- (b) The Target has no outstanding loan capital, nor has it agreed to create or issue any such loan capital.
- (c) The Target has not factored any of its debts, or engaged in financing of a type which would not require to be shown or reflected in the Last Accounts, or borrowed any money which it has not repaid, save for borrowings not exceeding the amounts shown in the Last Accounts.
- (d) Since the Last Accounts Date, the Target has not repaid or become liable to repay any loan or indebtedness in advance of its stated maturity.

### 3.9 **Government grants**

The Target has not received any grants, subsidies or financial assistance nor has it applied for or received from any governmental department or agency or any local or other authority or other body any such grants, subsidies or financial assistance.

## 4. **TRADING**

### 4.1 **Content**

- (a) There has been no claim, dispute or allegation that the Seller, or the Target or so far as the Seller is aware, any third party with whom the Target has entered into an agreement has infringed or is infringing any of the rights granted under the Content Agreements or has breached or is in breach of any of the terms of the Content Agreements and to the best of the Seller's knowledge and belief, there is no basis for such a claim, dispute or allegation.
- (b) The business conducted by the Target does not infringe or make unauthorised use and has not infringed or made unauthorised use of the Third Party Intellectual Property Rights and other rights granted under the Content Agreements and there is and has been no infringement or unauthorised use by any third party of any Intellectual Property rights or other rights used or owned by the Target or any misappropriation or misuse or unauthorised access to any information of the Target.
- (c) Nothing has been done or omitted to be done by the Target which would enable any assignment, lease or licence of the Content to be terminated or which constitutes a material breach of any of the terms of any lease or licence of the Content.
- (d) The Intellectual Property rights and other rights of third parties (including, without limitation, the copyrights in all works) that have been transferred, licensed or otherwise granted to the Target have been or are being lawfully used by the Target and/or another member of the Target Group.
- (e) The Target is not in material breach of any written agreement under which any Content was or is or is to be made available to it or was or is to be provided by the Target.
- (f) The Seller is not aware and neither has the Target received written notice of any unauthorised use by any third party of any of the Content.
- (g) There is nothing in any Content Agreement which would prevent the Target from sub-licensing to any third party any of the Content licensed under any Content Agreement.
- (h) A list of all material Content Agreements entered into by the Target is appended to the Disclosure Letter.
- (i) The Target has not given any notice to terminate or extend any Content Agreement referred to in paragraph 4.1(h) above and no other party to any such Content Agreement has given any written notice to the Target to terminate or extend such Content Agreement.

#### 4.2 **Changes since Last Accounts Date**

Since the Last Accounts Date:

- (a) the business of the Target has been carried on in the ordinary and normal course so as to maintain the same as a going concern;
- (b) there has been no material adverse change in the turnover or the financial or trading position of the Target;
- (c) no resolution of the members of the Target has been passed, whether in general meeting or otherwise;
- (d) the Target has not entered into any Material Contract;
- (e) the Target has not assumed or incurred any material liability (including any contingent liability) which is not provided for in the Last Accounts; and
- (f) the Target has not by doing or omitting to do anything prejudiced its goodwill.

#### 4.3 **Effect of Sale of the Shares**

Compliance with the terms of this agreement does not and will not:

- (a) result in the breach of, or constitute a default under, any of the terms, conditions or provisions of any Material Contract and so far as the Seller's aware, any other agreement, arrangement or instrument to which the Target is a party or any provision of its memorandum or articles of association or any Security Interest, lease, contract, order, judgment, award, injunction or regulation by which or to which any asset of the Target is bound or subject; or
- (b) relieve any person from any obligation to the Target (whether contractual or otherwise), or enable any person to terminate any such obligation or any right or benefit enjoyed by the Target or to exercise any right, whether under an agreement with or otherwise in respect of the Target; or
- (c) result in the creation, imposition, crystallisation or the enforcement of any Security Interest on or over any of the assets, property or undertaking of the Target or result in any present or future indebtedness of the Target becoming due and payable prior to its stated maturity.

#### 4.4 **Material Contracts**

The Target is not a party to any Material Contract which:

- (a) is of an unusual or abnormal nature or outside the ordinary and normal course of business; or
- (b) is for a fixed term of more than 6 months; or
- (c) is incapable of termination by it in accordance with its terms on 3 months' notice or less; or
- (d) is of a loss-making nature (that is, likely to result in a loss to it on completion of performance); or
- (e) has or is likely to have a material adverse effect on the financial or trading position of the Target; or
- (f) is not of an entirely arm's length nature; or
- (g) involves payment by it of amounts determined by reference to fluctuations in the index of retail prices or any other index or in the rate of exchange for any currency; or

(h) involves or could involve the supply of content or products, the aggregate sales value of which would represent in excess of 5% of its turnover for the preceding financial year; or

(i) is any agreement for the supply of any administrative or other services or facilities to the Target requiring expenditure by the Target in excess of £150,000 per annum; or

(j) provided for the sale, transfer or disposal by the Target of any body corporate or business or assets in circumstances such that the Target remains subject to any liability (whether contingent or otherwise) which is not fully provided for in the Last Accounts.

#### 4.5 **Joint Ventures and Partnerships**

(a) The Target is not, nor has it agreed to become, a member of any joint venture, consortium, partnership or other unincorporated association.

(b) The Target is not, nor has it agreed to become, a party to any agreement or arrangement for sharing commissions or other income.

#### 4.6 **Agency Agreements**

Excluding exclusivity arrangements, the Target is not a party to any agency, distribution or management agreement or any other agreement or arrangement which restricts its freedom to offer any of its products and services in any part of the world.

#### 4.7 **Outstanding Offers**

No offer, tender, bid or proposal is outstanding which, if accepted, would result in the Target becoming a party to a Material Contract.

#### 4.8 **Powers of attorney and authority**

(a) No power of attorney given by the Target is in force.

(b) There are not outstanding any authorities (express or implied) by which any person (other than a director of the Target) may enter into any contract or commitment to do anything on behalf of the Target.

#### 4.9 **Guarantees and indemnities**

(a) The Target has not entered into any guarantee or agreement for indemnity or for suretyship in respect of any debt, liability or obligation of any third party.

(b) There are no Intra Group Guarantees nor has any other third party entered into or provided any guarantee or agreement for indemnity or for suretyship or performance bond or other security in respect of any debt, liability or obligation of the Target.

#### 4.10 **Insider contracts and arrangements**

(a) There is not now outstanding and there has not at any time during the 3 years prior to the date of this agreement been any contract or arrangement between the Target on the one hand and the Seller or any Associate of the Seller on the other hand.

(b) The Target does not depend upon the use of any assets owned by, or facilities or services provided by, the Seller or any Associate of the Seller.

(c) There is no outstanding Intra Group Indebtedness.

(d) There is not now outstanding any debt, liability or obligation of any member of the Target Group to the Seller or any Associate of the Seller.

#### 4.11 **Defaults**

- (a) The Target has not received any notice in writing from any counterparty that it is in default under any Material Contract.
- (b) No party to any Material Contract is in default under such Material Contract and, so far as the Seller is aware, there are no facts, matters or circumstances which are likely to give rise to any such default.

#### 4.12 **Validity of agreements**

- (a) All agreements and licences to which the Target is a party constitute valid and binding obligations on the relevant Target Group Company and, so far as the Seller is aware, the other parties thereto.
- (b) Neither the Target nor the Seller has any knowledge of the invalidity of, or a ground for termination, rescission, avoidance or repudiation of any agreement to which the Target is a party.
- (c) No party with whom the Target has entered into any Material Contract has given written notice to terminate or rescind or has sought to repudiate or disclaim any such Material Contract.

#### 4.13 **Liability for termination**

There are no agreements to which the Target is a party which provide for the payment of liquidated damages or penalties which are payable by the Target on the termination of that agreement other than in breach of the terms of that agreement or any minimum term thereof.

#### 4.14 **Principal suppliers**

- (a) No supplier (including any person connected in any way with any such supplier) accounts for more than 10% of the aggregate value of all purchases made by the Target Group.
- (b) A list of the top 4 suppliers of the Target Group by value of purchases made by the Target Group from such suppliers is attached to the Disclosure Letter.
- (c) During the 12 months preceding the date of this agreement, no such top 4 supplier of the Target Group or supplier for Videotel On Demand has ceased to deal with the Target Group or has indicated an intention to cease to deal with the Target Group, either in whole or in part.
- (d) The Seller has no knowledge, information or belief that any such top 4 supplier of the Target Group or supplier for Videotel On Demand will or may cease to deal with the Target Group or will or may substantially reduce its business with the Target Group as a result of the provisions of this agreement.

#### 4.15 **Principal customers**

- (a) No customer (including any person connected in any way with any such customer) accounts for more than 10% of the aggregate value of all sales made by the Target Group.
- (b) A list of the top 40 customers of the Target Group by value of sales made by the Target Group to such customers is attached to the Disclosure Letter.
- (c) A list of all Governmental Authorities who are or have in the last 3 years been customers of the Target Group is attached to the Disclosure Letter.
- (d) During the 12 months preceding the date of this agreement, no such top 40 customer of the Target Group has ceased to deal with the Target Group or has indicated an intention to cease to deal with the Target Group, either in whole or in part.
- (e) The Seller has no knowledge, information or belief that any such top 40 customer of the Target Group will or may cease to deal with the Target Group or will or may substantially reduce its purchases from the Target Group as a result of the provisions of this agreement.

#### 4.16 **Business names**

The Target Group do not use names for any purpose other than their full corporate names.

#### 4.17 **Licences**

(a) The Target has obtained all licences, permissions, authorisations and consents from any person, authority or body which are necessary for the distribution of content and the carrying on of its business in the places and in the manner in which such content distribution and business is now carried on.

(b) A copy of each such licence, permission, authorisation or consent other than licences for standard off the shelf software is attached to the Disclosure Letter.

(c) All such licences, permissions, authorisations and consents are in full force and effect, are not limited in duration or subject to any unusual or onerous condition.

(d) The Target is not in breach of any of the terms or conditions of any such licence, permission, authorisation or consent and as far as the Seller is aware, there are no facts, matters or circumstances which might in any way prejudice the continuation or renewal of any such licence, permission, authorisation or consent.

(e) No party is or will be entitled to terminate or revoke any such licence, permission, authorisation or consent as a result of the entry into or performance of this agreement or any of the transactions contemplated by this agreement.

#### 4.18 **Litigation**

(a) No member of the Target Group is involved in (nor has any member of the Target Group been involved in the last 2 years) in any legal or arbitration or administrative proceedings (whether as plaintiff or defendant or otherwise) and so far as the Seller is aware no such proceedings are pending or threatened and there are no facts, matters or circumstances which are likely to give rise to any such proceedings.

(b) There are no outstanding judgements, orders, injunctions or decrees of any Governmental Authority or arbitration tribunal against the Target.

(c) So far as the Seller is aware, there are no circumstances which are likely to give rise to any litigation or arbitration or administrative proceedings by or against the Target.

#### 4.19 **Investigations and disputes**

(a) No governmental or official investigation or inquiry concerning the Target or any of its directors or employees is in progress or pending and, so far as the Seller is aware, there are no facts, matters or circumstances which are likely to give rise to any such investigation or inquiry.

(b) The Target has not received any written notice that any governmental or official investigation or inquiry concerning the Target or any of its directors or employees is in progress or pending.

#### 4.20 **Compliance with laws**

(a) The Target has conducted and is conducting its business in all material respects in accordance with all applicable Laws.

(b) Without limiting the generality of the foregoing, Target has not (i) sold, transferred or diverted any item or technology to any person, firm or other entity listed in the U.S. Department of Commerce's Denied Persons List, Unverified List or Entity List, or the U.S. Department of Treasury's lists of Specially Designated Nationals listing any Blocked Persons, or Foreign Sanctions Evaders in violation of applicable U.S. export control regulations and/or U.S. sanctions laws, or any similar list or applicable regulation maintained by any other country having jurisdiction over the activities of Target; (ii) sold, transferred or diverted any item or technology in violation of the Export Administration Regulations or International Traffic in Arms Regulations of the United States or any other applicable import/export laws, regulations, licenses or government orders; or (iii) otherwise engaged in any transaction prohibited

under Sanctions and Export Laws, including any prohibited transaction with entities in Cuba, Iran, North Korea, Sudan, or Syria or identified on restricted parties lists, such as the OFAC Specially Designated Nationals List, under Sanctions and Export Laws.

(c) The Target does not currently conduct any business in or with, or involving distribution of products, technology to, or the receipt of income by the Target or its affiliates from, (i) the nation of Iran or Iranian entities, including their affiliates, or Iranian persons; (ii) the nation of Cuba or Cuban entities or their affiliates, or Cuban persons; (iii) the nation of Syria or Syrian entities or their affiliates; (iv) the nation of Sudan or Sudanese entities or their affiliates; or (v) any other nation against which the United States or any other country having jurisdiction over the activities of Target have imposed economic sanctions and/or embargoes that would constitute such conduct as a violation of Sanctions and Export Laws, and the Target has disclosed to the Buyer in the Disclosure Letter any export, sale, or other transaction conducted in Iran, Cuba, North Korea, Sudan, Syria, or with entities of those countries or their controlled subsidiaries or affiliates, including direct sales of products or the use of distributors to sell such products to those countries or entities thereof, within the preceding 5 years.

(d) The Target has all necessary authority under Sanctions and Export laws to conduct its business as currently conducted, including, but not limited to, all (i) necessary Governmental Approvals for any export transactions or any other transactions as required under Sanctions and Export Control Laws, (ii) necessary Governmental Approvals and clearances for the disclosure of information to foreign persons and (iii) necessary registrations with any Governmental Authority with authority to implement applicable export control laws, and is in compliance with all relevant anti-boycott laws, regulations and guidelines, including without limitation, where applicable, Section 999 of the United States Internal Revenue Code and the regulations and guidelines issued pursuant thereto and the Export Administration Regulations administered by the U.S. Department of Commerce, as amended from time to time, including all reporting requirements, and is not a party to any agreement requiring it to participate in or cooperate with the Arab League boycott of Israel in violation of 15 C.F.R. Part 760 as administered by the U.S. Department of Commerce, including any agreement to provide boycott-related information or to refuse to do any business with any person or entity for boycott-related reasons.

(e) The Target has been and remains in compliance with (a) the United Kingdom Bribery Act of 2010, as amended, and any rules or regulations thereunder (the “**Bribery Act**”), (b) the United States Foreign Corrupt Practices Act of 1977, as amended, and any rules or regulations thereunder (the “**FCPA**”), and (c) any other applicable anti-corruption Laws in any jurisdiction in which the Target has engaged in any business activities.

(f) Neither the Target, nor so far as the Seller aware, any affiliate, subsidiary, partner, joint venturer, distributor, reseller, sales agent or consultant of the Target, nor so far as the Seller is aware any director, officer, employee, representative, agent or other person acting for or on behalf of any of the foregoing, has directly or indirectly taken any action which would cause the Target to be in violation of (a) the Bribery Act, (b) the FCPA, or (c) any other applicable anti-corruption laws or regulations in any jurisdiction in which the Target has engaged in any business activities.

(g) Neither the Target, nor so far as the Seller is aware, any affiliate, subsidiary, partner, joint venturer, distributor, reseller, sales agent or consultant of the Target, nor so far as the Seller is aware, any director, officer, employee, representative, agent or other person acting for or on behalf of any of the foregoing, has directly or indirectly made, given, offered or promised any contribution, gift, bribe, rebate, kickback, payment or other thing of value to any person, private or public, regardless of form, whether in money, property or services (i) to influence such person in the performance of such person’s duties, whether to act, to refrain from action, or to cause another to act or refrain from action; (ii) to obtain or attempt to obtain favourable treatment or otherwise to secure or retain business or other business advantage, or (iii) to reward such person for having provided or causing to be provided favourable treatment or otherwise previously securing or maintaining business or other business advantage.

#### 4.21 **Insolvency**

(a) The Target is solvent and able to pay its debts as they fall due.

(b) No order has been made or petition presented or meeting convened for the purpose of considering a resolution for the winding up of the Target nor has any such resolution been passed. No petition has

been presented for an administration order to be made in relation to the Target and no receiver (including any administrative receiver) has been appointed in respect of the whole or any part of any of the property, assets or undertaking of the Target.

(c) No composition in satisfaction of the debts of the Target or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors and/or members or any class of its creditors and/or members has been proposed, sanctioned or approved.

(d) No distress, execution or other process has been levied or applied for in respect of the whole or any part of any of the property, assets or undertaking of the Target.

(e) The Seller has not at any time:

(i) been the subject of a bankruptcy order; or

(ii) had a bankruptcy petition filed against him; or

(iii) entered into an individual voluntary arrangement, a deed of arrangement or into any other composition or arrangement with his creditors in satisfaction of his debts; or

(iv) had any distress, execution or other process levied or applied for in respect of the whole or any part of any of his property or assets.

#### 4.22 **Competition and Trade**

(a) The Target has not committed or omitted to do any act or thing which could give rise to any fine or penalty nor is the Target a party to any agreement, practice or arrangement which in whole or in part:

(i) would, or is reasonably likely to, result in an investigation by any anti-trust regulatory body; or

(ii) contravenes or is invalidated by any anti-trust, anti-monopoly, anti-cartel legislation, fair trading, consumer protection or similar legislation or regulations in any jurisdiction where the Target carries on business or has any assets.

(b) The Target is not, and has not been, the subject of any investigation by any anti-trust regulatory body nor has it contravened any undertakings given to any such body.

#### 4.23 **Data Protection**

(a) The Target has duly complied with all requirements of applicable Laws relating to the use, control and dissemination of information and records (collectively, "**Data Protection Laws**") including, but not limited to, compliance with the following:

(i) the data protection principles established in the Data Protection Laws;

(ii) requests from data subjects for access to data held by it; and

(iii) the requirements relating to the notification of data controllers.

(b) The Target has not received a notice or allegation from any Governmental Authority or a data subject alleging non-compliance with the data protection principles.

(c) No individual has claimed, or will have the right to claim, compensation from the Target under Data Protection Laws for loss or unauthorised disclosure of data.

## 5. EMPLOYMENT

### 5.1 Employees and Terms of Employment

(a) The Disclosure Letter sets out a list of all the directors of the Target and all employees of the Target together with the date of commencement of employment, period of continuous employment, job description or grade, citizenship and/or nationality, salary and all benefits provided and the applicable terms and conditions of employment of all such directors and employees of the Target. All such information is true and accurate.

(b) No employees of the Target are on secondment, maternity leave or absent on grounds of disability or other long term leave of absence.

(c) No outstanding offer of employment has been made by the Target to any person nor has any person accepted an offer of employment made by the Target but who has not yet commenced such employment.

(d) There are no contracts for services (including without limitation consultancy agreements) between the Target and any person.

(e) All subsisting contracts of service or contracts for services (including without limitation consultancy agreements) to which the Target is a party are determinable at any time by the Target on 3 months' notice or less without compensation.

(f) No contracts of employment or contracts for services (including without limitation consultancy agreements) with the Target contain pay in lieu clauses, liquidated damages clauses or other terms and conditions giving rise to any debt and/or compensation payable by the Target on the termination of any such contract, whether or not such termination is initiated by the individual, consultant or the Target.

(g) No director or employee has given notice to the Target terminating his contract of employment or contract for services (including without limitation consultancy agreements) which is outstanding as at the date of this agreement.

### 5.2 Bonus and other schemes

(a) The Target does not have in existence or participate in any share incentive scheme or share option scheme nor is it proposing to introduce or participate in any such scheme.

(b) There are no schemes (whether contractual or discretionary) in operation by, or in relation to, the Target under which any director or employee of the Target or former director or employee is entitled to any bonus, profit-share, commission or other incentive scheme (whether calculated by reference to the whole or part of the turnover, profits/losses or sales of the Target or otherwise).

(c) The Target has not registered a profit-related pay scheme under the provisions of the Income & Corporation Taxes Act 1998.

(d) The Target is not bound nor accustomed to pay any monies (other than in respect of contractual remuneration or emoluments of employment or pension benefits) to or for the benefit of any director or employee of the Target.

### 5.3 Changes in remuneration and terms and conditions

(a) Since the Last Accounts Date or (where the relevant employment or holding of office commenced after such date) since the commencing date of the employment or holding of office no change has been made in the rate of remuneration, emoluments, pension benefits or other terms of employment, of any director or employee.

(b) No agreement has been reached with any director, employee, trade union or other body representing employees that will or may on a future date result in an increase in any director's or employee's rate of remuneration or enhanced emoluments of employment or pension benefits.

(c) No negotiations for any increase in the remuneration or emoluments of employment or pension benefits of any director or employee of the Target are current or (based on past practice) anticipated to take place within 6 months after the date of Completion.

#### 5.4 **Liabilities to employees**

(a) All employees of the Target have received a written statement of particulars of employment as required by Section 1 of the Employment Rights Act 1996 to the extent they are so entitled and have been requested.

(b) The remuneration, holiday pay and other statutory pay and benefits to the extent due and payable (as applicable) of all employees and consultants have been paid in full up to Completion.

(c) No outstanding liability has been incurred by the Target for breach of any contract of employment, contract for services (including without limitation consultancy agreements) and/or for holiday pay (to the extent due and payable), redundancy payments, protective awards, compensation for wrongful dismissal or unfair dismissal or for failure to comply with any order for the reinstatement or re-engagement of any employee or in respect of any other liability arising out of the termination of any contract of employment, contract for services (including without limitation consultancy agreements), nor are any such proceedings pending or threatened against the Target.

#### 5.5 **Compliance**

(a) As at the date of Completion, each person employed, hired or engaged by the Target has valid and subsisting permission to live and work full time in the jurisdiction in which he or she is employed, hired or engaged by the Target under applicable Laws, and the Target has complied with its obligations under such Laws.

(b) In relation to any contract of employment between the Target and any of its directors, all statutory requirements (including, without limitation, any provisions for enforcement of fair dealing by directors) have been fulfilled.

(c) In relation to each of its employees and so far as relevant in relation to each of its former employees, the Target has complied with all statutes, regulations, codes of conduct, collective agreements, terms and conditions of employment, orders and awards relevant to their conditions of employment or to the relations between it and its employees (or former employees, as the case may be) or any recognised trade union.

(d) The Target has taken every reasonable step to ensure that records held in respect of its employees comply with the requirements of applicable Data Protection Laws.

(e) During the period of 3 years preceding the date of this agreement, the Target has not been a party to any “relevant transfer” (as defined in the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended) or failed to comply with any duty to inform and consult with appropriate representatives of any affected employees under Regulation 13 of the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended (or the equivalent provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981).

(f) The Target has complied with its obligations under the Working Time Regulations 1998.

(g) All income Tax and National Insurance deductions and contributions relating to all employees and staff (including but not limited to consultants where appropriate) of the Target to the extent due and payable have been paid in full up to Completion.

(h) All mandatory provident fund contributions have been made by VMA in full on behalf of the Seller and no higher contribution has been agreed.

#### 5.6 **Employment Claims**

(a) There are no legal or other proceedings between the Target on the one hand and any director or employee of the Target or consultant, independent contractor, third party or former director or employee of the Target or consultant on the other hand nor are any such proceedings pending or threatened.

(b) To the best of the knowledge, information and belief of the Seller, there are no facts, matters or circumstances which could give rise to any such proceedings.

#### 5.7 **Discrimination**

(a) In the 12 months preceding this agreement, there has been no recommendation made by an employment tribunal nor any investigation by any body responsible for investigating or enforcing matters relating to sex, race or disability discrimination.

(b) There are no terms or conditions under which any director, employee, consultant, non-executive director or worker of the Target is employed or engaged nor so far as the Seller is aware has anything occurred or not occurred prior to Completion that may give rise to any claim for discrimination on the grounds of age, pregnancy, religion or belief, sexual orientation, sex, race, gender reassignment, marriage or civil partnership, disability or equal pay either under the Laws of any jurisdiction to the extent applicable whether by such director, employee, consultant, non-executive director or worker or a former director, employee, consultant, non-executive director or worker or a prospective director, employee, consultant, non-executive director or worker or otherwise.

#### 5.8 **Effect of sale**

(a) No director nor any employee of the Target has given or received notice terminating his employment or office, except as expressly contemplated in this agreement and no such director or employee will be entitled to give such notice as a result of the provisions of this agreement.

(b) The Seller has no knowledge, information or belief that any director or employee of the Target will give notice terminating his employment as a result of the provisions of this agreement, except as expressly contemplated in this agreement.

(c) No director or employee will be entitled by reason of the transactions contemplated by this agreement to any one-off payment, bonus or commission or to terminate his employment other than on normal contractual terms.

#### 5.9 **Redundancies**

(a) During the 12 months preceding the date of this agreement, the Target has not given notice of any redundancies to the Secretary of State or any relevant Governmental Authority.

(b) The Target has not given any notice of termination or dismissal or notice of redundancy to any of its employees which is outstanding as at the date of this agreement.

(c) There are no severance, redundancy or other similar agreements or schemes conferring any entitlement on any of the directors and employees of the Target to receive any payment on the termination of their employment (except for contractual notice pay).

#### 5.10 **Collective Agreements**

The Target has not entered into any collective agreement or arrangement with nor does it recognise a trade union, works council, staff association or other body representing any of its employees nor has it done any act which might be construed as recognition.

#### 5.11 **Pensions**

(a) Other than the money purchase scheme in place for Jan Bond (to which Video Marine International Limited contributes £300 per month) (the "**Pension Scheme**"), the Target has not prior to Completion paid, provided or contributed towards, and the Target has not proposed nor is under any obligation, liability or commitment however established and whether or not legally enforceable to pay, provide or contribute towards, any benefits under a pension scheme (as defined by section 150 of the Finance Act 2004) for or in respect of any present or past officer or employee (or any spouse, child or dependant of any of them) of the Target or of any predecessor in the business of the Target.

(b) No member of the Target participates in, and no such member has at any time in the past participated in an occupational pension scheme or registered pension scheme which provides benefits other than money purchase benefits as defined in section 181 of the Pension Schemes Act 1993. All benefits provided under the Pension Scheme are on a money purchase basis.

(c) True, complete and accurate details of the Pension Scheme have been supplied to the Buyer.

(d) The Pension Scheme is a registered pension scheme within the meaning of the Finance Act 2004 and there is no reason why such registration may be withdrawn.

(e) The Pension Scheme complies with, and has been administered at all times in accordance with all applicable legal and administrative requirements (including, without limitation, Article 141 of the Treaty of Rome as it applies to the eligibility of employees of the Target Group to join the respective scheme and the benefits provided under them) the requirements of any competent government body or regulatory authority and the trusts, powers and provisions of the respective schemes.

(f) All contributions, premiums and expenses due including professional fees in respect of the Pension Scheme have been paid.

(g) No claim has been made or threatened against either the Seller or any member of the Target in respect of any act, event, omission or other matter arising out of or in connection with the Pension Scheme and there are no circumstances which may give rise to any such claim.

(h) No undertakings or assurances have been given to any of the employees of the Target as to the continuance, introduction, increase or improvement of any rights or entitlements in relation to pension, death, disability, sickness or retirement benefits.

(i) All lump sum death benefits which may be payable on the death of any employee of the Target are fully insured with an insurance company authorised to carry on long term insurance business under the Financial Services and Markets Act 2000 and all premiums in relation to this insurance have been paid.

## 6. ASSETS

### 6.1 Ownership of assets

(a) The Target is the legal and beneficial owner all assets included in the Last Accounts or acquired by it since the Last Accounts Date. None of such assets is the subject of any Security Interest, equity, option, right of pre-emption or royalty.

(b) No claim has been or, so far as the Seller is aware, will be made by any person to be entitled to any Security Interest on or over any of the assets, property or undertaking of the Target.

### 6.2 Assets sufficient for the business

(a) The assets owned by the Target together with the services and facilities to which it has a contractual right comprise all the assets, services and facilities necessary for the carrying on of the business of the Target as now carried on.

### 6.3 Insurance

(a) The Target is now and has for the last 3 years been insured against accident, damage, injury, third party loss (including, without limitation, product liability), loss of profits and other risks normally insured against by persons carrying on the same type of business as that carried on by the Target.

(b) All policies of insurance effected by or for the benefit of the Target are currently in force and nothing has been done or omitted to be done which could make any such policy of insurance void or voidable.

(c) A copy or summary of each policy of insurance effected by or for the benefit of the Target is attached to the Disclosure Letter.

(d) No claim is outstanding or may be made under any such policies and, so far as the Seller is aware, no circumstances exist which are likely to give rise to such a claim.

#### 6.4 Intellectual property rights

(a) The Target Intellectual Property Rights comprise all the Intellectual Property reasonably necessary for the Target to operate its business as it is operated at the date of this agreement.

(b) Without limitation to paragraph (a) above, the trade marks listed in Schedule 4 comprise all the trade marks necessary for the Target to operate its business as it is operated at the date of this agreement.

(c) All the Target Intellectual Property Rights are legally and beneficially owned by the Target, free from any Security Interests.

(d) The Target is the sole registered proprietor (or, where relevant, applicant for registration) of all Registered Intellectual Property Rights.

(e) All registrations of Registered Intellectual Property Rights have been properly maintained and are subsisting and have not been surrendered or are currently being prosecuted to grant.

(f) All renewal and prosecution fees which have become due for payment (or will become due in the three month period following the date of this agreement) in respect of any Registered Intellectual Property Rights have been paid in time and in full.

(g) The Domain Names are all the internet domain names owned or used by the Target. The Target is the sole registered proprietor of all the Domain Names.

(h) So far as the Seller is aware none of the Registered Intellectual Property Rights or Domain Names are the subject of any pending or threatened proceedings for opposition, cancellation, revocation, rectification, licence of right or relating to title or any similar proceedings anywhere in the world. The Seller is not aware of any circumstances which might result in any such proceedings.

(i) There is no fact or matter (including any act or omission of the Target or the Seller) which so far as the Seller is aware might result in any registrations of Registered Intellectual Property Rights or Domain Names, either in whole or in part, being revoked, invalidated or rendered unenforceable or, in the case of applications for registration, which might prejudice the prospects of registration.

(j) All Target Intellectual Property related to the SETT Cooperation Agreement are legally and beneficially owned by the Target, free from any Security Interests.

(k) There is no Intellectual Property jointly developed under the SETT Cooperation Agreement.

(l) The Target is entitled to use under a licence all Third Party Intellectual Property Rights for all purposes necessary to conduct its business.

(m) Details of all material IP Licences are set out in the Disclosure Letter.

(n) All material IP Licences are valid and binding and are in full force and effect.

(o) Each IP Licence which relates to registered Intellectual Property and which can be registered in respect of such Intellectual Property, has been duly registered with the proper authorities.

(p) Nothing has been done or omitted to be done by the Seller or the Target which would enable any IP Licence to be terminated or which in any way constitutes a breach of any of the terms of any IP Licence.

(q) So far as the Seller is aware no other party is in breach of any IP Licence.

(r) So far as the Seller is aware, no IP Licence is determinable by virtue of the Seller having entered into this agreement.

(s) Other than pursuant to the IP Licences, the Seller and the Target have not granted and are not obliged to grant any licence, sub-licence, Security Interest or assignment in respect of any of the Target Intellectual Property Rights or the Third Party Intellectual Property Rights.

(t) Whether in the carrying on of its business or otherwise, the Target does not infringe and has not, at any time within the past six years, infringed any Intellectual Property owned by any third party or breached any obligations of confidence owed to any third party.

(u) So far as the Seller is aware, no third party has infringed the Target Intellectual Property Rights, breached any obligations of confidence owed to the Seller or misappropriated or misused any Confidential Business Information.

(v) Neither the Seller nor the Target nor any of their officers, employees or agents have made any threat in writing to bring proceedings for infringement of Intellectual Property which is actionable by virtue of applicable legislation.

## 6.5 Information technology

(a) Details of the material parts of the Systems and all agreements or arrangements relating to the maintenance and support (including, without limitation, escrow agreements relating to the deposit of source codes), security, disaster recovery management and use of the Systems are contained in the Disclosure Letter.

(b) The Target is entitled as owner, lessee or licensee to use each part of the Systems for all purposes necessary to carry on its business in the manner in which it is carried on at the date of this agreement and the business of the Target is not dependent on any information technology (including, without limitation, data storage and processing) facilities which are not under the exclusive ownership, operation or control of the Target.

(c) There are no material defects relating to the Systems and the Systems have been and are being properly and regularly maintained.

(d) The Systems have the capacity and performance necessary to fulfil the present requirements of the Target.

## 7. PROPERTIES

### 7.1 Properties

(a) The Properties comprise all the land and buildings owned, occupied or otherwise used in connection with the business of the Target Group. The particulars of the Properties shown in Schedule 3 are true and correct.

(b) The Target Group is in sole and undisputed occupation of the Properties.

(c) The Properties are free from any mortgage, debenture, charge, rent charge, lien or other encumbrance securing the repayment of monies or other obligation or liability of the Target Group/or any other person.

(d) The Properties are not subject to any outgoing other than business rates, water and sewerage charges, insurance premiums, rent and service charges and all outgoing have been duly paid to date and none is in dispute.

(e) The rights in relation to Leased Properties are held by the Target under the terms and conditions of the relevant agreement giving rise to rights of occupation and enjoyment and no collateral assurances, undertakings or concessions have been made by any party to the relevant agreement and such agreement is valid and subsisting.

(f) The Target has paid the rent or fees and all other sums payable under the relevant agreement related to Leased Properties on the due dates for payment and the Target has performed the covenants and obligations therein required to be performed by it.

- (g) There are no rent reviews under the leases of the Properties held by the Target Group currently in progress.

## 7.2 Other involvement in relation to Properties

The Target Group has not in the last three years:

- (a) had vested in it (whether as an original tenant or undertenant or as an assignee, transferee or otherwise) any freehold or leasehold property other than the Properties; or

- (b) given any covenant or entered into any agreement, deed or other document (whether as a tenant or undertenant or as an assignee, transferee, guarantor or otherwise) in respect of any freehold or leasehold property other than these disclosed to the Buyer in writing in relation to the Properties in respect of which any contingent or potential liability remains with the Target Group.

## 7.3 Disputes

- (a) There are no claims, disputes or outstanding orders or notices affecting the Properties (whether served by a landlord, local authority, local planning authority, an adjoining or neighbouring owner or other body or person) and none are anticipated.

- (b) The Target Group has not had occasion to make any claim or complaint in relation to any neighbouring property or its use or occupation.

## 7.4 Consents

- (a) All necessary planning permissions and other statutory consents and approvals have been obtained and complied with respect to the use of the Properties by the Target Group and any alterations and improvements to the Properties carried out by or on behalf of the Target Group.

- (b) The documents of title include all licences, consents and approvals required from the landlords and any superior landlords under any lease of the Properties.

## 7.5 Condition of the Properties

- (a) The Properties are in a good state of repair (subject to ordinary wear and tear) and fit for the purposes for which they are presently used.

- (b) The Target Group is not expecting to have to expend any substantial sum of money in respect of the Properties in the near future.

## Schedule 5

### Completion Accounts and Receivable Adjustment

#### Part 1 - Completion Accounts

1. For the purposes of this Schedule:

“**Net Assets**” means a sterling sum equal to the aggregate amount of the consolidated assets of the Target Group excluding cash less the aggregate amount of the consolidated liabilities of the Target Group (including any contingent and prospective liabilities), as derived from the Completion Accounts.

“**Pro Forma Statement of Net Assets**” means the pro forma Statement of Net Assets set out in Part 3 of this Schedule for illustrative purposes.

“**Statement of Net Assets**” means a statement of the consolidated Net Assets of the Target Group, as derived from the Completion Accounts.
2. Within 2 months after the date of Completion, the Buyer shall prepare (or shall procure that the Buyer’s Accountants shall prepare) a draft of the Completion Accounts and a draft of the Statement of Net Assets and submit both for approval to the Seller.
3. The Completion Accounts and the Statement of Net Assets shall be prepared:
  - (a) on the basis of the accounting principles, policies, bases, practices used in preparing the Pro Forma Statement of Net Assets and audit adjustments;
  - (b) after making the following adjustments:
    - (i) fixed assets shall be valued at net book value;
    - (ii) all cash shall be valued at £ 697,000;
    - (iii) all intangible assets shall be valued at nil;
    - (iv) all goodwill shall be valued at nil;
    - (v) full provision shall be made against all agreed bad and doubtful debtors;
    - (vi) full provision shall be made for deferred tax;
    - (vii) full provision shall be made for any liabilities of any member of the Target Group;
    - (viii) dividends payable and customer deposits shall be valued at nil; and
    - (ix) any shareholder or director related amounts due shall be valued at nil.
  - (c) subject to paragraph (a) above and subject to the adjustments referred to in paragraph (a) above, in accordance with UK GAAP as at the date of Completion;
  - (d) having due regard to all matters set out or referred to in the Disclosure Letter insofar as the same discloses any liability (actual or contingent) which ought properly to be provided for in the Completion Accounts; and
  - (e) subject to the preceding provisions of this paragraph 3 and in so far as not inconsistent therewith, in a manner consistent with the procedures and policies, bases and methods of valuation adopted in the preparation of the Last Accounts.

4. Within 60 Business Days of the receipt by the Seller of the draft Completion Accounts and the draft Statement of Net Assets, the Seller shall inform the Buyer in writing whether or not he accepts the draft Completion Accounts and the draft Statement of Net Assets and, if not, shall specify in writing the amount and nature of any item which he does not accept.
5. If the Seller confirms in writing that he accepts the draft Completion Accounts and the draft Statement of Net Assets, or if he fails to inform the Buyer within 20 Business Days of receipt whether or not he accepts the draft Completion Accounts and the draft Statement of Net Assets, such drafts shall be the Completion Accounts and Statement of Net Assets for the purposes of this Schedule.
6. If the Seller informs the Buyer, in accordance with paragraph 4, that he does not accept the draft Completion Accounts and the draft Statement of Net Assets, the Seller and the Buyer shall hold discussions in good faith with a view to agreeing any particular item in relation to the Completion Accounts or the Statement of Net Assets the amount and nature of which has been specified by the Seller in accordance with paragraph 4. If such agreement is reached and is confirmed in writing by the parties, it shall be final and binding on the parties but without prejudice to the Buyer's right to claim under the Warranties, Schedule 6 or otherwise in respect of any matter.
7. Any dispute about the draft Completion Accounts and the draft Statement of Net Assets which remains unresolved 30 Business Days after receipt by the Seller of the draft Completion Accounts and the draft Statement of Net Assets shall, at the request of either the Buyer or the Seller, be referred for final determination to an independent firm of certified public accountants nominated jointly by the Buyer and the Seller or, failing such nomination within 10 Business Days after a request by either the Buyer or the Seller, such firm shall be nominated at the request of either the Buyer or the Seller by the President for the time being of the Hong Kong Institute of Certified Public Accountants. Such independent firm shall act as experts and not as arbitrators and (in the absence of manifest error) its decisions (both as to the manner in which its determination is to be made and as to the subject matter of its determination) shall be final and binding on the parties but shall be without prejudice to the Buyer's right to claim under the Warranties, Schedule 6 or otherwise in respect of any matter.
8. All costs incurred by the Seller in reviewing and agreeing the Completion Accounts and the Statement of Net Assets shall be borne by the Seller and all such costs incurred by the Buyer shall be borne by the Buyer. The fees of such independent firm shall be payable by the Buyer and the Seller in such proportions as such independent firm determines (or failing such determination equally by the Seller on the one hand and the Buyer on the other hand).
9. Each party will co-operate fully with the others and, if applicable, with the independent firm appointed under paragraph 7 (including giving all reasonable access to records, information, and to personnel) with a view to enabling the draft Completion Accounts and the draft Statement of Net Assets to be prepared and subsequently discussed and, if applicable, with a view to enabling any such independent firm to make any determination required by paragraph 7, and in particular the Buyer shall procure that the Target Group shall permit the Seller and their advisers (and, if applicable, such independent firm) to have reasonable access to, and (where reasonable) at their own cost to take copies of any records or information belonging to the Target Group which the Seller may reasonably require for the purpose of reviewing the draft Completion Accounts and the draft Statement of Net Assets.
10. Within 5 Business Days of the agreement or determination of the Completion Accounts and the Statement of Net Assets pursuant to this Schedule:
  - (f) if the Net Assets exceed (i.e. is more positive, or less negative than) (minus) £1,160,000, the full amount of any such excess shall be paid by or on behalf of the Buyer to the Seller; or
  - (g) if the Net Assets are less than (i.e. is more negative than) (minus) £1,160,000, the full amount of any such shortfall shall be paid by or on behalf of the Seller to the Buyer from the funds standing to the credit of the Escrow Account (in so far as there are sufficient funds standing to the credit of the Escrow Account).

## **Part 2 - Receivables Adjustment**

11. Within 10 days of the first anniversary of the date of Completion, the Buyer shall prepare (or shall procure that the Buyer's Accountants shall prepare) a statement showing the amount of the Receivables (as shown in the Statement of Net Assets agreed in accordance with Part 1 of this Schedule 5) which have been written-off in the ordinary course of business (less any provisions for all agreed bad and doubtful debtors (as referred to in paragraph 3(b)(v) of this Schedule 5) during the twelve month period following the date of Completion (the "**Post-Completion Write-Off**").
12. Within 5 Business Days of the agreement or determination of the Post-Completion Write-Off pursuant to this Schedule 5 if the Post-Completion Write-Off exceeds £200,000, the amount of any such excess shall be paid by or on behalf of the Buyer to the Seller.

## SCHEDULE 6

### Tax Warranties

1. Within the last 5 years, the Target has complied with relevant legal requirements for Taxation purposes in all material respects.
2. The Target has paid or accounted for all Taxation (if any) due to be paid or accounted for by it, and has filed returns which ought to have been filed by it for Taxation purposes, within the past 4 years on a timely basis.
3. All notices, returns, reports, accounts, computations, statements, assessments, registrations and any other necessary information submitted by the Target to any Tax Authority for the purposes of Taxation within the past 5 years have been made on a proper basis, were submitted within applicable time limits and, so far as the Seller is aware, were accurate and complete when submitted and remain accurate and complete in all material respects. So far as the Seller is aware, none of the above is, or is likely to be, the subject of any dispute with any Tax Authority.
4. There is no dispute or disagreement outstanding nor is any contemplated by the Seller as at the date of this Agreement with the Hong Kong Inland Revenue Department or any other Tax Authority regarding liability or potential liability for any Tax (including in each case penalties or interest) recoverable from the Target or regarding the availability of any relief from Tax to the Target, and so far as the Seller is aware there are no circumstances which make it likely that any such dispute or disagreement will commence.
5. The Target has not, within the past 12 months, been subject to any visit, audit, investigation, discovery or access order by any Tax Authority, and so far as the Seller is aware there are no circumstances existing which make it likely that a visit, audit, investigation, discovery or access order will be made in the next 12 months.
6. Within the last 5 years, the Target has, within applicable time periods, maintained all records in relation to Taxation as it is required to maintain.
7. Within the last 5 years, the Target has complied within applicable time limits with all notices serviced on them and any other requirements lawfully made of them by any Tax Authority.
8. Within the last 5 years, the Target has not received from any Tax Authority (and has not subsequently repaid to or settled with that Tax Authority) any payment to which it was not entitled, or any notice in which, so far as the Seller is aware, its liability to Taxation was understated.
9. The Target has not paid or become liable to pay any penalty, fine, surcharge or interest in relation to Tax in the 5 year period prior to the date hereof, and so far as the Seller is aware there are no circumstances which make it likely that the Target will become liable to pay any penalty, fine, surcharge or interests in relation to Tax.
10. The Target has complied with all requirements to deduct or withhold Taxation from any payments it has made in the 5 year period prior to the date hereof and has accounted in full to the appropriate authorities for all amounts so deducted or withheld.
11. During the 5 year period prior to the date hereof the Target has not engaged in or been a party to any transaction which is artificial or fictitious or any transaction or series of transactions or scheme or arrangement the main or dominant purpose of which was the avoidance of the Tax liability of the Target or which contravened or contravenes any Taxation Statute.
12. The Target has duly submitted all claims, disclaimers and elections the making of which have been assumed for the purposes of the Last Accounts.

13. Within the last 5 years, the Target has not made to any person (including any Tax Authority) any payment in respect of any liability to Taxation which is primarily or directly chargeable against, or attributable to, any other person (other than the Target or any other member of the Target Group).
14. The Last Accounts of the Target make proper provision or reserve in accordance with UK GAAP for any period ending on or before the date to which they were drawn up for all Taxation assessed or liable to be assessed on the Target or for which the Target is accountable at that date, whether or not such member has (or may have) the right to reimbursement against any other person. Proper provision has been made and shown in the Last Accounts for deferred taxation in accordance with UK GAAP.
15. All transactions and other dealings within the past 5 years between the Target on the one hand and any non-resident person with which it does business and with whom it is closely connected pursuant to Section 20 to 20B of the Inland Revenue Ordinance on the other, have been conducted at arm's length.
16. Any document that may be necessary in proving the title of the Target to any asset which is owned by the Target at Completion, and each document which the Target is required to enforce or produce in evidence, which is subject to stamp duty is duly stamped for stamp duty purposes. No such documents which are outside Hong Kong would attract stamp duty if they were brought into Hong Kong.
17. Neither entering into this agreement nor Completion will result in the withdrawal of a stamp duty relief granted to the Target on or before Completion.
18. The Target has complied with all its obligations in respect of salaries tax and has complied with all its reporting, accounting and payment obligations to the relevant authorities in connection with payments (including notional payments) and benefits provided for its employees (including former employees) of the Target or others.
19. The Target will not be liable after Completion to account for salaries tax in respect of, or in consequence of any event occurring in relation to, any shares, securities or options over or interests in any shares or securities of the Target held before Completion by any employee or director or former employee or director of the Target or any person associated with any of them.

## Schedule 7

### Warranty Limitations

#### 1. TIME LIMITS FOR BRINGING CLAIMS

- 1.1 The Seller shall not be liable for in respect of any Claim, Tax-Related Claim or Independent Indemnity Claim unless, subject to paragraph 1.2, the Buyer gives to the Seller written notification of the particulars of such claim specifying in reasonable detail the nature of the Claim, Tax-Related Claim or Independent Indemnity Claim and if practicable, an estimate of the amount claimed and including copies of all relevant documentation excluding that which attracts legal privilege in any claim against the Seller and in any event:
- (a) in the case of a Claim (excluding any Claim in respect of the Fundamental Warranties), Tax-Related Claim or Independent Indemnity Claim, before the Payment Date;
  - (b) in the case of a Claim in respect of the Fundamental Warranties, before the end of the relevant statutory limitation period.
- 1.2 Any Claim, Tax-Related Claim or Independent Indemnity Claim shall (if not previously satisfied, withdrawn or settled) be deemed to have been withdrawn and waived by the Buyer unless legal proceedings in respect of such Claim, Tax-Related Claim or Independent Indemnity Claim have been commenced (by being both issued and served on the relevant parties) within 6 months of the notification of such Claim, Tax-Related Claim or Independent Indemnity Claim to the Seller pursuant to paragraph 1.1 of this Schedule, provided that such 6 month period shall not exceed the three month period immediately following the relevant period set out in 1.1 above.

#### 2. LIMITATIONS ON QUANTUM

- 2.1 Subject to clause 2.2 below, the aggregate liability of the Seller in respect of all Claims (other than any Claim in respect of the Fundamental Warranties) in connection with the terms of this agreement shall not in any circumstances exceed the Escrow Sum.
- 2.2 The aggregate liability of the Seller for a Claim in respect of the Fundamental Warranties shall not in any circumstances, exceed the total amount of consideration received by him under the terms of this agreement less the aggregate amount of any Claims referred to under paragraph 2.1 above.
- 2.3 The Seller shall not be liable in respect of any Claim (other than a Claim in respect of the Fundamental Warranties):
- (a) unless the amount of the liability of the Seller for such Claim exceeds £100,000 (in which event, subject to paragraph 2.3(b) below, the Seller shall be liable for the whole amount of such Claim and not only the excess over such amount); and
  - (b) unless the aggregate amount of the liability of the Seller for all such Claims exceeds £300,000 (in which event, the Seller shall be liable for the whole amount of such Claims and not only the excess over such amount).

#### 3. ESCROW ACCOUNT

Prior to the Payment Date the Buyer shall seek to recover damages in respect of any Claims, Tax-Related Claims or Independent Indemnity Claims under this agreement from the funds held in the Escrow Account in the first instance but for the avoidance of doubt the Buyer shall be entitled to pursue the Seller for any Claims in respect of the Fundamental Warranties, Tax-Related Claims or Independent Indemnity Claims, in excess of the amount standing to the credit of the Escrow Account, subject always to the time limit for bringing such claims.

#### **4. NO DOUBLE COUNTING**

The Buyer shall not be entitled to recover damages in respect of any Claim, Tax-Related Claim or Independent Indemnity Claim or otherwise obtain reimbursement or restitution more than once in respect of any one breach of Warranty or Claim, Tax-Related Claim or Independent Indemnity Claim arising out of or in connection with the same circumstances.

#### **5. THIRD PARTY RECOVERIES**

5.1 The Seller shall not be liable for any Claim, Tax-Related Claim or Independent Indemnity Claim:

- (a) to the extent that recovery is made by the Buyer or any member of the Buyer's Group under any policy of insurance; or
- (b) to the extent that the Buyer or any member of the Buyer's Group or those deriving title from the Buyer have already obtained reimbursement or restitution in respect of such claim from any third party.

5.2 If the Seller pays to the Buyer an amount in respect of any Claim, Tax-Related Claim or Independent Indemnity Claim and the Buyer or any member of the Buyer's Group subsequently recovers from a third party (including, without limitation, any insurer or any Tax Authority) a sum which is referable to that claim, the Buyer shall repay to the Seller so much of the amount originally paid by the Seller as does not exceed the sum recovered from the third party after deduction of all the reasonable costs and expenses of recovery incurred.

#### **6. ACTS OF THE BUYER, CHANGES IN LEGISLATION, ETC**

The Seller shall not be liable for any Claim, Tax-Related Claim or Independent Indemnity Claim if and to the extent that the such claim would arise or the amount of such claim would be increased after the date of this agreement as a result of or to the extent that:

- (a) any breach by the Buyer of any of its obligations under this agreement;
- (b) such claim would not have arisen but for any transaction, arrangement, act or omission (or any combination of the same) carried out or effected at any time after Completion by the Buyer or any member of the Buyer's Group outside the ordinary course of its business;
- (c) the enactment of any legislation with retrospective effect;
- (d) a judgment or change in the interpretation or application of any Law or of any ruling or practice of any administrative authority (including Tax Authorities);
- (e) the liability arises out of any act, transaction or omission authorized by or carried out at the request of the Buyer or any member of the Buyer's Group; and/or
- (f) any penalties, charges or interest arising directly or indirectly from any transaction or omission of the Buyer or the Target Group after Completion.

#### **7. ACCOUNTING**

The Seller shall not be liable in respect of any Claim, Tax-Related Claim or Independent Indemnity Claim to the extent that provision, reserve or allowance for the matter giving rise to such claim has been made in the Last Accounts or the Completion Accounts or to the extent of any amount which is included as a liability in the Completion Accounts.

#### **8. REDUCTION IN CONSIDERATION**

If any amount is paid by the Seller in respect of a breach of any of the Warranties, the amount of such payment shall be deemed to constitute a reduction in the consideration payable under this agreement for the Shares to which the breach most relates.

**9. NO TERMINATION OR RESCISSION**

The Buyer shall not be entitled to terminate or rescind this agreement or any agreement or document entered into pursuant to this agreement.

**Schedule 8**  
**Escrow Account**

**1. DEFINITIONS**

For the purposes of this Schedule:

**“Claim”** means any claim by the Buyer in respect of any breach of any Warranty or Tax Warranty or otherwise under this agreement.

**“Finally Determined”** means either agreed between the Seller and the Buyer in writing, withdrawn by the Buyer in writing, or determined by a court of competent jurisdiction from which there is either no further appeal or from whose judgment the Seller or the Buyer (as the case may be) does not appeal within the period during which such appeal may properly be brought.

**“Independent Expert”** has the meaning given in paragraph 6.1.

**“Retained Amount”** means the amount calculated, agreed or determined in accordance with paragraph 5.

**2. OPERATION OF ESCROW ACCOUNT**

2.1 The Seller and the Buyer agree that the Escrow Account shall be operated in accordance with the provisions of this Schedule and the Escrow Agreement. The Escrow Sum shall be retained in the Escrow Account and shall only be released in accordance with the provisions of this Schedule.

2.2 The Seller and the Buyer shall give such instructions to the Escrow Bank from time to time as may be necessary to enable them to operate the Escrow Account in accordance with the provisions of this Schedule. The Seller and the Buyer irrevocably authorise and instruct the Escrow Bank to operate the Escrow Account in accordance with the Escrow Agreement.

**3. INTEREST**

Interest accruing from time to time on the balance of money standing to the credit of the Escrow Account shall be added to the money standing to the credit of the Escrow Account and any payment of principal out of the Escrow Account shall carry the interest earned on that principal sum in the Escrow Account.

**4. PAYMENTS OUT OF ESCROW ACCOUNT**

2.1 The Seller Stamp Duty Amount shall be released to the Buyer in accordance with clause 5.6 of this agreement.

2.2 Subject to paragraphs 4.4 and 4.5, all sums standing to the credit of the Escrow Account shall be released to the Seller on the Payment Date.

2.3 If, at any time before the Payment Date, the Buyer has notified any Claim in writing to the Seller and such Claim is Finally Determined before the Payment Date, an amount equal to the amount determined to be payable to the Buyer in relation to such Claim (if any) together with interest accrued on such amount since Completion (net of any Taxation required by law to be withheld from such interest) shall be released to the Buyer as soon as possible.

2.4 If, at any time before the Payment Date, the Buyer has notified any Claim in writing to the Seller, the Retained Amount in relation to any such Claim (except to the extent that such Claim has been Finally Determined and any sums payable in relation to such Claim has been paid in full before the Payment Date) shall be retained in the Escrow Account and the balance (if any) shall be released to the Seller on the Payment Date.

- 2.5 Upon any Claim referred to in paragraph 4.4 being Finally Determined on or after the Payment Date, an amount equal to the amount (if any) determined to be payable to the Buyer in relation to such Claim together with interest accrued on such amount since Completion (net of any Taxation required by law to be withheld from such interest) shall be released to the Buyer (in so far as there are sufficient funds standing to the credit of the Escrow Account) and:
- (a) if any Claim remains outstanding, the Retained Amount in relation to such outstanding Claim or Claims shall be retained in the Escrow Account and the balance (if any) shall be released to the Seller (net of any Taxation required by law to be withheld from interest on the balance); or
  - (b) if no Claim remains outstanding, all sums standing to the credit of the Escrow Account (if any) shall be released to the Seller (net of any Taxation required by law to be withheld from interest on those sums).

## 5. CALCULATION OF RETAINED AMOUNT

- 5.1 Subject to paragraph 5.2, in relation to any Claim or Claims, the Retained Amount shall be whichever is the lesser of:
- (a) the amount standing to the credit of the Escrow Account; and
  - (b) a sum equal to the aggregate amount of such Claim or Claims plus all interest accrued on such aggregate amount since Completion.
- 5.2 In the event of a dispute as to the calculation of the Retained Amount the Seller or the Buyer may refer the dispute for determination by the Independent Expert in accordance with paragraph 6. The Retained Amount shall be the amount so determined by the Independent Expert.

## 6. INDEPENDENT EXPERT

- 6.1 The disputes referred to in paragraph 5.2 shall be decided by an independent Counsel of at least 7 years standing with commercial expertise (“**Independent Expert**”) nominated jointly by the Buyer and the Seller or, failing such nomination within 10 Business Days of notification of the relevant dispute, at the request of either party, by the Chairman for the time being of the Hong Kong Bar Association.
- 6.2 The Independent Expert shall be instructed by the Buyer and the Seller to act as an expert and not as an arbitrator and to reach a decision, a written copy of which shall be sent to the Buyer and Seller within 20 Business Days of his nomination or appointment. Subject to the Independent Expert agreeing to comply with such confidentiality undertakings as the Buyer may reasonably require, the Buyer shall provide the Independent Expert with such documents and other information in the possession of the Buyer or the Target Group as the Independent Expert may reasonably request for the purpose of making his determination. In the absence of manifest error, his decision shall be final and binding on the parties who shall pay his costs as he directs or, in the absence of any such direction, such costs shall be divided equally between the parties.
- 6.3 For the avoidance of doubt, no Claim shall be (or be deemed to be) Finally Determined by the Independent Expert unless otherwise agreed between the parties.

## 7. MISCELLANEOUS

- 7.1 For the purposes of this Schedule a Claim will be deemed to have been withdrawn (and therefore Finally Determined for the purposes of paragraph 4.4) unless proceedings in respect of such Claim have been commenced in accordance with paragraph 1.2 of Schedule 7.
- 7.2 The payment of any sum to the Buyer pursuant to this Schedule in or towards satisfaction of any Claim shall in no way prejudice or affect any other rights or remedies of the Buyer for the purpose of recovering any amount due to the Buyer.



## SCHEDULE 9

### Holdback Account

#### 1. OPERATION OF HOLDBACK ACCOUNT

- 1.1 The Seller and the Buyer agree that the Holdback Account shall be operated in accordance with the provisions of this Schedule and the Holdback Agreement. The Holdback Amount shall be retained in the Holdback Account and shall only be released in accordance with the provisions of this Schedule.
- 1.2 The Seller and the Buyer shall give such instructions to the Escrow Bank from time to time as may be necessary to enable them to operate the Holdback Account in accordance with the provisions of this Schedule. The Seller and the Buyer irrevocably authorise and instruct the Escrow Bank to operate the Holdback Account in accordance with the Holdback Agreement.

#### 2. INTEREST

Interest accruing from time to time on the balance of money standing to the credit of the Holdback Account shall be added to the money standing to the credit of the Holdback Account and any payment of principal out of the Holdback Account shall carry the interest earned on that principal sum in the Holdback Account.

#### 3. PAYMENTS OUT OF HOLDBACK ACCOUNT

- 3.1 Subject to paragraphs 3.2 and 3.3 below, the Seller and the Buyer shall instruct the Escrow Bank to pay to the Seller the balance standing to the credit of the Holdback Account on the second anniversary of Completion provided that the Seller is, at that date, an employee of a Buyer's Group Company (including any Target Group Company).
- 3.2 If at any time prior to the second anniversary of Completion, the Seller is a Bad Leaver, the full amount standing to the credit of the Holdback Account shall be paid to the Buyer.
- 3.3 If at any time prior to or on the second anniversary of Completion, the Seller is a Good Leaver, the full amount standing to the credit of the Holdback Account shall be paid to the Seller.
- 3.4 For the purpose of this Schedule 9:
- (a) The Seller will be a 'Good Leaver' where he ceases to be an employee of a Buyer Group Company (including any Target Group Company) otherwise than as a Bad Leaver including, but not limited to, by reason of his death, disability, mental or physical incapacity, redundancy, constructive, unfair or wrongful dismissal; and
  - (b) The Seller will be a 'Bad Leaver' where he ceases to be an employee of a Buyer Group Company (including any Target Group Company) (i) for cause or (ii) following notice of termination of employment being served by the Seller other than under circumstances where the Seller is deemed to be a Good Leaver.

**EXECUTED** and delivered when  
dated as an agreement by **NIGEL CLEAVE**

By: /s/ Nigel Cleave

Name: Nigel Cleave

Title: Director

**EXECUTED** and delivered when  
dated as an agreement by **KVH MEDIA GROUP LIMITED**

By: /s/ Peter Rendall

Name: Peter Rendall

Title: Director

CREDIT AGREEMENT

Dated as of July 1, 2014

among

KVH INDUSTRIES, INC.  
as the Borrower,

THE AFFILIATES OF THE BORROWER PARTY HERETO,  
as the Guarantors,

BANK OF AMERICA, N.A.,  
as Administrative Agent,

THE LENDERS PARTY HERETO

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,  
as Sole Lead Arranger and Sole Book Runner

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- 11.05 Payments Set Aside.
- 11.06 Successors and Assigns.
- 11.07 Treatment of Certain Information; Confidentiality.
- 11.08 Right of Setoff.
- 11.09 Interest Rate Limitation.
- 11.10 Counterparts; Integration; Effectiveness.
- 11.11 Survival of Representations and Warranties.
- 11.12 Severability.
- 11.13 Replacement of Lenders.
- 11.14 Governing Law; Jurisdiction; Etc.
- 11.15 Waiver of Jury Trial.
- 11.16 Subordination.
- 11.17 No Advisory or Fiduciary Responsibility.
- 11.18 Electronic Execution of Assignments and Certain Other Documents.
- 11.19 USA PATRIOT Act Notice.
- 11.20 ENTIRE AGREEMENT.

## BORROWER PREPARED SCHEDULES

Schedule 1.01(c)	Authorized Officers
Schedule 5.10	Insurance
Schedule 5.20(a)	Subsidiaries, Joint Ventures, Partnerships and Other Equity Investments
Schedule 5.20(b)	Loan Parties
Schedule 5.21(b)	Intellectual Property
Schedule 5.21(c)	Documents, Instrument, and Tangible Chattel Paper
Schedule 5.21(d)(i)	Deposit Accounts & Securities Accounts
Schedule 5.21(d)(ii)	Electronic Chattel Paper & Letter-of-Credit Rights
Schedule 5.21(e)	Commercial Tort Claims
Schedule 5.21(f)	Pledged Equity Interests
Schedule 5.21(g)(i)	Other Properties
Schedule 5.21(h)	Material Contracts
Schedule 7.01	Existing Liens
Schedule 7.02	Existing Indebtedness
Schedule 7.03	Existing Investments

## ADMINISTRATIVE AGENT PREPARED SCHEDULES

Schedule 1.01(a)	Certain Addresses for Notices
Schedule 1.01(b)	Initial Commitments and Applicable Percentages

## EXHIBITS

Exhibit A	Form of Administrative Questionnaire
Exhibit B	Form of Assignment and Assumption
Exhibit C	Form of Compliance Certificate
Exhibit D	Form of Joinder Agreement
Exhibit E	Form of Loan Notice
Exhibit F	Form of Solvency Certificate
Exhibit G	Forms of U.S. Tax Compliance Certificates
Exhibit H-1	Form of Revolving Note
Exhibit H-2	Form of Term Note

## CREDIT AGREEMENT

This **CREDIT AGREEMENT** is entered into as of July 1, 2014, among KVH INDUSTRIES, INC., a Delaware corporation (the "Borrower"), the Guarantors (defined herein), the Lenders (defined herein), and BANK OF AMERICA, N.A., as Administrative Agent. As of the Closing Date there are no Guarantors party to the Agreement.

### PRELIMINARY STATEMENTS:

**WHEREAS**, the Loan Parties (as hereinafter defined) have requested that the Lenders make loans and other financial accommodations to the Loan Parties in an aggregate amount of up to \$80,000,000.

**WHEREAS**, the Lenders have agreed to make such loans and other financial accommodations to the Loan Parties on the terms and subject to the conditions set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

#### 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

"Acquisition" means the acquisition, whether through a single transaction or a series of related transactions, of (a) a controlling equity interest or other controlling ownership interest in another Person (including the purchase of an option, warrant or convertible or similar type security to acquire such a controlling interest at the time it becomes exercisable by the holder thereof), whether by purchase of such equity or other ownership interest or upon the exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person.

"Administrative Agent" means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 1.01(a), or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

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

"Aggregate Commitments" means the Commitments of all the Lenders.

"Agreement" means this Credit Agreement.

"Applicable Percentage" means (a) in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by the outstanding principal amount of such Term Lender's Term Loans at such time, and (b) in respect of the Revolving Facility, with respect to

any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender's Revolving Commitment at such time. If the Commitment of all of the Lenders to make Loans have been terminated pursuant to Section 8.02, or if the Commitments have expired, then the Applicable Percentage of each Lender in respect of the applicable Facility shall be determined based on the Applicable Percentage of such Lender in respect of such Facility most recently in effect, giving effect to any subsequent assignments. The Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 1.01(b) or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means, for any day, the rate per annum set forth below opposite the applicable Level then in effect (based on the Consolidated Leverage Ratio):

Applicable Rate				
Level	Consolidated Leverage Ratio	Applicable Rate Fee		Unused Fee
		Revolving Loans	Term Loan	
	≤ 1.00:1.00	1.50%	1.50%	0.25%
	>1.00:1.00 but ≤ 1.50:1.00	1.75%	1.75%	0.25%
	> 1.50:1.00 but ≤ 2.00:1.00	2.00%	2.00%	0.25%
	> 2.00:1.00	2.25%	2.25%	0.25%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Level 4 shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered. In addition, at all times while the Default Rate is in effect, the highest rate set forth in each column of the Applicable Rate shall apply.

Notwithstanding anything to the contrary contained in this definition, (a) the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.09(b), and (b) the initial Applicable Rate shall be set forth in Level 4 until the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a) for the quarter ending September 30, 2014 to the Administrative Agent.

“Applicable Revolving Percentage” means with respect to any Revolving Lender at any time, such Revolving Lender's Applicable Percentage in respect of the Revolving Facility at such time.

“Appropriate Lender” means, at any time, with respect to any Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan under such Facility at such time.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as sole lead arranger and sole book manager.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit B, or any other form approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease, (c) all Synthetic Debt of such Person, (d) in respect of any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

“Audited Financial Statements” means the audited Consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal years ended December 31, 2012 and December 31, 2013, and the related Consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“Availability Period” means in respect of the Revolving Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date for the Revolving Facility, (ii) the date of termination of the Revolving Commitments hereunder, and (iii) the date of termination of the Commitment of each Revolving Lender to make Revolving Loans.

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the LIBOR Rate plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Revolving Loan or a Term Loan that bears interest based on the Base Rate.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Revolving Borrowing or a Term Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any LIBOR Rate Loan, means any such day that is also a London Banking Day.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations); provided, that an amount equal to the amount of Net Cash Proceeds of Dispositions and Involuntary Dispositions applied to Capital Expenditures in accordance with Section 2.04(b)(i) for such period shall be excluded therefrom.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than three hundred sixty days (360) days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than one hundred eighty (180) days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition.

"Cash Management Agreement" means any agreement that is not prohibited by the terms hereof to provide treasury or cash management services, including deposit accounts, overnight draft, credit cards, debit cards, p-cards (including purchasing cards and commercial cards), funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other cash management services.

"Cash Management Bank" means any Person in its capacity as a party to a Cash Management Agreement that, (a) at the time it enters into a Cash Management Agreement with a Loan Party, is a Lender or an Affiliate of a Lender, or (b) at the time it (or its Affiliate) becomes a Lender, is a party to a Cash Management Agreement with a Loan Party, in each case in its capacity as a party to such Cash Management Agreement (even if such Person ceases to be a Lender or such Person's Affiliate ceased to be a Lender); provided, however, that for any of the foregoing to be included as a "Secured Cash Management Agreement" on any date of determination by the Administrative Agent, the applicable Cash Management Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith

and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means an event or series of events by which:

(a) at any time the current shareholders shall directly or indirectly cease to own Equity Interests in the Borrower representing more than 20% of the combined voting power of all Equity Interests entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully diluted basis; or any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of more than 20% of the Equity Interests of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right); or

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors).

“Closing Date” means the date hereof.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the “Collateral” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, each Joinder Agreement, each of the mortgages, collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.16, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means a Term Commitment or a Revolving Commitment, as the context may require.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Compliance Certificate” means a certificate substantially in the form of Exhibit C.

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

“Consolidated” shall mean, when used with reference to financial statements or financial statement items of the Borrower and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Consolidated EBITDA” means, at any date of determination, an amount equal to Consolidated Net Income for the most recently completed Measurement Period plus the following to the extent deducted in calculating such Consolidated Net Income (without duplication): (a) federal, state, local and foreign income franchise or similar tax expense, (b) interest expense, amortization or write-off of debt discount and debt issuance costs and commissions, discounts and other fees and charges associated with Indebtedness, (c) depreciation and amortization expense (d) amortization of intangibles and organization costs and impairment of goodwill, (e) any extraordinary charges or losses determined in accordance with GAAP, (f) reasonable transaction expenses relating to the Transactions incurred on or prior to the date that is six (6) months after the Closing Date, in each case, paid to Persons other than Affiliates of the Borrower not to exceed \$1,000,000 in the aggregate; (g) non-cash exchange, transaction or performance losses relating to any foreign currency hedging transactions or currency fluctuations; (h) any unrealized losses in respect to Swap Contracts and (i) any other non-recurring, non-cash charges, non-cash expenses or non-cash losses of the Borrower or any of its Subsidiaries for such period (including non-cash stock option expenses and excluding any such charge, expense or loss incurred in the ordinary course of business that constitutes an accrual of or a reserve for cash charges for any future period in respect of such non-cash charges, expenses or losses (excluding any such charge, expense or loss incurred in the ordinary course of business that constitutes an accrual of or a reserve for cash charges for any future period)) and shall be subtracted from Consolidated Net Income in calculating Consolidated EBITDA in the period when such payments are made and minus any other non-cash income.

Consolidated EBITDA shall be calculated on a Pro Forma Basis to give effect to permitted Acquisitions and Dispositions consummated at any time on or after the first day of the relevant Measurement Period as if each Permitted Acquisition had been effected on the first day of such period and as if each such Dispositions had been consummated on the day prior to the first day of such period.

“Consolidated Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA, less (ii) the aggregate amount of all cash Capital Expenditures made during the Measurement Period ended on such date, less (iii) taxes paid in cash during the Measurement Period ended on such date, less (iv) cash distributions and dividends permitted to be made hereunder made during the Measurement Period ended on such date, to (b) the sum of (i) Consolidated Interest Charges and (ii) (without duplication) the aggregate amount of all regularly scheduled principal payments and payments on Capital Leases during the Measurement Period ended on such date. For purposes of this calculation, Intercompany Debt shall be excluded.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Borrower and its Subsidiaries on a Consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) the maximum amount available to be drawn under issued and outstanding letters of credit (including standby and commercial), bankers’ acceptances, bank guarantees, surety bonds and similar instruments; (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (e) all Attributable Indebtedness, (f) all obligations to purchase, redeem, retire, defease or otherwise make any payment prior to the Maturity Date in respect of any Equity Interests or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (f) above of Persons other than the Borrower or any Subsidiary and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary is a general

partner or joint venturer. Consolidated Funded Indebtedness shall be reduced by the Unrestricted Cash held at such time by Borrower. For purposes of this calculation, Intercompany Debt shall be excluded.

“Consolidated Interest Charges” means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period. For purposes of this calculation, Intercompany Debt shall be excluded.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the last four fiscal quarters.

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of the Borrower and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that the Borrower’s equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the Borrower’s equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso).

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

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

“Cost of Acquisition” means, with respect to any Acquisition, as at the date of entering into any agreement therefor, the sum of the following (without duplication): (a) the value of the Equity Interests of the Borrower or any Subsidiary to be transferred in connection with such Acquisition, (b) the amount of any cash and fair market value of other property (excluding property described in clause (a) and the unpaid principal amount of any debt instrument) given as consideration in connection with such Acquisition, (c) the amount (determined by using the face amount or the amount payable at maturity, whichever is greater) of any Indebtedness incurred, assumed or acquired by the Borrower or any Subsidiary in connection with such Acquisition, (d) all additional purchase price amounts in the form of earnouts and other contingent obligations that should be recorded on the financial statements of the Borrower and its Subsidiaries in accordance with GAAP in connection with such Acquisition, (e) all amounts paid in respect of covenants not to compete or, consulting agreements that should be recorded on the financial statements of the Borrower and its Subsidiaries in accordance with GAAP, and other affiliated contracts in connection with such Acquisition, and (f) the aggregate fair market value of all other consideration given by the Borrower or any Subsidiary in connection with such Acquisition. For purposes of determining the Cost of Acquisition for any transaction, the Equity Interests of the Borrower shall be valued in accordance with GAAP.

“Credit Extension” means a Borrowing.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) with respect to any Obligation for which a rate is specified, a rate per annum equal to four percent (4%) in excess of the highest rate set forth under Applicable Rate or (b) with respect to any Obligation for which a rate is not specified or available, a rate per annum equal to the Base Rate plus the Applicable Rate (determined using the highest rate set forth under Applicable Rate) for Revolving Loans that are Base Rate Loans plus four percent (4%), in each case, to the fullest extent permitted by applicable Law.

“Defaulting Lender” means any Lender (including, without limitation, Administrative Agent) that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.14(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“Deposit Account” has the meaning set forth in the UCC.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction) of any property by any Loan Party or Subsidiary (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding any Involuntary Disposition.

“Dollar”; “Dollars” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“ECP Guarantor” means any Guarantor that has total assets exceeding \$10,000,000 at the time a Swap Obligation is incurred or is an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act or any regulations promulgated thereunder.

“Eligible Assignee” means any financial institution that meets the requirements to be an assignee under Section 11.06 (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

“Environmental Laws” means any and all applicable federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

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

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“Equity Issuance” means, any issuance by any Loan Party or any Subsidiary to any Person of its Equity Interests, other than (a) any issuance of its Equity Interests pursuant to the exercise of options or warrants, (b) any issuance of its Equity Interests pursuant to the conversion of any debt securities to equity or the conversion of any class of equity securities to any other class of equity securities, (c) any issuance of options or warrants relating to its Equity Interests, and (d) any issuance by the Borrower of its Equity Interests as consideration for a Permitted Acquisition. The term “Equity Issuance” shall not be deemed to include any Disposition.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity

was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, or the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings and proceeds of Involuntary Dispositions), indemnity payments and any purchase price adjustments; provided, however, that an Extraordinary Receipt shall not include cash receipts from proceeds of insurance or indemnity payments to the extent that such proceeds, awards or payments are received by any Person in respect of any third party claim against such Person and applied to pay (or to reimburse such Person for its prior payment of) such claim and the costs and expenses of such Person with respect thereto.

“Facility” means the Term Facility or the Revolving Facility, as the context may require.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated and (b) all Obligations have been paid in full (other than contingent indemnification obligations).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no

such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the letter agreement, dated July 1, 2014, among the Borrower, the Administrative Agent and the Arranger.

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

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

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States of America applied on a consistent basis and subject to the terms of Section 1.03.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed or expressly undertaken by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means the Subsidiaries of the Borrower as are or may from time to time become parties to this Agreement pursuant to Section 6.15.

“Guaranty” means, collectively, the Guaranty made by the Guarantors under Article X in favor of the Secured Parties, together with each other guaranty delivered pursuant to Section 6.15.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any applicable Environmental Law.

“Hedge Bank” means any Person in its capacity as a party to a Swap Contract that at the time it enters into a Swap Contract not prohibited under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract (even if such Person ceases to be a Lender or such Person’s Affiliate ceased to be a Lender); provided, in the case of a Secured Hedge Agreement with a Person who is no longer a Lender (or Affiliate of a Lender), such Person shall be considered a Hedge Bank only through the stated termination date (without extension or renewal) of such Secured Hedge Agreement and provided further that for any of the foregoing to be included as a “Secured Hedge Agreement” on any date of determination by the Administrative Agent, the applicable Hedge Bank (other than the Administrative Agent or an Affiliate of the Administrative Agent) must have delivered a Secured Party Designation Notice to the Administrative Agent prior to such date of determination.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations (including, without limitation, earnout obligations) of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and not past due for more than sixty (60) days after the due date of such trade account;
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

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

“Indemnitees” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Intellectual Property” has the meaning set forth in the Security Agreement.

“Intercompany Debt” has the meaning specified in Section 7.02.

“Interest Payment Date” means, (a) as to any Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; and (b) as to any Base Rate Loan, the last Business Day of each month and the Maturity Date of the Facility under which such Loan was made.

“Interest Rate Change Date” means the first Business Day of each month.

“Interest Period” means, as to each LIBOR Rate Loan (other than loans being interest at the LIBOR Daily Floating Rate), the period commencing on the date such LIBOR Rate Loan is disbursed or converted to or continued as a LIBOR Rate Loan and ending on the date one (1) month thereafter; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, but net of cash repayments and sale proceeds in the case of Investments in the form of Indebtedness and cash equity returns received as a distribution or dividend or by redemption or sale.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit D executed and delivered in accordance with the provisions of Sections 6.15 and 6.16.

“Laws” means, collectively, all applicable international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement and, their successors.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

“LIBOR Daily Floating Rate” means:

(a) the fluctuating rate of interest, which can change on each Business Day, equal to the London Interbank Offered Rate (“LIBOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 11:00 a.m., London time, two (2) Business Days prior to the date in question, for Dollar deposits with a term equivalent to a one (1) month term beginning on that date (in such case, the “LIBOR Rate”); and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate;

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

“LIBOR Monthly Floating Rate” means:

(a) the fluctuating rate of interest, equal to LIBOR, or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at or about 11:00 a.m., London time, two (2) Business Days prior to the most recent Interest Rate Change Date, for Dollar deposits for delivery on such Interest Rate Change Date, with a term equivalent to one (1) month; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate;

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

“LIBOR Rate Loan” means a Revolving Loan or a Term Loan that bears interest at the LIBOR Daily Floating Rate or the LIBOR Monthly Floating Rate.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan or a Revolving Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Fee Letter, (f) each Joinder Agreement, and (g) any agreement creating or perfecting rights in cash collateral (but specifically excluding any Secured Hedge Agreement or any Secured Cash Management Agreement).

“Loan Notice” means a notice of (a) a Borrowing, or (b) a continuation of LIBOR Rate Loans, pursuant to Section 2.02, which, if in writing, shall be substantially in the form of Exhibit E.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), or condition (financial or otherwise) of the Borrower or the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Contract” means, with respect to any Person, each contract or agreement (a) to which such Person is a party involving aggregate consideration payable to or by such Person of \$10,000,000 or more or (b) otherwise material to the business, condition (financial or otherwise), operations, performance, or properties of such Person or (c) any other contract, agreement, permit or license, written or oral, of the Borrower and its Subsidiaries as to which the breach, nonperformance, cancellation or failure to renew by any party thereto, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

“Maturity Date” means (a) with respect to the Revolving Facility, July 1, 2019 and (b) with respect to the Term Facility, July 1, 2019; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Measurement Period” means, at any date of determination, the most recently completed four (4) fiscal quarters of the Borrower.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means the aggregate cash or Cash Equivalents proceeds received by any Loan Party or any Subsidiary in respect of any Disposition, Equity Issuance, Debt Issuance or Involuntary Disposition, net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees and sales commissions), (b) taxes paid or payable as a result thereof and (c) in the case of any Disposition or any Involuntary Disposition, the amount necessary to retire any Indebtedness secured by a Permitted Lien (ranking senior to any Lien of the Administrative Agent) on the related property; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any Disposition, Equity Issuance, Debt Issuance or Involuntary Disposition.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-ECP Guarantor” means any Guarantor that is not an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act and Regulation 1.3(m) promulgated by the Commodity Futures Trading Commission.

“Note” means a Term Note or a Revolving Note, as the context may require.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof pursuant to any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction); (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction) and (d) with respect to all entities, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization (or equivalent or comparable documents with respect to any non-U.S. jurisdiction).

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means with respect to Term Loans and Revolving Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans and Revolving Loans, as the case may be, occurring on such date.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan and a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Liens” has the meaning specified in Section 7.01.

“Permitted Transfers” means (a) Dispositions of inventory in the ordinary course of business; (b) Dispositions of property to the Borrower or any Subsidiary; provided, that if the transferor of such property is a Loan Party then the transferee thereof must be a Loan Party; (c) Dispositions of accounts receivable in connection with the collection or compromise thereof; (d) licenses, sublicenses, leases or subleases granted to others not interfering in any material respect with the business of the Borrower and its Subsidiaries; and (e) the sale or disposition of Cash Equivalents for fair market value.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Pledged Equity Interests” has the meaning specified in the applicable Security Agreement.

“Pro Forma Basis” and “Pro Forma Effect” means, for any Disposition of all or substantially all of a line of business or for any Acquisition, whether actual or proposed, for purposes of determining compliance with the financial covenants set forth in Section 7.11, each such transaction or proposed transaction shall be deemed to have occurred on and as of the first day of the relevant Measurement Period, and the following pro forma adjustments shall be made:

(a) in the case of an actual or proposed Disposition, all income statement items (whether positive or negative) attributable to the line of business or the Person subject to such Disposition shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period;

(b) in the case of an actual or proposed Acquisition, income statement items (whether positive or negative) attributable to the property, line of business or the Person subject to such Acquisition shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period;

(c) interest accrued during the relevant Measurement Period on, and the principal of, any Indebtedness repaid or to be repaid or refinanced in such transaction shall be excluded from the results of the Borrower and its Subsidiaries for such Measurement Period; and

(d) any Indebtedness actually or proposed to be incurred or assumed in such transaction shall be deemed to have been incurred as of the first day of the applicable Measurement Period, and interest thereon shall be deemed to have accrued from such day on such Indebtedness at the applicable rates provided therefor (and in the case of interest that does or would accrue at a formula or floating rate, at the rate in effect at the time of determination) and shall be included in the results of the Borrower and its Subsidiaries for such Measurement Period.

“Public Lender” has the meaning specified in Section 6.02.

“Qualifying Control Agreement” shall mean an agreement, among a Loan Party, a depository institution or securities intermediary and the Administrative Agent, which agreement is in form and substance acceptable to the Administrative Agent and which provides the Administrative Agent with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) or securities account(s) described therein.

“Recipient” means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Reduction Amount” has the meaning set forth in Section 2.04.

“Register” has the meaning specified in Section 11.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Request for Credit Extension” means with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Loans, a Loan Notice.

“Required Lenders” means, when there are two or less Non-Defaulting Lenders, all of the Non-Defaulting Lenders, and when there are three or more Lenders, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate, in form and substance satisfactory to the Administrative Agent.

“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding.

“Revolving Borrowing” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of LIBOR Rate Loans, having the same Interest Period made by each of the Revolving Lenders pursuant to Section 2.01(b).

“Revolving Commitment” means, as to each Revolving Lender, its obligation to make Revolving Loans to the Borrower pursuant to Section 2.01(b), in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “Revolving Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Revolving Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans at such time.

“Revolving Facility” means, at any time, the aggregate amount of the Revolving Lenders’ Revolving Commitments at such time.

“Revolving Lender” means, at any time, any Lender that has a Revolving Commitment at such time.

“Revolving Loan” has the meaning specified in Section 2.01(b).

“Revolving Note” means a promissory note made by the Borrower in favor of a Revolving Lender evidencing Revolving Loans made by such Revolving Lender in the form set forth on Exhibit H-1.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sale and Leaseback Transaction” means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby such Loan Party or such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

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

“Secured Cash Management Agreement” means any Cash Management Agreement between the any Loan Party and any of its Subsidiaries and any Cash Management Bank.

“Secured Hedge Agreement” means any interest rate, currency, foreign exchange, or commodity Swap Contract permitted under Article VI or VII between any Loan Party and any of its Subsidiaries and any Hedge Bank.

“Secured Obligations” means (a) all Obligations, (b) all obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements and (c) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Secured Party Designation Notice” shall mean a notice from any Lender or an Affiliate of a Lender that shall designate the Agent as a Secured Party.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, the Cash Management Banks, the Indemnitees, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Securities Act” means the Securities Act of 1933, including all amendments thereto and regulations promulgated thereunder.

“Security Agreement” means each of the security and pledge agreements, dated as of the Closing Date, executed in favor of the Administrative Agent by each of the Loan Parties.

“Shareholders’ Equity” means, as of any date of determination, consolidated shareholders’ equity of the Borrower and its Subsidiaries as of such date, determined in accordance with GAAP.

“Solvency Certificate” means a solvency certificate in substantially in the form of Exhibit E.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person, on a going concern basis is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair saleable value of the assets of such Person on a going concern basis is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act, including any such obligation arising under any Secured Hedge Agreement with a Hedge Bank or in connection with any other Swap Contract.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the

date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds but are not otherwise included in the definition of “Indebtedness” or as a liability on the Consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including Sale and Leaseback Transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of LIBOR Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01(a).

“Term Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender’s name on Schedule 1.01(b) under the caption “Term Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Term Facility” means, at any time the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time.

“Term Lender” means any Lender that holds Term Loans at such time.

“Term Loan” means an advance made by any Term Lender under the Term Facility.

“Term Note” means a promissory note made by the Borrower in favor of a Term Lender evidencing Term Loans made by such Term Lender in the form set forth on Exhibit H-2.

“Threshold Amount” means \$1,000,000.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments, Revolving Exposure and Outstanding Amount of all Term Loans of such Lender at such time.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Loans.

“Transactions” means the Videotel Acquisition and the refinancing of, and repayment in full, of the existing Indebtedness of the Borrower (other than Indebtedness permitted to exist pursuant to Section 7.02).

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a LIBOR Rate Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

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

“Unrestricted Cash” means all cash and Cash Equivalents held on deposit by in excess of U.S. \$7,500,000.

“U.S. Loan Party” means any Loan Party that is organized under the laws of one of the states of the United States of America and that is not a CFC.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(e)(ii)(B)(3).

“Videotel Acquisition” means the purchase of the shares of Super Dragon Limited and Videotel Marine Asia Limited, under that certain Share Purchase Agreement between Nigel Cleave and KVH Media Group Limited, to be dated as of July 2, 2014.

“Voting Stock” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right to so vote has been suspended by the happening of such contingency.

“Working Capital” means, as at any date of determination, the excess of current assets over current liabilities, each as determined in accordance with GAAP.

## **1.02 Other Interpretive Provisions.**

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be

construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

### **1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Pro Forma Treatment. Each Disposition of all or substantially all of a line of business, and each Acquisition, by the Borrower and its Subsidiaries that is consummated during any Measurement Period shall, for purposes of determining compliance with the financial covenants set forth in Section 7.11 and for purposes of determining the Applicable Rate, be given Pro Forma Effect as of the first day of such Measurement Period.

### **1.04 Rounding.**

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

### **1.05 Times of Day.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

## ARTICLE II

### COMMITMENTS AND CREDIT EXTENSIONS

#### 2.01 Loans.

(a) Term Borrowing. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a single loan to the Borrower, in Dollars, on the Closing Date in an amount not to exceed such Term Lender's Applicable Percentage of the Term Facility. The Term Borrowing shall consist of Term Loans made simultaneously by the Term Lenders in accordance with their respective Applicable Percentage of the Term Facility. Term Loan Borrowings repaid or prepaid may not be reborrowed. Term Loans shall be Base Rate Loans and LIBOR Rate Loans except as otherwise provided herein.

(b) Revolving Borrowings. Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans (each such loan, a "Revolving Loan") to the Borrower, in Dollars, from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Commitment; provided, however, that after giving effect to any Revolving Borrowing, (i) the Total Revolving Outstandings shall not exceed the Revolving Facility, and (ii) the Revolving Exposure of any Lender shall not exceed such Revolving Lender's Revolving Commitment. Within the limits of each Revolving Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow Revolving Loans, prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Loans shall be Base Rate Loans and LIBOR Rate Loans except as otherwise provided herein.

(c) All Borrowings on the Closing Date shall be LIBOR Rate Loans.

#### 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Notice of Borrowing. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of LIBOR Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of LIBOR Rate Loans or of any conversion of LIBOR Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of LIBOR Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (A) the applicable Facility and whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be, under such Facility, (B) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (C) the principal amount of Loans to be borrowed, converted or continued, (D) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (E) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, LIBOR Rate Loans. Any such automatic conversion to LIBOR Rate Loans shall be effective as of the last day of the Interest Period then in effect. If the Borrower requests a Borrowing of, conversion to, or continuation of LIBOR Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Advances. Following receipt of a Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under such Facility of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to LIBOR Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) LIBOR Rate Loans. Except as otherwise provided herein, a LIBOR Rate Loan may be continued or converted only on the last day of an Interest Period for such LIBOR Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as LIBOR Rate Loans without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the outstanding LIBOR Rate Loans be converted immediately to Base Rate Loans.

(d) Notice of Interest Rates. The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBOR Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) Interest Periods. After giving effect to all Term Borrowings, there shall not be more than four (4) Interest Periods in effect in respect of the Term Facility. After giving effect to all Revolving Borrowings, there shall not be more than four (4) Interest Periods in effect in respect of the Revolving Facility.

### **2.03 Intentionally Omitted.**

## 2.04 Prepayments.

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans and Revolving Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three (3) Business Days prior to any date of prepayment of LIBOR Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of LIBOR Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$100,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if LIBOR Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.04(a) shall be applied to the principal repayment installments thereof in inverse order of maturity. Subject to Section 2.14, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(b) Mandatory.

(i) Dispositions and Involuntary Dispositions. The Borrower shall prepay the Loans as hereinafter provided in an aggregate amount equal to 100% of the Net Cash Proceeds received by any Loan Party or any Subsidiary from all Dispositions (other than Permitted Transfers) and Involuntary Dispositions within fifteen (15) days of the date of such Disposition or Involuntary Disposition; provided, however, that so long as no Default shall have occurred and be continuing, such Net Cash Proceeds shall not be required to be so applied at the election of the Borrower (as notified by the Borrower to the Administrative Agent) to the extent such Loan Party or such Subsidiary reinvests all or any portion of such Net Cash Proceeds in assets used or usable in the business of the Borrower or an of its Subsidiaries (but specifically excluding current assets as classified by GAAP) within one hundred twenty (120) days after the receipt of such Net Cash Proceeds; provided that if such Net Cash Proceeds shall have not been so reinvested shall be immediately applied to prepay the Loans.

(ii) Equity Issuance. Immediately upon the receipt by any Loan Party or any Subsidiary of the Net Cash Proceeds of any Equity Issuance (excluding the Equity Issuance made by the Borrower on the Closing Date), the Borrower shall prepay the Loans in an aggregate amount equal to 50% of such Net Cash Proceeds.

(iii) Extraordinary Receipts. Immediately upon receipt by any Loan Party or any Subsidiary of any Extraordinary Receipt received by or paid to or for the account of any Loan Party or any of its Subsidiaries in excess of \$250,000 in the aggregate in any fiscal year, and not otherwise included in clause (1) (ii), (iii) or (iv) of this Section, the Borrower shall prepay the Loans in an aggregate principal amount equal to 100% of all Net Cash Proceeds received therefrom.

(iv) Application of Payments. Each prepayment of Loans pursuant to the foregoing provisions of Section 2.04(b)(i)-(iii) shall be applied to the principal repayment installments of the Term Loan in inverse order of maturity and, thereafter, to the Revolving Facility in the manner set forth in clause (v) of Section 2.04(b). Subject to Section 2.14, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of the relevant Facilities.

(v) Revolving Outstandings. If for any reason the Total Revolving Outstandings at any time exceed the Revolving Facility at such time, the Borrower shall immediately prepay Revolving Loans (together with all accrued but unpaid interest thereon) in an aggregate amount equal to such excess.

(vi) Application of Other Payments. Except as otherwise provided in Section 2.14, prepayments of the Revolving Facility made pursuant to this Section 2.04(b), shall be applied to the outstanding Revolving Loans, in the case of prepayments of the Revolving Facility required pursuant to clause (i), (ii) or (iii) of this Section 2.04(b), the amount remaining, if any, after the prepayment in full of all Revolving Loans outstanding at such time (the sum of such prepayment amounts, cash collateralization amounts and remaining amount being, collectively, the "Reduction Amount") may be retained by the Borrower for use in the ordinary course of its business, and with respect to any prepayment on account of Section 2.04(b)(ii), at the discretion of the Administrative Agent, the Revolving Facility shall be automatically and permanently reduced by the Reduction Amount as set forth in Section 2.05(b)(i).

Within the parameters of the applications set forth above, prepayments pursuant to this Section 2.04(b) shall be applied first to Base Rate Loans and then to LIBOR Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.04(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

## **2.05 Termination or Reduction of Commitments.**

(a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Facility, or from time to time permanently reduce the Revolving Facility; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$3,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Revolving Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Revolving Facility,.

(b) Mandatory. The Revolving Facility shall, at the discretion of the Administrative Agent, be automatically and permanently reduced on each date on which the prepayment of Revolving Loans outstanding thereunder is required to be made pursuant to Section 2.04(b)(ii).

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Revolving Commitment under this Section 2.05. Upon any reduction of the Revolving Commitments, the Revolving Commitment of each Revolving Lender shall be reduced by such Lender's Applicable Revolving Percentage of such reduction amount. All fees in respect of the Revolving Facility accrued until the effective date of any termination of the Revolving Facility shall be paid on the effective date of such termination.

## **2.06 Repayment of Loans.**

(a) Term Loans. The Borrower shall repay to the Term Lenders the aggregate principal amount of all Term Loans outstanding on the following dates in the respective amounts set forth opposite such dates (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.04), unless accelerated sooner pursuant to Section 8.02;

Year	Payment Dates	Principal Repayment Installments
	10/1/14, 1/1/15, 4/1/15, 7/1/15	\$1,218,750
		\$1,218,750
	10/1/16, 1/1/17, 4/1/17, 7/1/17	\$1,625,000
	10/1/17, 1/1/18, 4/1/18, 7/1/18	\$1,625,000
	10/1/18, 1/1/19, 4/1/19	\$1,625,000
	Maturity Date	All remaining principal

provided, however, that the final principal repayment installment of the Term Loans shall be repaid on the Maturity Date for the Term Facility and in any event shall be in an amount equal to the aggregate principal amount of all Term Loans outstanding on such date.

(b) Revolving Loans. The Borrower shall repay to the Revolving Lenders on the Maturity Date for the Revolving Facility the aggregate principal amount of all Revolving Loans outstanding on such date.

## 2.07 Interest and Default Rate.

(a) Interest. Subject to the provisions of Section 2.07(b), (i) each LIBOR Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period from the applicable borrowing date at a rate per annum equal to the LIBOR Daily Floating Rate or LIBOR Monthly Floating Rate, as applicable plus the Applicable Rate for such Facility; and (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for such Facility.

(b) Default Rate.

(i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due, whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, outstanding Obligations may accrue at a fluctuating rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest Payments. Interest on each LIBOR Rate Loan (other than LIBOR Rate Loans bearing interest at the LIBOR Daily Floating Rate) shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest on each LIBOR Rate Loan bearing interest at the LIBOR Daily Floating Rate shall be due and payable in arrears on the first Business Date of each month. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

## **2.08 Fees.**

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Revolving Percentage, a commitment fee equal to the Unused Fee set forth under Applicable Rate times the actual daily amount by which the Revolving Facility exceeds the Outstanding Amount of Revolving Loans, subject to adjustment as provided in Section 2.14. The commitment fee shall accrue at all times during the relevant Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees.

(i) The Borrower shall pay to the Administrative Agent and the Arranger for its own account fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

## **2.09 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.**

(a) Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the LIBOR Rate) shall be made on the basis of a year of three hundred sixty-five (365) or three hundred sixty-six (366) days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a three hundred sixty-five (365) day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.11(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) Financial Statement Adjustments or Restatements. If, as a result of any restatement of or other adjustment to the financial statements of the Borrower and its Subsidiaries or for any other reason, the Borrower, or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent or any Lender, as the case may be, under any other provision of this Agreement to payment of any Obligations hereunder at the Default Rate. The Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

## **2.10 Evidence of Debt.**

Maintenance of Accounts. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

## **2.11 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be. The Borrower agrees that the Administrative Agent may debit deposit account number 9427767316 owned by the Borrower, or such other of the Borrower's accounts with Bank of America as designated in writing by the Borrower (the "Designated Account") on the date each payment of principal and interest and any fees from the Borrower becomes due (the "Due Date") hereunder. The Borrower will maintain sufficient funds in the Designated Account to cover each debit. If there are insufficient funds in the Designated Account on the date the Administrative Agent enters any debit authorized by this Agreement, the Administrative Agent may reverse the debit.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of LIBOR Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the

Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

## **2.12 Sharing of Payments by Lenders.**

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing

(but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(1) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(2) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

### **2.13 Intentionally Omitted.**

### **2.14 Defaulting Lenders.**

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such

Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans owed to, such Defaulting Lender until such time as all Loans funded by the Lenders pro rata in accordance with the Commitments hereunder. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.14(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any fee payable under Section 2.08(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent (or the Required Lenders if the Administrative Agent is the Defaulting Lender) agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

### ARTICLE III

#### TAXES, YIELD PROTECTION AND ILLEGALITY

##### 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code,

and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error. Each of the Loan Parties shall also, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (B) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (C) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative

Agent to set off and apply any and all amounts at any time owing to such Lender, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax; and

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

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

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

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

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

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

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

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of

such Lender, as the case may be. If any Recipient receives a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection shall not be construed to require the Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### **3.02 Illegality.**

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make, maintain or fund Loans whose interest is determined by reference to the LIBOR Rate, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to make or continue LIBOR Rate Loans or to convert Base Rate Loans to LIBOR Rate Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBOR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Rate Loans and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

### **3.03 Inability to Determine Rates.**

If the Required Lenders determine that for any reason in connection with any request for a LIBOR Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBOR Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the LIBOR Rate for any requested

Interest Period with respect to a proposed LIBOR Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain LIBOR Rate Loans shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the LIBOR Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBOR Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

### **3.04 Increased Costs.**

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e));

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the LIBOR Rate (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on LIBOR Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each LIBOR Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

### **3.05 Compensation for Losses.**

Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a LIBOR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each LIBOR Rate Loan made by it at the LIBOR Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such LIBOR Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower, such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 11.13.

### **3.07 Survival.**

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and the Facility Termination Date.

## **ARTICLE IV**

### **CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

#### **4.01 Conditions of Initial Credit Extension.**

The obligation of each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Execution of Credit Agreement; Loan Documents. The Administrative Agent shall have received (i) counterparts of this Agreement, executed by a Responsible Officer of each Loan Party and a duly authorized officer of each Lender, (ii) for the account of each Lender requesting a Note, a Note executed by a Responsible Officer of the Borrower, (iii) counterparts of the Security Agreement and each other Collateral Document, executed by a Responsible Officer of the applicable Loan Parties and a duly authorized officer of each other Person party thereto, as applicable and (iv) counterparts of any other Loan Document, executed by a Responsible Officer of the applicable Loan Party and a duly authorized officer of each other Person party thereto.

(b) Officer's Certificate. The Administrative Agent shall have received a certificate of a Responsible Officer dated the Closing Date, certifying as to the Organization Documents of each Loan Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of each Loan Party, the good standing, existence or its equivalent of each Loan Party, the incumbency of the Responsible Officers of each Loan Party, and a certification of the balance sheet of the Borrower upon giving effect to the Videotel Acquisition.

(c) Legal Opinions of Counsel. The Administrative Agent shall have received an opinion or opinions (including, if requested by the Administrative Agent, local counsel opinions) of counsel for the Loan Parties, dated the Closing Date and addressed to the Administrative Agent and the Lenders, in form and substance acceptable to the Administrative Agent.

(d) Financial Statements. The Administrative Agent and the Lenders shall have received copies of the financial statements referred to in Section 5.05, each in form and substance satisfactory to each of them.

(e) Personal Property Collateral. The Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent:

(i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Loan Party and each jurisdiction where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens and (B) tax lien, judgment and bankruptcy searches;

(ii) if requested by the Administrative Agent, searches of ownership of Intellectual Property in the appropriate governmental offices and such patent/trademark/copyright filings as requested by the Administrative Agent in order to perfect the Administrative Agent's security interest in the Intellectual Property;

(iii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iv) stock or membership certificates, if any, evidencing the Pledged Equity and undated stock or transfer powers duly executed in blank; in each case to the extent such Pledged Equity is certificated;

(v) in the case of any personal property Collateral located at premises leased by a Loan Party and set forth on Schedule 5.21(g)(i), such estoppel letters, consents and waivers from the landlords of such real property to the extent required to be delivered in connection with Section 6.16 (such letters, consents and waivers shall be in form and substance satisfactory to the Administrative Agent); and

(vi) to the extent required to be delivered pursuant to the terms of the Collateral Documents, all instruments, documents and chattel paper in the possession of any of the Loan Parties, together with allonges or assignments as may be necessary or appropriate to perfect the Administrative Agent's and the Lenders' security interest in the Collateral.

(f) Intentionally Omitted.

(g) Liability, Casualty, Property, Terrorism and Business Interruption Insurance. The Administrative Agent shall have received copies of insurance policies, declaration pages, certificates, and endorsements of insurance or insurance binders evidencing liability, casualty, property, terrorism and business interruption insurance meeting the requirements set forth herein or in the Collateral Documents or as reasonably required by the Administrative Agent, including, without limitation, (i) standard flood hazard determination forms and (ii) if any property is located in a special flood hazard area (A) notices to (and confirmations of receipt by) such Loan Party as to the existence of a special flood hazard and, if applicable, the unavailability of flood hazard insurance under the National Flood Insurance Program and (B) evidence of applicable flood insurance, if available, in each case in such form, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent.

(h) Solvency Certificate. The Administrative Agent shall have received a Solvency Certificate signed by a Responsible Officer of the Borrower as to the financial condition, solvency and related matters of the Borrower and its Subsidiaries, after giving effect to the initial borrowings under the Loan Documents and the other transactions contemplated hereby.

(i) Borrowing Notice. The Administrative Agent shall have received a Borrowing Notice with respect to the Loans to be made on the Closing Date.

(j) Existing Indebtedness of the Loan Parties. All of the existing Indebtedness for borrowed money of the Borrower and its Subsidiaries (other than Indebtedness permitted to exist pursuant to Section 7.02) shall be repaid in full and all security interests related thereto shall be terminated on or prior to the Closing Date.

(k) Consents. The Administrative Agent shall have received evidence that all boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the entering into of this Agreement have been obtained.

(l) Fees and Expenses. The Administrative Agent and the Lenders shall have received all fees and expenses, if any, owing pursuant to the Fee Letter and Section 2.08.

(m) Due Diligence. The Lenders shall have completed a due diligence investigation of the Borrower and its Subsidiaries in scope, and with results, satisfactory to the Lenders.

(n) Material Adverse Effect. There shall not have occurred since December 31, 2013 any event or condition that has had or could reasonably be expected to have either individually or in the aggregate, a Material Adverse Effect. There shall also exist no action, suit, investigation or proceeding pending or, to the knowledge of the Loan Parties, threatened, in any court or before any arbitrator or governmental authority that could reasonably be expected to have a Material Adverse Effect.

(o) Transactions. Evidence of an equity contribution of not less than \$12,000,000 and the consummation of the Transactions except for the funding made pursuant to the proceeds of the Term Loans and Revolving Loans.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### **4.02 Conditions to all Credit Extensions.**

The obligation of each Lender to honor any Request for Credit Extension is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article II, Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Credit Extension (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date of such Credit Extension, (iii) representations and warranties that specifically refer to an earlier date shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) as such earlier date, and except that for purposes of this Section 4.02,

the representations and warranties contained in Sections 5.05(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b), respectively.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of LIBOR Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders, as of the date made or deemed made, that:

#### **5.01 Existence, Qualification and Power.**

Each Loan Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. The copy of the Organization Documents of each Loan Party provided to the Administrative Agent pursuant to the terms of this Agreement is a true and correct copy of each such document, each of which is valid and in full force and effect.

#### **5.02 Authorization; No Contravention.**

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, except for any conflict with or breach or contravention of any Contractual Obligation that could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

#### **5.03 Governmental Authorization; Other Consents.**

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or, to the knowledge of Borrower, enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority

nature thereof) or (d) to the knowledge of Borrower, the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained, (ii) filings to perfect the Liens created by the Collateral Documents and (iii) filings required under federal securities laws.

#### **5.04 Binding Effect.**

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

#### **5.05 Financial Statements; No Material Adverse Effect.**

(a) Audited Financial Statements. The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) Quarterly Financial Statements. The unaudited Consolidated balance sheets of the Borrower and its Subsidiaries dated March 31, 2014, and the related Consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Material Adverse Effect. Since the date of the audited Consolidated balance sheet of the Borrower and its Subsidiaries dated December 31, 2013, and the related Consolidated statements of income or operations, shareholders' equity and cash flows for the year ended on that date there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

#### **5.06 Litigation.**

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or an Subsidiary or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document or any of the transactions contemplated hereby, or (b) either individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

#### **5.07 No Default.**

Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

#### **5.08 Ownership of Property.**

Each Loan Party has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### **5.09 Environmental Compliance.**

Except as disclosed in writing to the Administrative Agent and the Lenders:

(a) The Loan Parties conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Loan Parties have reasonably concluded that such Environmental Laws and claims would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) None of the properties currently or formerly owned or operated by any Loan Party is listed or to the knowledge of the Loan Parties proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or to the best knowledge of the Loan Parties, is adjacent to any such property; there are no and to the best knowledge of the Loan Parties never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party, to the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party; to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party in violation of any Environmental Laws; and Hazardous Materials have not been released, discharged or disposed of in violation of any applicable Environmental Laws on any property currently or owned or operated by any Loan Party or to the best knowledge of the Loan Parties, any property formerly owned or operated by any Loan Party.

(c) No Loan Party is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation in contravention of applicable Environmental Laws, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party.

#### **5.10 Insurance.**

The properties of the Borrower are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party operates. The general liability, casualty, property, terrorism and business interruption insurance coverage of the Loan Parties as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 5.10 and such insurance coverage complies with the requirements set forth in this Agreement and the other Loan Documents.

#### **5.11 Taxes.**

Each Loan Party has filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or any Subsidiary that would,

if made, have a Material Adverse Effect, nor is there any tax sharing agreement applicable to the Borrower that would reasonably be expected to result in a Material Adverse Effect.

#### **5.12 ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws.

(b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Borrower has no Pension Plan.

#### **5.13 Margin Regulations; Investment Company Act.**

(a) Margin Regulations. The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin security or margin stock (within the meaning of Regulation T and Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing, not more than 25% of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 7.01 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 8.01(e) will be margin stock.

(b) Investment Company Act. Borrower is not required to be registered as an “investment company” under the Investment Company Act of 1940.

#### **5.14 Disclosure.**

The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any other Loan Party is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

#### **5.15 Compliance with Laws.**

Each Loan Party is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

#### **5.16 Solvency.**

The Borrower, individually and together with each of its Subsidiaries on a Consolidated basis, Solvent.

**5.17 Casualty, Etc.**

Neither the businesses nor the properties of any Loan Party are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

**5.18 Labor Matters.**

There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower as of the Closing Date and the Borrower has not suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years preceding the Closing Date.

**5.19 Authorized Officers.**

Set forth on Schedule 1.01(c) is the Chief Executive Officer and Chief Financial Officer of the Loan Party (the "Authorized Officers") as of the Closing Date. Such Authorized Officers are the duly elected and qualified officers of such Loan Party and are duly authorized to execute and deliver, on behalf of the respective Loan Party, the Credit Agreement, the Notes and the other Loan Documents.

**5.20 Subsidiaries; Equity Interests; Loan Parties.**

(a) Subsidiaries, Joint Ventures, Partnerships and Equity Investments. Set forth on Schedule 5.20(a), is the following information which is true and complete in all respects as of the Closing Date a complete and accurate list of all Subsidiaries, joint ventures and partnerships and other equity investments of the Loan Parties as of the Closing Date. The outstanding Equity Interests in all Subsidiaries are validly issued, fully paid and non-assessable and are owned free and clear of all Liens (other than as contemplated in connection with the Loan Documents). There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors' qualifying shares) of any nature relating to the Equity Interests (other than the Borrower) of any Loan Party or any Subsidiary thereof, except as contemplated in connection with the Loan Documents.

(b) Loan Parties. Set forth on Schedule 5.20(b) is a complete and accurate list of all Loan Parties, showing as of the Closing Date (i) the exact legal name, (ii) any former legal names of such Loan Party in the four (4) months prior to the Closing Date, (iii) the jurisdiction of its incorporation or organization, as applicable, (iv) the type of organization, (v) the jurisdictions in which such Loan Party is qualified to do business, (vi) the address of its chief executive office, (vii) the address of its principal place of business, (viii) its U.S. federal taxpayer identification number, if applicable and (ix) a brief description of the industry or nature of business of such Loan Party.

**5.21 Collateral Representations.**

(a) Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Permitted Liens) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

(b) Intellectual Property. Set forth on Schedule 5.21(b), as of the Closing Date, is a list of all registered or issued Intellectual Property (including all applications for registration and issuance) owned by each of the Loan Parties or that each of the Loan Parties otherwise has the right to grant a security interest in

its rights to (including the name/title, current owner, registration or application number, and registration or application date and such other information as reasonably requested by the Administrative Agent).

(c) Documents, Instrument, and Tangible Chattel Paper. Set forth on Schedule 5.21(c), as of the Closing Date, is a description of all Documents (as defined in the UCC), Instruments (as defined in the UCC), and Tangible Chattel Paper (as defined in the UCC) of the Loan Parties (including the Loan Party owning such Document, Instrument and Tangible Chattel Paper and such other information as reasonably requested by the Administrative Agent).

(d) Deposit Accounts, Electronic Chattel Paper, Letter-of-Credit Rights, and Securities Accounts.

(i) Set forth on Schedule 5.21(d)(i), as of the Closing Date, is a description of all Deposit Accounts (as defined in the UCC) and Securities Accounts (as defined in the UCC) of the Loan Parties, including the name of (A) the applicable Loan Party, (B) in the case of a Deposit Account, the depository institution and average amount held in such Deposit Account and whether such account is a ZBA account or a payroll account, and (C) in the case of a Securities Account, the Securities Intermediary (as defined in the UCC) or issuer and the average aggregate market value held in such Securities Account, as applicable.

(ii) Set forth on Schedule 5.21(d)(ii), as of the Closing Date, is a description of all Electronic Chattel Paper and Letter of Credit Rights of the Loan Parties, including the name of (A) the applicable Loan Party, (B) in the case of Electronic Chattel Paper, the account debtor and (C) in the case of Letter-of-Credit Rights, the issuer or nominated person, as applicable.

(e) Commercial Tort Claims. Set forth on Schedule 5.21(e), as of the Closing Date, is a description of all Commercial Tort Claims (as defined in the UCC) of the Loan Parties (detailing such Commercial Tort Claim in such detail as reasonably requested by the Administrative Agent).

(f) Pledged Equity Interests. Set forth on Schedule 5.21(f), as of the Closing Date, is a list of (i) all Pledged Equity and (ii) all other Equity Interests required to be pledged to the Administrative Agent pursuant to the Collateral Documents (in each case, detailing the Grantor (as defined in the Security Agreement), the Person whose Equity Interests are pledged, the number of shares of each class of Equity Interests, the certificate number, if any, and known percentage ownership of outstanding shares of each class of Equity Interests and the class or nature of such Equity Interests (i.e. voting, non-voting, preferred, etc.).

(g) Properties. Set forth on Schedule 5.21(g)(i), as of the Closing Date, is a list of (A) each headquarter location of the Loan Parties, (B) each other location where any significant administrative or governmental functions are performed, (C) each other location where the Loan Parties maintain any books or records (electronic or otherwise) and (D) each location where any personal property Collateral is located at any premises owned or leased by a Loan Party with a Collateral value in excess of \$250,000 (in each case, including (1) an indication if such location is leased or owned, (2), if leased, the name of the lessor, and if owned, the name of the Loan Party owning such property, (3) the address of such property (including, the city, county, state and zip code) and (4) to the extent owned, the approximate fair market value of such property as of 2013).

(h) Material Contracts. Set forth on Schedule 5.21(h), as of the Closing Date, is a complete and accurate list of all Material Contracts of the Borrower and its Subsidiaries.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall cause each of their Subsidiaries to:

#### **6.01 Financial Statements.**

Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) Audited Financial Statements. As soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Borrower, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of income or operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception (except for such qualification of exception arising solely from the current scheduled maturity of the Loans) or any qualification or exception as to the scope of such audit.

(b) Quarterly Financial Statements. As soon as available, but in any event within sixty (60) days after the end of each of the fiscal quarters of each fiscal year of the Borrower, a Consolidated and consolidating balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related Consolidated and consolidating statements of income or operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP and including management discussion and analysis of operating results inclusive of operating metrics in comparative form certified by the chief executive officer, chief financial officer, treasurer or controller who is a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries, subject only to normal year-end audit adjustments and the absence of footnotes.

No Loan Party shall have any additional obligation with respect to the foregoing (a) and (b) if Administrative Agent has been provided with copies of the filings made to the SEC with respect to such financial statements.

(c) Videotel Financials.

(i) As soon as available, but in any event on or before October 2, 2014, the consolidated audited financial statements in U.S. Dollars for Videotel for the fiscal years ending December 31, 2012 and December 31, 2013 audited by Grant Thornton which shall not be subject to any "going concern" or like qualification or exception (the "Specified Videotel Financials").

(ii) Contemporaneously with the delivery of the Specified Videotel Financials, Borrower shall provide a calculation using the information set forth therein as to the actual Consolidated Leverage Ratio on the Closing Date giving effect to the Loans extended hereunder on the Closing Date (without any credit given to Consolidated Funded Indebtedness for Unrestricted Cash) using the actual results for Borrower provided for March 31, 2014. If the Consolidated Leverage Ratio calculated for the Closing Date exceeds 3.63:1.00, Borrower shall make an immediate prepayment on the Term Loan in an amount sufficient to cause the Closing Date Consolidated Leverage Ratio to be no greater than 3.63:1.00 (calculated as if such prepayment had been made on the Closing Date).

(iii) Until such time as the Specified Videotel Financials have been delivered and any prepayment required pursuant to the above Section 6.01(c)(II) has been made, Borrower shall maintain \$5,000,000 in a restricted account maintained by Bank of America or one of its Affiliates which shall be pledged to secure the Obligations hereunder.

## **6.02 Certificates; Other Information.**

Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) Compliance Certificate. Concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller which is a Responsible Officer of the Borrower, which shall be accompanied by written evidence demonstrating the Borrower's Unrestricted Cash.

(b) Intentionally Omitted.

(c) Changes in Corporate Structure. Within ten (10) days prior to any merger, consolidation, dissolution or other change in corporate structure of any Loan Party or any of its Subsidiaries (other than with respect to internal restructuring that doesn't result in the change of a Loan Party's name, type of entity or jurisdiction of organization) (or such shorter period of time as agreed to by the Administrative Agent) permitted pursuant to the terms hereof, provide notice of such change in corporate structure to the Administrative Agent, along with such other information as reasonably requested by the Administrative Agent. Provide notice to the Administrative Agent, not less than ten (10) days prior (or such shorter period of time as agreed to by the Administrative Agent) of any change in any Loan Party's legal name, state of organization, or organizational existence.

(d) Audit Reports; Management Letters; Recommendations. Promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them.

(e) Debt Securities Statements and Reports. Promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or of any of its Subsidiaries pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section.

(f) Notices. Not later than five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement and, from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may reasonably request.

(g) Environmental Notice. Promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect.

(h) Annual Budget. Not later than 60 days after the end of each fiscal year of Borrower, beginning with the fiscal year ending December 31, 2014, an annual budget of Borrower including its Subsidiaries containing, among other things, pro forma financial statements for each quarter of the next fiscal year.

(i) Additional Information. Promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (A) the Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, Syndtrak or another similar electronic system (the "Platform") and (B) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (1) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (2) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, the Arranger and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (3) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (4) the Administrative Agent and the any Affiliate thereof and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

### **6.03 Notices.**

Promptly, but in any event within two (2) Business Days, notify the Administrative Agent and each Lender:

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws, in each case of (i), (ii), or (iii) above that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event;
- (d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
- (e) of any (i) occurrence of any Disposition of property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.04(b), (ii) Equity Issuance for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.04(b)), and (iii) receipt of any Extraordinary Receipt for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.04(b); and

(f) any event which impairs the rights and remedies of the Administrative Agent or any Lender in relation to the Collateral.

In addition, each Loan Party shall give the Administrative Agent at least thirty (30) days notice before changing its residence or its chief executive office or state of incorporation or organization.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and to the extent applicable, stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Obligations.**

Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

**6.05 Preservation of Existence, Etc.**

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05;

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.**

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and

(b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07 Maintenance of Insurance.**

(a) Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including, without limitation, (i) terrorism insurance and (ii) flood hazard insurance on all Mortgaged Properties that are Flood Hazard Properties, on such terms and in such amounts as required by the National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent.

(b) Interests. Cause the Administrative Agent to be named as lenders' loss payable, loss payee or mortgagee, as its interest may appear, and/or additional insured with respect of any such insurance providing liability coverage or coverage in respect of any Collateral, and cause each provider of any such insurance to

agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent that it will give the Administrative Agent thirty (30) days prior written notice before any such policy or policies shall be altered or cancelled (or ten (10) days prior notice in the case of cancellation due to the nonpayment of premiums). Annually, upon expiration of current insurance coverage, the Loan Parties shall provide, or cause to be provided, to the Administrative Agent (i) copies of such insurance policies, (ii) evidence of such insurance policies (including, without limitation and as applicable, ACORD Form 28 certificates (or similar form of insurance certificate), and ACORD Form 25 certificates (or similar form of insurance certificate)), (iii) declaration pages for each insurance policy and (iv) lender's loss payable endorsement if the Administrative Agent for the benefit of the Secured Parties is not on the declarations page for such policy. As requested by the Administrative Agent, the Loan Parties agree to deliver to the Administrative Agent an Authorization to Share Insurance Information in such form as required by each of the Loan Parties' insurance companies.

(c) Redesignation. Promptly notify the Administrative Agent of any Mortgaged Property that is, or becomes, a Flood Hazard Property.

#### **6.08 Compliance with Laws.**

Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

#### **6.09 Books and Records.**

Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be.

#### **6.10 Inspection Rights.**

Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, unless an Event of Default has occurred and is continuing, such inspections shall be limited to one (1) per fiscal year of Borrower or such more frequent times as may be required by any regulator or any Lender; provided, further, however, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

#### **6.11 Use of Proceeds.**

Use the proceeds of the Credit Extensions for general corporate purposes not in contravention of any Law or of any Loan Document.

#### **6.12 Compliance with Environmental Laws.**

Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, to the extent required by applicable Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action

necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

**6.13 Intentionally Omitted.**

**6.14 Material Contracts.**

Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms.

**6.15 Covenant to Guarantee Obligations.**

The Loan Parties will cause each of their Subsidiaries whether newly formed, after acquired or otherwise existing to promptly (and in any event within thirty (30) days after such Subsidiary is formed or acquired (or such longer period of time as agreed to by the Administrative Agent in its reasonable discretion)) become a Guarantor hereunder by way of execution of a Joinder Agreement; provided, however, no Foreign Subsidiary shall be required to become a Guarantor. In connection therewith, the Loan Parties shall give notice to the Administrative Agent not less than ten (10) days prior to creating a Subsidiary (or such shorter period of time as agreed to by the Administrative Agent in its reasonable discretion), or acquiring the Equity Interests of any other Person. In connection with the foregoing, the Loan Parties shall deliver to the Administrative Agent, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to Sections 4.01 and 6.16 and such other documents or agreements as the Administrative Agent may reasonably request.

**6.16 Covenant to Give Security.**

Except with respect to Excluded Property:

(a) Equity Interests and Personal Property. Each Loan Party will cause the Pledged Equity and all of its tangible and intangible personal property now owned or hereafter acquired by it to be subject at all times to a first priority, perfected Lien (subject to Permitted Liens to the extent permitted by the Loan Documents) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Secured Obligations pursuant to the terms and conditions of the Collateral Documents. Each Loan Party shall provide opinions of counsel and any filings and deliveries reasonably necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Administrative Agent.

(b) Intentionally Omitted.

(c) Landlord Waivers. In the case of (i) each headquarter location of the Loan Parties, each other location where any significant administrative or governmental functions are performed and each other location where the Loan Parties maintain any books or records (electronic or otherwise) and (ii) any personal property Collateral located at any other premises leased by a Loan Party containing personal property Collateral with a value in excess of \$250,000, the Loan Parties will provide the Administrative Agent with such estoppel letters, consents and waivers from the landlords on such real property to the extent (A) requested by the Administrative Agent and (B) the Loan Parties are able to secure such letters, consents and waivers after using commercially reasonable efforts (such letters, consents and waivers shall be in form and substance satisfactory to the Administrative Agent,).

(d) Further Assurances. At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative

Agent may deem necessary or desirable to maintain in favor of the Administrative Agent, for the benefit of the Secured Parties, Liens and insurance rights on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Loan Parties under, the Loan Documents and all applicable Laws.

#### **6.17 Further Assurances.**

Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable Law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

## **ARTICLE VII**

### **NEGATIVE COVENANTS**

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

#### **7.01 Liens.**

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following (the "Permitted Liens"):

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.01 and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(g), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(h);

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) Statutory Liens such as carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person; provided that a reserve or other appropriate provision shall have been made therefor;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions (including zoning restrictions) and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 8.01(h);

(i) Liens securing Indebtedness permitted under Section 7.02(c); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(j) Bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any of its Subsidiaries with any Lender, in each case in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing solely the customary amounts owing to such bank with respect to cash management and operating account arrangements; provided, that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Liens arising out of judgments or awards not resulting in an Event of Default; provided the applicable Loan Party or Subsidiary shall in good faith be prosecuting an appeal or proceedings for review;

(l) Any interest or title of a lessor, licensor or sublessor under any lease, license or sublease entered into by any Loan Party or any Subsidiary thereof in the ordinary course of business and covering only the assets so leased, licensed or subleased;

(m) Licensing of intellectual property in the ordinary course of business; and

(n) Liens of a collection bank arising under Section 4-210 of the UCC on the items in the course of collection.

## **7.02 Indebtedness.**

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension;

(c) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations within the limitations set forth in Section 7.01(i); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$10,000,000;

(d) Unsecured Indebtedness of a Subsidiary of the Borrower owed to the Borrower or a wholly-owned Subsidiary of the Borrower, which Indebtedness shall (i) to the extent required by the Administrative Agent, evidenced by promissory notes which shall be pledged to the Administrative Agent as Collateral for the Secured Obligations in accordance with the terms of the Security Agreement, (ii) be on terms (including subordination terms) acceptable to the Administrative Agent and (iii) be otherwise permitted under the provisions of Section 7.03 ("Intercompany Debt");

(e) Guarantees of the Borrower or any Subsidiary in respect of Indebtedness otherwise permitted hereunder of the Borrower or any wholly-owned Subsidiary;

(f) Indebtedness in respect of Swap Contracts designed to hedge against the Borrower's or any of its Subsidiaries' exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes;

(g) Indebtedness arising from the endorsement of instruments in the ordinary course of business;

(h) Indebtedness arising under Cash Management Agreements in the ordinary course of business.

### **7.03 Investments.**

Make or hold any Investments, except:

(a) Investments held by the Borrower and its Subsidiaries in the form of cash or Cash Equivalents;

(b) (i) Investments by the Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by the Borrower and its Subsidiaries in Loan Parties, and (iii) additional Investments by Subsidiaries of the Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties;

(c) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(d) Guarantees permitted by Section 7.02;

(e) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 7.03; and

(f) The creation and capitalization of a Loan Party that is a Subsidiary so long as the terms and conditions set forth in Section 6.15 and Section 6.16 are satisfied.

### **7.04 Fundamental Changes.**

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party;

(b) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party; and

(c) so long as no Default has occurred and is continuing or would result therefrom, each of the Borrower and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the Borrower is a party, the Borrower is the surviving corporation and (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, such Loan Party is the surviving corporation.

#### **7.05 Dispositions.**

Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Permitted Transfers;

(b) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions permitted by Section 7.04; and

(e) other Dispositions so long as (i) the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneous with consummation of the transaction and shall be in an amount not less than the fair market value of the property disposed of, (ii) if such transaction is a Sale and Leaseback Transaction, such transaction is not prohibited by the terms of Section 7.16, (iii) such transaction does not involve the sale or other disposition of a minority Equity Interests in any Subsidiary, and (iv) such transaction does not involve a sale or other disposition of receivables other than receivables owned by or attributable to other property concurrently being disposed of in a transaction otherwise permitted under this Section.

#### **7.06 Restricted Payments.**

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) each Subsidiary may make Restricted Payments to any Person that owns Equity Interests in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made; and

(b) the Borrower may declare and make dividend payments or other distributions payable solely in the Borrower's common Equity Interests.

#### **7.07 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.08 Transactions with Affiliates.**

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than transactions which are entered into in the ordinary course of such Person's business on fair and reasonable terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate.

**7.09 Burdensome Agreements.**

Enter into, or permit to exist, any Contractual Obligation (except for this Agreement and the other Loan Documents) that (a) encumbers or restricts the ability of any such Person to (i) to act as a Loan Party; (ii) make Restricted Payments to any Loan Party, (iii) pay any Indebtedness or other obligation owed to any Loan Party, (iv) make loans or advances to any Loan Party, or (v) create any Lien upon any of their properties or assets, whether now owned or hereafter acquired, except, in the case of clause (a)(v) only, for any document or instrument governing Indebtedness incurred pursuant to Section 7.02(c), provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, or (b) requires the grant of any Lien on property for any obligation if a Lien on such property is given as security for the Secured Obligations.

**7.10 Use of Proceeds.**

Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Financial Covenants.**

(a) Maximum Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the end of each fiscal quarter of the Borrower set forth below to be greater than the ratio set forth below opposite such period:

<b>Four (4) Fiscal Quarters Ending</b>	<b>Maximum Consolidated Leverage Ratio</b>
9/30/14	2.25:1.00
9/30/15 and each fiscal quarter thereafter	1.00:1.00

(b) Minimum Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio as of the end of each fiscal quarter of the Borrower commencing with the fiscal quarter ending December 31, 2014 to be less than 1.25:1.00.

**7.12 Amendments of Organization Documents; Fiscal Year; Legal Name, State of Formation and Form of Entity.**

- (a) Amend any of its Organization Documents in any manner adverse to the interests of the Lenders;
- (b) change its fiscal year; or

- (c) change its name, state of formation or form of organization.

**7.13 Accounting Changes.**

Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

**7.14 Account Control Agreements; Additional Bank Accounts.**

Other than any checking or savings account included under the definition of “Excluded Property”, maintain or otherwise have any checking, savings or other accounts (including securities accounts) at any bank or other financial institution, or any other account where money is or may be deposited or maintained with any Person, other than at Bank of America; provided, however, that Borrower shall promptly move all accounts existing on the date of this Agreement to Bank of America, but in no event shall any such account remain open at such other institutions six month or more after the date of this Agreement.

**7.15 Sale and Leaseback Transactions.**

Enter into any Sale and Leaseback Transaction.

**ARTICLE VIII**

**EVENTS OF DEFAULT AND REMEDIES**

**8.01 Events of Default.**

Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three (3) days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02 (other than subsections (f) and (h)), 6.03, 6.05, 6.08, 6.10, 6.11, 6.14, Article VII or Article X; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto,

or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; provided, however, no such Early Termination Date may be based on a Default under this Agreement which has been waived by the Required Lenders in accordance with Section 11.01 of this Agreement; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for forty-five (45) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for forty-five (45) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within forty-five (45) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance reasonably acceptable to Administrative Agent has been notified of the potential claim and does not dispute coverage), or (iii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, and (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of ten (10) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any

provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

- (k) Change of Control. There occurs any Change of Control; or

Without limiting the provisions of Article IX, if a Default shall have occurred under the Loan Documents, then such Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Loan Documents or is otherwise expressly waived by Administrative Agent (with the approval of requisite Appropriate Lenders (in their sole discretion)) as determined in accordance with Section 11.01; and once an Event of Default occurs under the Loan Documents, then such Event of Default will continue to exist until it is cured to the extent expressly permitted hereunder or expressly waived by the requisite Appropriate Lenders or by the Administrative Agent with the approval of the requisite Appropriate Lenders, as required hereunder in Section 11.01.

#### **8.02 Remedies upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

- (a) declare the Commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and
- (c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law or equity;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

#### **8.03 Application of Funds.**

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable or if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all Secured Obligations then due hereunder, any amounts received on account of the Secured Obligations shall, subject to the provisions of Sections 2.13 and 2.14 be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders arising under the Loan Documents and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid interest on the Loans and other Secured Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans and Secured Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received a Secured Party Designation Notice, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX for itself and its Affiliates as if a “Lender” party hereto.

## ARTICLE IX

### ADMINISTRATIVE AGENT

#### 9.01 Appointment and Authority.

(a) Appointment. Each of the Lenders hereby irrevocably appoints, designates and authorizes Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

In the exercise of its administrative duties, the Administrative Agent shall use the same diligence and standard of care that is customarily used by the Administrative Agent with respect to similar loans held by the Administrative Agent solely for its own account, which standard of care shall be at least that of a prudent lender acting as agent for other lenders.

(b) Collateral Agent. The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article

XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

## **9.02 Rights as a Lender.**

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

## **9.03 Exculpatory Provisions.**

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent and its Related Parties:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its commercially reasonable opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may have an effect of a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary), or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. Any such action taken or failure to act pursuant to the foregoing shall be binding on all Lenders. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower or a Lender.

Neither the Administrative Agent nor any of its Related Parties have any duty or obligation to any Lender or participant or any other Person to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance

of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent provided that Administrative Agent receive or obtain such UCC searches, title policies and other insurance or confirmation as are commercially reasonable to obtain as to such validity, priority or perfection, and such appraisals as are necessary to establish the value or sufficiency of Collateral.

#### **9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) reasonably believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and reasonably believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections.

#### **9.05 Delegation of Duties.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent with the approval of the Required Lenders, which shall not be unreasonably withheld. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Facilities as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

#### **9.06 Resignation of Administrative Agent.**

(a) Notice. The Administrative Agent may at any time resign as Administrative Agent upon thirty (30) days' notice to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment prior to the effective date of the resignation of the Administrative Agent gives (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective.

(b) **Defaulting Lender.** If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable Law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) **Effect of Resignation or Removal.** With effect from the Resignation Effective Date (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

#### **9.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has reasonably deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

#### **9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, the Arranger or a Lender hereunder.

#### **9.09 Administrative Agent May File Proofs of Claim; Credit Bidding.**

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative

Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.03(h) and (i) and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

The Loan Parties and the Secured Parties hereby irrevocably authorize the Administrative Agent, based upon the instruction of the Required Lenders, to (a) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Section 363 of the Bankruptcy Code or any similar Laws in any other jurisdictions to which a Loan Party is subject, or (b) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. In connection with any such credit bid and purchase, the Secured Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Secured Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of the Administrative Agent to credit bid and purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Secured Parties whose Secured Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Secured Obligations credit bid in relation to the aggregate amount of Secured Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase). Except as provided above and otherwise expressly provided for herein or in the other Collateral Documents, the Administrative Agent will not execute and deliver a release of any Lien on any Collateral. Upon request by the Administrative Agent or the Borrower at any time, the Secured Parties will confirm in writing the Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 9.09.

#### **9.10 Collateral and Guaranty Matters**

Each of the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon the Facility Termination Date, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 11.01;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i); and

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

#### **9.11 Secured Cash Management Agreements and Secured Hedge Agreements.**

Except as otherwise expressly set forth herein, no Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 8.03, the Guaranty or any Collateral by virtue of the provisions hereof or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements except to the extent expressly provided herein and unless the Administrative Agent has received a Secured Party Designation Notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. The Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements in the case of a Facility Termination Date.

## ARTICLE X

### CONTINUING GUARANTY

#### 10.01 Guaranty.

(a) Each ECP Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Secured Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrower to the Secured Parties, arising hereunder or under any other Loan Document, any Secured Cash Management Agreement or any Secured Hedge Agreement (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, reasonable attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof); provided, however, that if at any time any Non-ECP Guarantor shall become an ECP Guarantor, such ECP Guarantor's guarantee contained in this Section 10.01 shall be deemed to be amended to include liability for any obligations of any Loan Party arising under any Secured Hedge Agreement with a Hedge Bank or in connection with any other Swap Contract, such amendment to be effective as at the time that such Non-ECP Guarantor has become an ECP Guarantor.

(b) Each Non-ECP Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Secured Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrower to the Secured Parties, arising hereunder or under any other Loan Document, or any Secured Cash Management Agreement (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, reasonable attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof); provided, however, that, notwithstanding anything contained herein or other Loan Documents to the contrary, in no event will a Non-ECP Guarantor be liable for any obligations of any Loan Party arising under any Secured Hedge Agreement with a Hedge Bank or in connection with any other Swap Contract; provided, further, that if at any time any ECP Guarantor shall become a Non-ECP Guarantor, such Non-ECP Guarantor's guarantee contained in this Section 10.01 shall be deemed to be amended to exclude liability for any obligations of any Loan Party arising under any Secured Hedge Agreement with a Hedge Bank or in connection with any other Swap Contract, such amendment to be effective as at the time that such ECP Guarantor has become a Non-ECP Guarantor.

(c) Each ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor to honor all of such Guarantor's obligations under this Section 10.01 in respect of any obligations of any Loan Party arising under any Secured Hedge Agreement with a Hedge Bank or in connection with any other Swap Contract, or any other Swap Obligation. Each ECP Guarantor intends that this Section 10.01(c) constitutes, and this Section 10.01(c) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Guarantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

(d) Notwithstanding anything in Sections 10.01(a), (b) and (c), the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provisions of any applicable state law. The Administrative Agent's books and records showing the amount of the Secured Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Secured Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Secured Obligations or any instrument or agreement evidencing any Secured

Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Secured Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

**10.02 Rights of Lenders.**

Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Secured Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Secured Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Secured Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

**10.03 Certain Waivers.**

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrower, proceed against or exhaust any security for the Secured Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Secured Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Secured Obligations.

**10.04 Obligations Independent.**

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Secured Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

**10.05 Subrogation.**

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Secured Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Facilities are terminated. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Secured Obligations, whether matured or unmatured.

**10.06 Termination; Reinstatement.**

This Guaranty is a continuing and irrevocable guaranty of all Secured Obligations now or hereafter existing. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or a Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Secured Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

**10.07 Stay of Acceleration.**

If acceleration of the time for payment of any of the Secured Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

**10.08 Condition of Borrower.**

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as such Guarantor requires, and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

**10.09 Appointment of Borrower.**

Each of the Guarantors hereby appoints the Borrower to act as its agent for all purposes of this Agreement and the other Loan Documents and agrees that (a) the Borrower may execute such documents on behalf of such Guarantor as the Borrower deems appropriate in its sole discretion and each Guarantor shall be obligated by all of the terms of any such document executed on its behalf, (b) any notice or communication delivered by the Administrative Agent or the Lender to the Borrower shall be deemed delivered to each Guarantor and (c) the Administrative Agent or the Lenders may accept, and be permitted to rely on, any document, instrument or agreement executed by the Borrower on behalf of each Guarantor.

**10.10 Right of Contribution.**

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable Law.

## ARTICLE XI

### MISCELLANEOUS

#### 11.01 Amendments, Etc.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01, or, in the case of the initial Credit Extension, Section 4.02, without the written consent of each Non-Defaulting Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or any mandatory prepayment or mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Non-Defaulting Lender entitled to such payment; it being understood that a waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date fixed for payment of principal, interest, fees or other amounts;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Non-Defaulting Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(e) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Non-Defaulting Lender;

(f) change any provision of this Section 11.01 or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or thereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

(g) release any material portion of the Collateral in any transaction or series of related transactions, without the written consent of each Non-Defaulting Lender;

(h) other than in a transaction permitted under Sections 7.04 and 7.05 release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone); or

(i) other than in a transaction permitted under Sections 7.04 and 7.05 release the Borrower or permit the borrower to assign or transfer any of its rights or obligations under this Agreement or the other Loan Documents without the consent of each Lender; or

(j) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of the Required Facility Lenders under such Facility;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, (A) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender under a Facility, may be effected with the consent of the applicable Lenders other than Defaulting Lenders, except that (1) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender, or all Lenders or each affected Lender under a Facility, that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (B) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (C) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

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

#### **11.02 Notices; Effectiveness; Electronic Communications.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or other electronic mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party, the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 1.01(a); and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by (fax transmission or other electronic mail transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including electronic mail address and Internet

or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

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

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials through the Internet.

(d) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, facsimile number or telephone number or electronic mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile number or telephone number or electronic mail address for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by

or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**11.03 No Waiver; Cumulative Remedies; Enforcement.**

No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**11.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Administrative Agent or the Lenders (including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent, but excluding counsel for any Lender other than, in the event of a conflict of interest, one additional counsel to each group of affected Lenders), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), and shall indemnify and hold harmless each Indemnatee from all reasonable fees and time charges and disbursements for attorneys who may be employees of any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by

the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto IN ALL CASES, EXCEPT AS SET FORTH IN THE FOLLOWING PROVISION, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.11(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages), even if advised of the possibility thereof, arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

#### **11.05 Payments Set Aside.**

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **11.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Required Lenders and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may with the prior written consent of the Required Lenders which shall not be unreasonably withheld assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment(s) and the Loans at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall

not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Facility, or \$5,000,000, in the case of any assignment in respect of the Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement and the other Loan Documents with respect to the Loans and/or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Facilities; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any unfunded Term Commitment or any Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph,

then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participations.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under paragraph (b) of this Section and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant

acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note or Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

#### **11.07 Treatment of Certain Information; Confidentiality.**

(a) Treatment of Certain Information. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iii) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (B) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (viii) with the consent of the Borrower or to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent and any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if

such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) Non-Public Information. Each of the Administrative Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws.

(c) Press Releases. The Loan Parties and their Affiliates agree that they will not in the future issue any press releases or other public disclosure using the name of the Administrative Agent or any Lender or their respective Affiliates or referring to this Agreement or any of the Loan Documents without the prior written consent of the Administrative Agent, unless (and only to the extent that) the Loan Parties or such Affiliate is required to do so under law and then, in any event the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.

(d) Customary Advertising Material. The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties.

#### **11.08 Right of Setoff.**

If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or their respective Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.14 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

#### **11.09 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude

voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### **11.10 Counterparts; Integration; Effectiveness.**

This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document, or any certificate delivered thereunder, by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or electronic mail transmission shall be promptly followed by such manually executed counterpart.

#### **11.11 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid.

#### **11.12 Severability.**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### **11.13 Replacement of Lenders.**

If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### **11.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING

OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**11.15 Waiver of Jury Trial.**

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**11.16 Subordination.**

Each Loan Party (a "Subordinating Loan Party") hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Secured Parties or resulting from such Subordinating Loan Party's performance under the Guaranty set forth herein, to the indefeasible payment in full in cash of all Obligations. If the Secured Parties so request, after the occurrence and during the continuation of any Event of Default, any such obligation or indebtedness of any such other Loan Party to the Subordinating Loan Party shall be enforced and performance received by the Subordinating Loan Party as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Secured Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Default has occurred and is continuing, the Loan Parties may make and receive payments with respect to Intercompany Debt; provided, that in the event that any Loan Party receives any payment of any Intercompany Debt at a time when such payment is prohibited by this Section, such payment shall be held by such Loan Party, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to the Administrative Agent.

**11.17 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, the Arranger and the Lenders are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and, as applicable, its Affiliates (including the Arranger) and the Lenders and their Affiliates (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (ii) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors

to the extent it has deemed appropriate, and (iii) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Administrative Agent and its Affiliates (including the Arranger) and each Lender each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (ii) neither the Administrative Agent, any of its Affiliates (including the Arranger) nor any Lender has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent and its Affiliates (including the Arranger) and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, any of its Affiliates (including the Arranger) nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, any of its Affiliates (including the Arranger) or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

#### **11.18 Electronic Execution of Assignments and Certain Other Documents.**

The words “execute,” “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

#### **11.19 USA PATRIOT Act Notice.**

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrower and the Loan Parties agree to, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

#### **11.20 ENTIRE AGREEMENT.**

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[Signature Page to Credit Agreement]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BORROWER:**

KVH INDUSTRIES, INC.

By: /s/ Peter Rendall

Name: Peter Rendall

Title: Chief Financial Officer

**GUARANTOR:**

BANK OF AMERICA, N.A., as Administrative Agent

By: /s/ Brenda Schriener

Name: Brenda Schriener

Title: Vice President

BANK OF AMERICA, N.A., as a Lender

By: /s/ Donald C. McQueen

Name: Donald C. McQueen

Title: Senior Vice President

**LENDERS:**

THE WASHINGTON TRUST COMPANY, as a Lender

By: /s/ Scott A. McCaughey

Name: Scott A. McCaughey

Title: Vice President

**REVOLVING CREDIT NOTE**

\$10,312,500

July 1, 2014

FOR VALUE RECEIVED, the undersigned KVH INDUSTRIES, INC., a Delaware corporation (the "Borrower"), hereby promises to pay to BANK OF AMERICA, N.A. or its assigns (the "Lender"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Revolving Loan from time to time made by the Lender to the Borrower under that certain Credit Agreement dated as of the date hereof (as may be further amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among the Borrower, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Revolving Loan from the date of such Revolving Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in accordance with the Credit Agreement in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. Revolving Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Revolving Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF RHODE ISLAND.

**KVH INDUSTRIES, INC.**

By: /s/ Peter Rendall  
Name: Peter Rendall  
Title: Chief Financial Officer

## REVOLVING CREDIT NOTE

\$4,687,500

July 1, 2014

FOR VALUE RECEIVED, the undersigned KVH INDUSTRIES, INC., a Delaware corporation (the "Borrower"), hereby promises to pay to THE WASHINGTON TRUST COMPANY or its assigns (the "Lender"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Revolving Loan from time to time made by the Lender to the Borrower under that certain Credit Agreement dated as of the date hereof (as may be further amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among the Borrower, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Revolving Loan from the date of such Revolving Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in accordance with the Credit Agreement in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. Revolving Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Revolving Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF RHODE ISLAND.

**KVH INDUSTRIES, INC.**

By: /s/ Peter Rendall  
Name: Peter Rendall  
Title: Chief Financial Officer

**TERM NOTE**

\$44,687,500

July 1, 2014

FOR VALUE RECEIVED, the undersigned KVH INDUSTRIES, INC., a Delaware corporation (the "Borrower"), hereby promises to pay to BANK OF AMERICA, N.A. or its assigns (the "Lender"), the principal amount of Forty-Four Million Six Hundred Eighty-Seven Thousand Five Hundred and 00/100 Dollars (\$44,687,500.00), in accordance with the provisions of that certain Credit Agreement dated as of the date hereof (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement," the terms defined therein being used herein as therein defined), among the Borrower, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount hereof, from the date hereof until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. The Loan made by the Lender shall be evidenced by a loan account or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of the Loan and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF RHODE ISLAND.

**KVH INDUSTRIES, INC.**

By: /s/ Peter Rendall  
Name: Peter Rendall  
Title: Chief Financial Officer

**TERM NOTE**

\$20,312,500

July 1, 2014

FOR VALUE RECEIVED, the undersigned KVH INDUSTRIES, INC., a Delaware corporation (the "Borrower"), hereby promises to pay to THE WASHINGTON TRUST COMPANY or its assigns (the "Lender"), the principal amount of Twenty Million Three Hundred Twelve Thousand Five Hundred and 00/100 Dollars (\$20,312,500.00), in accordance with the provisions of that certain Credit Agreement dated as of the date hereof (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among the Borrower, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount hereof, from the date hereof until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. The Loan made by the Lender shall be evidenced by a loan account or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of the Loan and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note. THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF RHODE ISLAND.

**KVH INDUSTRIES, INC.**

By: /s/ Peter Rendall  
Name: Peter Rendall  
Title: Chief Financial Officer

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") dated as of July 1, 2014 by KVH INDUSTRIES, INC., a Delaware corporation ("Borrower" or "Pledgor"), is executed in favor of BANK OF AMERICA, N.A., a national banking association organized under the laws of the United States having an office at 100 Westminster Street, Providence, Rhode Island 02903, its successors and assigns, in its capacity as Administrative Agent ("Secured Party" or "Agent") for itself and as a lender and the other lenders from time to time party to the Credit Agreement, as defined below (collectively, together with their respective successors and assigns, "Lenders"). Capitalized terms used but not expressly defined herein shall have the meanings assigned thereto in the Credit Agreement, as defined below.

### R E C I T A L S

WHEREAS, Borrower, Secured Party and the Lenders are entering into a Credit Agreement of even date, as may be amended, restated, supplemented or otherwise modified from time to time, is referred to herein as the "Credit Agreement";

WHEREAS, it is a condition precedent to Secured Party's and Lenders' obligations to extend credit that the Pledgor execute and deliver this Agreement; and

NOW, THEREFORE, in order to induce the Lenders to extend credit to Borrower and in consideration of the foregoing premises and for other value received, the receipt and adequacy of which are hereby acknowledged, the Pledgor hereby agrees as follows:

1. THE SECURITY. The Pledgor hereby assigns and grants to Secured Party, for the ratable benefit of the Lenders, a security interest in the following described property now owned or hereafter acquired by the Pledgor ("Collateral");

(a) All accounts, contract rights, chattel paper, instruments, deposit accounts, letter of credit rights, payment intangibles and general intangibles, including all amounts due to the Pledgor from a factor; rights to payment of money from the Secured Party under any Swap Contract to the extent permitted under any such Swap Contract; and all returned or repossessed goods which, on sale or lease, resulted in an account or chattel paper.

(b) All inventory, including all materials, work in process and finished goods.

(c) All machinery, furniture, fixtures and other equipment of every type now owned or hereafter acquired by the Pledgor, (including, but not limited to, the equipment described in the attached Equipment Description, if any).

(d) All of the Pledgor's deposit accounts with the Secured Party. The Collateral shall include any renewals or rollovers of the deposit accounts, any successor accounts, and any general intangibles and choses in action arising therefrom or related thereto.

(e) All instruments, notes, chattel paper, documents, certificates of deposit, securities and investment property of every type other than equity interests held by Pledgor in any Subsidiary of Pledgor, including without limitation all securities accounts maintained by Pledgor, together with all financial assets, investment property, securities, cash and other property now or hereafter held therein, and the proceeds thereof, including without limitation dividends payable in cash or stock and shares or other proceeds of conversions or splits of any securities in such accounts. The Collateral shall include all liens, security agreements, leases and other contracts securing or otherwise relating to the foregoing;

(f) All general intangibles, including, but not limited to, (i) all patents, and all unpatented or unpatentable inventions; (ii) all trademarks, service marks, and trade names; (iii) all copyrights and literary rights; (iv) all computer software programs; (v) all mask works of semiconductor chip products; (vi) all trade secrets, proprietary information, customer lists, manufacturing, engineering and production plans, drawings, specifications, processes and systems. The Collateral shall include all good will connected with or symbolized by any of such general intangibles; all contract rights, documents, applications, licenses, materials and other matters related to such general intangibles; all tangible property embodying or incorporating any such general intangibles; and all chattel paper and instruments relating to such general intangibles.

(g) All negotiable and nonnegotiable documents of title covering any Collateral.

(h) All accessions, attachments and other additions to the Collateral, and all tools, parts and equipment used in connection with the Collateral.

(i) All substitutes or replacements for any Collateral, all cash or non-cash proceeds, product, rents and profits of any Collateral, all income, benefits and property receivable on account of the Collateral, all rights under warranties and insurance contracts, letters of credit, guaranties or other supporting obligations covering the Collateral, and any causes of action relating to the Collateral.

(j) All books and records pertaining to any Collateral, including but not limited to any computer-readable memory and any computer hardware or software necessary to process such memory ("Books and Records").

2. THE OBLIGATIONS. The Collateral secures and will secure all Obligations, including without limitation all debts, obligations or liabilities now or hereafter existing, absolute or contingent of the Pledgor or any one or more of them to the Secured Party or any Lender, whether voluntary or involuntary, whether due or not due, or whether incurred directly or indirectly or acquired by the Secured Party or any Lender by assignment or otherwise. Obligations shall include, without limitation, all obligations of any Pledgor arising under any Swap Contract. Each party primarily or secondarily obligated under any of the Obligations is referred to in this Agreement as a "Debtor."

3. PLEDGOR'S COVENANTS. The Pledgor represents, covenants and warrants that unless compliance is waived by the Secured Party in writing:

(a) The Pledgor will properly preserve the Collateral; defend the Collateral against any adverse claims and demands; and keep accurate Books and Records.

(b) The Pledgor's chief executive office is located, in the state specified on the signature page hereof. In addition, the Pledgor is incorporated in or organized under the laws of the state specified on such signature page.

(c) Unless otherwise agreed, the Pledgor has not granted and will not grant any security interest in any of the Collateral except to the Secured Party, and will keep the Collateral free of all liens, claims, security interests and encumbrances of any kind or nature except, in each case, for Permitted Liens.

(d) The Pledgor shall pay all costs necessary to preserve, defend, enforce and collect the Collateral, including but not limited to taxes, assessments, insurance premiums, repairs, rent, storage costs and expenses of sales, and any costs to perfect the Secured Party's security interest (collectively, the "Collateral Costs"). Without waiving the Pledgor's default for failure to make any such payment, the Secured Party at its option may pay any such Collateral Costs, and discharge encumbrances on the Collateral. The Pledgor agrees to reimburse the Secured Party on demand for any Collateral Costs so incurred.

(e) Until the Secured Party exercises its rights to make collection, the Pledgor will diligently collect all Collateral in accordance with its reasonable business judgment or as otherwise requested by the Secured Party.

(f) If any Collateral is or becomes the subject of any registration certificate, certificate of deposit or negotiable document of title, including any warehouse receipt or bill of lading, the Pledgor shall immediately deliver such documents as the Secured Party may reasonably request.

(g) The Pledgor will not sell, lease, agree to sell or lease, or otherwise dispose of any Collateral except as set forth in the Credit Agreement.

(h) Exhibit A to this Agreement is a complete list of all U.S. patents, trademark and service mark registrations, and all applications therefore, in which the Pledgor has any right, title, or interest, throughout the world. To the extent required by the Secured Party in its discretion, the Pledgor will promptly notify the Secured Party of any acquisition (by adoption and use, purchase, license or otherwise) of any material U.S. patent, trademark or service mark registrations, and applications therefore, and unregistered trademarks and service marks, throughout the world, which are granted or filed or acquired after the date hereof or which are not listed on Exhibit A. The Pledgor authorizes the Secured Party, without notice to the Pledgor, to modify this Agreement by amending the Exhibit to include any such Collateral.

(i) The Pledgor will, at its expense, preserve or renew all of its material registered patents, copyrights, trademarks, trade names and service marks. The Pledgor also will promptly make application on any material patentable but unpatented inventions, material registerable but unregistered trademarks and service marks, and material copyrightable but uncopyrighted works except as shall be consistent with the Pledgor's reasonable business judgment or as otherwise requested by the Secured Party. The Pledgor will at its expense protect and defend all rights in the Collateral against any material claims and demands of all persons other than the Secured Party and will, at its expense, enforce all rights in the Collateral against any and all infringers of the Collateral where such infringement would materially impair the value or use of the Collateral to the Pledgor or the Secured Party. The Pledgor will not license or transfer any of the Collateral, except as permitted under the Credit Agreement or with the Secured Party's prior written consent.

4. ADDITIONAL OPTIONAL REQUIREMENTS. The Pledgor agrees that the Secured Party may at its option at any time:

(a) Require the Pledgor to deliver to the Secured Party (i) copies of or extracts from the Books and Records, and (ii) information on any contracts or other matters affecting the Collateral, consistent with the provisions of the Credit Agreement.

(b) Examine the Collateral, including the Books and Records, and make copies of or extracts from the Books and Records, and for such purposes enter at any reasonable time upon the property where any Collateral or any Books and Records are located, in each instance, consistent with the provisions of the Credit Agreement.

(c) To the extent reasonably requested, require the Pledgor to deliver to the Secured Party any instruments or chattel paper which are part of the Collateral to the extent any such instrument or chattel paper is in excess of \$250,000, and to assign to the Secured Party the proceeds of any such letters of credit to the extent that such letter of credit is in excess of \$250,000.

(d) Following and during the continuation of an Event of Default, upon the request of Secured Party, notify any account debtors, any buyers of the Collateral, or any other persons of the Secured Party's interest in the Collateral.

5. SECURED PARTY'S REMEDIES AFTER DEFAULT. An "Event of Default" hereunder shall mean either (i) an Event of Default (as defined in the Credit Agreement) or (ii) the Secured Party fails to have an enforceable first lien (except for any liens (x) to which the Secured Party has consented in writing, (y) constituting Permitted Liens, or (z) whose existence does not result in an Event of Default under the Credit Agreement), to the extent that such lien can be perfected by the filing of financing statements under the Uniform Commercial Code or is a lien in which Secured Party is otherwise previously perfected, on or security interest in the Collateral and such failure is not cured or remedied within ten (10) days after the Pledgor receives written notice thereof. Following any Event of Default that is continuing, the Secured Party may do any one or more of the following:

- (a) Declare any Obligations immediately due and payable, without notice or demand.
- (b) Enforce the security interest given hereunder pursuant to the Uniform Commercial Code and any other applicable law.
- (c) Enforce the security interest of the Secured Party in any deposit account of the Pledgor maintained with the Secured Party by applying such account to the Obligations.
- (d) Require the Pledgor to obtain the Secured Party's prior written consent to any sale, lease, agreement to sell or lease, or other disposition of any Collateral consisting of inventory.
- (e) Require the Pledgor to segregate all collections and proceeds of the Collateral so that they are capable of identification and deliver daily such collections and proceeds to the Secured Party in kind.
- (f) Require the Pledgor to direct all account debtors to forward all payments and proceeds of the Collateral to a post office box under the Secured Party's exclusive control.
- (g) Require the Pledgor to assemble the Collateral, including the Books and Records, and make them available to the Secured Party at a place designated by the Secured Party.
- (h) Enter upon the property where any Collateral, including any Books and Records, are located and take possession of such Collateral and such Books and Records, and use such property (including any buildings and facilities) and any of the Pledgor's equipment, if the Secured Party deems such use necessary or advisable in order to take possession of, hold, preserve, process, assemble, prepare for sale or lease, market for sale or lease, sell or lease, or otherwise dispose of, any Collateral.
- (i) Demand and collect any payments on and proceeds of the Collateral. In connection therewith the Pledgor irrevocably authorizes the Secured Party to endorse or sign the Pledgor's name on all checks, drafts, collections, receipts and other documents, and to take possession of and open the mail addressed to the Pledgor and remove therefrom any payments and proceeds of the Collateral.
- (j) Grant extensions and compromise or settle claims with respect to the Collateral for less than face value, all without prior notice to the Pledgor.
- (k) Use or transfer any of the Pledgor's rights and interests in any Intellectual Property now owned or hereafter acquired by the Pledgor, if the Secured Party deems such use or transfer necessary or advisable in order to take possession of, hold, preserve, process, assemble, prepare for sale or lease, market for sale or lease, sell or lease, or otherwise dispose of, any Collateral. The Pledgor agrees that any such use or transfer shall be without any additional consideration to the Pledgor. As used in this paragraph, "Intellectual Property" includes, but is not limited to, all trade secrets, computer software, service marks, trademarks, trade names, trade styles, copyrights, patents, applications for any of the foregoing, customer lists, working drawings, instructional manuals, and rights in processes for technical manufacturing, packaging and labeling, in which the Pledgor has any right or interest, whether by ownership, license, contract or otherwise.

(l) Have a receiver appointed by any court of competent jurisdiction to take possession of the Collateral. The Pledgor hereby consents to the appointment of such a receiver and agrees not to oppose any such appointment.

(m) Take such measures as the Secured Party may deem necessary or advisable to take possession of, hold, preserve, process, assemble, insure, prepare for sale or lease, market for sale or lease, sell or lease, or otherwise dispose of, any Collateral, and the Pledgor hereby irrevocably constitutes and appoints the Secured Party as the Pledgor's attorney-in-fact to perform all acts and execute all documents in connection therewith.

(n) Without notice or demand to the Pledgor, set off and apply against any and all of the Obligations any and all deposits (general or special, time or demand, provisional or final) and any other indebtedness, at any time held or owing by the Secured Party or any of the Secured Party's agents or affiliates to or for the credit of the account of the Pledgor or any guarantor or endorser of the Pledgor's Obligations.

(o) Exercise any other remedies available to the Secured Party at law or in equity.

6. PLEDGOR NOT A DEBTOR. If any Pledgor is not a Debtor under some or all of the Obligations:

(a) The Pledgor authorizes the Secured Party, from time to time, without affecting the Pledgor's obligations under this Agreement, to enter into an agreement with the Debtor to change the interest rate on or renew the Obligations; accelerate, extend, compromise, or otherwise change the repayment terms or any other terms of the Obligations; receive and hold, exchange, enforce, waive, fail to perfect, substitute, or release Collateral, including collateral not originally covered by this Agreement; sell or apply any Collateral in any order; or release or substitute any borrower, guarantor or endorser of the Obligations, or other person.

(b) The Pledgor waives any defense by reason of any Debtor's or any other person's defense, disability, or release from liability. The Secured Party can exercise its rights against the Collateral even if any Debtor or any other person no longer is liable on the Obligations because of a statute of limitations or for other reasons.

(c) The Pledgor agrees that it is solely responsible for keeping itself informed as to the financial condition of the Debtors and of all circumstances which bear upon the risk of nonpayment. The Pledgor waives any right it may have to require the Secured Party to disclose to the Pledgor any information which the Secured Party may now or hereafter acquire concerning the financial condition of the Debtor

(d) The Pledgor waives all rights to notices of default or nonperformance by the Debtor. The Pledgor further waives all rights to notices of the existence or the creation of new indebtedness by Debtor and all rights to any other notices to any party liable on any of the Obligations.

(e) The Pledgor represents and warrants to the Secured Party that it will derive benefit, directly and indirectly, from the collective administration and availability of credit under the Obligations. The Pledgor agrees that the Secured Party will not be required to inquire as to the disposition by Debtor of funds disbursed by the Secured Party.

(f) Until all obligations to the Secured Party under the Obligations have been paid in full and any commitments of the Secured Party or facilities provided by the Secured Party with respect to the Obligations have been terminated, the Pledgor waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including without limitation, any claim or right of subrogation under the Bankruptcy Code (Title 11, United States Code) or any successor statute, which the Pledgor may now or hereafter have against any Debtor with respect to the Obligations. The Pledgor waives any right to enforce any remedy which the Secured Party now has or may hereafter have against Debtor, and waives any benefit of, and any right to participate in, any security now or hereafter held by the Secured Party.

(g) The Pledgor waives any right to require the Secured Party to proceed against any Debtor or any other person; proceed against or exhaust any security; or pursue any other remedy. Further, the Pledgor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Pledgor under this Agreement or which, but for this provision, might operate as a discharge of the Pledgor.

(h) In the event any amount paid to the Secured Party on any Obligations or any interest in property transferred to the Secured Party as payment on any Obligations is subsequently recovered from the Secured Party in or as a result of any bankruptcy, insolvency or fraudulent conveyance proceeding, the Pledgor shall be liable to the Secured Party for the amounts so recovered up to the fair market value of the Collateral whether or not the Collateral has been released or the security interest terminated. In the event the Collateral has been released or the security interest terminated, the fair market value of the Collateral shall be determined, at the Secured Party's option, as of the date the Collateral was released, the security interest terminated, or said amounts were recovered.

7. Waiver of Jury Trial. THE PARTIES TO THIS AGREEMENT waive trial by jury in any action or proceeding to which THEY may be parties, arising out of, in connection with or in any way pertaining to, this AGREEMENT. It is agreed and understood that this waiver constitutes a waiver of trial by jury of all claims against all parties to such action or proceedings, including claims against parties who are not parties to this AGREEMENT. This waiver is knowingly, willingly and voluntarily made.

8. MISCELLANEOUS.

(a) Any waiver, express or implied, of any provision hereunder and any delay or failure by the Secured Party to enforce any provision shall not preclude the Secured Party from enforcing any such provision thereafter.

(b) The Pledgor shall, at the request of the Secured Party, execute such other agreements, documents, instruments, or financing statements in connection with this Agreement as the Secured Party may reasonably deem necessary.

(c) All notes, security agreements, subordination agreements and other documents executed by the Pledgor or furnished to the Secured Party in connection with this Agreement must be in form and substance reasonably satisfactory to the Secured Party.

(d) This Agreement shall be governed by and construed according to the laws of the State of Rhode Island, to the jurisdiction of which the parties hereto submit.

(e) All rights and remedies herein provided are cumulative and not exclusive of any rights or remedies otherwise provided by law. Any single or partial exercise of any right or remedy shall not preclude the further exercise thereof or the exercise of any other right or remedy.

(f) All terms not defined herein are used as set forth in the Uniform Commercial Code.

(g) After and during the continuation of an Event of Default, in the event of any action by the Secured Party to enforce this Agreement, or to protect the security interest of the Secured Party in the Collateral, or to take possession of, hold, preserve, process, assemble, insure, prepare for sale or lease, market for sale or lease, sell or lease, or otherwise dispose of, any Collateral, the Pledgor agrees to pay immediately the costs and expenses thereof, together with reasonable attorney's fees and allocated costs for in-house legal services to the extent permitted by law.

(h) In the event the Secured Party seeks to take possession of any or all of the Collateral by judicial process, the Pledgor hereby irrevocably waives any bonds and any surety or security relating thereto that may be required by applicable law as an incident to such possession, and waives any demand for possession prior to the commencement of any such suit or action.

(i) This Agreement shall constitute a continuing agreement, applying to all existing and future transactions entered into in connection with the Obligations, whether or not of the character contemplated at the date of this Agreement, and if all such transactions between the Secured Party and the Pledgor shall be closed at any time, shall be equally applicable to any new transactions entered into in connection with the Obligations thereafter.

(j) The Secured Party's rights hereunder shall inure to the benefit of its successors and assigns. In the event of any assignment or transfer by the Secured Party of any of the Obligations or the Collateral, the Secured Party thereafter shall be fully discharged from any responsibility with respect to the Collateral so assigned or transferred, but the Secured Party shall retain all rights and powers hereby given with respect to any of the Obligations or the Collateral not so assigned or transferred. All representations, warranties and agreements of the Pledgor if more than one are joint and several and all shall be binding upon the personal representatives, heirs, successors and assigns of the Pledgor.

(k) Upon a Disposition of any Collateral permitted pursuant to the Credit Agreement, unless an Event of Default shall have occurred and be continuing, Secured Party shall, upon the request of the Pledgor, release such Collateral from the Lien imposed by this Agreement.

(l) All notices hereunder shall be given in the manner set forth in the Credit Agreement.

9. Final Agreement. BY SIGNING THIS DOCUMENT EACH PARTY REPRESENTS AND AGREES THAT: (A) THIS DOCUMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF; (B) THIS DOCUMENT SUPERSEDES ANY COMMITMENT LETTER, TERM SHEET, OR OTHER WRITTEN OUTLINE OF TERMS AND CONDITIONS RELATING TO THE SUBJECT MATTER HEREOF; (C) THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES; AND (D) THIS DOCUMENT MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.

[Signature Page to Security Agreement]

WITNESS:

KVH Industries, Inc., a Delaware corporation

By: /s/ Felise Feingold

*Print Name*

By: /s/ Peter Rendall

Name: Peter Rendall

Title: Chief Financial Officer

*Execution Copy*

KVH INDUSTRIES, INC.

## PLEDGE AGREEMENT

This PLEDGE AGREEMENT (this “Agreement”) is made as of this 1<sup>st</sup> day of July, 2014 by and between KVH INDUSTRIES, INC., a Delaware corporation having a principal place of business at 50 Enterprise Center, Middletown, Rhode Island 02842-5279 (the “Pledgor”) and BANK OF AMERICA, N.A., a national bank having a place of business at 100 Westminster Street, Providence, Rhode Island 02903-2394, as Administrative Agent (the “Agent”).

RECITALS

**WHEREAS**, the Pledgor, the Agent and the Lenders from time to time party thereto have entered into a Credit Agreement dated as of the date hereof (as the same may thereafter be amended, modified, supplemented and restated from time to time, the “Credit Agreement”);

**WHEREAS**, as security under the Credit Agreement, the Pledgor has agreed to deliver this Agreement, it being the intention of the Pledgor that the security interests granted pursuant to this Agreement shall constitute valid security interests securing all obligations of the Pledgor under the Credit Agreement and the other Loan Documents;

**WHEREAS**, as security for the obligations of the Pledgor to the Agent and the Lenders under the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement), the Pledgor is pledging to the Agent sixty-five percent (65%) of the ordinary shares of KVH Industries A/S, a company incorporated in Denmark with its registered address at Kokkedal Industripark 2B, Kokkedal, Denmark (“Issuer”), (all such stock and ownership interests, collectively, the “Pledged Equity Interests”);

**NOW, THEREFORE**, in consideration of the foregoing premises and value received, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions. All capitalized terms used herein without definition shall have the respective meanings provided therefor in the Credit Agreement. Terms used herein and not defined in the Credit Agreement or otherwise defined herein that are defined in the UCC (as defined below) have such defined meanings herein, unless the context otherwise indicates or requires, and the following terms shall have the following meanings:

Cash Collateral. See Section 3.

Cash Collateral Account. See Section 3

Pledged Collateral. The Pledged Equity Interests and any other property at any time pledged to the Agent hereunder (whether described herein or not) and all income therefrom, increases therein and proceeds thereof, including without limitation that included in Cash Collateral, but excluding any income, increases or proceeds received by the Pledgor to the extent expressly permitted by Section 5.

Pledged Equity Interests. See Recitals.

Secured Obligations. All of the obligations of the Pledgor to the Agent and the Lenders under this Agreement, the Credit Agreement, the Notes, and the other loan documents, including without limitation, any interest which accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of any obligor, or which would accrue but for the

commencement of such case, proceeding or other action, whether or not allowed or allowable as a claim in any such proceeding.

UCC. The Uniform Commercial Code of the State of Rhode Island, as amended and in effect from time to time.

## SECTION 2. The Pledge.

(a) In order to secure the full and punctual payment and performance of the Secured Obligations in accordance with the terms thereof, the Pledgor hereby pledges, assigns, grants a security interest in, and delivers to the Agent, for the benefit of the Lenders, all of the Pledgor's right, title and interest in and to the Pledged Collateral, and all of the Pledgor's rights, entitlements and privileges with respect to the Pledged Collateral. Contemporaneously with the execution and delivery hereof, the Pledgor is delivering executed, undated stock powers for each of the Pledged Equity Interests evidenced by certificates as noted on Annex A hereto.

(b) In the event that the issuer of Pledged Collateral at any time issues any additional or substitute shares of capital stock of any class, or any other additional or substitute ownership interests, the Pledgor will immediately deliver to the Agent certificates representing all such shares as additional security for the Secured Obligations, provided that at no time shall greater than sixty-five percent (65%) of the Pledgor's ownership interest in Issuer be pledged to Agent, for the benefit of the Lenders. All such shares constitute Pledged Collateral and are subject to all provisions of this Agreement.

## SECTION 3. Liquidation, Recapitalization, Etc.

(a) Any sums or other property paid or distributed upon or with respect to any of the Pledged Collateral, whether by dividend or redemption or upon the liquidation or dissolution of the issuer thereof or otherwise, shall, except to the limited extent provided in Section 5, be paid over and delivered to the Agent to be held by the Agent as security for the payment and performance in full of all of the Secured Obligations. In the event that, pursuant to the recapitalization or reclassification of the capital of the issuer thereof or pursuant to the reorganization thereof, any distribution of capital shall be made on or in respect of any of the Pledged Collateral or any such property, then such distribution of capital shall be paid over and delivered to the Agent to be held by the Agent as security for the Secured Obligations. Except to the limited extent provided in Section 5, all sums of money and property paid or distributed in respect of the Pledged Collateral, whether as a dividend or upon such a liquidation, dissolution, recapitalization or reclassification or otherwise, that are received by the Pledgor shall, until paid or delivered to the Agent, be held in trust for the Agent as security for the payment and performance in full of all of the Secured Obligations.

(b) All sums of money that are delivered to the Agent pursuant to this Section 3 shall be deposited into an interest bearing account with the Agent (the "Cash Collateral Account"). So long as no Event of Default has occurred which is continuing, upon the request by the Pledgor, funds from time to time in the Cash Collateral Account shall be invested in time deposits ("Time Deposits") that are satisfactory to both the Agent and the Pledgor. Interest earned on the Cash Collateral Account and on the Time Deposits, and the principal of the Time Deposits at maturity that is not invested in new Time Deposits, shall be deposited in the Cash Collateral Account. The Cash Collateral Account, all sums from time to time credited to the Cash Collateral Account, any and all Time Deposits, any and all instruments or other writings evidencing Time Deposits and any and all proceeds of any thereof are hereinafter referred to as the "Cash Collateral."

(c) The Pledgor shall have no right to withdraw sums from the Cash Collateral Account, to receive any of the Cash Collateral or to require the Agent to part with the Agent's possession of any instruments or other writings evidencing any Time Deposits. So long as no Event of Default has occurred which is continuing and subject to any provisions to the contrary in the Credit Agreement, the Pledgor shall have the right to direct that any sums in the Cash Collateral Account be applied to such of the Secured Obligations as the Pledgor may request.

SECTION 4. Warranty of Title; Authority. The Pledgor hereby represents and warrants that: (a) the Pledgor has good and marketable title to the Pledged Collateral subject to no pledges, liens, security interests, charges, options, restrictions or other encumbrances except the pledge and security interest created by this Agreement, and (b) the Pledgor has full power, authority and legal right to execute, deliver and perform the Pledgor's obligations under this Agreement and to pledge and grant a security interest in all of the Pledged Collateral pursuant to this Agreement, and the execution, delivery and performance hereof and the pledge of and granting of a security interest in the Pledged Collateral hereunder have been duly authorized by all necessary action and do not contravene any law, rule or regulation or any judgment, decree or order of any tribunal or of any agreement or instrument to which the Pledgor is a party or by which the Pledgor or any of the Pledgor's property is bound or affected or constitute a default thereunder. The Pledgor covenants that (x) the Pledgor will defend the Agent's rights and security interest in such Pledged Collateral against the claims and demands of all persons whomsoever; (y) except as permitted by the Credit Agreement, the Pledgor is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement and the other Financing Documents, which restricts in any manner the rights of any present or future holder of any of the Pledged Collateral with respect thereto, and (z) upon the delivery of the Pledged Collateral, the Agent will have a valid and perfected security interest in the Pledged Collateral subject to no prior lien. The Pledgor further covenants that the Pledgor will have legal title to and the right to pledge and grant a security interest in the Pledged Collateral hereafter pledged or in which a security interest is granted to the Agent hereunder and will likewise defend the Agent's rights, pledge and security interest thereof and therein.

SECTION 5. Dividends, Voting, Etc., Prior to Maturity. So long as no Event of Default shall have occurred and be continuing, the Pledgor shall be entitled to receive all cash dividends paid in respect of the Pledged Equity Interests, to vote the Pledged Equity Interests and to give consents, waivers and ratifications in respect of the Pledged Equity Interests; provided, however, that no vote shall be cast or consent, waiver or ratifications given by the Pledgor if the effect thereof would impair any of the Pledged Equity Interests or be inconsistent with or result in any violation of any of the provisions of the Credit Agreement. All such rights of the Pledgor to receive cash dividends, to vote and give consents, waivers and ratifications with respect to the Pledged Equity Interests shall, at the Agent's option, as evidenced by the Agent's notifying the Pledgor of such election in writing, cease in case an Event of Default shall have occurred and be continuing.

SECTION 6. Remedies.

(a) If an Event of Default shall have occurred and be continuing, the Agent shall thereafter have the following rights and remedies (to the extent permitted by applicable law) in addition to the rights and remedies of a secured party under the UCC, all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively or concurrently, at such time or times as the Agent deems expedient:

(i) the Agent may cause any or all of the Pledged Equity Interests to be transferred of record into the name of the Agent or its nominee;

(ii) if the Agent so elects and gives notice of such election to the Pledgor in writing, the Agent may vote any or all shares of the Pledged Equity Interests (whether or not the same shall have been transferred into the Agent's name or the name of the Agent's nominee or nominees) for any lawful purpose, including, without limitation, if the Agent so elects, for the liquidation of the assets of the issuer thereof, and give all consents, waivers and ratifications in respect of the Pledged Equity Interests and otherwise act with respect thereto as though the Agent were the outright owner thereof (the Pledgor hereby irrevocably constituting and appointing the Agent the proxy and attorney-in-fact of the Pledgor, with full power of substitution, to do so);

(iii) the Agent may demand, sue for, collect or make any compromise or settlement the Agent deems suitable in respect of any Pledged Collateral;

(iv) the Agent may sell, resell, assign and deliver, or otherwise dispose of any or all of the Pledged Collateral, for cash or credit or both and upon such terms at such place or places, at such time or times and to such entities or other persons as the Agent thinks expedient, all without demand for performance by the Pledgor or any notice or advertisement whatsoever except as expressly provided herein or as may otherwise be required by law;

(v) the Agent may set off against the Secured Obligations any and all sums owing by the Agent or the Lenders to the Pledgor or held by the Agent or the Lenders, including without limitation, any sums credited to the Cash Collateral Account and any Time Deposits; and

(vi) the may sell any of the Pledged Collateral at a public or private sale or at any broker's board or any exchange, for cash, upon credit or for future delivery, at such price or prices as the Agent may deem satisfactory.

(b) In the event of any disposition of the Pledged Collateral as provided in clause (iv) of Section 6(a), the Agent shall give to the Pledgor at least ten (10) days' prior written notice of the time and place of any public sale of the Pledged Collateral or of the time after which any private sale or any other intended disposition is to be made. The Pledgor hereby acknowledges that ten (10) days' prior written notice of such sale or sales shall be reasonable notice. The Agent may enforce the Agent's rights hereunder without any other notice and without compliance with any other condition precedent now or hereunder imposed by statute, rule of law or otherwise (all of which are hereby expressly waived by the Pledgor, to the fullest extent permitted by law). The Agent may buy any part or all of the Pledged Collateral at any public sale and if any part of all of the Pledged Collateral of a type customarily sold in a recognized market or is of the type which is the subject of widely-distributed standard price quotations, the Agent may buy at private sale and may make payments thereof by any means. The Agent may apply the cash proceeds actually received from any sale or other disposition to the reasonable expenses of retaking, holding, preparing for sale, selling and the like, to reasonable attorneys' fees, travel and all other expenses which may be incurred by the Agent in attempting to collect the Secured Obligations or to enforce this Agreement or in the prosecution or defense of any action or proceeding related to the subject matter of this Agreement, and then to the Secured Obligations in such order or preference as the Agent may determine after proper allowance for the Secured Obligations not then due. Only after such applications, and after payment by the Agent of any amount required by §9-615(a)(3) of the UCC, or any successor statute thereto, need the Agent account to the Pledgor for any surplus. To the extent that any of the Secured Obligations are to be paid or performed by a person other than the Pledgor, the Pledgor expressly waives (to the fullest extent permitted by law) and agrees not to assert any rights or privileges which the Pledgor may have as a Debtor under the UCC with regard to any actions taken or not taken or notices or other information provided to others, by the Agent with respect thereto or any rights of redemption, rights to injunctive relief or claims for losses in connection therewith.

(c) The Pledgor recognizes that the Agent may be unable to effect a public sale of the Pledged Collateral by reason of certain prohibitions contained in certain applicable laws, but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers. The Pledgor agrees that any such private sales may be at prices and other terms less favorable to the Agent than if sold at public sales and that such private sales shall not by reason thereof be deemed not to have been made in a commercially reasonable manner. The Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the issuer of such securities to register such securities for public sale under any applicable law, even if the issuer would agree to do so. Subject to the foregoing, the Agent agrees that any sale of the Pledged Collateral shall be made in a commercially reasonable manner.

(d) The Pledgor further agrees to do or cause to be done all such other acts and things as may be reasonably necessary to make any sales of any portion or all of the Pledged Collateral pursuant to this Section 6 valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at the Pledgor's expense. Notwithstanding the foregoing, the Pledgor

shall not be obligated to register, or to cause the issuer of the Pledged Collateral to register, the Pledged Collateral under any federal or state securities laws in connection with any sale of the Pledged Collateral by the Agent. The Pledgor further agrees that a breach of any of the covenants contained in this Section 6 will cause irreparable injury to the Agent, that the Agent has no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 6 shall be specifically enforceable against the Pledgor and the Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

SECTION 7. Marshalling. The Agent shall not be required to marshal any present or future security for (including but not limited to this Agreement and the Pledged Collateral), or other assurances of payment of, the Secured Obligations or any of them, or to resort to such security or other assurances of payment in any particular order. All of the Agent's rights hereunder and in respect of such security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that the Pledgor lawfully may, the Pledgor hereby agrees that the Pledgor will not invoke any law relating to the marshalling of collateral that might cause delay in or impede the enforcement of the Agent's rights under this Agreement or under any other instrument evidencing any of the Secured Obligations or under which any of the Secured Obligations is outstanding or by which any of the obligations is secured or payment thereof is otherwise assured, and to the extent that the Pledgor lawfully may the Pledgor hereby irrevocably waives the benefits of all such laws.

SECTION 8. Pledgor's Obligations Not Affected. The obligations of the Pledgor hereunder shall remain in full force and effect without regard to, and shall not be impaired by (a) any exercise or nonexercise, or any waiver, by the Agent of any right, remedy, power or privilege under or in respect any of the Secured Obligations or any security thereof (including this Agreement); (b) any amendment to or modification of the Credit Agreement or any of the Secured Obligations; (c) any amendment to or modification of any instrument (other than this Agreement) securing any of the Secured Obligations; or (d) assurances of payment of, any of the Secured Obligations or the release or discharge or termination of any security or other assurances of payment or performance for any of the Secured Obligations; whether or not the Pledgor shall have notice or knowledge of any of the foregoing.

SECTION 9. Transfer, Etc., by Pledgor.

(a) Without the prior written consent of the Agent, request for which will be reasonably considered by Agent, the Pledgor will not sell, assign, transfer or otherwise dispose of, grant any option with respect to, or pledge or grant any security interest in or otherwise encumber or restrict any of the Pledged Collateral or any interest therein, except for the pledge thereof and security interest thereof and security interest therein provided for in this Agreement.

(b) With respect to the pledge and/or transfer of the Pledged Collateral pursuant to this Agreement, to the fullest extent permitted by applicable law, each of the Pledgor and the Subsidiaries hereby waives any and all restrictions against the pledge and/or transfer of the Pledged Collateral contained in Pledgor's and the Subsidiaries' formation and/or governing documents, including all amendments thereto.

SECTION 10. Power of Attorney. PLEDGOR HEREBY IRREVOCABLY GRANTS TO THE AGENT PLEDGOR'S PROXY (EXERCISABLE FROM AND AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT WHICH IS CONTINUING AND SUBJECT TO THE TERMS OF THIS AGREEMENT) TO VOTE ANY PLEDGED INTEREST AND APPOINTS THE AGENT AS PLEDGOR'S ATTORNEY-IN-FACT (EXERCISABLE FROM AND AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT WHICH IS CONTINUING) TO PERFORM ALL OBLIGATIONS OF PLEDGOR UNDER THIS AGREEMENT AND TO EXERCISE ALL OF THE AGENT'S RIGHTS HEREUNDER. THE PROXY AND POWER OF ATTORNEY HEREIN GRANTED, AND EACH STOCK POWER AND SIMILAR POWER NOW OR HEREAFTER GRANTED (INCLUDING ANY EVIDENCED BY A SEPARATE WRITING) ARE COUPLED

WITH AN INTEREST AND ARE IRREVOCABLE PRIOR TO FINAL PAYMENT IN FULL OF THE OBLIGATION.

SECTION 11. Further Assurances. The Pledgor will do all such acts, and will furnish to the Agent all such financing statements, certificates, legal opinions and other documents and will obtain all such governmental consents and corporate approvals and will do or cause to be done all such other things as the Agent may reasonably request from time to time in order to give full effect to this Agreement and to secure the rights of the Agent hereunder, all without any costs or expense to the Agent.

SECTION 12. Agent's Exoneration. Under no circumstances shall the Agent be deemed to assume any responsibility for or obligation or duty with respect to any part or all of the Pledged Collateral of any nature or kind or any matter or proceedings arising out of or relating thereto, other than (a) to exercise reasonable care in the physical custody of the Pledged Collateral and (b) after an Event of Default shall have occurred and be continuing to act in a commercially reasonable manner. The Agent shall not be required to take any action of any kind to collect, preserve or protect the Agent's or the Pledgor's rights in the Pledged Collateral or against other parties thereto. The Agent's prior recourse to any part or all of the Pledged Collateral shall not constitute a condition of any demand, suit or proceeding for payment or collection of any of the Secured Obligations.

SECTION 13. No Waiver, Etc. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated except by a written instrument expressly referring to this Agreement and to the provisions so modified or limited, and executed by the party to be charged. No act, failure or delay by the Agent shall constitute a waiver of the Agent's rights and remedies hereunder or otherwise. No single or partial waiver by the Agent of any default or right or remedy that the Agent may have shall operate as a waiver of any other default, right or remedy or of the same default, right or remedy on a future occasion. The Pledgor hereby waives presentment, notice of dishonor and protest of all instruments, included in or evidencing any of the Secured Obligations, the Pledged Collateral and any and all other notices and demands whatsoever (except as expressly provided herein or in the Credit Agreement).

SECTION 14. Notice, Etc. All notices, requests and other communications hereunder shall be made in the manner set forth in the Credit Agreement.

SECTION 15. Termination. Upon final payment and performance in full of the Secured Obligations, this Agreement shall terminate and the Agent shall, at the Pledgor's request and expense, return such Pledged Collateral and Cash Collateral in the possession or control of the Agent as has not theretofore been disposed of pursuant to the provisions hereof, together with any moneys and other property at the time held by the Agent hereunder. Upon a Disposition of any Pledged Collateral permitted pursuant to the Credit Agreement, unless an Event of Default shall have occurred and be continuing Agent shall, upon the request of the Pledgor, release such Pledged Collateral from the lien imposed by the Credit Agreement.

SECTION 16. Overdue Amounts. Until paid, all amounts due and payable by the Pledgor hereunder shall be a debt secured by the Pledged Collateral and shall bear, whether before or after judgment, interest at the default rate set forth under the Credit Agreement.

SECTION 17. Governing Law; Consent to Jurisdiction. THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF RHODE ISLAND. The Pledgor agrees that any suit for the enforcement of this Agreement may be brought in the courts of the State of Rhode Island or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Pledgor by mail at the address specified in the Credit Agreement. The Pledgor hereby waives any objection that the Agent may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

SECTION 18. Waiver of Jury Trial. THE PLEDGOR WAIVES THE PLEDGOR'S RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS. Except as prohibited by law, the Pledgor waives any right which the Pledgor may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Pledgor (a) certifies that neither the Agent nor any representative, agent or attorney of the Agent has represented, expressly or otherwise, that the Agent would not, in the event of litigation, seek to enforce the foregoing waivers and (b) acknowledges that, in entering into the Credit Agreement to which the Agent is a party, the Agent is relying upon, among other things, the waivers and certifications contained in this Section 8.

SECTION 19. Miscellaneous. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Pledgor and his respective successors and assigns, and shall inure to the benefit of the Agent and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall be in no way affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. This Agreement may be signed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. The Pledgor acknowledges receipt of a copy of this Agreement.

[Signature Page Follows]

[Signature Page to KVH/Denmark Pledge Agreement]

IN WITNESS WHEREOF, intending to be legally bound, the Pledgor and the Agent have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

PLEDGOR:  
KVH INDUSTRIES, INC.

WITNESSED:  
Felise Feingold

*Print/Type Full Name*

By: /s/ Peter Rendall  
Name: Peter Rendall  
Title: Chief Financial Officer

ADMINISTRATIVE AGENT:  
BANK OF AMERICA, N.A., as Administrative Agent

WITNESSED:  
Tiffany Shin

*Print/Type Full Name*

By: /s/ Brenda Schriener  
Name: Brenda Schriener  
Title: Vice President

KVH INDUSTRIES, INC.

PLEDGE AGREEMENT

This PLEDGE AGREEMENT (this "Agreement") is made as of this 1<sup>st</sup> day of July, 2014 by and between KVH INDUSTRIES, INC., a Delaware corporation having a principal place of business at 50 Enterprise Center, Middletown, Rhode Island 02842-5279 (the "Pledgor") and BANK OF AMERICA, N.A., a national bank having a place of business at 100 Westminster Street, Providence, Rhode Island 02903-2394, as Administrative Agent (the "Agent").

RECITALS

**WHEREAS**, the Pledgor, the Agent and the Lenders from time to time party thereto have entered into a Credit Agreement dated as of the date hereof (as the same may thereafter be amended, modified, supplemented and restated from time to time, the "Credit Agreement");

**WHEREAS**, as security under the Credit Agreement, the Pledgor has agreed to deliver this Agreement, it being the intention of the Pledgor that the security interests granted pursuant to this Agreement shall constitute valid security interests securing all obligations of the Pledgor under the Credit Agreement and the other Loan Documents;

**WHEREAS**, as security for the obligations of the Pledgor to the Agent and the Lenders under the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement), the Pledgor is pledging to the Agent sixty-five percent (65%) of the ordinary shares of KVH Industries Ltd., a company incorporated in the United Kingdom with its registered address at 2A Queen Street, Leeds, West Yorkshire, UK LS1 2TW ("Issuer"), (all such stock and ownership interests, collectively, the "Pledged Equity Interests");

**NOW, THEREFORE**, in consideration of the foregoing premises and value received, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions. All capitalized terms used herein without definition shall have the respective meanings provided therefor in the Credit Agreement. Terms used herein and not defined in the Credit Agreement or otherwise defined herein that are defined in the UCC (as defined below) have such defined meanings herein, unless the context otherwise indicates or requires, and the following terms shall have the following meanings:

Cash Collateral. See Section 3.

Cash Collateral Account. See Section 3

Pledged Collateral. The Pledged Equity Interests and any other property at any time pledged to the Agent hereunder (whether described herein or not) and all income therefrom, increases therein and proceeds thereof, including without limitation that included in Cash Collateral, but excluding any income, increases or proceeds received by the Pledgor to the extent expressly permitted by Section 5.

Pledged Equity Interests. See Recitals.

Secured Obligations. All of the obligations of the Pledgor to the Agent and the Lenders under this Agreement, the Credit Agreement, the Notes, and the other loan documents, including without limitation, any interest which accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of any obligor, or which would accrue but for the

commencement of such case, proceeding or other action, whether or not allowed or allowable as a claim in any such proceeding.

UCC. The Uniform Commercial Code of the State of Rhode Island, as amended and in effect from time to time.

## SECTION 2. The Pledge.

(a) In order to secure the full and punctual payment and performance of the Secured Obligations in accordance with the terms thereof, the Pledgor hereby pledges, assigns, grants a security interest in, and delivers to the Agent, for the benefit of the Lenders, all of the Pledgor's right, title and interest in and to the Pledged Collateral, and all of the Pledgor's rights, entitlements and privileges with respect to the Pledged Collateral. Contemporaneously with the execution and delivery hereof, the Pledgor is delivering executed, undated stock powers for each of the Pledged Equity Interests evidenced by certificates as noted on Annex A hereto.

(b) In the event that the issuer of Pledged Collateral at any time issues any additional or substitute shares of capital stock of any class, or any other additional or substitute ownership interests, the Pledgor will immediately deliver to the Agent certificates representing all such shares as additional security for the Secured Obligations, provided that at no time shall greater than sixty-five percent (65%) of the Pledgor's ownership interest in Issuer be pledged to Agent, for the benefit of the Lenders. All such shares constitute Pledged Collateral and are subject to all provisions of this Agreement.

## SECTION 3. Liquidation, Recapitalization, Etc.

(a) Any sums or other property paid or distributed upon or with respect to any of the Pledged Collateral, whether by dividend or redemption or upon the liquidation or dissolution of the issuer thereof or otherwise, shall, except to the limited extent provided in Section 5, be paid over and delivered to the Agent to be held by the Agent as security for the payment and performance in full of all of the Secured Obligations. In the event that, pursuant to the recapitalization or reclassification of the capital of the issuer thereof or pursuant to the reorganization thereof, any distribution of capital shall be made on or in respect of any of the Pledged Collateral or any such property, then such distribution of capital shall be paid over and delivered to the Agent to be held by the Agent as security for the Secured Obligations. Except to the limited extent provided in Section 5, all sums of money and property paid or distributed in respect of the Pledged Collateral, whether as a dividend or upon such a liquidation, dissolution, recapitalization or reclassification or otherwise, that are received by the Pledgor shall, until paid or delivered to the Agent, be held in trust for the Agent as security for the payment and performance in full of all of the Secured Obligations.

(b) All sums of money that are delivered to the Agent pursuant to this Section 3 shall be deposited into an interest bearing account with the Agent (the "Cash Collateral Account"). So long as no Event of Default has occurred which is continuing, upon the request by the Pledgor, funds from time to time in the Cash Collateral Account shall be invested in time deposits ("Time Deposits") that are satisfactory to both the Agent and the Pledgor. Interest earned on the Cash Collateral Account and on the Time Deposits, and the principal of the Time Deposits at maturity that is not invested in new Time Deposits, shall be deposited in the Cash Collateral Account. The Cash Collateral Account, all sums from time to time credited to the Cash Collateral Account, any and all Time Deposits, any and all instruments or other writings evidencing Time Deposits and any and all proceeds of any thereof are hereinafter referred to as the "Cash Collateral."

(c) The Pledgor shall have no right to withdraw sums from the Cash Collateral Account, to receive any of the Cash Collateral or to require the Agent to part with the Agent's possession of any instruments or other writings evidencing any Time Deposits. So long as no Event of Default has occurred which is continuing and subject to any provisions to the contrary in the Credit Agreement, the Pledgor shall have the right to direct that any sums in the Cash Collateral Account be applied to such of the Secured Obligations as the Pledgor may request.

SECTION 4. Warranty of Title; Authority. The Pledgor hereby represents and warrants that: (a) the Pledgor has good and marketable title to the Pledged Collateral subject to no pledges, liens, security interests, charges, options, restrictions or other encumbrances except the pledge and security interest created by this Agreement, and (b) the Pledgor has full power, authority and legal right to execute, deliver and perform the Pledgor's obligations under this Agreement and to pledge and grant a security interest in all of the Pledged Collateral pursuant to this Agreement, and the execution, delivery and performance hereof and the pledge of and granting of a security interest in the Pledged Collateral hereunder have been duly authorized by all necessary action and do not contravene any law, rule or regulation or any judgment, decree or order of any tribunal or of any agreement or instrument to which the Pledgor is a party or by which the Pledgor or any of the Pledgor's property is bound or affected or constitute a default thereunder. The Pledgor covenants that (x) the Pledgor will defend the Agent's rights and security interest in such Pledged Collateral against the claims and demands of all persons whomsoever; (y) except as permitted by the Credit Agreement, the Pledgor is not and will not become a party to or otherwise be bound by any agreement, other than this Agreement and the other Financing Documents, which restricts in any manner the rights of any present or future holder of any of the Pledged Collateral with respect thereto, and (z) upon the delivery of the Pledged Collateral, the Agent will have a valid and perfected security interest in the Pledged Collateral subject to no prior lien. The Pledgor further covenants that the Pledgor will have legal title to and the right to pledge and grant a security interest in the Pledged Collateral hereafter pledged or in which a security interest is granted to the Agent hereunder and will likewise defend the Agent's rights, pledge and security interest thereof and therein.

SECTION 5. Dividends, Voting, Etc., Prior to Maturity. So long as no Event of Default shall have occurred and be continuing, the Pledgor shall be entitled to receive all cash dividends paid in respect of the Pledged Equity Interests, to vote the Pledged Equity Interests and to give consents, waivers and ratifications in respect of the Pledged Equity Interests; provided, however, that no vote shall be cast or consent, waiver or ratifications given by the Pledgor if the effect thereof would impair any of the Pledged Equity Interests or be inconsistent with or result in any violation of any of the provisions of the Credit Agreement. All such rights of the Pledgor to receive cash dividends, to vote and give consents, waivers and ratifications with respect to the Pledged Equity Interests shall, at the Agent's option, as evidenced by the Agent's notifying the Pledgor of such election in writing, cease in case an Event of Default shall have occurred and be continuing.

SECTION 6. Remedies.

(a) If an Event of Default shall have occurred and be continuing, the Agent shall thereafter have the following rights and remedies (to the extent permitted by applicable law) in addition to the rights and remedies of a secured party under the UCC, all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively or concurrently, at such time or times as the Agent deems expedient:

(i) the Agent may cause any or all of the Pledged Equity Interests to be transferred of record into the name of the Agent or its nominee;

(ii) if the Agent so elects and gives notice of such election to the Pledgor in writing, the Agent may vote any or all shares of the Pledged Equity Interests (whether or not the same shall have been transferred into the Agent's name or the name of the Agent's nominee or nominees) for any lawful purpose, including, without limitation, if the Agent so elects, for the liquidation of the assets of the issuer thereof, and give all consents, waivers and ratifications in respect of the Pledged Equity Interests and otherwise act with respect thereto as though the Agent were the outright owner thereof (the Pledgor hereby irrevocably constituting and appointing the Agent the proxy and attorney-in-fact of the Pledgor, with full power of substitution, to do so);

(iii) the Agent may demand, sue for, collect or make any compromise or settlement the Agent deems suitable in respect of any Pledged Collateral;

(iv) the Agent may sell, resell, assign and deliver, or otherwise dispose of any or all of the Pledged Collateral, for cash or credit or both and upon such terms at such place or places, at such time or times and to such entities or other persons as the Agent thinks expedient, all without demand for performance by the Pledgor or any notice or advertisement whatsoever except as expressly provided herein or as may otherwise be required by law;

(v) the Agent may set off against the Secured Obligations any and all sums owing by the Agent or the Lenders to the Pledgor or held by the Agent or the Lenders, including without limitation, any sums credited to the Cash Collateral Account and any Time Deposits; and

(vi) the may sell any of the Pledged Collateral at a public or private sale or at any broker's board or any exchange, for cash, upon credit or for future delivery, at such price or prices as the Agent may deem satisfactory.

(b) In the event of any disposition of the Pledged Collateral as provided in clause (iv) of Section 6(a), the Agent shall give to the Pledgor at least ten (10) days' prior written notice of the time and place of any public sale of the Pledged Collateral or of the time after which any private sale or any other intended disposition is to be made. The Pledgor hereby acknowledges that ten (10) days' prior written notice of such sale or sales shall be reasonable notice. The Agent may enforce the Agent's rights hereunder without any other notice and without compliance with any other condition precedent now or hereunder imposed by statute, rule of law or otherwise (all of which are hereby expressly waived by the Pledgor, to the fullest extent permitted by law). The Agent may buy any part or all of the Pledged Collateral at any public sale and if any part of all of the Pledged Collateral of a type customarily sold in a recognized market or is of the type which is the subject of widely-distributed standard price quotations, the Agent may buy at private sale and may make payments thereof by any means. The Agent may apply the cash proceeds actually received from any sale or other disposition to the reasonable expenses of retaking, holding, preparing for sale, selling and the like, to reasonable attorneys' fees, travel and all other expenses which may be incurred by the Agent in attempting to collect the Secured Obligations or to enforce this Agreement or in the prosecution or defense of any action or proceeding related to the subject matter of this Agreement, and then to the Secured Obligations in such order or preference as the Agent may determine after proper allowance for the Secured Obligations not then due. Only after such applications, and after payment by the Agent of any amount required by §9-615(a)(3) of the UCC, or any successor statute thereto, need the Agent account to the Pledgor for any surplus. To the extent that any of the Secured Obligations are to be paid or performed by a person other than the Pledgor, the Pledgor expressly waives (to the fullest extent permitted by law) and agrees not to assert any rights or privileges which the Pledgor may have as a Debtor under the UCC with regard to any actions taken or not taken or notices or other information provided to others, by the Agent with respect thereto or any rights of redemption, rights to injunctive relief or claims for losses in connection therewith.

(c) The Pledgor recognizes that the Agent may be unable to effect a public sale of the Pledged Collateral by reason of certain prohibitions contained in certain applicable laws, but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers. The Pledgor agrees that any such private sales may be at prices and other terms less favorable to the Agent than if sold at public sales and that such private sales shall not by reason thereof be deemed not to have been made in a commercially reasonable manner. The Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the issuer of such securities to register such securities for public sale under any applicable law, even if the issuer would agree to do so. Subject to the foregoing, the Agent agrees that any sale of the Pledged Collateral shall be made in a commercially reasonable manner.

(d) The Pledgor further agrees to do or cause to be done all such other acts and things as may be reasonably necessary to make any sales of any portion or all of the Pledged Collateral pursuant to this Section 6 valid and binding and in compliance with any and all applicable laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or governmental instrumentalities, domestic or foreign, having jurisdiction over any such sale or sales, all at the Pledgor's expense. Notwithstanding the foregoing, the Pledgor

shall not be obligated to register, or to cause the issuer of the Pledged Collateral to register, the Pledged Collateral under any federal or state securities laws in connection with any sale of the Pledged Collateral by the Agent. The Pledgor further agrees that a breach of any of the covenants contained in this Section 6 will cause irreparable injury to the Agent, that the Agent has no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 6 shall be specifically enforceable against the Pledgor and the Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

SECTION 7. Marshalling. The Agent shall not be required to marshal any present or future security for (including but not limited to this Agreement and the Pledged Collateral), or other assurances of payment of, the Secured Obligations or any of them, or to resort to such security or other assurances of payment in any particular order. All of the Agent's rights hereunder and in respect of such security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that the Pledgor lawfully may, the Pledgor hereby agrees that the Pledgor will not invoke any law relating to the marshalling of collateral that might cause delay in or impede the enforcement of the Agent's rights under this Agreement or under any other instrument evidencing any of the Secured Obligations or under which any of the Secured Obligations is outstanding or by which any of the obligations is secured or payment thereof is otherwise assured, and to the extent that the Pledgor lawfully may the Pledgor hereby irrevocably waives the benefits of all such laws.

SECTION 8. Pledgor's Obligations Not Affected. The obligations of the Pledgor hereunder shall remain in full force and effect without regard to, and shall not be impaired by (a) any exercise or nonexercise, or any waiver, by the Agent of any right, remedy, power or privilege under or in respect any of the Secured Obligations or any security thereof (including this Agreement); (b) any amendment to or modification of the Credit Agreement or any of the Secured Obligations; (c) any amendment to or modification of any instrument (other than this Agreement) securing any of the Secured Obligations; or (d) assurances of payment of, any of the Secured Obligations or the release or discharge or termination of any security or other assurances of payment or performance for any of the Secured Obligations; whether or not the Pledgor shall have notice or knowledge of any of the foregoing.

SECTION 9. Transfer, Etc., by Pledgor.

(a) Without the prior written consent of the Agent, request for which will be reasonably considered by Agent, the Pledgor will not sell, assign, transfer or otherwise dispose of, grant any option with respect to, or pledge or grant any security interest in or otherwise encumber or restrict any of the Pledged Collateral or any interest therein, except for the pledge thereof and security interest thereof and security interest therein provided for in this Agreement.

(b) With respect to the pledge and/or transfer of the Pledged Collateral pursuant to this Agreement, to the fullest extent permitted by applicable law, each of the Pledgor and the Subsidiaries hereby waives any and all restrictions against the pledge and/or transfer of the Pledged Collateral contained in Pledgor's and the Subsidiaries' formation and/or governing documents, including all amendments thereto.

SECTION 10. Power of Attorney. PLEDGOR HEREBY IRREVOCABLY GRANTS TO THE AGENT PLEDGOR'S PROXY (EXERCISABLE FROM AND AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT WHICH IS CONTINUING AND SUBJECT TO THE TERMS OF THIS AGREEMENT) TO VOTE ANY PLEDGED INTEREST AND APPOINTS THE AGENT AS PLEDGOR'S ATTORNEY-IN-FACT (EXERCISABLE FROM AND AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT WHICH IS CONTINUING) TO PERFORM ALL OBLIGATIONS OF PLEDGOR UNDER THIS AGREEMENT AND TO EXERCISE ALL OF THE AGENT'S RIGHTS HEREUNDER. THE PROXY AND POWER OF ATTORNEY HEREIN GRANTED, AND EACH STOCK POWER AND SIMILAR POWER NOW OR HEREAFTER GRANTED (INCLUDING ANY EVIDENCED BY A SEPARATE WRITING) ARE COUPLED

WITH AN INTEREST AND ARE IRREVOCABLE PRIOR TO FINAL PAYMENT IN FULL OF THE OBLIGATION.

SECTION 11. Further Assurances. The Pledgor will do all such acts, and will furnish to the Agent all such financing statements, certificates, legal opinions and other documents and will obtain all such governmental consents and corporate approvals and will do or cause to be done all such other things as the Agent may reasonably request from time to time in order to give full effect to this Agreement and to secure the rights of the Agent hereunder, all without any costs or expense to the Agent.

SECTION 12. Agent's Exoneration. Under no circumstances shall the Agent be deemed to assume any responsibility for or obligation or duty with respect to any part or all of the Pledged Collateral of any nature or kind or any matter or proceedings arising out of or relating thereto, other than (a) to exercise reasonable care in the physical custody of the Pledged Collateral and (b) after an Event of Default shall have occurred and be continuing to act in a commercially reasonable manner. The Agent shall not be required to take any action of any kind to collect, preserve or protect the Agent's or the Pledgor's rights in the Pledged Collateral or against other parties thereto. The Agent's prior recourse to any part or all of the Pledged Collateral shall not constitute a condition of any demand, suit or proceeding for payment or collection of any of the Secured Obligations.

SECTION 13. No Waiver, Etc. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated except by a written instrument expressly referring to this Agreement and to the provisions so modified or limited, and executed by the party to be charged. No act, failure or delay by the Agent shall constitute a waiver of the Agent's rights and remedies hereunder or otherwise. No single or partial waiver by the Agent of any default or right or remedy that the Agent may have shall operate as a waiver of any other default, right or remedy or of the same default, right or remedy on a future occasion. The Pledgor hereby waives presentment, notice of dishonor and protest of all instruments, included in or evidencing any of the Secured Obligations, the Pledged Collateral and any and all other notices and demands whatsoever (except as expressly provided herein or in the Credit Agreement).

SECTION 14. Notice, Etc. All notices, requests and other communications hereunder shall be made in the manner set forth in the Credit Agreement.

SECTION 15. Termination. Upon final payment and performance in full of the Secured Obligations, this Agreement shall terminate and the Agent shall, at the Pledgor's request and expense, return such Pledged Collateral and Cash Collateral in the possession or control of the Agent as has not theretofore been disposed of pursuant to the provisions hereof, together with any moneys and other property at the time held by the Agent hereunder. Upon a Disposition of any Pledged Collateral permitted pursuant to the Credit Agreement, unless an Event of Default shall have occurred and be continuing Agent shall, upon the request of the Pledgor, release such Pledged Collateral from the lien imposed by the Credit Agreement.

SECTION 16. Overdue Amounts. Until paid, all amounts due and payable by the Pledgor hereunder shall be a debt secured by the Pledged Collateral and shall bear, whether before or after judgment, interest at the default rate set forth under the Credit Agreement.

SECTION 17. Governing Law; Consent to Jurisdiction. THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF RHODE ISLAND. The Pledgor agrees that any suit for the enforcement of this Agreement may be brought in the courts of the State of Rhode Island or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Pledgor by mail at the address specified in the Credit Agreement. The Pledgor hereby waives any objection that the Agent may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

SECTION 18. Waiver of Jury Trial. THE PLEDGOR WAIVES THE PLEDGOR'S RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS. Except as prohibited by law, the Pledgor waives any right which the Pledgor may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Pledgor (a) certifies that neither the Agent nor any representative, agent or attorney of the Agent has represented, expressly or otherwise, that the Agent would not, in the event of litigation, seek to enforce the foregoing waivers and (b) acknowledges that, in entering into the Credit Agreement to which the Agent is a party, the Agent is relying upon, among other things, the waivers and certifications contained in this Section 8.

SECTION 19. Miscellaneous. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Pledgor and his respective successors and assigns, and shall inure to the benefit of the Agent and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall be in no way affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. This Agreement may be signed in any number of counterparts, each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. The Pledgor acknowledges receipt of a copy of this Agreement.

[Signature Page Follows]

[Signature Page to KVH/UK Pledge Agreement]

IN WITNESS WHEREOF, intending to be legally bound, the Pledgor and the Agent have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

PLEDGOR:  
KVH INDUSTRIES, INC.

WITNESSED:  
Felise Feingold

*Print/Type Full Name*

By: /s/ Peter Rendall  
Name: Peter Rendall  
Title: Chief Financial Officer

ADMINISTRATIVE AGENT:  
BANK OF AMERICA, N.A., as Administrative Agent

WITNESSED:  
Tiffany Shin

*Print/Type Full Name*

By: /s/ Brenda Schriner  
Name: Brenda Schriner  
Title: Vice President